135 FERC 61,255
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. ER11-3415-000

ORDER CONDITIONALLY ACCEPTING EXIT FEE AGREEMENT AND PROPOSED RATE SCHEDULES

(Issued June 20, 2011)

1. On April 21, 2011 (April 21 Filing), pursuant to section 205 of the Federal Power Act (FPA),[1] Midwest Independent Transmission System Operator, Inc. (MISO) and American Transmission Systems, Incorporated (ATSI) (jointly, Applicants) notified the Commission that they had successfully negotiated the exit fees required of ATSI upon its withdrawal from MISO as directed by the Commission in the ATSI Realignment Order.[2] Applicants also submitted the executed Exit Fee Agreement along with three associated schedules, Schedules 10-D, 16-B, and 17-B (collectively, Alternative Administrative Cost Schedules) to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). In this order, we accept both the Exit Fee Agreement and the Tariff schedules, effective May 31, 2011, subject to a compliance filing as discussed below.

I. Background

2. On December 17, 2009, in the ATSI Realignment Order, the Commission conditionally accepted proposed revisions to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (PJM OATT) in connection with ATSI's integration into the PJM regional transmission organization (RTO). The order conditioned its approval on,

[1] 16 U.S.C. § 824d (2006).

[2] *American Transmission Sys., Inc.*, 129 FERC ¶ 61,249, at P 4 (2009) (ATSI Realignment Order).

among other things, the submission of a separate filing addressing ATSI's remaining financial obligations required under Article Five, Section II.B of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (MISO TO Agreement).[3]

3. On February 1, 2011, PJM and ATSI jointly submitted proposed modifications to the PJM OATT to, among other things, transfer ATSI's existing formula rate into the PJM OATT (PJM-ATSI Filing). The proposed formula rate allowed for the recovery from ATSI's wholesale transmission customers of the exit fees paid to MISO. In an order issued May 31, 2011, the Commission found that ATSI failed to demonstrate the justness and reasonableness of its proposal to recover from its wholesale transmission customers the exit fees associated with ATSI's RTO realignment decision.[4] The Commission therefore accepted and suspended the proposed revisions to the PJM OATT, subject to refund and ATSI making a compliance filing to, among other things, remove exit fees from its formula rates.[5]

II. <u>The April 21 Filing</u>

4. Applicants filed an executed Exit Fee Agreement, as well as the Alternative Administrative Cost Schedules, pursuant to the conditions ordered in the ATSI Realignment Order.[6] The Exit Fee Agreement will determine and resolve ATSI's obligation to pay Schedules 10, 16, and 17 exit fees under the MISO Tariff.[7] Applicants

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[3] *Id.* P 51. Article Five, Section II.B of the MISO TO Agreement states: "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by [MISO] and the withdrawing [transmission owner]." This financial obligation consists of multiple components, one of which is at issue in this proceeding; ATSI's payment of MISO Schedule 10, 16, and 17-related financial obligations incurred and payments applicable to time periods prior to the effective date of its withdrawal.

[4] *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 (2011) (PJM-ATSI Order).

[5] In the PJM-ATSI Order, the Commission stated that its finding is without prejudice to ATSI submitting a new section 205 filing seeking recovery of, among other things, exit fees. *See id.* P 60.

[6] *See* ATSI Realignment Order, 129 FERC ¶ 61,249 at P 51.

[7] Schedule 10 (ISO Cost Recovery Adder) provides for the recovery of the costs

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state that the Exit Fee Agreement is the product of arms-length bargaining and includes no special discounts to ATSI.

5. The Exit Fee Agreement provides that, upon ATSI's withdrawal from MISO, MISO will provide ATSI with a good faith estimate of the exit fees. The good faith estimate of the exit fees will be subject to a true up fee[8] ninety days after ATSI's withdrawal from MISO.[9] Upon payment of the exit fees, ATSI will gain certain Eligibility Rights to post-withdrawal transmission services by MISO under Alternative Administrative Cost Schedules under Schedules 10, 16, and 17 to MISO's Tariff. The Eligibility Rights will reflect the prepayment of an amount equal to the exit fees, as adjusted by the true up fee. Therefore, ATSI will get a credit against future Schedule 10, 16, or 17 charges incurred under the MISO Tariff to reflect its having prepaid certain MISO administrative costs through the exit fees. Thus, to the extent that it uses MISO transmission service in the future, the costs of that service will be offset by the amount ATSI prepaid. Applicants propose that any prepayment amount shall be allocated to the Alternative Administrative Cost Schedules on a schedule-by-schedule basis based on the amount of the exit fees.

