

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Midwest Independent Transmission
System Operator, Inc. and
FirstEnergy Service Company

Docket No. ER05-285-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND
ESTABLISHING HEARING PROCEDURES

(Issued January 28, 2005)

1. In this order, we accept for filing the revised tariff sheets submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and FirstEnergy Service Company (FirstEnergy), on behalf of American Transmission Systems, Incorporated (ATSI), to replace the current stated rates for the ATSI pricing zone under the Midwest ISO Open Access Transmission Tariff (OATT) with rates calculated pursuant to the standard Attachment O rate formula (Attachment O) under the Midwest ISO's OATT, suspend them for a nominal period, to take effect February 1, 2005, subject to refund, and establish hearing procedures. This action will benefit customers by ensuring that the rates charged to the Midwest ISO's transmission customers are just and reasonable and not unduly discriminatory or preferential.

Background

2. The license plate zonal rates for delivery to load in the ATSI zone under the Midwest ISO's OATT are currently stated rates which were adopted for use under the Midwest ISO's OATT from ATSI's individual company OATT upon ATSI's joining the Midwest ISO. The rates are differentiated by voltage, so that customers delivering at higher voltages (138kV and above) pay a rate that excludes the cost of lower voltage facilities.

Instant Filing

3. On December 2, 2004, pursuant to section 205 of the Federal Power Act, the Midwest ISO and FirstEnergy submitted revisions to the Midwest ISO OATT to apply the rate formula in Attachment O to derive transmission rates for the ATSI Zone. The Midwest ISO and FirstEnergy propose a straightforward application of Attachment O without any modifications to the rate formula.

4. The Midwest ISO and FirstEnergy state that the purpose of their filing is to extend the application of the existing, approved Attachment O rate formula to transmission service customers within the ATSI zone. However, because the Attachment O rate formula does not calculate rates that are differentiated by delivery voltage, the instant filing will eliminate the voltage differentiated feature that is currently reflected in the existing transmission rates applicable to the ATSI pricing zone, resulting in a single stated rate applicable to all customers taking delivery within the ATSI zone regardless of delivery voltage.

5. The Midwest ISO and FirstEnergy request waiver of the filing requirements set forth in section 35.13 of the Commission's regulations,¹ and they ask that the proposed tariff changes become effective as of February 1, 2005. They contend that good cause exists for granting the waiver because the proposal consists of ministerial changes necessary to implement a rate formula already approved and on file with the Commission.

Notice, Interventions, and Protests

6. Notice of the Midwest ISO's and FirstEnergy's filing was published in the *Federal Register*, 69 Fed. Reg. 75,527 (2004), with interventions and protests due on or before December 23, 2004. Timely interventions and protests were filed by American Municipal Power-Ohio, Inc. (AMP-Ohio) and the City of Cleveland, Ohio (Cleveland). The Midwest ISO and FirstEnergy filed an answer to the protests.

Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. Under Rule 213(a) of the Commission's Rules of Practice and Procedure,³ no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. Accordingly, we deny the Midwest ISO's and FirstEnergy's answer.

¹ 18 C.F.R. § 35.13 (2004).

² 18 C.F.R. § 385.214 (2004).

³ 18 C.F.R. § 385.213(a) (2004).

B. Substantive Matters**1. Protests**

8. The protestors allege that the application of the Attachment O rate formula to the ATSI zone, without modification to reflect a voltage differentiated feature, will result in a rate increase, which they estimate may be as much as 36 percent, for both Cleveland and AMP-Ohio. They contend that the Midwest ISO and FirstEnergy have not shown such an alleged rate increase to be just and reasonable. Protestors argue that the Midwest ISO and FirstEnergy inappropriately assume that because the Attachment O rate formula has already been approved, they need not justify the reasonableness of applying that rate formula to new zones under the Midwest ISO's OATT. They maintain that a customer that does not require the use of the facilities below 138 kV should not have to pay for the use of 69 kV and lower voltage facilities.

9. Protestors request that the Commission reject the proposed revisions or require the Midwest ISO and FirstEnergy to modify the proposed revisions to incorporate a voltage-differentiated rate feature. In the alternative, they request that the proposal be suspended, made subject to refund, and set for hearing and that the Midwest ISO and FirstEnergy be required to hold harmless existing customers taking delivery at 138 kV voltage and above from the increase in rates due to elimination of the voltage differentiated rate.

2. Commission Determination

10. We find that the Midwest ISO and FirstEnergy have not adequately justified the reasonableness of their proposal to eliminate the voltage-differentiated rate design for the ATSI zone of the Midwest ISO OATT. For example, we cannot determine the function that ATSI's below 138 kV transmission facilities may provide in support of its higher voltage transmission facilities based on the record before us. This issue is, therefore, more appropriately addressed in the hearing ordered below.

11. Our preliminary analysis indicates that the proposal tariff revisions have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We will therefore accept the proposed tariff revisions for filing, suspend them for a nominal period, to become effective February 1, 2005, subject to refund, and set them for hearing, as ordered below.

The Commission orders:

(A) The Midwest ISO's and FirstEnergy's proposed tariff sheets are hereby accepted for filing and suspended for a nominal period, to become effective on February 1, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the proposed tariff sheets.

(C) A presiding judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.