

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Market-Based Rates for Public Utilities

| Docket No. RM04-7-000

**SUPPLEMENTAL COMMENTS OF TRANSMISSION
ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group (“TAPS”) responds to the January 21, 2005 “Written Comments of MidAmerican Energy Company” (“MEC Statement”) in this proceeding. The MEC Statement purports to provide factual context for the December 7, 2004 Written Statement and appearance before the Commission of Anne Kimber on behalf of TAPS and the Midwest Municipal Transmission Group (“MMTG”). The MEC Statement does not refute Ms. Kimber’s statement and testimony before the Commission. Instead, it confirms Ms. Kimber’s central message that the Order 888 OATT is not succeeding to mitigate the transmission market power of public utilities and thus is not sufficient to satisfy the transmission market power prong of the Commission’s market-based rate test.

Ms. Kimber described how existing planning mechanisms are failing to produce the robust transmission grid needed to support the Commission’s vision of competitive wholesale markets. She proposed as solutions the kinds of joint planning and investment mechanisms set forth in the TAPS White Paper, “Effective Solutions for Getting Needed Transmission Built at Reasonable Cost.” MEC responds that joint planning already exists within the Mid-Continent Area Power Pool (“MAPP”) and Iowa, and that MEC meets the OATT planning obligations. MEC Statement at 3-5. However, the thrust of Ms. Kimber’s testimony is that these mechanisms are not effective to support the grant of market-based rates. As proof, one may look at the MAPP/Iowa planning process cited by MEC. If this process were effective to resolve the grid

inadequacies that hinder wholesale markets, MEC would not claim that “MidAmerican simply cannot address the transmission constraints of these surrounding systems.” MEC Statement at 5.¹ MEC does not attempt to refute the further proof that the current system is broken – the inability of even small wholesale customers to have their transmission requests of less than 1 MW fulfilled. *See* Kimber Statement at 5-7. MEC merely claims that these small customers did not getting in the ration line (the existence of which also supports Ms. Kimber’s conclusion) soon enough. MEC Statement at 6.²

MEC’s own description of its planning process reveals the flaw in the current system. MEC states (at 5) that it does not plan “for each of its network customers to import 100% of its load under contingency conditions, just as MidAmerican does not plan for 100% import levels for its own bundled retail load.” MEC does not have to plan for 100% import levels for its own retail load, because it has most, if not all, of its resources on its system. For MEC to use that same assumption in planning for network customers who must often look beyond the MEC system to find alternatives,³ effectively walls such customers out of the competitive market.

¹ MEC’s suggestion (at 4) that municipal systems participating in the MAPP/Iowa process could have succeeded where MEC has not is untenable. The Iowa municipals’ experience is that the Iowa process, while open, merely lists problems and documents local planning efforts but does not have the authority to enforce effective joint planning or ensure that construction needed to fix significant bottlenecks is performed.

² MEC seems to try to send the message that its sales to municipal utilities are too small to matter. *See* MEC Statement at 2-3. Though municipal sales may be a small part of total MEC’s sales, those sales remain part of this Commission’s regulatory responsibility. *See, e.g., Ameren Energy Generating Co.*, 108 F.E.R.C. ¶ 61,081 P 28 (2004) (Commission responsibility for wholesale customers). Further, MEC’s incentive to favor its own generation sales is not limited to sales to municipal utilities.

³ Contrary to the impression MEC seeks to convey (at 11), Indianola’s on-system generation was neither hidden from the Commission nor “a salient fact” that alters the need for MEC to plan for Indianola’s continued reliance on the MEC grid. As Ms. Kimber explained (at 4), Indianola was seeking to replace its then-terminating 10-year requirements contract with MEC (which permitted limited interruptions in light of Indianola’s 50 MW of generation). The fact that Indianola could not economically meet its load using on-system air permit-limited diesel generation, and would need to replace the MEC requirements contract when it terminated, should have been well known to MEC.

Similarly, MEC's assertion (at 6) that "The Iowa electric system meets all the required thermal, voltage and dynamic criteria" misses the point: The question is not whether MEC's system is reliable, assuming continuation of network customers current purchase patterns, but whether the system can reliably support any change in those patterns so that wholesale customers can economically reach competitive alternatives. The answer is "no" – as described by Ms. Kimber and not contested by MEC. The grid remains inadequate to support wholesale customer access to alternative power supplies.⁴ Without such access, MEC and other similarly situated transmission providers will not have mitigated their transmission market power. Without such mitigation, market-based rates will not be just and reasonable.

One way to bring effective joint planning and investment to the grid is through an inclusive stand-alone transmission company. Both Ms. Kimber and the TAPS White Paper cited as one example of such an approach the TRANSLink proposal that would have involved municipal, cooperative and IOU (including MEC) participation. Ms. Kimber observed (at 11):

MMTG was a participant in TRANSLink which, if it had not failed, would have provided a vehicle for municipal investment in the grid, strengthening the infrastructure and opening up competitive opportunities. Since the demise of TRANSLink, MMTG's offers to Xcel, Alliant and MEC to participate in owning and planning the grid have made scant progress.

