

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. ER03-727-001

ORDER DENYING REHEARING

(Issued October 24, 2003)

I. Introduction

1. In this order, we deny a request for rehearing of the Commission's June 5, 2003 Order,¹ rejecting the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its Schedule 1 (Scheduling, System Control and Dispatch Service) charges. This order finds that no arguments have been made on rehearing that warrant reversal of the June 5 Order.

II. Background

2. On November 1, 2002, in anticipation of the then-prospective merger between Midwest ISO and the Southwest Power Pool (SPP), Midwest ISO filed a proposed Resulting Company Open Access Transmission Tariff (Resulting Company Tariff) and a proposed agreement of the Transmission Facilities Owners to organize the new entity (Midwest ISO/SPP Agreement), which were conditionally accepted for filing by Commission order issued on December 19, 2002 (December 19 Order).² However, Midwest ISO and SPP subsequently terminated their proposed merger, and the

¹See Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,282 (2003) (June 5 Order).

²Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,319 (2002). The Commission dismissed requests for rehearing and clarification of the December 19 Order as moot, citing the withdrawal of the Resulting Company Tariff and the Midwest ISO/SPP Agreement. Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,283 (2003).

Commission accepted Midwest ISO's withdrawal of the Resulting Company Tariff and Midwest ISO/SPP Agreement by letter order.³

3. On April 8, 2003, in Docket No. ER03-727-000, Midwest ISO filed proposed revisions to its open access transmission tariff (Midwest ISO OATT). Among other things, it proposed to re-adopt certain provisions, which were included in the since-withdrawn Resulting Company Tariff, for the Midwest ISO OATT. In pertinent part, Midwest ISO proposed to revise Schedule 1 to reflect the current SPP Tariff, as approved in the since-withdrawn Resulting Company Tariff in the December 19 Order. Midwest ISO stated that it proposed the revision to Schedule 1 at the request of Midwest ISO Transmission Owners (Transmission Owners).

4. Midwest ISO proposed to provide Schedule 1 service at the effective rate for each control area operator that must take scheduling or dispatch action to implement transmission service. Under its proposal, scheduling activities would be limited to the source and sink control areas of a transaction regardless of the span of the transmission service. Midwest ISO asserted that each control area incurs its own unique costs to perform these functions. In addition, Midwest ISO asserted that the methodology reflected in its existing OATT did not reflect the fact that action by two or more control area operators was necessary to effect service crossing over two or more control area boundaries, which it claimed resulted in Transmission Owners being under-compensated for their costs. Midwest ISO further asserted that its proposal was consistent with the charge that the Commission approved in the December 19 Order for the Resulting Company based on the SPP Tariff.

5. Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (Duke) protested. They argued that: Midwest ISO's proposal would increase the cost to transmission customers who cross more than one zone. Duke also argued that unlike SPP, Midwest ISO's rate structure did not include pancaked rates, and, while it previously may have been appropriate in the Resulting Company Tariff proceeding to adopt SPP's rate structure for both Midwest ISO and SPP until those two entities could reconcile their different rate structures pursuant to their proposed merger, the predicate for adopting SPP's scheduling charge for both Midwest ISO and SPP no longer existed, because Midwest ISO and SPP had terminated their proposed merger.

6. In the June 5 Order, the Commission rejected the proposed changes to Schedule 1, holding:

We reject Midwest ISO's proposal to change the Schedule 1 charge. As with the penalty for unauthorized use, acceptance of the proposed Schedule 1 for filing, with modification, as part of the Resulting Company Tariff in

³See *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,267 (2003).

the December 19 Order did not constitute approval of the charge. In the December 19 Order, we stated that we would accept the proposed Schedule 1 with modification, only "as a transition mechanism until a more appropriate long-term solution can be developed." The circumstances of this proceeding are not the same as the proceeding that resulted in the December 19 Order.

As the Commission stated in the December 19 Order, we do not want service providers under this schedule to incur costs without reimbursement. However, Midwest ISO has not demonstrated that service providers are not recovering their costs. Under the current Midwest ISO OATT, customers are charged the average cost of providing Schedule 1 service by the Transmission Owners. Midwest ISO's existing formula should recover the total costs booked to Account 561 for all the Transmission Owners that operate a control area, less certain revenue credits; therefore, Midwest ISO has not explained adequately how the existing formula under-recovers the costs for providing the service.

Moreover, the Commission does not want to encourage pancaking of Schedule 1 charges, which the proposal would institute. Such pancaking could discourage load from purchasing power from other control areas to avoid a second Schedule 1 charge. Therefore, we reject Midwest ISO's proposal to change the Schedule 1 charge, and order Midwest ISO to revise its OATT accordingly in the compliance filing required below.

Midwest ISO is currently charging a regional postage stamp rate for Schedule 1 service, which, as discussed above, should recover the total costs of the Transmission Owners providing this service. If Midwest ISO finds that some Transmission Owners are not recovering their costs of providing service, then presumably other Transmission Owners are recovering more than their costs of providing the service. In that case, Midwest ISO may want to re-evaluate its methodology for distribution of Schedule 1 revenues to ensure that each Transmission Owner recovers its costs of providing the service.⁴

Rehearing Request

7. Transmission Owners filed a timely request for rehearing of the June 5 Order's rejection of the proposed changes to Schedule 1. They argue that under Midwest ISO's proposal, costs would be allocated to those who benefit from those costs, consistent with the Commission's cost causation principles. They argue that the June 5 Order did not recognize that the existing Midwest ISO OATT does not take into account that when scheduling occurs under Schedule 1, both the source zone and the sink zone must

⁴103 FERC ¶ 61,282 at P 29-32 (footnotes omitted).

schedule these services for each transaction. They argue that the proposed Schedule 1 would employ cost causation principles to ensure that providers of Schedule 1 service are compensated appropriately, according to each transaction. According to Transmission Owners, the June 5 Order provided no explanation why rate pancaking would result. They further assert that "[t]his is not, as the Commission appears to suggest by characterizing the proposal as pancaking, a revenue distribution issue; rather, it is a revenue requirement issue."⁵

8. Transmission Owners also argue that the Commission did not purport to employ the "just and reasonable" standard under section 205 of the Federal Power Act⁶ in evaluating the proposed charge, but made only conclusory statements in rejecting the proposed Schedule 1 charge.

