

139 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Midwest LLC

Docket Nos. ER12-1114-000
ER12-1114-001

ORDER ACCEPTING AGREEMENTS

(Issued May 25, 2012)

1. On February 17, 2012, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's Regulations,² ITC Midwest LLC (ITC Midwest) filed a transmission succession agreement (Succession Agreement) as well as a transmission agreement (Transmission Agreement) among ITC Midwest, Interstate Power and Light Company (Interstate), and Northeast Missouri Electric Power Cooperative (Northeast Power). On March 29, 2012, ITC Midwest amended its filing to submit a revision to the Transmission Agreement (Amended Transmission Agreement). As discussed in the body of this order, we accept the Succession Agreement and the Amended Transmission Agreement, effective February 29, 2012 and May 29, 2012, respectively.

I. Background and Filings

2. ITC Midwest states that it and the other operating company subsidiaries of ITC Holdings Corp. (ITC Holdings) have undertaken a comprehensive review of all of their contracts to ensure compliance with the Commission's filing requirements, especially those agreements that had been assigned to ITC Holdings' operating companies through various sales and mergers. ITC Midwest states that, as a result of this review, it has identified agreements that should be, but are not, on file with the Commission or that should have been, but were not, identified as ITC Midwest rate schedules through a notice of succession. As a product of this review, ITC Midwest has determined that the

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2011).

Transmission Agreement and the Succession Agreement had not been previously filed with the Commission.³

3. ITC Midwest is a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings) and a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (MISO). In 2007, ITC Midwest acquired Interstate's transmission assets.⁴ At the time of the acquisition, Interstate's transmission system was the product of several previous mergers and reorganizations.⁵ Notably in this case, Interstate had acquired assets, including agreements and service obligations, of Iowa Electric Light & Power Company, which was originally a party to the Transmission Agreement with Northeast Power.⁶

4. On March 28, 2008, Interstate, ITC Midwest, and Northeast Power entered into the Succession Agreement, under which ITC Midwest assumed Interstate's responsibility for the transmission-related terms and conditions of the Transmission Agreement.⁷ On March 1, 2012, Interstate, ITC Midwest, and Northeast Power entered the Amended Transmission Agreement, which replaced the Transmission Agreement and reflects the current operating conditions, the current party names, and the correct ownership status of the relevant facilities.⁸ The Amended Transmission Agreement provides the terms and conditions pursuant to which Northeast Power provides transmission service to Interstate. Service Schedule 1 to the Amended Transmission Agreement describes the wheeling charge that Interstate must pay to Northeast Power for transmission service. Among other things, the Amended Transmission Agreement requires ITC Midwest and Interstate to own, operate and maintain certain facilities at several delivery points, as described in Appendix A to the agreement.

³ ITC Midwest February 17 Application at 2.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* & nn.11-14.

⁷ Interstate and Northeast Power were also parties to an interconnection and transmission agreement, which is also listed in the Succession Agreement. ITC Midwest filed that agreement with the Commission, which was accepted under delegated authority. *Midwest Independent Transmission Sys. Operator, Inc.*, ER11-3118-000 (May 16, 2011) (delegated letter order).

⁸ ITC Midwest March 29 Amendment at 1.

5. ITC Midwest acknowledges that when a utility files a jurisdictional agreement with the Commission after service has commenced, the utility is required to refund the time-value of monies it has received under the agreement.⁹ ITC Midwest asserts that it did not receive revenue from Northeast Power related to the Succession and Transmission Agreements. Consequently, ITC Midwest requests waiver of the Commission's requirement to make time-value refunds.

6. ITC Midwest requests that the Succession Agreement be made effective February 29, 2012 and that the Amended Transmission Agreement become effective May 29, 2012.¹⁰

II. Notice of Filing and Responsive Pleadings

7. Notice of the February 17, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 11,525 (2012), with interventions and protests due on or before March 9, 2012. Notice of the March 29, 2012 Filing was published in the *Federal Register*, 77 Fed. Reg. 20,814 (2012), with interventions and protests due on or before April 19, 2012. Northeast Power filed a timely motion to intervene and comments.

