

133 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc. and
Big Rivers Electric Corporation

Docket Nos. ER11-16-000
ER11-15-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued November 24, 2010)

1. In this order, we address two separate filings, Docket Nos. ER11-15-000 and ER11-16-000, submitted by Big Rivers Electric Corporation (Big Rivers) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (collectively, Applicants) on October 4, 2010 to revise Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to facilitate Big Rivers joining Midwest ISO as a transmission-owning member on December 1, 2010.¹ With regard to Docket No. ER11-15-000, we conditionally accept for filing Big Rivers' Attachment O formula rate, to be effective December 1, 2010 through and including December 31, 2011. With regard to Docket No. ER11-16-000, we conditionally accept for filing Applicants' proposed revisions to Schedules 7, 8, 9, and 26 of Midwest ISO's Tariff, to be effective as of the date of Big Rivers' full integration into Midwest ISO, as requested, subject to a compliance filing as discussed below.

I. Background

2. Midwest ISO is a Commission-approved Regional Transmission Organization (RTO) that provides transmission service pursuant to rates, terms and conditions of its Tariff on file with the Commission. Among other things, Midwest ISO provides point-to-point transmission service and network integration transmission service under its Tariff. Big Rivers is a not-for-profit generation and transmission cooperative providing

¹ As the administrator of the Tariff, Midwest ISO joins Big Rivers in this filing to amend the Tariff but takes no position on the substance of the filing.

wholesale power and transmission service to its three-member distribution cooperatives in Western Kentucky. Big Rivers' three-member distribution cooperatives are: Kenergy Corporation; Jackson Purchase Energy Corporation; and Meade County Rural Electric Cooperative Corporation. Big Rivers has announced its intent to join Midwest ISO as a transmission owner and plans to integrate its facilities into Midwest ISO on December 1, 2010.

II. Description of Filings

A. Docket No. ER11-15-000

3. On October 4, 2010, Applicants filed revisions to Midwest ISO's Tariff to include Big Rivers' company-specific Attachment O template. Applicants state that Big Rivers is currently seeking approval from the Kentucky Public Service Commission (Kentucky Commission) to transfer functional control of its transmission facilities to Midwest ISO on December 1, 2010.² Applicants seek approval of deviations from Midwest ISO's Attachment O formula rate template (Non-Levelized Rate Formula Template Using Rural Utilities Service Form 12 Data). Specifically, Applicants request, on an interim basis, to use rates for firm and non-firm point-to-point and network integration transmission services currently contained in Big Rivers' safe harbor Open Access Transmission Tariff (OATT), which the Kentucky Commission has approved, until such time that Big Rivers can obtain approval from the Kentucky Commission to use Midwest ISO's Attachment O formula rate.³

4. Applicants state that the Kentucky Commission approved an "unwind" of Big River's long-term lease of its generation facilities to various subsidiaries of E.ON US LLC (Unwind Transaction), which stipulated that Big Rivers is obligated to file with the Kentucky Commission to adjust its rates, including its transmission rates, within

² Subsequent to the date of filing in this proceeding, the Kentucky Commission approved Big Rivers' request to transfer functional control of its transmission system to Midwest ISO. *In re* Application of Big Rivers Elec. Corp. for Approval to Transfer Functional Control of its Transmission System to Midwest Indep. Transmission Sys. Operator, Inc., Case No. 2010-00043, at 12 (Nov. 1, 2010).

³ Applicants state that Big Rivers filed its safe harbor OATT with the Commission on April 22, 2009 in Docket No. NJ09-3-000. The Commission conditionally accepted Big Rivers' OATT on September 17, 2009, subject to a compliance filing addressing certain non-rate terms and conditions. Applicants Transmittal Letter, Docket No. ER11-15-000, at 3-4 (citing *Big Rivers Elec. Corp.*, 128 FERC ¶ 61,264 (2009)). Applicants state that Big Rivers made the compliance filing on December 16, 2009, but that the Commission has not yet acted on the compliance filing. *Id.* at 4.

three years of the date of closing of the Unwind Transaction (July 16, 2009).⁴ Applicants state that Big Rivers anticipates submitting a filing with the Kentucky Commission to adjust its transmission rates to be effective no later than January 1, 2012.⁵ Applicants state that Big Rivers will seek approval from the Kentucky Commission at that time to adjust its transmission rates to utilize the Midwest ISO Attachment O formula rate. Until the Kentucky Commission approves such adjustments, however, Applicants state that it is necessary for Big Rivers to utilize certain limited variances from the Attachment O formula rate.⁶ Accordingly, Applicants seek to utilize Big Rivers' existing OATT rates until such time as it can obtain approval from the Kentucky Commission, as described above.