6. The Exit Fee Agreement also provides that ATSI has the discretion to assign or otherwise transfer any Eligibility Rights, including prepayment amounts, to its affiliates or any "Eligible Customers"[10] that pay NITS rates to ATSI.[11] In addition, to the extent

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associated with operating MISO, exclusive of those costs recovered under Schedules 16 and 17. Schedule 16 (Financial Transmission Rights (FTR) Administrative Service Cost Recovery Adder) provides for the recovery of the costs associated with administering MISO's FTR market. Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) provides for the recovery of the costs associated with administering MISO's energy markets.

[8] The true up fee is defined in section 3.1(c) of the Exit Fee Agreement as "a written statement of the Exit Fee true up calculated in accordance with the provisions of the Exit Fee Methodology to account for the substitution of actual data in lieu of estimated data[.]"

[9] The exit fees will be calculated based on the financial obligations of MISO's balance sheet as of May 31, 2011, according to a methodology set forth in the Exit Fee Agreement, using the most recent twelve months of billing determinants prior to ATSI's withdrawal. *See* Exit Fee Agreement, Att. A at p. A-1.

[10] Section 3.3(d) of the Exit Fee Agreement provides that:

> "'Eligible Customers' include ATSI, existing and future

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that ATSI recovers any portion of the exit fees through its NITS rates, ATSI will allocate to customers paying its NITS rates a portion of the prepayment amount along with the associated right to use the Alternative Administrative Cost Schedules on a monthly basis up to the amount of the exit fees recovered from such customers through ATSI's NITS rates.

7. Further, Applicants state that the methodology for calculating the exit fees is consistent with the Commission's decision in *LG&E*, which allowed Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, LG&E/KU), upon their withdrawal from MISO, to receive credits under Schedules 10, 16, and 17 for the lump-sum exit fee paid to MISO.[12]

8. Applicants request that the Commission grant waiver of the 60-day prior notice requirement to permit an effective date of May 31, 2011. They state that the requested effective date is appropriate because the Commission directed the filing of the Exit Fee Agreement in the ATSI Realignment Order. They further state that good cause exists to grant the requested effective date because the Exit Fee Agreement and associated rate schedules do not present any novel issues for analysis, but instead closely follow the

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> affiliates of ATSI, persons in the ATSI zone responsible for paying [network integrated transmission service (NITS)] to ATSI on and after June 1, 2011, and existing and future affiliates and members of such Persons; provided that an owner of a Transmission System that is a member of [MISO] or any of its affiliates or assigns, other than ATSI and ATSI's affiliates, shall not be recognized as an Eligible Customer. An Eligible Customer may not assign or otherwise transfer any unutilized Eligibility Amount and associated Eligibility Rights to a Person that is not an Eligible Customer."

The Eligible Customers are currently identified as: ATSI; American Municipal Power, Inc. (AMP); Buckeye Power, Inc. (Buckeye); Cleveland Public Power; and the affiliates and members of those entities.

[11] ATSI's rights to the prepayment amount and the associated Alternative Cost Schedules for post-withdrawal transmission services by MISO, shall continue until the earlier of either May 31, 2026, or until the prepayment amounts recouped under the respective Alternative Administrative Cost Schedule is equal to a portion of the exit fee allocated to that schedule.

[12] *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282 (2006) (*LG&E*).

approach approved by the Commission in *LG&E*. They further state that the Exit Fee Agreement requires that MISO present ATSI with a good faith estimate of the Exit Fee on the date of ATSI's withdrawal – June 1, 2011 – and ATSI must pay that Exit Fee no later than 30 days thereafter. They state that an effective date of May 31, 2011 will ensure an accurate calculation of the Exit Fee and will help ensure an orderly transition.

III. Notice of Filing and Responsive Pleadings

9. Notice of the April 21 Filing was published in the *Federal Register*, 76 Fed. Reg. 23,805 (2011), with protests and interventions due on or before May 12, 2011. Timely motions to intervene were filed by PJM, Consumers Energy Company, Duke Energy Corporation, Midwest ISO Transmission Owners,[13] the Office of the Ohio Consumers' Counsel, and Wisconsin Electric Power Company. Timely motions to intervene and protests were filed by Buckeye; AMP; and Midwest TDUs.[14] On May 27, 2011, ATSI, MISO, and Midwest ISO Transmission Owners filed answers.

