

125 FERC ¶ 61,105
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 28, 2008

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket No. ER08-1485-000

Midwest Independent Transmission
System Operator, Inc.
Attention: Mr. Matthew R. Dorsett
720 City Center Drive
Carmel, IN 46032

Reference: Proposed Revisions to the Credit Policy in Attachment L

Dear Mr. Dorsett:

1. On August 29, 2008, Midwest Independent Transmission System Operator, Inc, (Midwest ISO) submitted for filing with the Commission proposed revisions to the Credit Policy in Attachment L of Midwest ISO's Open Access Transmission and Energy Market Tariff (Tariff). The proposed revisions modify the Credit Policy to provide for the acceptance of Foreign Guaranties.
2. Midwest ISO recently reassessed, through its stakeholder process, its practices relating to the acceptance of Corporate Guaranties from entities domiciled outside of the United States or Canada. Midwest ISO currently accepts Corporate Guaranties only from entities domiciled in the United States or Canada, but recognizes that this practice prevents certain Midwest ISO Transmission Customers and Market Participants from relying on Foreign Guaranties that could be available to them.
3. Midwest ISO now believes that it is acceptable to permit Foreign Guaranties when certain criteria are met, so Midwest ISO is proposing to revise its Tariff's Attachment L credit provisions to permit Foreign Guarantors under certain conditions.

The Foreign Guarantor:

- 1) Must be an Affiliate of the Tariff Customer.
- 2) Must provide financials in Generally Accepted Accounting Principles (GAAP) format or other acceptable format with a clear representation of net worth, intangible assets, and any other information the Transmission Provider may require.
- 3) Must maintain an agent for acceptance of service of process in the State of Indiana, absent legal constraint.
- 4) Must provide a Secretary's Certificate certifying the adoption of Corporate Resolutions: (1) authorizing and approving the Guaranty; and (2) authorizing the Officers to execute and deliver the Guaranty on behalf of the Guarantor.
- 5) Must be domiciled in a country with a minimum long-term sovereign (or equivalent) rating of AA+/Aa1, with the following conditions:
 - a. Sovereign ratings must be available from at least two rating agencies acceptable to Transmission Provider (e.g. S&P, Moody's, Fitch, and Dominion Bond Rating Service).
 - b. Each agency's sovereign rating for the domicile will be considered to be the lowest of: the country ceiling, senior unsecured government debt, long-term foreign currency sovereign rating, long-term local currency sovereign rating, or other equivalent measures, at the Transmission Provider's sole discretion.
 - c. Whether ratings are available from two or three agencies, the lowest of the two or three will be used.
- 6) Must be domiciled in a country that recognizes and enforces judgments of United States courts.
- 7) Must demonstrate financial commitment to activity in the United States as evidenced by one of the following:
 - a. American Depository Receipts are traded on the New York Stock Exchange, American Stock Exchange, or NASDAQ.

- b. Equity ownership worth over 100,000,000 United States Dollars in the wholly owned or majority owned subsidiaries in the United States.
 - 8) Must satisfy all other applicable provisions of the Transmission Provider's Tariff and/or Operating Agreement.
 - 9) Must pay all expenses incurred by the Transmission Provider related to reviewing and accepting Foreign Guaranty beyond nominal in-house credit and legal review.
 - 10) Must, at its own cost provide the Transmission Provider with an independent legal opinion from an attorney/solicitor of the Transmission Provider's choosing and licensed to practice law in the United States and/or Guarantor's domicile, in form and substance acceptable to the Transmission Provider in its sole discretion, confirming the enforceability of the Foreign Guaranty, the Guarantor's legal authorization to grant the Guaranty, the conformance of the Guaranty, Guarantor, and Guarantor's domicile to all of these requirements, and such other matters as the Transmission Provider may require in its sole discretion.
4. In addition, Midwest ISO proposes to revise the Attachment L credit provisions to provide that the Guaranty:
- a. Must contain provisions equivalent to the standard form of Foreign Guaranty, with modifications subject to the Market ISO's approval.
 - b. Must be denominated in U.S. Currency.
 - c. Must be written and executed solely in English.
5. Midwest ISO requests that the proposed tariff revisions be accepted to take effect October 28, 2008.
6. Notice of Midwest ISO's filing was published in the *Federal Register*, 73 Fed. Reg. 53,860 (2008), with comments due on or before September 19, 2008. Timely motions to intervene that raised no substantive issues were filed by Alliant Energy Corporate Services, Inc., Ameren Services Company, Macquarie Cook Power Inc. and Consumers Energy Company. A timely motion to intervene and comment was filed by H.Q. Energy Services (H. Q. Energy).

7. According to the H. Q. Energy, during stakeholder deliberations, stakeholders discussed permitting Guarantors to submit audited financials either under United States GAAP or its Canadian equivalent, Canadian GAAP. Stakeholders ultimately approved a provision in the new tariff section on Foreign Guarantors that would require them to provide audited financials in United States and/or Canadian GAAP or International Financial Reporting Standards format, but the proposed tariff sheets filed by Midwest ISO omit the reference to “Canadian GAAP” in the stakeholder-approved language. In addition, H.Q. Energy contends that the stakeholder-approved language regarding Canadian GAAP was originally inserted into the provision that only applied to Foreign Guarantors, but it should also apply to Non-Foreign Guarantors, since Non-Foreign Guarantors include both United States and Canadian entities. Therefore, H. Q. Energy seeks clarification that Guarantors may submit audited financials under the United States and/or Canadian GAAP or International Financial Reporting Standards format.

8. Midwest ISO filed an answer to H. Q. Energy’s comments. Midwest ISO points out that H. Q. Energy’s comments recognize that Midwest ISO’s omission of language referring to Canadian GAAP was an oversight. Midwest ISO therefore states that it will correct the language in a compliance filing ordered by the Commission.

9. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene of H.Q. Energy serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO’s answer because it has provided information that assisted us in our decision-making process.

10. As an initial matter, on Original Sheet No. 1239D of Midwest ISO’s Credit Policy, Midwest ISO refers to “Operating Agreement” in describing one of the criteria needed to become a Foreign Guarantor. Midwest ISO has not specified which of its operating agreements it is referring to, therefore we direct Midwest ISO to provide clarification and to revise its Tariff sheet to incorporate the specific operating agreement.

11. In addition, Midwest ISO acknowledges that the omission of reference to Canadian GAAP was an oversight. We direct Midwest ISO to revise its Tariff sheets to include the reference to Canadian GAAP. We will therefore accept, subject to a

compliance filing, Midwest ISO's proposed tariff revisions, to become effective October 28, 2008, as requested. Midwest ISO is hereby directed to file revised Tariff sheets within 30 days of this order.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.