9. Further, Transmission Owners argue that the proposed revisions to Schedule 1 of the Resulting Company OATT that the Commission accepted in the December 19 Order are identical to the proposed revisions to Schedule 1 of the Midwest ISO OATT in this proceeding. They claim that the Commission "has not demonstrated any rational basis" for its rejection of the proposed revision to the Midwest ISO OATT after having accepted identical provisions elsewhere.

III. Discussion

10. We disagree with Transmission Owners' claim that in the June 5 Order, the Commission ignores cost causation principles and does not explain how the proposed Schedule 1 charges constitute rate pancaking. Midwest ISO explained in its Resulting Company Tariff filing that it would charge a rate calculated for each source and sink control area providing the service. That meets the Commission's definition of rate pancaking, which "occurs when a transmission customer is charged separate access charges for each utility service territory the customer's path crosses."⁷ Thus, the proposed Schedule 1 charges constitute rate pancaking. Order No. 2000 requires that RTOs eliminate rate pancaking for recovery of embedded transmission costs. Transmission Owners merely reiterate Midwest ISO's statement that each control area incurs its own costs to perform Schedule 1 service and that action by two or more control area operators is necessary to effect service crossing over two or more control area boundaries.⁸ However, neither Midwest ISO or Transmission Owners have adequately

⁵ Transmission Owners' Request for Rehearing at 6 (emphasis in original).

⁶ 16 U.S.C. § 824d (2000).

⁷ Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,250 at n.38, reh'g denied, 101 FERC ¶ 61,044 (2002).

⁸ See June 5 Order, 103 FERC ¶ 61,282 at P 26.

supported their contention that transactions crossing control area boundaries cause more costs to be incurred such that Schedule 1 charges should be exempted from Order No. 2000's prohibition against rate pancaking.

11. Further, the June 5 Order's statements concerning whether Midwest ISO may want to re-evaluate its methodology for the distribution of Schedule 1 revenues was dictum concerning how Midwest ISO might address its concern. The Commission did not misunderstand the revenue requirement argument made by Midwest ISO, as evidenced by the Commission's determination that Midwest ISO had not adequately explained how its existing formula under-recovered the costs of providing Schedule 1 service. Moreover, in the same paragraph in which the dictum appears, the Commission states that "Midwest ISO is currently charging a regional postage stamp rate for Schedule 1 service which, as discussed above, should recover the total costs of the Transmission Owners providing this service."⁹ We reemphasize that Midwest ISO failed to demonstrate under-recovery of costs for providing Schedule 1 service, as explained in the June 5 Order, and Transmission Owners have provided no basis for changing our determination.

12. We also reject Transmission Owners' argument that we must accept the proposed changes to Schedule 1 of the Midwest ISO OATT, because the provisions are identical to the provisions in Schedule 1 of the Resulting Company OATT, which was accepted for filing. As the June 5 Order noted, the Commission accepted the proposal for the Resulting Company for filing under different circumstances than are presented in this proceeding, on only an interim basis as a transition mechanism until Midwest ISO (which did not have pancaked rates) and SPP (which had pancaked rates) resolved their conflicting rate methodologies and develop a "more appropriate" methodology. Thus, the Commission found that the pancaked rate methodology was not an appropriate long-term solution. Further, as the June 5 Order noted, acceptance of the Resulting Company Schedule 1 for filing as part of the Resulting Company OATT in the December 19 Order did not constitute approval of the charge, and, thus, it is not binding upon the Commission in its review of Midwest ISO's proposal in this proceeding .

13. Finally, we reject Transmission Owners' argument that the Commission should accept Midwest ISO's pancaked rate proposal because it accepted a similar proposal by SPP. While the Commission accepted SPP's zonal rate proposal for filing, the Commission also noted that SPP was voluntarily eliminating rate pancaking and charging a single rate. It did not require SPP to adopt single system rates, because SPP was not then seeking approval as an independent system operator or regional transmission organization. However, the Commission held that "[I]f SPP seeks such approval in the future, SPP will have to comply with any applicable requirements for single-system

⁹ Id. at P 32.

rates.”¹⁰ Thus, the acceptance of SPP’s zonal rates for filing under those circumstances did not constitute approval of pancaked rates for an ISO or RTO such as Midwest ISO.

14. Based on the discussion above, we conclude that Transmission Owners' request for rehearing has not provided any new arguments that warrant changing the June 5 Order's rejection of the proposed revisions to Schedule 1. Therefore, we will deny rehearing, as ordered below.

The Commission orders:

Transmission Owners’ request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹⁰ Southwest Power Pool, 89 FERC ¶ 61,284 at 61,889 (1999), order on reh’g, 98 FERC ¶ 61,038 (2002), aff’d in pertinent part and remanded in part, East Texas Electric Cooperative, Inc., et al. v. FERC, 331 F.3d 131 (D.C. Cir. 2003).