A. Protests

10. AMP and Buckeye state that the Commission should not rule on the validity of ATSI's attempt to pass through the exit fee to ATSI's transmission customers, arguing

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[13] Midwest ISO Transmission Owners for the purpose of this filing consist of: 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 Company LLC; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC/*Transmission*; 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, a Minnesota corporation, and Northern States Power Company, a Wisconsin Corporation, subsidiaries of Xcel Energy, Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[14] Midwest TDUs are Madison Gas & Electric Company, Midwest Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy.

that the issue should be left to the proceeding involving the PJM-ATSI Filing. However, to the extent that the Commission decides the issue in this proceeding, AMP also argues that an Eligible Customer should be able to transfer or assign its prepayment amounts to its members and affiliates or to other Eligible Customers without limitation. Specifically, AMP is concerned that it would not be allowed to transfer its prepayment amounts to its members who are also MISO transmission owners, or to other Eligible Customers who are not members or affiliates. AMP argues that as its members who are also MISO transmission owners will ultimately bear the cost of the exit fee, they should have the right to receive a portion of the prepayment amounts that AMP is assigned, should it be assigned a portion of the exit fee.

11. Midwest TDUs seek clarification that the Exit Fee Agreement does not waive or otherwise compromise MISO's ability to impose exit fee charges on ATSI in order to address any adverse effects on the feasibility of Long-Term Firm Transmission Rights due to ATSI's withdrawal from MISO, because such charges are at issue in another proceeding in Docket No. ER11-2059-000.[15]

B. Answers

12. Midwest ISO Transmission Owners state that AMP's attempt to allow the assignment or use of the prepayment credits to transmission owners or unaffiliated customers should be rejected. Midwest ISO Transmission Owners argue that allowing AMP or any other Eligible Customer to assign its Schedule 10-D, 16-B, or 17-B prepayment credits to a MISO transmission owner other than ATSI, or other customers who are not affiliates or members, will increase the Schedule 10, 16, or 17 costs that other MISO customers must pay. Additionally, Midwest ISO Transmission Owners claim that allowing the assignment of such prepayment credits to a transmission owner or other unaffiliated customers is potentially discriminatory because it would result in similarly-situated customers paying different rates for the same service. Midwest ISO Transmission Owners defend the language in section 3.3(d) of the Exit Fee Agreement by explaining that it avoids ambiguity and future litigation about the scope of these limitations by clearly stating the applicable limitations on assignability of the prepayments.[16]

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[15] Midwest TDUs Protest at 3-4, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,009 (2011). There the parties are currently in the settlement judge process.

[16] Midwest ISO Transmission Owners point out that, for example, in a proceeding involving Commonwealth Edison Company, in Docket No. ER10-209-000, *et al.*, parties

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13. MISO states that it supports the positions in Midwest ISO Transmission Owners' answer and, additionally, requests that the Commission approve the Exit Fee Agreement and the Alternative Rate Schedules.

14. In its answer, ATSI contends that both Buckeye and Midwest TDUs' protests expressly do not address the merits of the proposed exit fee in the instant filing, but instead concern matters being addressed in other proceedings. Thus, ATSI contends that both protests are beyond the scope of this proceeding and should therefore be rejected.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[17] the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ATSI, MISO, and Midwest ISO Transmission Owners' answers because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

16. We will accept the proposed Exit Fee Agreement and Alternative Administrative Rate Schedules, to become effective on May 31, 2011,[18] subject to a compliance filing, as discussed below. We find that the Exit Fee Agreement and Alternative Administrative Cost Schedules are consistent with the Commission's decision in *LG&E*. In *LG&E*, the Commission conditionally approved LG&E/KU's withdrawal from MISO and accepted a proposed methodology to determine LG&E/KU's exit fees, which is the same methodology used to calculate ATSI's exit fees. In addition, the proposed Alternative

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were subject to a lengthy and complicated settlement process resulting from ambiguity regarding whom Commonwealth Edison could assign certain Schedule 10-A credits associated with an exit fee.

[17] 18 C.F.R. § 385.214 (2011).

