

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TRANSLink Development Company, LLC

Docket No. ER03-83-001

ORDER ON REHEARING AND CLARIFICATION

(Issued May 21, 2003)

1. In an order issued on December 19, 2002,¹ the Commission accepted, as modified, suspended, made subject to refund and set for hearing proposed schedules to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT), for service on the TRANSLink Transmission Company, LLC (TRANSLink) transmission system. Various entities seek rehearing of the December 19 Order. The Commission addresses these requests below. This order benefits customers by furthering the development of viable for-profit independent transmission companies (ITCs) that operate and perform certain functions under the Midwest ISO.

Background

2. In an order issued on April 25, 2002,² the Commission accepted, as modified, a proposal by Alliant Energy Corporate Services, Inc., (Alliant), et al.,³ to form an ITC,

¹TRANSLink Development Company, LLC, 101 FERC ¶ 61,316 (2002) (December 19 Order).

²TRANSLink Transmission Company, L.L.C., et al., 99 FERC ¶ 61,106 (2002) (April 25 Order), order on reh'g, 101 FERC ¶ 61,140 (2002).

³The proposal was submitted by Alliant on behalf of its operating company affiliates IES Utilities, Inc. (IES) and Interstate Power Company (IPC) (jointly, Alliant West); MidAmerican Energy Company (MidAmerican); Xcel Energy Services, Inc., on behalf of its operating company affiliates Northern States Power Company - Minnesota (NSP-M) and Northern States Power Company - Wisconsin (NSP-W) (jointly, the NSP Companies); Public Service Company of Colorado (PSCo) and Southwestern Public Service Company

(continued...)

TRANSLink. TRANSLink is designed to share responsibility with the Midwest ISO and other regions for the RTO functions prescribed in Order No. 2000,⁴ and would take control of and, potentially, own certain transmission facilities currently owned by Private Power Participants, as well as certain transmission facilities currently owned by Nebraska Public Power District (NPPD) and Omaha Public Power District (OPPD) (collectively, Public Power Participants) and Corn Belt Power Cooperative (Corn Belt or Cooperative Power Participant). The Commission, in the April 25 Order, rejected TRANSLink's proposal to maintain its own tariff, but, in order to facilitate different rates and a different rate design for transactions that source and sink within TRANSLink's footprint, the Commission allowed TRANSLink to maintain a separate schedule within the Midwest ISO OATT.

3. The Commission, in the December 19 Order, accepted and suspended, TRANSLink's proposed schedules under the Midwest ISO OATT, as modified and subject to refund, and instituted hearing and settlement procedures. In that order, the Commission approved, among other things, TRANSLink's proposed rate design for TRANSLink's initial operation under the Midwest ISO prior to the commencement of the Midwest ISO's energy markets. The order further required the Midwest ISO and TRANSLink to each submit reports to the Commission, at least 60 days prior to the commencement of the Midwest ISO's energy markets, addressing the impacts that TRANSLink's rate design may have on the efficient operation of the Midwest ISO's markets and utilization of the transmission system. The December 19 Order also accepted TRANSLink's proposal to allow participants to adopt the 12.88 percent return on equity (ROE) that the Commission has approved for use in the formula rate in Attachment O of the Midwest ISO OATT. The Commission, however, rejected TRANSLink's proposed ROE adders and accelerated depreciation schedule for new investment.

4. The following entities filed for rehearing of the December 19 Order: Dairyland Power Cooperative, Great River Energy and Southern Minnesota Municipal Power Agency (collectively, Dairyland); Duke Energy North America LLC (Duke Energy); the Iowa Utilities Board (Iowa Board); Municipal Energy Agency of Nebraska (MEAN); Nebraska Public Power District (NPPD); and TRANSLink.

³(...continued)

(SPS) (jointly, Xcel Energy) (together, Private Power Participants); and TRANSLink.

⁴Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607(D.C. Cir. 2001).