5. Specifically, Applicants propose the following deviations to Big Rivers' Attachment O:

- Revenue Adjustment, page 1, line 7a: As explained in a new Note W on page 5 to Big Rivers Attachment O, "Line 7a reflects an adjustment to incorporate Big Rivers' existing OATT rates as approved by the [Kentucky Commission] under whose jurisdiction Big Rivers' rates are subject. The rates as derived using the Midwest ISO Tariff Attachment O formul[a] will be adjusted to equal the existing rates approved by the [Kentucky Commission]." Applicants state that the Revenue Adjustment is necessary to adjust the rates up or down in order to produce the revenue requirement that is consistent with Big Rivers' current OATT rates. Applicants state that Big Rivers cannot change this revenue requirement without the approval from the Kentucky Commission.⁷
- Net Revenue Requirement, page 1, line 7: Applicants state that Big Rivers has included language to reflect that the Net Revenue Requirement includes the Revenue Adjustment.⁸

6. Applicants assert that the deviations from Midwest ISO's Attachment O formula rate are just and reasonable. In addition, Applicants argue that Big Rivers' circumstances are unique in that it will be the only Midwest ISO transmission owner whose rates under

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Midwest ISO's Tariff are subject to state commission approval. Applicants request an effective date of December 1, 2010, and that the Commission issue an order accepting these tariff sheets no later than November 24, 2010.⁹

B. Docket No. ER11-16-000

7. Also, on October 4, 2010, Applicants filed revisions to: Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service); Schedule 8 (Non-Firm Point-to-Point Transmission Service); Schedule 9 (Network Integration Transmission Service); and Schedule 26 (Network Upgrade Charge From Transmission Expansion Plan) of Midwest ISO's Tariff to reflect the addition of Big Rivers as a pricing zone in connection with its proposed integration into Midwest ISO. The proposed revisions adopt Midwest ISO's Commission-accepted transmission formula rate template contained in Attachment O to the Tariff, with the exception of the deviations outlined above in Docket No. ER11-15-000. According to Applicants, by transitioning to Midwest ISO's Attachment O formula rate, Big Rivers will fully migrate to the Tariff and be subject to the same terms and conditions of service as are other Midwest ISO transmission owners that utilize the Attachment O formula rate.¹⁰

8. Applicants request that the Commission accept the proposed revisions, without condition or suspension, to be effective as of the date of Big Rivers' full integration into Midwest ISO, which is currently scheduled for December 1, 2010. Applicants assert that granting this request is consistent with prior Commission orders wherein the Commission addressed formula rates for transmission owners in Midwest ISO and other RTOs in which the Commission approved those rates with no more than nominal suspension periods.¹¹

III. Notice of Filing and Responsive Pleadings

9. Notice of Applicants' filings in Docket Nos. ER11-15-000 and ER11-16-000 were published in the *Federal Register*, 75 Fed. Reg. 63,457 (2010), with interventions or protests due on or before October 25, 2010.

⁹ *Id.* at 2.

¹⁰ Applicants Transmittal Letter, Docket No. ER11-16-000, at 2.

¹¹ *Id.* at 1 (citing *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098 (2008); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 (2007); *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314 (2006); *Int'l Transmission Co.*, 116 FERC ¶ 61,036 (2006)).

10. American Municipal Power, Inc. and Consumers Energy Company filed timely motions to intervene in Docket Nos. ER11-15-000 and ER11-16-000. Midwest ISO Transmission Owners (Midwest ISO TOs)¹² filed a timely motion to intervene and comments in Docket Nos. ER11-15-000 and ER11-16-000. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) filed a timely motion to intervene and comments in Docket No. ER11-16-000. Big Rivers filed an answer to Midwest ISO TOs' comments in Docket No. ER11-15-000.

IV. Discussion

A. Procedural Matters

11. 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 the proceedings in which they intervened. 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 Big Rivers' answer because it has provided information that assisted us in our decision-making process.

