

134 FERC ¶ 61,023
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.

Docket No. ER11-2350-000

ORDER REJECTING PROPOSED
TARIFF REVISIONS

(Issued January 14, 2011)

1. On December 13, 2010, Midwest Independent Transmission System Operator, Inc. (Midwest ISO)¹ and certain Midwest ISO Transmission Owners (Certain Midwest ISO TOs)² (collectively, December 13 Filing Parties) filed proposed revisions to Schedule 1 (Scheduling, System Control and Dispatch Service) of Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (December 13 Filing). We reject the Tariff revisions proposed in this docket for the reasons discussed below.

¹ Midwest ISO is filing the proposed revisions in its capacity as Administrator of its Tariff. However, Midwest ISO states that it takes no position on the substance of this filing.

² The Certain Midwest ISO TOs are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Northern Indiana Public Service Company; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; and Wabash Valley Power Association, Inc.

I. Background

2. Schedule 1 of the Midwest ISO Tariff is an ancillary service schedule that sets forth the rate that recovers the Midwest ISO transmission owners' expenses to manage the reliability coordination function and to monitor, assess and operate the transmission system in real time to maintain safe and reliable operation. The current rate for Schedule 1 service is a single, system-wide postage stamp rate based on the total revenue requirements and load of all transmission owners providing the service.³ Schedule 1 service is provided, and Schedule 1 revenue is generated, when a transmission customer purchases the following services: Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service under Schedule 7 of the Tariff; Non-Firm Point-to-Point Transmission Service under Schedule 8 of the Tariff; and Network Integration Transmission Service (NITS) under Schedule 9 of the Tariff.

3. Schedule 1 provides that revenue generated from Schedule 1 service is to be allocated to each Midwest ISO pricing zone on the same basis as the base transmission service revenues under Schedules 7, 8, or 9 of the Tariff. Base transmission service revenues under Schedules 7, 8, or 9 are distributed pursuant to the revenue distribution provisions in Appendix C, Section III of the Midwest ISO Transmission Owners Agreement (TO Agreement). Under this methodology, revenues collected from transmission customers related to service of load in Midwest ISO are distributed to the transmission owner in the zone where the load being served is located and revenues related to service through or out of the Midwest ISO system are distributed 50 percent based on transmission investment and 50 percent based on power flows. As a result, the Schedule 1 rate design is regional (i.e., a "postage stamp" rate), and the revenues generated by Schedule 1 are distributed primarily on a zonal basis (i.e., on a "license plate" basis) in accordance with the distribution method for base transmission revenues associated with the zonal rates under Schedules 7, 8, and 9.

4. Further, section 37.3(a) of the Tariff provides that when Midwest ISO transmission owners and independent transmission company (ITC) participants take NITS under Schedule 9 to serve their bundled load, they shall not pay charges pursuant to Schedule 1, 3 through 6, and 9 of the Midwest ISO Tariff.

³ Original Sheet No. 1758. The transmission owners' costs recovered under Schedule 1 include amounts recorded in FERC Accounts 561.1, 561.2, and 561.3, excluding any costs booked to a sub-account to Account 561 to be recovered under Midwest ISO Schedule 24 (the costs to operate local balancing areas, which were previously recovered through Schedule 1, but are now recovered through Schedule 24).

II. Proposed Revisions to Schedule 1

5. In the December 13 Filing, the Certain Midwest ISO TOs submitted an alternative proposal to the proposed revisions to Schedule 1 filed by Midwest ISO and Certain Other Midwest ISO TOs⁴ on November 15, 2010, in Docket No. ER11-2113-000 (collectively, November 15 Filing Parties). The Certain Midwest ISO TOs state that the purpose of their proposed modified Schedule 1 revenue distribution methodology is to align revenue distribution with the nature of the transmission service transaction to which Schedule 1 service applies, without imputing revenues from bundled retail customers for Schedule 1 service. Further they state that the proposal honors the agreed-upon methodology outlined in the TO Agreement for distribution of revenues received by Midwest ISO on behalf of the transmission owners.