A. Public Power Participation**1. December 19 Order**

5. Section 2.6 of proposed Attachment V.1 - TRANSLink provides that any conflict or inconsistency between the Midwest ISO OATT and an operating agreement between TRANSLink and a TRANSLink Participant that is not a public utility shall be governed by the operating agreement.⁵ In the December 19 Order, the Commission explained that the operating agreement with a participant cannot automatically take precedence when conflicts exist between it and the Midwest ISO OATT. The Commission further explained that while it recognized that certain operating agreement provisions may reflect contractual arrangements or treaty or statutory obligations of the parties, and that the ability of such parties to participate in TRANSLink or Midwest ISO may hinge on provisions in the operating agreements, it must balance the need to ensure independence of the RTO and operation of an efficient non-discriminatory transmission grid with the legal obligations of the parties joining the RTO. Thus, the December 19 Order required TRANSLink to file revised tariff sheets modifying Section 2.6 to provide specific information relating to the provisions of the operating agreements with non-public utility participants where a conflict between these provisions and the Midwest ISO OATT could adversely affect the ability of a non-public utility participant to participate in TRANSLink or the Midwest ISO. The order also required TRANSLink to provide a detailed explanation of why these provisions are essential and stated that the Commission would allow all interested parties an opportunity to comment upon these revisions upon submission of the compliance filing and that the Commission would take further action on this issue at that time.⁶

2. Rehearing Requests

⁵Section 2.6 of proposed Attachment V.1 - TRANSLink provides that:

Any Transmission Service the Transmission Provider provides under the RTO tariff using the transmission facilities of a TRANSLink Participant that is not a public utility under the Federal Power Act and which has an operating agreement with TRANSLink shall not conflict with or be inconsistent with the provisions of said TRANSLink operating agreement. Any conflict or inconsistency arising between the Tariff and such operating agreement between TRANSLink and said TRANSLink Participant that is not a public utility under the Federal Power Act shall be governed by and decided pursuant to the provisions of said operating agreement....

⁶See December 19 Order at 62,285.

6. While expressing general support for the December 19 Order, NPPD contends that the Commission erred by failing to accept, without modification, Section 2.6 of proposed Attachment V.1 - TRANSLink. NPPD argues that the Section 2.6 provisions are essential to allow public power participants to participate in a Commission-regulated RTO since they provide the requisite assurance that, should a conflict arise between the tariff and the operating agreement, the entities will continue to be in compliance with state law. NPPD further contends that the Commission's decision is arbitrary and capricious since a non-jurisdictional entity, such as itself, cannot violate its constitutional and statutory obligation by submitting to interpretations of existing provisions or changes to the tariff that could require it to take actions contrary to state law. Citing TRANSLink Transmission Co., LLC, et al.,⁷ NPPD argues that the Commission has, in the December 19 Order, disregarded its previous rulings regarding the importance and necessity of the provisions of the NPPD operating agreement and the challenges that public power entities face.

7. TRANSLink argues that the proposed provision in Section 2.6 simply recognizes that public power entities cannot incur obligations arising from their participation in a regional tariff that are inconsistent with their governing laws, a proposition that the Commission has previously accepted. TRANSLink points out that Section 39.1 of the Midwest ISO OATT, which the Commission previously accepted, generally implements that principle with respect to federal marketing agencies.⁸ Therefore, TRANSLink argues, the Commission should have accepted Section 2.6, without modification, in recognition that non-jurisdictional utilities other than federal agencies are similarly unable to make their facilities available under a regional transmission tariff in a manner that is inconsistent with their legal obligations.

8. Dairyland requests clarification that the Commission's requirement for TRANSLink to provide examples of any conflicts that might arise is limited to the existing operating agreements with non-public utilities, and does not pertain to agreements that have not yet been drafted or finalized.

3. Commission Conclusion

9. We will grant the rehearing requests and will accept proposed Section 2.6 of Attachment V.1 - TRANSLink, as originally filed. In this regard, we note that proposed

⁷101 FERC ¶ 61,140 at 61,588 (2001).

⁸Section 39.1, in pertinent part, states: "[i]n the event of a conflict between these Federal Participation provisions and any other provision of this Tariff, these provisions shall have precedence with respect to the application of this Tariff to the United States."

Section 2.6 of Attachment V.1 - TRANSLink is applicable in the event that the OATT is in conflict with, or is inconsistent with, the provision of TRANSLink's operating agreements. As proposed Section 2.6 would be part of the OATT, a jurisdictional tariff, it is for the Commission to interpret proposed Section 2.6, and decide when, and to what extent, there is, in fact, a conflict or an inconsistency.⁹

10. With respect to TRANSLink's argument that the Commission has accepted similar language with respect to federal marketing agencies, the Commission agrees with TRANSLink to the extent that there may be no justification for treating state and federal public power entities differently. However, like proposed Section 2.6 discussed above, Section 39.1 is triggered by a conflict, and it is for the Commission to interpret and decide when, and to what extent, an actual conflict exists. As such, TRANSLink's request for rehearing is hereby granted.