¹² Midwest ISO TOs for purposes of this filing consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, Missouri); City Water, Light & Power (Springfield, Illinois); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Minnesota Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

B. Substantive Matters**1. Docket No. ER11-15-000****a. Comments**

12. Midwest ISO TOs state that they do not oppose the use of Big Rivers' Attachment O, but they believe that certain aspects of the filing should be modified or clarified. Specifically, Midwest ISO TOs assert that the Commission should require Applicants to modify Big Rivers' Attachment O to state that it is being adopted on an interim basis and shall remain in effect no later than December 31, 2011. At that point, Midwest ISO TOs state, Applicants can make the necessary filings to adopt the appropriate formula rate for Big Rivers. Midwest ISO TOs express concern that while Big Rivers anticipates filing the standard Attachment O template to become effective January 1, 2012, Big Rivers makes no firm commitment to do so. Midwest ISO TOs state that although Big Rivers is making these statements in good faith, this lack of a firm end-date for the use of Big Rivers' Attachment O could mean that the rate formula remains in use indefinitely in a manner that is different from the representations made in the instant filing. Alternatively, Midwest ISO TOs request that the Commission condition its acceptance of Big Rivers' Attachment O upon Big Rivers submitting a filing to adopt an appropriate formula rate for Big Rivers, to become effective no later than January 1, 2012.¹³

13. In addition, Midwest ISO TOs assert that Applicants need to address the impact of Schedules 26 and proposed 26-A (Multi-Value Project Usage Rate)¹⁴ and the charges allocated and billed to the Big Rivers pricing zone during the interim period. Midwest ISO TOs state that Midwest ISO's Tariff contains a number of additional charges other than the base transmission charges (i.e., Schedules 7, 8, and 9), including charges under Schedule 26 and proposed Schedule 26-A. Midwest ISO TOs state that charges imposed under these schedules will be billed to and collected from Big Rivers, but it is unclear how Big Rivers will treat any charges allocated and billed to its zone under Schedule 26 and proposed Schedule 26-A. For example, Midwest ISO TOs question whether Big Rivers will treat these charges as an add-on charge that is recovered in addition to its proposed rates or, alternatively, be deemed to be part of Big Rivers' base transmission rates. Because Schedule 26 and proposed Schedule 26-A are intended to recover the

¹³ Midwest ISO TOs Comments, Docket No. ER11-15-000, at 5.

¹⁴ On July 15, 2010, Midwest ISO submitted to the Commission a new Schedule 26-A as part of a joint filing with certain Midwest ISO Transmission Owners in Docket No. ER10-1791-000. The proposed Schedule 26-A would establish a new category of transmission projects designated as Multi-Value Projects and a corresponding cost allocation methodology for such projects. This filing is pending before the Commission.

costs of new transmission facilities for every transmission owner that has revenue requirements for facilities that qualify, Midwest ISO TOs claim that these charges recover more than just Big Rivers' revenue requirements. Midwest ISO TOs contend that Applicants should be required to clarify how any Schedule 26 and proposed Schedule 26-A charges allocated and billed to the Big Rivers' zone during the interim period will be treated for purposes of Big Rivers' Attachment O.¹⁵

14. Finally, Midwest ISO TOs state that Applicants should clarify the effects of Big Rivers' Attachment O on Midwest ISO's drive-out and drive-through rates and on revenue distribution under Midwest ISO's Transmission Owners Agreement.¹⁶ Specifically, Midwest ISO TOs state that the rates for drive-out and drive-through transmission services are based on the total net revenue requirements for all transmission owners within Midwest ISO, divided by total load within Midwest ISO.¹⁷ In addition, Midwest ISO TOs state that under Midwest ISO's Transmission Owners Agreement, revenues for certain transmission services, including drive-out and drive-through transactions, are distributed to all transmission owners.¹⁸ Midwest ISO TOs argue that acceptance of Big Rivers' Attachment O should have no impact on the method used to develop the Midwest ISO drive-out and drive-through rates or the resulting revenue distribution. Regardless of whether the Commission accepts Big Rivers' Attachment O, Midwest ISO TOs state that Applicants should clarify that: (1) transmission customers taking service under the Tariff that exit the Big Rivers pricing zone will pay the drive-out and drive-through rate established pursuant to Attachment O; and (2) the distribution of revenues to the Midwest ISO Transmission Owners will include transmission revenues deriving from transmission service exiting the Big Rivers pricing zone.¹⁹

¹⁵ Midwest ISO TOs Comments, Docket No. ER11-15-000, at 6.