MEC's response makes no mention of TRANSLink. This absence is remarkable given TRANSLink's promise, as well as the disappointment of some industry segments (and Chairman Wood)⁵ at TRANSLink's demise, and the questions directed by FERC Staff to Ms. Kimber

⁴ These customers include those that rely on point-to-point service, like Pella. The fact that the OATT does not oblige MEC to plan for point-to-point customers (see MEC Statement at 6) demonstrates the OATT's inability to mitigate market power if, as has occurred here, the result is a grid that is not adequate to permit such customers access to competitive wholesale markets.

⁵ See TAPS White Paper n 35.

regarding TRANSLink (*see* Tr. 50-52). If TRANSLink, or something like it, were revived,⁶ it could provide meaningful opportunities for municipal (as well as other LSE) participation in grid ownership and expansion that do not exist today in the Upper Midwest.⁷ As the experience of the American Transmission Company (another stand-alone open to all LSEs) demonstrates, this approach gets needed transmission built.

MEC defends its interpretation of the OATT's rollover rights as consistent with the terms of § 2.2 of the OATT. MEC Statement at 13. However, the question posed by the Commission was not whether companies like MEC were adhering to the OATT but whether the OATT "fully mitigates the vertically integrated transmission provider's ability to use its control over transmission to exercise market power." Kimber Statement at 2. As explained by Ms. Kimber:

OATT § 2.2 rollover rights have been construed so narrowly that they are useless – preserving only the right to continue to purchase from the incumbent supplier; the system is so weak that any change in source, either on or off the host TO system, is deemed to exceed transmission limits.

Id. When MEC argues (at 13) that "the rollover right applies to service from the same source or sources..." and that "Indianola and Hudson were not entitled to rollover rights when initiating application for new supply," MEC confirms Ms. Kimber's point.⁸

⁶ As Ms. Kimber testified, MMTG has offered and stands ready, willing and able to build transmission in conjunction with MEC and other Iowa (and Minnesota) utilities. Such construction would aid in fixing the problem. Mitigating market power dictates finding mechanisms to make this happen.

⁷ MEC notes that Iowa law does not prohibit municipalities from owning transmission facilities and that MEC has offered municipalities participation in transmission projects. Statement at 7-9. However, the absence of a prohibition on municipal ownership does not address the disadvantaged position of municipalities when it comes to participation in grid planning and expansion. TRANSLink would have ensured that municipal investments in transmission would be recognized as part of the larger transmission grid and compensated as such. In addition, the projects in which MEC has offered participation have generally involved transmission associated with participation in MEC generation, not projects that decongest the grid and create opportunities for competitive power supply transactions on a regional basis.

⁸ MEC also claims that mitigation schemes, such as redispatch, are an answer to the lack of transmission capacity and faults municipal systems (or their agents) for not pursuing them. MEC Statement at 6, 10. However, these

To rebut the facts leading to the conclusion that the OATT does not mitigate transmission market power, MEC resorts to misleading accusations. For example, MEC says that “Callender and Pocahontas are not located on the MidAmerican transmission system and MidAmerican is *not* the transmission provider.” MEC Statement at 11.⁹ To the contrary, Ms. Kimber’s statements that Callender is “in MidAmerican’s control area, currently served by MEC” (Kimber Statement at 6) and that Pocahontas is “a 4 MW municipal on the MEC system” (*id.* at 8) are correct. Both municipal systems are in the MEC control area and are connected to MEC 69 kV or 12.5 kV facilities for which they pay MEC a FERC jurisdictional rate under the MEC OATT.¹⁰ Until Callender started taking service from Calhoun County Rural Electric Cooperative,¹¹ MEC’s wholesale merchant function took network service under the MEC OATT to serve Callender. MEC’s wholesale merchant function still takes network service under the MEC OATT to serve Pocahontas. Thus, Ms. Kimber’s statements were factually supported.

Finally, MEC claims (at 13): “If transmission limitations are restricting access to competitive suppliers, then that will be appropriately reflected in the Commission’s current market screens.” The current market screens use simultaneous import capability,¹² which overstates the transmission available to reach competing suppliers. Most relevant to the

mitigation options are often not realistic for long-term power supply contracts, limiting alternatives. In MAPP, transmission owners have been reluctant to approve mitigation schemes of more than one year’s duration.

⁹ MEC further claims that it does not manipulate transmission service requests (MEC Statement at 9), make discriminatory offers to its potential energy customers (MEC Statement at 12), or mandate the terms of its energy offers (*id.*). Ms. Kimber’s statements made no mention of these acts but focused on the omissions that permit MEC to maintain market power.

¹⁰ MEC generally classifies as transmission only those facilities with voltages of 161 kV or higher.

¹¹ As Ms. Kimber described (at 7), because it was unable to secure transmission for its proposed MEAN purchase, Calhoun is now served by Corn Belt Power Cooperative whose transmission system is integrated with MEC’s. MEC operates a single control area that includes Corn Belt, MEC and the municipal utilities connected to their systems.

¹² *AEP Power Mktg, Inc.*, 108 F.E.R.C. ¶ 61,026, P 37 (2004).

wholesale consumers described in Ms. Kimber's statement is the availability of firm transmission for the delivery of firm power supply. The availability of such transmission is reflected in ATC figures.

In sum, MEC has in no way detracted from, and indeed confirms, Ms. Kimber's message that the Order 888 OATT is not succeeding to mitigate transmission market power.

Respectfully submitted,

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