11. In light of our decision above, Dairyland's request for clarification is moot and, therefore, we will dismiss it.

B. Market Power and Mitigation Measures

1. December 19 Order

12. TRANSLink proposed provisions for the redispatch of generation, in response to emergency or unexpected conditions, to prevent the TRANSLink transmission system from operating in a non-secure state and to return the TRANSLink system to a secure state following an emergency or unexpected condition, until the Midwest ISO's congestion relief system or NERC Transmission Loading Relief (TLR) procedures can be applied. Under TRANSLink's proposal, it would obtain pricing data from the Midwest ISO if

⁹The Commission cannot allow participants in an RTO, including public power entities, unfettered discretion to unilaterally disregard the terms of the OATT because they may believe that, from time to time, some provision of the OATT conflicts with or is inconsistent with a TRANSLink operating agreement.

generators are submitting that data to the Midwest ISO; otherwise TRANSLink would compensate generators based on either market-based bids or the generator's incremental costs if the generator does not have Commission-authorized market-based rate authority. In the December 19 Order, the Commission set for hearing the potential for generators to exercise market power in TRANSLink's market for redispatch service during the period prior to the commencement of the Midwest ISO's energy spot markets, and directed parties to also address options to mitigate market power in instances where the potential to exercise market power is likely.

2. Rehearing Requests

13. Duke Energy seeks rehearing of the Commission's decision to set for hearing issues of market power and market power mitigation measures for TRANSLink's emergency redispatch market. Duke Energy contends that since TRANSLink will operate as an ITC within the Midwest ISO, the Midwest ISO's Independent Market Monitor (IMM) should be responsible for matters relating to market power and mitigation. Therefore, Duke Energy submits, the need for a market power analysis and evaluation of possible mitigation measures should be a matter for the Midwest ISO's IMM to address in the first instance, and not a matter to be set for hearing with the other TRANSLink rate issues as the December 19 Order directed.

14. Duke Energy also seeks Commission clarification with respect to TRANSLink's default cost-based pricing mechanism. Duke Energy wants to ensure that the cost-based mechanism will apply only in the event that no other Commission-approved rate schedule or agreement governs emergency redispatch rates.

3. Commission Conclusion

15. We will deny Duke Energy's request for rehearing. While we chose to direct the Midwest ISO to submit a market analysis by the IMM to aid us in our analysis of the Midwest ISO's initial proposal to institute a market for redispatch service, rather than set the proposal for hearing,¹⁰ the situation here is distinguishable. Unlike that instance, here, other issues were set for hearing, and we determined that including the potential to exercise market power among the issues to be addressed at that hearing was the most administratively efficient approach to address this issue.

¹⁰See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,075, reh'g denied, 99 FERC 61,198 (2002).

16. However, we will grant Duke Energy's request for clarification. TRANSLink does not have the authority to modify Commission-approved rate schedules or agreements in such a cursory fashion as Duke Energy fears. Rather, TRANSLink must file to seek any necessary changes to those rate schedules or agreements pursuant to Sections 205 or 206 of the Federal Power Act (FPA), as appropriate.¹¹ In addition, we note that the Midwest ISO has developed provisions governing the relationship between its operating protocols for existing generators and existing agreements and rate schedules. These provisions are currently at issue in Docket No. ER02-488.¹² We remind TRANSLink that in the December 19 Order we stated that TRANSLink should adopt the comparable requirements and protocols for generators that are used by the Midwest ISO and must justify the necessity of any departure from those requirements and protocols.¹³ TRANSLink should likewise adopt Midwest ISO's provisions governing the relationship between its operating protocols for existing generators, and existing agreements and rate schedules, and must justify the necessity of any departure from those provisions.

C. Return On Equity

1. December 19 Order

17. The Commission, in the December 19 Order, accepted TRANSLink's proposal to allow participants to adopt a return on equity (ROE) of 12.88 percent that the Commission has approved for use in Attachment O of the Midwest ISO OATT.¹⁴

¹¹See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,137 at 61,402-03, order on compliance, 100 FERC 61,262 at P 29-32 (2002).

¹²Id.

¹³December 19 Order at P 68.

¹⁴See Midwest Independent Transmission System Operators, Inc., 100 FERC

(continued...)