[18] We find that Applicants have shown good cause to grant waiver of the 60-day prior notice requirement to permit an effective date of May 31, 2011. *See Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

Administrative Cost Schedules are expressly modeled on Schedules 10-C, 16-A, and 17-A to the MISO Tariff, which include formulas that allow MISO to recover Schedule 10, 16, and 17-related costs from LG&E/KU, net of financial obligations that LG&E/KU pre-paid as part of its exit fees.[19]

17. With regard to the protestors' arguments, the issue of whether ATSI should be able to recover the exit fees from its NITS customers is addressed in the PJM-ATSI Order.[20] And, we note that language in the Exit Fee Agreement and the Alternative Cost Schedules reflects that the issue had not yet been determined, and does not purport to resolve it.[21]

18. In addition, with respect to AMP's concern that Eligible Customers be allowed to transfer prepayment amounts to certain parties, we find that the proposed limits on reassignments are consistent with *LG&E*, avoid ambiguity regarding the assignment of the prepayments, and ensure that responsibility for ATSI's exit fees is not inappropriately shifted to MISO's remaining members and therefore are just and reasonable. The purpose of the exit fees is to hold the loads of MISO's remaining members harmless from increased responsibility for the financial obligations on MISO's balance sheet at the time of a transmission owner's withdrawal. The exit fees are accordingly based on the loads of the withdrawing transmission owner's transmission system, reflecting the responsibility for such costs that would have been borne by those loads if they remained in MISO. However, AMP's proposal would allow ATSI's prepayment of MISO administrative costs through the exit fee to be used to offset administrative cost responsibility of AMP's members remaining in MISO, whose loads are not included in the calculation of ATSI's exit fee. As a result, AMP's proposal would allow responsibility for ATSI's exit fees to be shifted to remaining MISO members, other than AMP's members that are MISO transmission owners, which would be unjust and unreasonable and contrary to the purpose of the exit fees. We note that, should ATSI seek to recover its exit fees from its wholesale transmission customers in the future, the

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[19] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,023 (2006), *order on compliance filing and denying rehearing*, 118 FERC ¶ 61,158 (2007).

[20] *See* 135 FERC ¶ 61,198 at P 59-60.

[21] *See* Exit Fee Agreement, section 3.3(b): "The Parties recognize that ATSI intends to seek recovery of the Exit Fee, as adjusted by the True Up Fee, by adding such amount to its network integrated transmission service ('NITS') rates. To the extent ATSI actually recovers such amounts in its NITS rates, ..." *See also id.*, section 3.3(c) ("To the extent ATSI does not recover all of the Exit Fee through its NITS rates, ...").

PJM-ATSI Order required ATSI to include a cost-benefit analysis considering the benefits and impacts of the exit fee recovery on wholesale customers, which would protect customers from any harmful consequences due to their payment of ATSI's exit fees, including related to limits on their reassignments of prepayment amounts and rights to use the Alternative Administrative Cost Schedules.[22]

19. We grant Midwest TDUs' request for clarification that the Exit Fee Agreement does not waive or restrict MISO's rights to charge ATSI any Long-Term Firm Transmission Rights-related withdrawal charges, as determined by settlement or litigation under Docket No. ER11-2059-000. The Exit Fee Agreement does not include any calculation of those charges. To the extent that MISO may assess Long-Term Firm Transmission Rights-related charges to ATSI, they should be calculated and recovered separately from the Exit Fee Agreement.

20. Finally, consistent with the Commission's directives in *LG&E*,[23] we direct Applicants to submit: (1) the calculation of their final exit fee to the Commission, and (2) revised Alternative Administrative Cost Schedules that reflect the actual portion of the exit fee allocated to each schedule, in a compliance filing within 30 business days of MISO providing a calculation of the true up fee to ATSI. In that compliance filing, Applicants should provide the documentation that MISO provides to ATSI to demonstrate that the proposed exit fee was calculated pursuant to the methodology accepted here.

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[22] PJM-ATSI Order , 135 FERC ¶ 61,198 at P 60. AMP argues that its members who are also MISO transmission owners will ultimately bear the cost of the exit fee, but it appears that that would only occur if ATSI were successful in recovering its exit fees from AMP for service to AMP's members in PJM and AMP ultimately recovered those costs from its members who are transmission owners in MISO. However, how AMP shares the benefits and burdens associated ATSI's RTO realignment among its members in PJM and its members that remain MISO transmission owners, including costs associated with ATSI's exit fees should ATSI succeed in recovering its exit fees from wholesale transmission customers, is a matter to be addressed between AMP and its members and not by this Commission, and nothing in the Exit Fee Agreement or associated Alternative Administrative Cost Schedules limits AMP's ability to decide how to allocate its costs among its members.

[23] *See LG&E* 114 FERC ¶ 61,282 at P 60.

The Commission orders:

(A) Applicants' filing is hereby conditionally accepted for filing, to become effective on May 31, 2011, subject to a compliance filing, as discussed in the body of this order.

(B) Applicants are hereby directed to submit a compliance filing within 30 business days of MISO providing a calculation of the true up fee to ATSI, as discussed in the body of this order.

By the Commission.

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Kimberly D. Bose,
Secretary.