6. In general, the Certain Midwest ISO TOs propose to change the revenue distribution under Schedule 1 for transactions related to “through” and “out” point-to-point transactions, which serve load outside of Midwest ISO, and are inherently regional in nature. The Certain Midwest ISO TOs state that, in the case of point-to-point transmission service transactions that serve load outside Midwest ISO, it is appropriate to distribute the revenues associated with the service on a system-wide, regional basis. For transactions serving load internal to Midwest ISO, the Certain Midwest ISO TOs propose to maintain the existing revenue distribution. The proposed changes will result in Schedule 1 revenues being allocated based on either the zonal revenue distribution methodologies used in Schedules 7, 8, and 9 if the transaction serves load internal to Midwest ISO, or system-wide for transactions involving service to load external to Midwest ISO. Furthermore, the Certain Midwest ISO TOs state that by modifying the revenue distribution related to system-wide transactions, an individual pricing zone can seek its own solution to the over and under recovery issue within its zone without impacting other pricing zones.⁵

7. The Certain Midwest ISO TOs propose to revise Schedule 1 in order to allow the Schedule 1 rate to be calculated based on each transmission owner’s current revenue requirement. The Certain Midwest ISO TOs propose to remove the language which states that rates will be calculated and put into effect “based on data for the prior calendar

⁴ In Docket No. ER11-2113-000, the Certain Other Midwest ISO TOs are: Great River Energy (GRE); International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC (collectively, the ITC Companies); Wolverine Power Supply Cooperative, Inc. (Wolverine); and Xcel Energy Services, Inc., on behalf of its operating company subsidiaries Northern States Power Company-Minnesota, and Northern States Power Company-Wisconsin (Xcel).

⁵ See Transmittal, Exhibit MTO-1 at 8.

year” and to modify Schedule 1 so that it indicates that the rate will be calculated and put into effect “on January 1 and June 1 of each year or as Attachment O rate templates are otherwise updated.” They state that this will allow for the Schedule 1 rate to be calculated based on each transmission owners’ current Attachment O revenue requirement.

8. In addition, the Certain Midwest ISO TOs propose to allocate Schedule 1 revenues associated with “through” and “out” transmission service on the basis of each transmission owner’s proportional share of the total Schedule 1 revenue requirement collected for (1) Firm Point-to-Point Transmission Service or Non-Firm Point-to-Point Transmission Service where generation source is located within the transmission system region and the load is located outside of the transmission system region and (2) Firm Point-To-Point Transmission Service or Non-Firm Point-to-Point Transmission Service where both the generation source and the load are located outside of the transmission system.

9. The Certain Midwest ISO TOs also propose to modify language in Schedule 1 to indicate that the existing revenue distribution provisions (distributing Schedule 1 revenues on the same basis as base transmission charge revenues under Schedules 7, 8, and 9) apply to: (1) Firm Point-to-Point Transmission Service or Non-Firm Point-to-Point Transmission Service where the generation source is located outside the transmission system region and the load is located within the transmission system region; (2) Firm Point-To-Point Transmission Service where both the generation source and the load are located within the transmission system region; and (3) NITS.

10. Finally, the Certain Midwest ISO TOs propose to add language to Schedule 1 to reflect that the revenue distribution procedures will be limited to the portion of revenues associated with services provided under Schedule 1 and will not apply to Scheduling, System Control, and Redispatch Service provided under an independent transmission company’s Control Area Services and Operations Tariff, which they state is consistent with existing language in Schedule 1 and similar to revisions proposed by the November 15 Filing Parties in Docket No. ER11-2113-000.

11. The Certain Midwest ISO TOs state that their proposal does not impute hypothetical revenues from zonal customers as part of the revenues collected under Schedule 1. Rather, their proposal will distribute revenues in a manner commensurate with the nature of the transaction underlying the transmission service without imputing revenues from bundled retail load that transmission owners may not receive.

12. The Certain Midwest ISO TOs state that they are making the filing consistent with Appendix K, Section II of the TO Agreement. The Certain Midwest ISO TOs request waiver of the Commission’s 60-day prior notice requirement to permit an effective date of January 1, 2011. They explain that the requested effective date is appropriate because the proposed Tariff revisions do not affect Schedule 1 rates but merely modify the

distribution of Schedule 1 revenues to transmission owners. The Certain Midwest ISO TOs also state that granting waiver will permit the Tariff revisions to go into effect on January 1, 2011, the next date on which several transmission owners' updated 2011 revenue requirements become effective.

III. Notice of Filing and Responsive Pleadings

13. Notice of the filing was issued, with interventions or protests due on or before January 3, 2011.

14. The Illinois Commerce Commission and the Michigan Public Service Commission each filed a notice of intervention. Wisconsin Electric Power Company filed a motion to intervene. Midwest ISO filed a timely motion to intervene and comments. Consumers Energy Company (Consumers) filed a timely motion to intervene and comments. Certain Other Midwest ISO TOs filed a timely motion to intervene and protest. American Municipal Power, Inc. (AMP) filed a timely motion to intervene, motion to consolidate Docket Nos. ER11-2350-000 and ER11-2113-000, and request for five-month suspension of the effective date for the revisions to Schedule 1 revenue distribution proposed in both dockets.