2. Rehearing Requests

18. The Iowa Board requests that the Commission grant rehearing on the December 19 Order and reverse its decision to allow TRANSLink to use the 12.88 percent ROE approved for use in Attachment O of the Midwest ISO OATT. The Iowa Board reiterates that it has relied upon the TRANSLink participants' commitment to use state-authorized ROEs in allowing them to move forward with their plans to participate in TRANSLink. The Iowa Board suggests that the Commission's decision to allow TRANSLink to deviate from its initial proposal to utilize state-authorized ROEs is contrary to Commission policy, economics, and law.¹⁵ The Iowa Board contends that during the last year it has determined that Alliant and MidAmerican are able to attract capital for generation projects at a rate of 12.23 percent. It further asserts that both parties effectively accepted this determination by proceeding with the projects. The Iowa Board, therefore, requests that the Commission reverse its ruling and require TRANSLink to use state-authorized ROEs at least until TRANSLink can demonstrate the need for another ROE level based on operating experience.

3. Commission Conclusion

19. We will deny the Iowa Board's request for rehearing. The Iowa Board raises no new arguments on this point, and its arguments were considered in the December 19 Order. The submission in the instant proceeding is a section 205 filing which TRANSLink had the right to tender, and over which the Commission has jurisdiction.

20. More importantly, the Commission remains convinced that participation in TRANSLink should not be less attractive for a TRANSLink participant than direct participation in the Midwest ISO.

D. TRANSLink Rate Design

¹⁴(...continued)

¶ 61,292, reh'g denied, 102 FERC ¶ 61,143 (2003).

¹⁵The Iowa Board also criticizes the Commission for accepting the validity of the 12.88 percent ROE approved for use in Attachment O of the Midwest ISO OATT while requests for rehearing of the order approving that rate are still pending in Docket No. ER02-485-000. The Commission notes that an order denying rehearing of the order approving the 12.88 percent ROE for use in Attachment O was issued on February 5, 2003. See Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,143.

1. December 19 Order

21. TRANSLink proposed a rate design in which both network and point-to-point transmission service customers would pay a single non-pancaked charge consisting of three components: (1) a highway component; (2) a supply-zone component; and (3) a load-zone component. Under TRANSLink's proposal, the highway component is intended to represent the costs of higher voltage facilities that contribute significantly to regional transfers between pricing zones; the costs of new highway facilities would be immediately reflected in rates on a postage stamp basis; and the costs of existing highway facilities would be reflected in rates on a license plate basis for an initial period of five years, with a phased-in reflection on a postage stamp basis over the subsequent four years. The supply-zone component is intended to represent the costs of grid facilities that deliver power from the generator to the highway system and would be based on the costs of such facilities in the pricing zone where the generator is located. The load-zone component is intended to represent the costs of grid facilities that deliver power from the highway system to load and would be developed on a license plate basis.

22. In the December 19 Order, the Commission expressed concern that the proposed supply-zone charge could result in inefficient use of existing grid facilities and expansion of the grid. The Commission, therefore, accepted the proposed rate design only for TRANSLink's initial operation under the Midwest ISO, prior to the commencement of the Midwest ISO's energy markets, and required the Midwest ISO and TRANSLink to each submit reports to the Commission, addressing the impacts that TRANSLink's rate design may have on the efficient operation of the Midwest ISO's markets and utilization of the transmission system, as well as justifying the continued reasonableness of TRANSLink's rate design beyond the commencement of the Midwest ISO's energy markets.

2. Rehearing Requests

23. TRANSLink requests clarification of the Commission's findings in the December 19 Order concerning TRANSLink's proposed rate design. TRANSLink seeks confirmation that, because the Commission only indicated concerns with the supply-zone component of its rate design, only the supply-zone portion of the rate design remains in question. TRANSLink is concerned that the December 19 Order leaves uncertainty concerning the entire rate design, thus undermining a critical element on which TRANSLink was developed.

24. MEAN requests rehearing of the Commission's possible acceptance of TRANSLink's proposed time-frame for transitioning from license plate rates to postage stamp rates for existing highway facilities without specifically addressing its concerns. In

particular, MEAN contends, the order failed to address its assertion that the transition from license plate pricing to postage stamp pricing for existing highway facilities must commence when TRANSLink begins operations, and not five years later. MEAN repeats its prior arguments that, among other things, the scheduled transition period violates cost-causation principles, and promotes undue discrimination prohibited under Section 205 of the FPA. MEAN argues that the only statement directly addressing the period for transition to a postage stamp rate in the December 19 Order is that "to the extent that the functional analysis holds up, the highway/zonal split may serve as a reasonable basis to transition to postage stamp rates." MEAN asserts that this statement is unclear and, coupled with the Commission's failure to address its concerns directly, could naturally be interpreted to mean that the Commission has left the issue of the reasonableness of TRANSLink's proposed transition period for resolution at hearing or settlement. MEAN asks if this is indeed the Commission's intention. Finally, MEAN cautions the Commission that approving the proposed lengthy transition period without addressing its concerns is a violation of the Commission's duty of reasoned decision-making under the Administrative Procedure Act.

