

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Xcel Energy's Petition for Affirmation that MISO Day 2 Costs are Recoverable Under the Fuel Clause Rules and Associated Variances

ISSUE DATE: February 24, 2006

DOCKET NO. E-002/M-04-1970

In the Matter of Minnesota Power's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

DOCKET NO. E-015/M-05-277

In the Matter of Otter Tail Power Company's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

DOCKET NO. E-017/M-05-284

In the Matter of Interstate Power and Light Company's Petition for Approval of Revision to Rider for Fuel Adjustment to Recover Costs and Pass-Through Related to MISO Day 2

DOCKET NO. E-001/M-05-406

ORDER ON RECONSIDERATION
SUSPENDING REFUND, GRANTING
DEFERRED ACCOUNTING AND
REQUIRING FILINGS

PROCEDURAL HISTORY

On December 21, 2005, the Commission issued its ORDER ESTABLISHING SECOND INTERIM ACCOUNTING FOR MISO DAY 2 COSTS, PROVIDING FOR REFUNDS, AND INITIATING INVESTIGATION in each of the dockets listed above.

On January 10, 2006, the Midwest Independent Transmission System Operator, Inc. (MISO), petitioned to intervene in these dockets. Also, the Commission received petitions to reconsider the December 21 Order from Interstate Power and Light Company (IPL), the Minnesota Department of Commerce (the Department), Minnesota Power, a group of Minnesota utility investors (Minnesota Utility Investors, or MUI), MISO, Northern States Power Company d/b/a Xcel Energy (Xcel), and Otter Tail Power Company (OTP).

On January 23, 2006, a group of industrial companies (Large Power Intervenors, or LPI) replied to Minnesota Power's request for reconsideration.

This matter came before the Commission on February 9, 2006. At that time the Commission received a joint proposal from the petitioners and the Department. The Residential and Small Business Division of the Office of Attorney General (RUD-OAG) was the only party to oppose the proposal.

FINDINGS AND CONCLUSIONS

I. Background

In April, 2005, MISO began its "Day 2 operations," creating a market for buying and selling electricity.¹ Since then, MISO has been billing its members – including IPL, Minnesota Power, OTP and Xcel – for the cost of its operations divided into thirty-two "charge types," some further subdivided into components. MISO's Business Practices Manuals list these charge types as follows:

1. Day-Ahead Asset Energy Amount (with energy, congestion, and line loss components)
2. Day-Ahead Financial Bilateral Transmission Congestion Amount
3. Day-Ahead Financial Bilateral Transaction Loss Amount
4. Day-Ahead Market Administration Amount
5. Day-Ahead Non-Asset Energy Amount
6. Day-Ahead Congestion Rebate on Carve-Out Grandfathered Agreements
7. Day-Ahead Losses Rebate on Carve-Out Grandfathered Agreements
8. Day-Ahead Congestion Rebate on Option B Grandfathered Agreements
9. Day-Ahead Losses Rebate on Option B Grandfathered Agreements
10. Day-Ahead Revenue Sufficiency Guarantee Distribution Amount
11. Day-Ahead Revenue Sufficiency Guarantee Make Whole Payment Amount
12. Day-Ahead Virtual Energy Amount
13. Real-Time Asset Energy Amount (with energy, congestion, and line loss components)
14. Real-Time Distribution of Losses Amount
15. Real-Time Financial Bilateral Transaction Congestion Amount
16. Real-Time Financial Bilateral Transaction Loss Amount
17. Real-Time Congestion Rebate on Carve-Out Grandfathered Agreements
18. Real-Time Losses Rebate on Carve-Out Grandfathered Agreements
19. Real-Time Market Administration Amount
20. Real-Time Miscellaneous Amount
21. Real-Time Net Inadvertent Distribution
22. Real-Time Non-Asset Energy Amount

¹ *Midwest Independent Transmission System Operator, Inc.*, FERC Docket Nos. ER04-961-014 and EL04-104-013, *et al.* (March 16, 2005).