15. In its comments, Midwest ISO states that it is unrealistic that it can implement the proposed changes by the requested effective date of January 1, 2011. Midwest ISO suggests that six months after an order is issued would be a more realistic time estimate for implementing a change to the Schedule 1 revenue distribution method and in order to account for the possibility that the proposal might be changed.

16. Consumers states that the changes proposed in the December 13 Filing do nothing to remedy the Schedule 1 over-/under-recovery problem. In contrast, Consumers states that the changes proposed by the Certain Other Midwest ISO TOs in Docket No. ER11-2113-000 would remedy the problem. Consumers requests that the Commission reject the Tariff revisions proposed in Docket No. ER11-2350-000 and accept the Tariff revisions proposed in Docket No. ER11-2113-000.

17. In their protest, the Certain Other Midwest ISO TOs state that revenue distribution should not be aligned with "the nature of the underlying transmission service transaction," as the Certain Midwest ISO TOs propose. The Certain Other Midwest ISO TOs argue that revenue distribution should instead be aligned with the Schedule 1 single, system-wide rate design. They state that the Commission has recognized in *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,282 (2003), *reh'g denied*, 105 FERC ¶ 61,111 (2003), that Schedule 1 is a regional rate. The Certain Other Midwest ISO TOs further state that the fact that revenues are currently distributed on a zonal basis does not convert the regional Schedule 1 rate into a zonal rate. The Certain Other Midwest ISO TOs agree that pro rata distribution that relates to the revenue requirement is appropriate; however, they assert that it should cover all Schedule 1

service, not just a small subset of Schedule 1 revenues. They explain that the Schedule 1 functions that support regional reliability coordination and operations are benefits for the whole transmission system, and not confined to local zones. Accordingly, the Certain Other Midwest ISO TOs assert that there is no basis in the Midwest ISO Tariff for using different methods for Schedule 1 revenue distribution based on the “purpose” of a transaction, or whether a transaction is “local” or “regional” in nature. They assert that their November 15, 2010 filing in Docket No. ER11-2113-000, demonstrates that utilizing the same revenue distribution provisions for revenues from the regional Schedule 1 rate, as are used for distribution of revenues from the zonal Schedule 7, 8, and 9 transmission service charges, is unjust and unreasonable because it does not provide a reasonable opportunity for transmission owners to recover their Schedule 1 revenue requirements.

18. The Certain Other Midwest ISO TOs also state that the Certain Midwest ISO TOs’ proposal would continue to ignore revenues properly attributed to bundled load for purposes of Schedule 1 revenue distribution. They argue that the difference in revenue collection, where Midwest ISO collects Schedule 1 charges from unbundled load, but not from bundled load, gives rise to the need to impute revenues from bundled load in order to assure that the revenue distribution methodology allows a reasonable opportunity for transmission owners to recover their revenue requirements.

19. The Certain Other Midwest ISO TOs additionally assert that the revenue distribution procedures in Appendix C of the TO Agreement do not apply to Schedule 1, contrary to the Certain Midwest ISO TOs’ claim that their proposed revisions will “honor” the methodology in the TO Agreement for revenue distribution. They state that Appendix C of the TO Agreement is specifically tailored to transmission transactions that are based on zonal rates, and not for ancillary services under Schedule 1 that represent a regional service with a regional rate design.

20. The Certain Other Midwest ISO TOs assert that the Certain Midwest ISO TOs’ proposal seeks a very modest change in the revenue distribution methodology that does not enable all transmission owners to have a reasonable opportunity to recover their Schedule 1 revenue requirements and that it should therefore be rejected.

21. AMP requests that the Commission consolidate Docket No. ER11-2350-000 with ER11-2113-000 so that the proposed revisions to Schedule 1 of the Midwest ISO Tariff may be evaluated in a single proceeding. AMP states that both filings are factually similar and arise from the same concerns. Additionally, AMP states that consolidating the two dockets will avoid the potential for duplicative discovery and redundant evidence and proceedings. It also states that consolidation will allow the parties and the Commission to more effectively utilize resources and more effectively evaluate the financial impacts of each filing.

