

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. ER03-901-000

ORDER ACCEPTING AND SUSPENDING SERVICE AGREEMENT
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 23, 2003)

1. On May 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted seven unexecuted, amended transmission service agreements between itself and various Michigan entities (Service Agreements) under the Midwest ISO open access transmission tariff (OATT).
2. Midwest ISO seeks to add to the Service Agreements a provision for power factor correction service for a specific charge (VAR Charge) to remedy situations in which the customer fails to meet its power factor requirements as specified in Schedule 15 of the Midwest ISO OATT. In this order we will accept the service agreements for filing, suspend them for a nominal period, make them effective subject to refund and establish hearing procedures, but hold the hearing procedures in abeyance pending settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedules are just and reasonable.

Midwest ISO's Filing

3. Midwest ISO states that the proposed Service Agreements amend the existing Service Agreements between the parties to allow for the recovery of certain charges historically recovered from these customers that were omitted from the current versions of the Service Agreements on file with the Commission. Midwest ISO requests waiver of the Commission's notice requirements to permit an effective date of June 1, 2003.
4. Midwest ISO explains that under Schedule 15 of the Midwest ISO OATT, the Transmission Owner may provide power factor correction service at a VAR Charge if necessary to ensure and maintain appropriate voltage. It further explains that such charge

is to be included in the transmission service customers' service agreements.

5. Midwest ISO then explains the history of these Service Agreements that has led to Midwest ISO's proposal in this proceeding. According to Midwest ISO, the Service Agreements at issue were originally filed under Consumers Energy Company's (Consumers) OATT and Michigan Electric Transmission Company Inc.'s (Michigan Electric) OATT and contained provisions providing for this service, including the VAR Charge. Later, as Midwest ISO explains, Trans-Elect, Inc. purchased the Commission-jurisdictional transmission assets formerly owned by Consumers and Michigan Electric, and Michigan Electric Transmission Company, LLC (METC), which is a wholly-owned transmission subsidiary of Trans-Elect, Inc., transferred functional control of the transmission assets to the Midwest ISO, effective May 1, 2002.

6. Once this transfer was completed, Midwest ISO explains, the Service Agreements were assigned to Midwest ISO as the transmission provider and were filed with the Commission. Midwest ISO explains that, at that time, two transmission customers, Michigan Public Power Agency (MPPA) and the City of Holland, Michigan (Holland), opposed incorporating the VAR Charge into the Service Agreements. Midwest ISO, without consulting METC, filed the Service Agreements, without a VAR Charge, with the Commission.

7. Midwest ISO now explains that it is its understanding that METC has contacted MPPA, Holland and Wolverine Power Supply Cooperative, Inc. (Wolverine), and has had discussions concerning the reinstatement of the VAR Charge in the Service Agreements, but that an agreement could not be reached. Midwest ISO further explains that METC asserts that a VAR Charge continues to be necessary because it encourages transmission customers to install capacitors or otherwise provide reactive supply to properly compensate for reactive load. It maintains that, without proper compensation, system voltages cannot be maintained, and METC must install additional capacitors on its transmission system.

8. Midwest ISO adds that the recovery of these costs through the VAR Charge was a long-standing practice across the Michigan Electric and Consumers systems, and that METC believes that the VAR Charge is fully cost supported. Because the parties could not agree on the inclusion of the VAR Charge, Midwest ISO explains that it filed the Service Agreements on an unexecuted basis.

Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's filing was published in the Federal Register, 68 Fed. Reg. 35,397 (2003), with comments, protests and interventions due on or before June 20, 2003.

Consumers filed a timely motion to intervene, raising no substantive issues. MPPA and Wolverine filed timely motions to intervene and protest. METC filed a timely motion to intervene and comments in support of Midwest ISO's filing. On July 7, 2003, Wolverine filed an answer to METC's comments, and Midwest ISO and METC filed a joint answer to the protests of MAPP and Wolverine.

Cost Support for VAR Charges

10. Wolverine and MPPA argue that the Midwest ISO filing provides no cost support for the addition of the VAR Charge other than its statement that METC believes the VAR Charge is cost-supported. They argue that the Commission should reject Midwest ISO's filing for failure to provide cost support and a comparison of rates. They further argue that if the Commission does not reject this filing, it should set this case for hearing and allow the parties to attempt to settle the case under the auspices of a settlement judge.