23. Real-Time Revenue Neutrality Uplift Amount
24. Real-Time Revenue Sufficiency Guarantee First Pass Distribution Amount
25. Real-Time Revenue Sufficiency Make Whole Payment Amount
26. Real-Time Uninstructed Deviation Amount
27. Real-Time Virtual Energy Amount
28. Financial Transmission Rights Hourly Allocation Amount
29. Financial Transmission Rights Market Administration Amount
30. Financial Transmission Rights Monthly Allocation Amount
31. Financial Transmission Rights Transaction Amount
32. Financial Transmission Rights Yearly Allocation Amount

IPL, Minnesota Power, OTP and Xcel petitioned the Commission for permission to recover these costs from their respective ratepayers through their fuel clauses. A fuel clause permits a utility to adjust its rates monthly to recover its fluctuating “cost of fuel consumed in the generation of electricity”² and its “cost of energy purchased.”³

While the Commission was considering these requests, the petitioners asked the Commission to grant their request on an interim basis, with the understanding that the petitioners would refund any revenues for costs that the Commission subsequently determined should not have been recovered through the fuel clause. On April 7, 2005, the Commission granted the parties’ interim request subject to refund.⁴

On December 21, 2005, the Commission issued a second interim Order.⁵ Among other things, the December 21 Order authorized the utilities to continue using their fuel clauses to recover their net costs related to energy⁶ and directed the petitioners to refund revenues related to other costs.⁷ In addition, the Commission initiated an investigation regarding alternatives for securing low-cost, reliable electricity for Minnesota ratepayers.⁸

Various parties sought reconsideration of the December 21 Order, resulting in the current Order.

II. Procedural Matters

² Minn. Rules part 7825.2400, subp. 9.

³ Minn. Rules part 7825.2400, subp. 7.

⁴ These dockets, ORDER AUTHORIZING INTERIM ACCOUNTING FOR MISO DAY 2 COSTS, SUBJECT TO REFUND WITH INTEREST.

⁵ *Id.*, ORDER ESTABLISHING SECOND INTERIM ACCOUNTING FOR MISO DAY 2 COSTS, PROVIDING FOR REFUNDS, AND INITIATING INVESTIGATION (December 21 Order).

⁶ *Id.* at 13-14 and Ordering Paragraph 1.

⁷ *Id.* at 14-17, 20 and Ordering Paragraph 9.

⁸ *Id.* at 9-10 and Ordering Paragraph 10.

A. MISO's Intervention

MISO requests permission to intervene in this docket, arguing that it has unique interests in this docket that are not represented by the other parties to the case. Specifically, MISO argues that the Commission's December 21 Order could harm MISO's finances, and the Commission's investigation of alternative means to secure electricity could affect MISO's operations in the future.

MISO argues that no other party can adequately represent MISO's interests because the interests of the utilities and MISO diverge. As a result of the Commission's December 21 Order, some utilities have concluded that their best course of action is to begin the process of withdrawing from MISO; this is not an optimal course of action from MISO's perspective. MISO further argues that its participation in these proceedings could prove helpful because of MISO's knowledge and data regarding its billing practices, market changes, and alternative strategies for utilities to secure electricity.

MISO acknowledges that the normal time for seeking intervention has passed, but MISO argues that it could not have anticipated the extent to which these dockets would implicate interests unique to MISO. MISO notes that it filed its intervention petition promptly after the issuance of the December 21 Order. No party opposed MISO's petition.

The Commission grants intervention to a party when, among other reasons,

the outcome of the proceeding will bind or affect the person with respect to an interest peculiar to that person, as distinguished from an interest common to the public or other ratepayers in general, or the person's interests are not adequately represented by one or more other parties participating in the case.⁹

Here the Commission finds that the outcome of these proceedings may affect interests unique to MISO, and that MISO is in a unique position to represent its own interests. MISO's petition for intervention will be granted.

B. Consolidation

As noted above, IPL, Minnesota Power, OTP and Xcel each petitioned the Commission to permit recovery of MISO Day 2 costs, initiating the four dockets listed on the heading of this Order.

