

132 FERC ¶ 61,245  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER10-1913-000

ORDER ACCEPTING BALANCING AUTHORITY COORDINATION AGREEMENT

(Issued September 20, 2010)

1. On July 22, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act (FPA),<sup>1</sup> an Adjacent Balancing Authority Coordination Agreement with Western Area Power Administration (Western), Upper Great Plains Region (UGPR) (Coordination Agreement)<sup>2</sup>. In this order, we accept the Coordination Agreement, effective September 21, 2010, as discussed below.

**I. Filing**

2. Midwest ISO states that it has submitted the Coordination Agreement in order to comply with North American Electric Reliability Corporation (NERC) Reliability Standard EOP-001-0 – Emergency Operations Planning Requirement R1, which provides: “Balancing Authorities shall have operating agreements with adjacent Balancing Authorities that shall, at a minimum, contain provisions for emergency assistance, including provisions to obtain emergency assistance from remote Balancing Authorities.” Midwest ISO explains that it did not have such an agreement with UGPR before this time because UGPR was a participant in the Midwest Contingency Reserve Sharing Group. Midwest ISO states that the Midwest Contingency Reserve Sharing Group ended in December 2009, and since then Midwest ISO and UGPR have been negotiating a new adjacent balancing authority coordination agreement that includes provisions for emergency energy.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> The Coordination Agreement is designated as Midwest ISO Rate Schedule FERC No. 29.

3. Midwest ISO explains that the Coordination Agreement is based on a template used by Midwest ISO and is similar to others that have previously been accepted by the Commission.<sup>3</sup> Midwest ISO points out that the rate proposed in the Coordination Agreement is the 150 percent of LMP rate previously approved by the Commission for PJM.<sup>4</sup> In addition, Midwest ISO explains that the proposed agreement, including the proposed rates, is consistent with previous agreements for the sale of emergency energy that have been approved by the Commission.

4. According to Midwest ISO, the proposed Coordination Agreement has certain modifications to the template previously used by Midwest ISO, which relate to UGPR's status as a United States governmental agency. The parties added article XI, Participation by the Government of the United States, in addition to other minor clarifications, based on the circumstances. Midwest ISO requests an effective date of September 21, 2010.

## **II. Notice of Filing and Responsive Pleadings**

5. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 Fed. Reg. 45,616 (2010), with interventions and protests due on or before August 12, 2010.

6. On July 29, 2010, American Municipal Power, Inc. filed a motion to intervene. On August 11, 2010, Duke Energy Corporation filed a motion to intervene.

7. On August 12, 2010, the Midwest ISO Transmission Owners filed a motion to intervene and protest. On August 26, 2010, Western submitted a motion to intervene out of time and answer to the protest.

8. In their protest, the Midwest ISO Transmission Owners state that they generally find that the Coordination Agreement is acceptable, but they object to section 3.4, which states:

**NERC Civil Monetary Penalties.** No party shall be responsible for sanctions it is not legally obligated to pay, or for any acts, omissions, or violations of another party. UGPR hereby provides notice that it has informed FERC and NERC that as a Federal governmental agency it is not subject to any

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<sup>3</sup> Midwest Independent Transmission System Operator, Inc., Docket No. ER10-514-000, (February 12, 2010) (delegated letter order).

<sup>4</sup> *New York Independent System Operator and PJM Interconnection, LLC*, 92 FERC ¶ 61,107 (2000) (NYISO/PJM).

monetary civil penalties that may arise from FERC, NERC, [Midwest Reliability Organization] or a successor Regional Entity's standards or rules.

The Midwest ISO Transmission Owners explain that they are concerned that this provision erroneously could be construed to limit the Commission's enforcement capability and authority to compel compliance with any mandatory reliability standards that have been approved or authorized by the Commission, and to limit the authority of NERC and its regional entities. They request that the Commission either reject section 3.4 of the Coordination Agreement or at least condition any approval of this provision upon the statement that such approval does not constitute an acceptance or endorsement of UGPR's position that it is not subject to any civil monetary penalties for violations of Commission-approved mandatory reliability standards.

9. In its answer, Western states that it believes that the language in section 3.4 is sufficiently clear that it included the language as a notice to third parties of its position on the payment of civil monetary fines related to FERC, NERC, or Midwest Reliability Organization standards or rules. Western disagrees that it runs the risk of being construed to limit the Commission's enforcement capability and authority, and to limit the authority of NERC and its regional entities. Western points out that the language is identical to language used in another Midwest ISO interconnection contract accepted by the Commission.<sup>5</sup> Western further explains that section 3.4 is not meant to infer that Western is exempt from reliability standards, but to inform third parties that Western has publicly stated before the Commission its position that it is unable to pay monetary civil fines and that Western does not waive any defense it might have regarding the applicability of those fines. Western states that it recognizes that the Commission has specifically stated (and would likely do so in this case) that this language does not bind a party to any particular outcome and that acceptance by the Commission is not an endorsement of Western's language. Western therefore requests that the Commission approve the Coordination Agreement as filed.

### **III. Discussion**

#### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Western's late filed

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<sup>5</sup> *Xcel Energy Operating Cos.*, 129 FERC ¶ 61,203, at P 55 (2009) (*Xcel*).

motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of Western because it has provided information that assisted us in our decision-making process.

## **B. Substantive Matters**

12. We find that the Coordination Agreement, which is essentially unopposed, is just and reasonable because it fulfills the requirements of NERC Reliability Standard EOP-001-0 – Emergency Operations Planning Requirement R1. The rate proposed in the Coordination Agreement for emergency energy is the same rate that the Commission previously found just and reasonable in *NYISO/PJM*.<sup>6</sup> However, we will address section 3.4, to avoid any ambiguity regarding our acceptance of the Coordination Agreement.

13. As the Commission explained in *Xcel*, “Federal Entities that are registered by an Electrical Reliability Organization (ERO) as users, owners, and operators of the Bulk-Power System must comply with mandatory Reliability Standards as to facilities that fall within the Bulk-Power System.”<sup>7</sup> Section 3.4 of the Coordination Agreement simply recites Western’s view of the issue and its statement that it has informed the Commission and NERC of its position on monetary civil penalties. The Commission agrees with Western that the language of section 3.4 does not bind any party to any particular outcome, but instead serves to notify third parties of its position. Western’s position is a matter for another proceeding and is not before the Commission in this proceeding.<sup>8</sup> For the sake of clarity, we reiterate that our acceptance of the Coordination Agreement is not an endorsement of Western’s position in section 3.4 regarding the civil penalty issue.

14. Accordingly, we will accept the Coordination Agreement for filing, to be effective September 21, 2010, as requested.

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<sup>6</sup> *See supra* note 4.

<sup>7</sup> *Xcel*, 129 FERC ¶ 61,203 at P 55.

<sup>8</sup> *North American Electric Reliability Corp.*, 129 FERC ¶ 61,033 (2009) (addressing applicability of section 215 of the FPA to federal entities), *order on reh’g*, 130 FERC ¶ 61,002 (2010).

The Commission orders:

The Coordination Agreement is hereby accepted, to be effective September 21, 2010.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.