11. Wolverine asserts that static VAR support of inductive load is usually supplied close to the load with capacitors operating at less than 138 kV. MPPA and Wolverine note that METC does not own facilities at less than 138 kV, and argue that Midwest ISO must demonstrate whether and how it is supplying VAR support to substantiate its claim for compensation. MPPA argues that if METC has not installed reactive control devices or capacitors, then it must be obtaining VAR support from Consumers. Accordingly, MPPA asks for information on the arrangements between Consumers and METC so that it can obtain a true picture of the cost METC is incurring to address MPPA's reactive power flows.

12. METC states that the Service Agreements were assigned to Midwest ISO when METC transferred control of its transmission facilities to Midwest ISO, and that they provided proper compensation for transmission owners providing power factor correction service. METC states that the proposed VAR Charge is the same charge included in Service Agreements between Consumers/Michigan Electric and the transmission customers that were previously accepted by the Commission and in effect for more than ten years, and that the transmission customers paid this charge every year without dispute.

13. METC states that Midwest ISO's initial filing of the Service Agreements was made at the transmission customers' urging, without METC's input. METC adds that if it is not appropriately compensated for the costs it incurs in providing power factor correction service, the wrong economic signals are provided to transmission customers; moreover, it adds, adequate voltage cannot be maintained. METC says that it attempted without success to negotiate the reinstatement of the VAR Charge with the transmission customers. It attaches to its comments the affidavit of John F. Schmitt, which counters some of the arguments that MPPA, Wolverine and Holland made during negotiations.

Discriminatory Application of VAR Charges to Midwest ISO Customers

14. Wolverine states that Midwest ISO has not filed a VAR tariff applicable to all customers within the METC pricing zone, but instead has negotiated individual VAR agreements with customers. Wolverine argues that individual VAR agreements for a service that should be cost-based (and thus charged the same for each customer) suggests possible rate discrimination among customers. Wolverine argues that the Commission should require Midwest ISO to make a filing comparing the rate schedule change and its other rates so that the parties can see whether Midwest ISO is discriminating among customers in the METC pricing zone with its VAR Charges. It believes that without such a filing, the Commission cannot find that the proposed VAR Charge to Wolverine is not unduly discriminatory.

15. MPPA states that it and Holland indicated to METC their willingness to amend the existing Service Agreements to include mutually agreeable VAR provisions, as long as the arrangements were cost-based, did not discriminate among MPPA and Holland relative to other Midwest ISO customers in the METC pricing zone, and recognized the VAR support that MPPA and Holland provide from their own facilities. MPPA reports that in telephone conversations between itself and METC, METC staff said that different customers have different VAR charge arrangements. MPPA states that this indicates that some customers may be receiving preferential treatment.

16. MPPA states that it sought information on METC's arrangement with Consumers, thinking that MPPA and Holland might accept similar arrangements on VAR charges as exist between METC and Consumers, but METC did not respond to its request. MPPA says that METC has not filed a proposed schedule applicable to all transmission customers, but seeks to amend the existing Service Agreements of only MPPA and Holland. This, MPPA alleges, coupled with METC's unwillingness to discuss its arrangements with Consumers, raises concerns that METC seeks to apply different charges and provisions to different customers.

Discussion

Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of Consumers, MPPA, Wolverine and METC serve to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the

decisional authority. We are not persuaded to allow the answers of Wolverine and Midwest ISO and METC and will, therefore, reject them.

Commission Decision

18. Intervenors have raised issues of material fact concerning cost support for the VAR charges and possible unduly discriminatory behavior that cannot be resolved based on the record before us and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the proposed Service Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed Service Agreements for filing, suspend them for a nominal period, make them effective June 1, 2003 as requested, subject to refund, and set them for hearing.¹

19. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed Service Agreements are hereby accepted for filing, suspended for a nominal period, to become effective June 1, 2003, as requested, subject to refund and set for hearing, as discussed in the body of this order.

¹See 18 C.F.R. § 35.3 (2003). See *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106 at 61,338-39, reh'g denied, 61 FERC ¶ 61,089 (1992).

²18 C.F.R. § 385.603 (2003).

³If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held in Docket No. ER03-901-000 concerning the proposed Service Agreements, as discussed in the body of this order. As discussed in the body of this order, we will hold the proceeding in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement discussions fail, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

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Linda Mitry,
Acting Secretary.