¹⁶ The formal name of the Transmission Owners Agreement is the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation.

¹⁷ Midwest ISO TOs Comments, Docket No. ER11-15-000, at 7 (citing Midwest ISO Tariff, FERC Electric Tariff, Third Revised Vol. No. 1, Second Revised Sheet No. 1316).

¹⁸ *Id.* (citing Midwest ISO, Transmission Owners Agreement, Appendix C, § III.A.7 and III.B).

¹⁹ *Id.*

b. Answer

15. In response to Midwest ISO TOs' concern that the interim formula rate lacks a firm end-date, Big Rivers reiterates that its transmission rates are subject to the jurisdiction of the Kentucky Commission, and cannot be changed without the Kentucky Commission's approval. Accordingly, Big Rivers states that it cannot commit to a firm end-date for the use of the proposed Big Rivers' Attachment O. However, Big Rivers does commit to submitting a filing with the Commission, to become effective no later than January 1, 2012, to propose a rate formula to be employed thereafter. In the event that Big Rivers does not receive approval from the Kentucky Commission to utilize a different rate, Big Rivers asserts that it will seek to retain the existing formula rate. However, Big Rivers states that it would not object to a Commission order that allows Big Rivers' Attachment O to remain in effect only through December 31, 2011.²⁰

16. With regard to Midwest ISO TOs' request for clarification concerning how charges under Schedule 26 and proposed Schedule 26-A will be treated, Big Rivers clarifies that it is not proposing to change Big Rivers' Attachment O to reflect any amounts that may be allocated and billed to Big Rivers' zone. Big Rivers states that the formula rate in the proposed Big Rivers' Attachment O reflects the cost of existing facilities, and it is unlikely that Big Rivers would be assessed any charges under these schedules during the interim period. Big Rivers, however, asserts that if these charges should occur, the charges will be paid, as required under Midwest ISO's Tariff, and would not result in any changes to Big Rivers' Attachment O rates.²¹

17. Finally, in response to the requested clarification concerning the impact of Big Rivers' Attachment O on Midwest ISO's drive-out and drive-through rates, Big Rivers states that its Attachment O is not intended to have any impact on the method used to develop Midwest ISO's drive-out and drive-through rates or the resulting revenue distribution under Midwest ISO's Transmission Owners Agreement.²²

c. Commission Determination

18. We will conditionally accept Big Rivers' Attachment O formula rate. As an initial matter, we find it reasonable to accept Big Rivers' non-conforming Attachment O until such time that Big Rivers receives approval from the Kentucky Commission to use the Midwest ISO Attachment O formula rate. We find that the completion of the Unwind

²⁰ Big Rivers Answer at 3.

²¹ *Id.* at 3-4.

²² *Id.* at 4.

Transaction, coupled with Big Rivers rates being subject to the Kentucky Commission authority, present unique circumstances for Big Rivers' Attachment O formula rate.²³ Thus, we find it appropriate to allow Big Rivers to adjust its revenue up or down commensurate with its state-approved transmission service rates. However, as Midwest ISO TOs point out, we are concerned that Big Rivers' non-conforming Attachment O lacks a firm end-date.²⁴ Therefore [consistent with Big Rivers' answer,] we conditionally accept Big Rivers' Attachment O formula rate to be effective December 1, 2010 through and including December 31, 2011 (Interim Period). We note, however, that this acceptance with an end-date of December 31, 2011 does not foreclose Applicants from making a filing at an earlier date to adopt an appropriate formula rate for Big Rivers.

19. With respect to Midwest ISO TOs concerns regarding Big Rivers' impact on Schedule 26 and proposed Schedule 26-A, we find that Big Rivers' answer addresses Midwest ISO TOs concern and clarifies that Big Rivers is unlikely to be assessed any charges under Schedule 26 or proposed Schedule 26-A prior to January 1, 2012 [but should that occur, the charges will be paid by the zonal load as required under the Tariff and would not result in any changes to Big Rivers' Attachment O rates].