Xcel observes that the December 21 Order, which applies to all four dockets, cited arguments raised by LPI exclusively in Docket No. E-015/M-05-277. Xcel notes it never had the opportunity to respond to LPI's arguments because Xcel was not a party to that docket. All parties would have an equal opportunity to respond to the comments made in any docket if the Commission would consolidate the four dockets. At hearing, no party opposed the proposal to consolidate these dockets.

These four dockets address the recovery of MISO Day 2 costs. So far, the Commission's decisions in each of the dockets have been guided by facts and policies that are common to all the dockets. The

⁹ Minn. Rules part 7829.0800, subp. 2.

Commission anticipates that this dynamic will continue. To facilitate due process of law and administrative convenience, the Commission will consolidate the dockets.

III. Reconsideration and Resolution

A. Positions of the Parties

IPL, Minnesota Power, MISO, MUI, OTP and Xcel variously ask the Commission to reconsider, rehear or clarify its December 21 Order. For both legal and policy reasons, they dispute the Commission's ruling barring the utilities from recovering certain MISO costs through the fuel clause. They argue that the Commission should take account of a recent decision regarding how the Federal Energy Regulatory Commission (FERC) treats such costs.¹⁰ They argue that the Commission should grant the utilities "deferred accounting" regarding excluded costs – that is, permission to seek recovery of the costs in a future rate case. They ask the Commission to clarify the appropriate accounting treatment for each of the 32 charge types. And they ask that the Commission suspend the Order's refund obligation.

MISO provides additional information about the nature of its charge types, and acknowledges that MISO is continuing to refine how it allocates costs among the types.

LPI generally defends the Commission's December 21 Order as well-reasoned and grounded in the record. But both LPI and the Department concede that the issues addressed in the Order are challenging and evolving, and acknowledge that all parties might benefit from having a further opportunity to analyze the issues.

While RUD-OAG did not file comments on the petitions for reconsideration, at hearing RUD-OAG restated its concern that the Commission take no action that could lead to restricting the Commission's jurisdiction over these utilities.

B. Joint Recommendation

At hearing, a joint recommendation was offered by the Department, IPL, LPI, Minnesota Power, OTP and Xcel as follows:

1. Cancel the December 21 Order's refund obligation.
2. Provide the parties with an additional 60 days to confer and develop a joint recommendation on the following issues.
 - a. Which of MISO's 32 charge types should the utilities recover through the fuel clause and which should they recover through base rates, with special attention to charges that had received special attention in the December 21

¹⁰ *Financial Reporting and Cost Accounting, Oversight and Recovery Practices for Regional Transmission Organizations and Independent System Operators*, FERC Docket No. RM04-12-000, Final Rules (issued December 16, 2005) ("Order No. 668").

Order:

- The four “uplift” charges (Revenue Sufficiency Guarantee charge, Option B Uplift charge, Uncollectible Default Accounts and Real-Time Revenue Neutrality Uplift).
 - Schedule 16 and 17 “administrative” costs.
 - Congestion revenues and expenses.
- b. The method of allocating MISO charges between retail and wholesale operations.
3. Require the petitioning utilities to provide the following information regarding wholesale margins:
- a. How wholesale margins are generated and what utility resources are used to generate them.
 - b. The level of wholesale revenues and related expenses for 2005.
 - c. The level of wholesale revenue or margin approved in the utility’s most recently approved rate case and how these amounts were calculated in that case.
4. Permit deferred accounting of MISO Day 2 costs that the Commission subsequently determines to be recoverable through base rates. The utility could continue deferring these cost for 36 months following the date of this Order or until the utility’s next rate case, whichever occurs first, without interest. In its next rate case the utility could propose a method for recovering these costs to the extent that the costs were prudently incurred, reasonable, and resulted in benefits justifying recovery. Thirty-six months after the date of this Order, the utility would begin amortizing the balance of the deferred MISO Day 2 costs over the next 36 months unless and until the Commission rules on the utility’s proposal for recovering the balance.

In effect, these parties seek additional time in which to develop a joint understanding of the issues, and ask the Commission to defer action in the meantime. This includes cancelling the parts of the December 21 Order requiring a refund, and permitting utilities to defer MISO Day 2 costs for possible recovery in the future. The parties acknowledge that such deferral would not guarantee that utilities would recover these costs; it would merely allow for possible recovery in the future.