3. Commission Discussion

25. We will grant, in part, TRANSLink's request for clarification. The highway and load-zone components of TRANSLink's proposed rate design contain features of both conventional license plate rate design (for load-zone facilities and, during the transition period, existing highway facilities) and postage stamp pricing (new highway facilities and, after the transition period, existing highway facilities) in which a uniform rate applies for all deliveries to load at a particular location, regardless of the location of the resource. We note that both the license plate and the postage stamp rate concepts have been accepted by this Commission for use by ISOs and RTOs, and do not anticipate that the design of the proposed highway and load-zone charges will hinder the implementation of locational marginal pricing (LMP) or any other component of the energy market that the Midwest ISO is planning to adopt. However, as we noted in the December 19 Order, the proposed highway/zonal rate design contains a supply-zone charge that is designed to recover embedded costs and varies depending on the location of the resource. The Commission is concerned that the supply-zone charge may distort economic decisions and result in inefficient use of existing facilities and expansion of the grid. Thus, we clarify that the concerns we expressed in the December 19 Order pertain only to the supply-zone component of TRANSLink's proposed highway/zonal rate design.

26. In addition, we find that TRANSLink's proposed transition period for highway facilities, with immediate postage stamp pricing for new facilities and a five-year period of license plate rates followed by a four-year phase-in of postage stamp rates for existing highway facilities, is within the bounds of transition periods that we have accepted for other

ISOs and RTOs and is, therefore, acceptable.¹⁶ While the Commission has historically favored postage stamp pricing for integrated network facilities, it has not required immediate postage stamp treatment upon the commencement of new regional transmission arrangements, and will not do so in this instance. We disagree with MEAN's contention that the proposed transition period for postage stamp treatment of existing highway facilities conflicts with TRANSLink's rationale for distinguishing highway facilities in the first instance. By distinguishing highway facilities from local facilities, TRANSLink has been able to adopt: (1) immediate postage stamp treatment for new highway facilities, which, as we noted in the December 19 Order, we believe can help mitigate disincentives to new investment to support transactions benefitting load in another pricing zone; and (2) an up-front plan to transition to postage stamp rates for existing highway facilities by a date certain. We are encouraged by the recognition of the integrated, regional nature of high-voltage back-bone transmission facilities reflected in these aspects of TRANSLink's proposal.¹⁷ We will not penalize TRANSLink participants for their up-front inclusion of postage stamp elements in their proposed rates by forcing TRANSLink to adopt postage stamp pricing on an even more aggressive time-frame than it has already proposed, as MEAN would have us do.

27. Finally, we note that, in granting ITCs, such as TRANSLink, the authority to maintain a separate schedule within an RTO OATT to facilitate different rates and different rate designs, we required that such rates not result in adverse impacts (either physically or financially) outside of the ITC footprint and that the ITC must demonstrate that regional uniformity is not harmed by its proposal. We find that TRANSLink's proposed highway and load-zone charges pose no conflicts with the Midwest ISO's existing rate design. However, we cannot make such a finding as to any rates that supersede Midwest ISO's existing rate design. Therefore, we clarify that, should the Midwest ISO adopt a different rate design, TRANSLink's rate design will be subject to: (1) re-evaluation for potential conflicts with the rate design under the Midwest ISO OATT for transactions that source and/or sink outside of the TRANSLink footprint; and (2) modification should such a conflict be found to exist.

The Commission orders:

¹⁶See, e.g., Avista Corp., et al., 100 FERC 61,274 at P 133 (2002).

¹⁷We note that for other regional arrangements (e.g., PJM Interconnection, LLC, New York Independent System Operator, Inc., and the Midwest ISO), we have accepted rates that reflect the cost of all facilities (existing and new) on a license plate basis, and with no up-front plan to transition to postage stamp pricing.

The requests for rehearing are hereby granted, in part, and denied, in part, and requests for clarification are hereby granted, in part, and dismissed, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.