22. AMP also recommends that the Commission suspend the filings in both dockets for five months and direct the parties to engage in settlement discussions. AMP contends that two different dockets with competing tariff changes, each with the same proposed effective date, poses a challenge for the Commission that can best be resolved by suspension and settlement discussions.

23. On January 11, 2011, the Certain Other Midwest ISO TOs filed an answer opposing AMP's motion to consolidate Docket Nos. ER11-2113-000 and ER11-2350-000 and its request for a five-month suspension of the filings' effective dates in both dockets.

24. On January 11, 2011, the Certain Midwest ISO TOs filed an answer to the Certain Other Midwest ISO TOs' January 3, 2011 protest. In their answer, the Certain Midwest ISO TOs state that the Certain Other Midwest ISO TOs exhibited misconceptions regarding the Commission's analysis under section 205 of the FPA. In particular, they state that the Certain Other Midwest ISO TOs appear to call for the Certain Midwest ISO TOs to meet a burden similar to section 206 of the FPA, which they argue is not required for the Commission to accept the December 13 Filing. The Certain Midwest ISO TOs state that the Certain Other Midwest ISO TOs' suggestion that section 205 of the FPA requires a showing that the Certain Midwest ISO TOs' proposal is superior to any alternative proposal that may be offered by other parties is misplaced. The Certain Midwest ISO TOs claim that the assertion that the Commission may ignore the instant filing if it determines that the alternative proposal in Docket No. ER11-2113-000 is just and reasonable misreads Commission precedent because nothing in section 205 of the FPA authorizes the Commission to disregard an otherwise complete tariff filing on the basis that another pending filing revises the same portions of a tariff. Additionally, they state that the existence of another pending filing to revise Schedule 1 revenue distribution is irrelevant to the Commission's determination of whether the December 13 Filing is just and reasonable.

IV. Discussion

A. Procedural Matters

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

B. Substantive Matters

26. As discussed below, we reject the Certain Midwest ISO TOs' proposed revisions to Schedule 1 of the Midwest ISO Tariff.⁶ In an order being issued concurrently with this order in Docket No. ER11-2113-000, we are accepting the Tariff revisions proposed by the Certain Other Midwest ISO TOs, which will impute Schedule 1 revenues for bundled load and distribute all Schedule 1 revenues based on each transmission owner's *pro rata* share of the sum of all transmission owners' Schedule 1 revenue requirements. In that order, we find that the proposed revisions to impute the Schedule 1 revenues for bundled load and distribute all Schedule 1 revenues based on Schedule 1 revenue requirements will allow all transmission owners the opportunity to recover their Schedule 1 revenue requirements.

27. We agree with the Certain Other Midwest ISO TOs and Consumers that the Certain Midwest ISO TOs' alternative proposal in this proceeding perpetuates an unjust and unreasonable, and unduly discriminatory, result because it will not ensure that each transmission owner has the opportunity to fully recover its Schedule 1 revenue requirement under the existing regional rate design for the Schedule 1 charge, regardless of whether or not it has bundled load.⁷

28. We agree with the Certain Midwest ISO TOs that there is no requirement that the December 13 Filing be reviewed under section 206 of the FPA. However, while the Certain Midwest ISO TOs assert that they have the right to file under section 205 proposed revisions to Schedule 1 of the Tariff pursuant to the terms of the TO Agreement, in fact both groups of transmission owners have this right.⁸ As discussed above, the Commission has determined that the proposal in Docket No. ER11-2113-000 is just and reasonable and not unduly discriminatory. In contrast, upon examination of the proposal filed in Docket No. ER11-2350-000, we find that for the reasons stated above, it is not just and reasonable, and is unduly discriminatory.

⁶ We deny AMP's motion to consolidate the December 13 Filing with the Certain Other Midwest ISO TOs' proposal in Docket No. ER11-2113-000. Since we are rejecting the Certain Midwest ISO TOs' proposal in this proceeding and, in a separate order, accepting the Certain Other Midwest ISO TOs' proposed Tariff revisions in Docket No. ER11-2113-000, there are no issues to consolidate for purposes of settlement and decision.

⁷ Even the Certain Midwest ISO TOs recognize there will still be some under or over collection for revenues related to system-wide transactions. *See* Transmittal, Exhibit MTO-1 at 8.

⁸ *See* section III (A) of Appendix K to the TO Agreement.

The Commission orders:

The proposed Tariff revisions are hereby rejected for filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.