20. Finally, with regard to Midwest ISO TOs request for clarification concerning the impact of Big Rivers' proposed Attachment O on drive-out and drive-through rates and the resulting revenue distribution pursuant to Midwest ISO's Transmission Owners Agreement, we find that Big Rivers' answer provides Midwest ISO TOs requested confirmations and therefore addresses their concerns. Big Rivers clarifies that its proposed Attachment O is not intended to have any impact on the method for calculating these rates or the associated revenue distribution. Big Rivers states that it concurs with Midwest ISO TOs clarification.

21. Accordingly, we will conditionally accept for filing Big Rivers' Attachment O formula rate, as clarified and modified in Big Rivers' answer, to be effective December 1, 2010 through and including December 31, 2011, as discussed above.

²³ We note that the Commission previously accepted Big Rivers' transmission service rates contained within its safe harbor OATT. *See supra* note 3.

²⁴ Applicants anticipate submitting a filing to the Commission to adjust its rates to utilize the Midwest ISO Attachment O formula rate to be effective no later than January 1, 2012. *See supra* P 4.

2. Docket No. ER11-16-000**a. Comments**

22. Midwest ISO TOs and Hoosier request that Midwest ISO clarify which of Big Rivers' planned or proposed transmission projects will be subject to cost allocation pursuant to Attachment FF of Midwest ISO's Tariff and cost recovery pursuant to Schedule 26.²⁵ Midwest ISO TOs and Hoosier state that under the Midwest ISO Transmission Expansion Plan (MTEP) process, set forth in Attachment FF of Midwest ISO's Tariff, projects are subject to a determination of cost allocation at the time the projects are approved.²⁶ Because Big Rivers is not yet a Transmission Owner within Midwest ISO, Midwest ISO TOs and Hoosier argue that Big Rivers should have no planned or proposed projects that are subject to cost allocation under these provisions prior to the MTEP 2011 planning cycle at the earliest. Midwest ISO TOs and Hoosier note that the Commission directed Midwest ISO to provide similar clarifications in proceedings involving the integration of Dairyland Power Cooperative and MidAmerican Energy Company into Midwest ISO.²⁷ If Midwest ISO cannot or does not provide such clarification, Hoosier requests that the Commission require Applicants to provide justification for including the projects in question prior to approving the proposed revisions to the Tariff.²⁸

b. Commission Determination

23. We will conditionally accept the proposed revisions to Schedules 7, 8, 9, and 26 of Midwest ISO's Tariff to reflect the addition of Big Rivers as a pricing zone in connection with its proposed integration with Midwest ISO, to be effective as of the date of Big

²⁵ Midwest ISO TOs Comments, Docket No. ER11-16-000, at 3; Hoosier Comments at 3.

²⁶ Midwest ISO TOs Comments, Docket No. ER11-16-000, at 3 (citing Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Second Substitute Original Sheet No. 1839C.01); Hoosier Comments at 3 (citing Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Original Sheet No. 1840).

²⁷ Midwest ISO TOs Comments, Docket No. ER11-16-000, at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,187, at P 14 (2010) (*Dairyland*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,046, at P 61 (2009) (*MidAmerican*)).

²⁸ Hoosier Comments at 4.

Rivers' full integration into Midwest ISO, which is currently scheduled for December 1, 2010, as requested, subject to the compliance filing ordered below.

24. With respect to Midwest ISO TOs' and Hoosier's requests for Midwest ISO to clarify which of Big Rivers' projects will be subject to cost allocation pursuant to Attachment FF of Midwest ISO's Tariff and cost recovery pursuant to Schedule 26, we will require, consistent with *Dairyland* and *MidAmerican*, that Applicants provide these clarifications in a compliance filing, due within 30 days of the date of this order.

The Commission orders:

(A) Big Rivers' Attachment O formula rate is hereby conditionally accepted for filing, to be effective December 1, 2010 through and including December 31, 2011, as discussed in the body of this order.

(B) The proposed revisions to Schedules 7, 8, 9, and 26 of Midwest ISO's Tariff are hereby conditionally accepted for filing, to be effective as of the date of Big Rivers' full integration into Midwest ISO, as requested, as discussed in the body of this order.

(C) Applicants are hereby directed to make a compliance filing, due 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.