

125 FERC ¶ 61,382
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MidAmerican Energy Company

Docket Nos. OA08-78-000
OA08-78-001

ORDER ON COMPLIANCE FILING

(Issued December 30, 2008)

1. On March 17, 2008, in Docket No. OA08-78-000, under section 206 of the Federal Power Act (FPA),¹ MidAmerican Energy Company (MidAmerican) submitted proposed revisions to its Open Access Transmission Tariff (OATT) to comply with Order No. 890-A.² On March 31, 2008, MidAmerican submitted an errata in Docket No. OA08-78-001 that included additional tariff sheets that it indicated were necessary to comply with Order No. 890-A. In this order, we accept MidAmerican's revised OATT, as modified, and subject to a further compliance filing, as discussed below.

I. Background

2. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. The Commission in Order No. 890-A continues its Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping to improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

3. The revisions in Order No. 890-A address, among other things: how transmission providers process service requests; under what circumstances long-term customers may

¹ 16 U.S.C. § 824e (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

renew (roll over) their transmission service; the ability of network customers to designate certain resources; and how point-to-point customers may reassign transmission capacity. As discussed in further detail below, the Commission also directed transmission providers to address certain issues related to the calculation of incremental costs for purposes of imbalance charges.

II. MidAmerican's Compliance Filing

4. In its March 17 filing, MidAmerican states that the proposed revisions do not contain any variations from the Commission's markups of the *pro forma* tariff as presented in Appendix C to Order No. 890-A, with the exception of section 2.2. MidAmerican notes that it must wait until its proposed Attachment K planning process is accepted by the Commission before it may make the *pro forma* changes to section 2.2 regarding rollover rights.³

5. MidAmerican states in its March 31 errata that a further review of Order No. 890-A revealed that MidAmerican needed to provide further changes to comply with Order No. 890-A. MidAmerican submitted with that errata changes to its Business Practice No. 7 (Mechanism for Crediting Imbalance Penalty Revenues) in accordance with the requirements set forth in Order No. 890-A. MidAmerican states that it has recalculated the crediting of imbalance penalty revenues for August 2007 to December 2007, and that the revised mechanism for crediting imbalance penalty revenues was adopted for the billing month of January 2008 and for subsequent billing months. MidAmerican states that no refunds are due. MidAmerican states that customers received higher credits under the recalculation, but that it is not seeking reimbursement.

III. Notices of Filing and Responsive Pleadings

6. Notices of MidAmerican's filing were published in the *Federal Register*, 73 Fed. Reg. 16,003 (2008) and 73 Fed. Reg. 19,204 (2008), with interventions and protests due on or before April 21, 2008.

7. The Municipal Energy Agency of Nebraska filed a timely motion to intervene and protest. MidAmerican filed an answer to the Municipal Energy Agency of Nebraska's protest on April 16, 2008.

³ At the time of MidAmerican's filing in the instant proceeding, its Attachment K planning process had not yet been accepted. That filing was accepted, subject to modification, on May 15, 2008 in Docket No. OA08-41-000. See *MidAmerican Energy Co.*, 123 FERC ¶ 61,160 (2008). MidAmerican subsequently submitted proposed changes to section 2.2 on June 2, 2008 in Docket No. OA07-56-003.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the Municipal Energy Agency of Nebraska's timely, unopposed motion to intervene serves to make it a party to this proceeding.

9. 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 are not persuaded to accept MidAmerican's answer and will, therefore, reject it.

B. Substantive Matters

10. We find that MidAmerican's proposed tariff revisions, as modified below, comply with the requirements of Order No. 890-A. Accordingly, we accept MidAmerican's proposed tariff revisions, as modified, subject to a further compliance filing, as discussed below.

11. In Order No. 890-A, the Commission granted rehearing and found that, among other things, transmission providers should base imbalance charges on the actual cost to correct the imbalance, which may be different than the cost of serving native load. As a result, the Commission modified the definition of incremental cost to include the cost of the last 10 MW dispatched for any purpose, whether to serve native load, correct imbalances, or make off-system sales.⁴ The Commission also required each transmission provider to provide language in its OATT clearly specifying the method by which it calculates incremental costs for purposes of imbalance charges, as well as the method it will use to obtain each component of the calculation.⁵ If start-up costs are incurred during an hour different from the hour of excess imbalance, the start-up costs may also be included in the calculation of incremental costs as long as they are associated with providing imbalance service.⁶

12. In Second Revised Sheet No. 121, MidAmerican proposes an incremental energy cost methodology based on the projected cost of purchasing fuel to replace the fuel used to generate any amounts included in the last 10 MW of production for an hour.

13. The Municipal Energy Agency of Nebraska argues that MidAmerican should be required to use actual, rather than projected, fuel costs in its incremental energy cost

⁴ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 309.

⁵ *Id.* P 310.

⁶ *Id.* P 312.

calculation. It argues that the language in MidAmerican's Second Revised Sheet No. 121 directly contravenes the language in Order 890-A that "it is more reasonable to base imbalance charges on the actual cost to correct the imbalance."⁷

14. We agree with the Municipal Energy Agency of Nebraska that MidAmerican must base imbalance charges on the actual cost to correct the imbalance, as directed in Order No 890-A. Accordingly, we direct MidAmerican to file, within 30 days of the date of this order, a further compliance filing to demonstrate that it will use actual, rather than projected, fuel costs in its incremental energy cost methodology.

The Commission orders:

(A) MidAmerican's compliance filing, as modified, is hereby accepted, subject to a further compliance filing, as discussed in the body of this order.

(B) MidAmerican is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ The Municipal Energy Agency of Nebraska Protest at 4 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 309).