By permitting utilities to accrue MISO Day 2 costs over 36 months, the parties argue, the Commission would remove the need to resolve all these cost recovery issues immediately. Parties could gain greater experience with MISO’s operations and normal operating costs without

precluding recovery of those costs. Also, a 36-month period provides time for regulators to address each utility's circumstances in turn, rather than attempting to set four utilities' rates simultaneously. Finally, according to the parties, the 36-month amortization period would provide an incentive for utilities to resolve these issues in a timely fashion without creating an unwarranted penalty if a utility's rate case is delayed.

In the meantime, the joint recommendation provides for the parties to develop a common understanding regarding the appropriate regulatory treatment for the 32 MISO charge types, with special attention to types that have proven most controversial. The utilities identify specific information they are prepared to provide to aid this analysis, including information about the utilities' wholesale transactions.

C. Commission Action

No party opposes reconsidering the Commission's December 21 Order. Even the Department and LPI, which had expressed little dissatisfaction with the Order, acknowledge the potential benefits of providing an opportunity for further analysis and clarification. And given that MISO has now intervened and is eager to provide additional information in these matters, the Commission finds ample reason to approve the parties' requests. Reconsideration will be granted.

The Commission finds much to commend the joint recommendation of the Department, IPL, LPI, Minnesota Power, OTP and Xcel. Given the complexity of the issues, the Commission is pleased that so many parties were able to agree on a framework for developing and presenting the issues for further consideration. In the meantime, the Commission finds the parties' proposals provide a reasonable process for maintaining the status quo. The joint recommendation will be adopted.

Finally, the December 21 Order sets forth the Commission's analysis of RUD-OAG's jurisdictional concerns.¹¹ Because RUD-OAG offers no additional information or analysis on this point, no further action is warranted to address these concerns.

ORDER

1. MISO's petitions to intervene in the above-captioned dockets are granted.
2. The above-captioned dockets are consolidated.

¹¹ December 21 Order at 10-13 and Ordering Paragraphs 4 and 6.

3. The petitions of the Department, IPL, Minnesota Power, MISO, MUI, OTP and Xcel to reconsider the Commission's ORDER ESTABLISHING SECOND INTERIM ACCOUNTING FOR MISO DAY 2 COSTS, PROVIDING FOR REFUNDS, AND INITIATING INVESTIGATION (December 21, 2005) are granted, and the Order is modified as specified below.
4. The refund obligation arising from Ordering Paragraph 9 of the December 21 Order is eliminated.
5. Within 60 days of the date of this Order, all parties shall meet and report back to the Commission with a joint recommendation on the following:
 - A. Which of MISO's 32 charge types should the utilities recover through the fuel clause and which should they recover through base rates, with special attention to –
 - the four uplift charges (Revenue Sufficiency Guarantee charge, Option B Uplift charge, Uncollectible Default Accounts and Real-Time Revenue Neutrality Uplift),
 - Schedule 16 and 17, and
 - Congestion revenues and expenses.
 - B. The method of allocating MISO charges between retail and wholesale operations.
6. Petitioning utilities shall provide the following information regarding wholesale margins:
 - A. How wholesale margins are generated and what utility resources are used to generate them.
 - B. The level of wholesale revenues and related expenses for 2005.
 - C. The level of wholesale revenue or margin approved in the utility's most recently approved rate case and how these amounts were calculated in that case.
7. The Commission grants deferred accounting of MISO Day 2 costs that the Commission subsequently determines to be recoverable through base rates. A utility may continue deferring these cost without interest for 36 months following the date of this Order or until the utility's next rate case, whichever occurs first. In its next rate case the utility may propose a method for recovering these costs to the extent that the costs were prudently incurred, reasonable, and resulted in benefits justifying recovery. Thirty-six months after the date of this Order, the utility shall begin amortizing the balance of the deferred MISO Day 2 costs over the next 36 months unless and until the Commission rules on the utility's proposal for recovering the balance.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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