8. Northeast Power requests that the Commission dismiss ITC Midwest's Filing of the Transmission Agreement as unnecessary because the Transmission Agreement does not involve a Commission-jurisdictional service.¹¹ Northeast Power explains that it, a non-jurisdictional electric cooperative, provides the only transmission service under the Transmission Agreement. Northeast Power further states that the only Commission-jurisdictional facilities at issue in the Transmission Agreement are the interconnection facilities of Interstate and ITC Midwest. Northeast Power points out that any service provided over those facilities would be provided pursuant to the open access transmission tariff of the MISO, rather than the terms of the Transmission Agreement.

9. Northeast Power requests that, if the Commission accepts the Transmission Agreement for filing, the Commission acknowledge that "the only transmission service

⁹ ITC Midwest February 17 Application at 6 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979, *order on reh'g*, 65 FERC ¶ 61,081 (1993)).

¹⁰ *Id.*; ITC Midwest March 29 Amendment at 1.

¹¹ Northeast Power Protest at 2-3.

provided under the [Transmission Agreement] is provided by Northeast Power and is therefore not subject to the Commission's jurisdiction."¹²

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 (2011), Northeast Power's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. We will accept for filing the Succession Agreement and the Amended Transmission Agreement, effective February 29, 2012 and May 29, 2012, respectively, as requested.¹³

12. Under section 201 of the FPA¹⁴ the Commission has jurisdiction over the transmission of electric energy in interstate commerce, as well as the wholesale sale (or sale for resale) of electric energy in interstate commerce, and it has jurisdiction over all facilities used for such transmission or sale of electric energy. Section 201 also defines a public utility as "any person who owns or operates facilities subject to the jurisdiction of the Commission."¹⁵ Sections 205¹⁶ and 206¹⁷ of the FPA provide the Commission with jurisdiction over all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission. Those sections also provide the Commission with jurisdiction over all rules, regulations, practices, or contracts that affect jurisdictional rates, charges, or classifications. Section 205(c) of the FPA provides:

¹² *Id.* at 4.

¹³ Because ITC Midwest filed the Amended Transmission Agreement in its March 29, 2012 amendment without replacing the original Transmission Agreement in eTariff, this order rejects the Transmission Agreement as moot.

¹⁴ 16 U.S.C. § 824.

¹⁵ 16 U.S.C. § 824(e).

¹⁶ 16 U.S.C. § 824d.

¹⁷ 16 U.S.C. § 824e.

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.¹⁸

13. We find that the Succession Agreement and the Amended Transmission Agreement are contracts that provide for jurisdictional transmission service and thus have been appropriately filed with the Commission. The Amended Transmission Agreement provides for jurisdictional service in the form of facilities that are utilized for “electric energy transmission or exchanges between the Parties.”¹⁹ Consequently, the Agreements are subject to the Commission’s jurisdiction.

14. The Commission holds jurisdiction over the Succession Agreement and the Amended Transmission Agreement, however, only to the extent that the agreements require jurisdictional transmission service to be provided by ITC Midwest and Interstate. Accordingly, the Commission’s authority over the agreements does not extend to the transmission service provided by Northeast Power under the Succession Agreement and the Amended Transmission Agreement.

15. As acknowledged by ITC Midwest, the Succession Agreement and the Amended Transmission Agreement were not filed with the Commission before service commenced, as required by the Commission’s *Prior Notice* policy.²⁰ Because ITC Midwest did not receive revenue from Northeast Power related to the Succession Agreement and the Amended Transmission Agreement, we find that time-value refunds are not required.²¹

¹⁸ 16 U.S.C. § 824d(c).

¹⁹ See Amended Transmission Agreement, Article 2.01; *id.* at Appendix A.

²⁰ It appears that, contrary to the requirements of section 35.3 of the Commission’s regulations, 18 C.F.R. § 35.3 (2011), ITC Midwest failed to timely file the agreements. We remind ITC Midwest that it must submit required filings on a timely basis or face possible sanctions by the Commission.

²¹ See *Michigan Electric Transmission Co., LLC*, 136 FERC ¶ 61,202, at P 8 n.8 (citing *Entergy Services, Inc.*, 76 FERC ¶ 61,034, at 61,185-86 (1996)).

The Commission orders:

(A) The Succession Agreement is hereby accepted effective February 29, 2012, as requested, as discussed in the body of this order.

(B) The Amended Transmission Agreement is hereby accepted effective May 29, 2012, as requested, as discussed in the body of this order.

(C) The Transmission Agreement is hereby rejected as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.