117 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. — Docket Nos. ER06-1308-000, ER06-1308-001

ORDER CONDITIONALLY ACCEPTING FILING

(Issued October 6, 2006)

1. On July 31, 2006, as amended on August 8, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed Schedules 10-C, 16-A, and 17-A to its Open Access Transmission and Energy Markets Tariff (EMT), with a requested effective date of September 1, 2006 (July 31 Filing). The Midwest ISO also requests waiver of the 60-day prior notice requirement contained in the Federal Power Act (FPA).[1] The proposed schedules specify the fees for certain tariff services that apply to E.ON U.S. LLC's (E.ON U.S.) public utility operating company subsidiaries, Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, LG&E/KU), as a consequence of their withdrawal from the Midwest ISO. In this order, we conditionally accept the Midwest ISO's filing, as described below, to be effective September 1, 2006, as requested.

Background

2. On October 7, 2005, as amended on January 10, 2006, LG&E Energy LLC (now E.ON U.S.), on behalf of its public utility operating company subsidiaries LG&E and KU, submitted under sections 203 and 205 of the FPA[2] a proposal to withdraw from the Midwest ISO.

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[1] 16 U.S.C. § 824d (2000).

[2] 16 U.S.C. §§ 824b, 824d (2000), *as amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 983-84 (2005).

3. In an order dated March 17, 2006, the Commission conditionally accepted LG&E/KU's proposal to withdraw from the Midwest ISO.[3] The Commission also accepted LG&E/KU's proposed methodology to determine their exit fee, and required the utilities to submit the calculation of the exit fee for a compliance filing within 30 business days after the effective date of their withdrawal from the Midwest ISO.[4] This exit fee methodology is based, in part, on the requirements of the EMT, which sets forth the financial obligations of a withdrawing entity at Schedules 10, 16, and 17.[5]

The Midwest ISO's Proposal

4. The Midwest ISO proposes new Schedules 10-C, 16-A and 17-A to specify the fees for certain tariff services that will apply to LG&E/KU. The Midwest ISO requests that these schedules be effective as of the date of LG&E/KU's withdrawal from the Midwest ISO.[6]

5. Schedule 10-C (Administrative Cost Adder) contains the formula designed to recover from LG&E/KU the Midwest ISO's Schedule 10-related administrative costs, net of any pre-paid financial obligations. Schedule 16-A (Financial Transmission Rights Administrative Service Cost Recovery Adder) contains the formula designed to recover from LG&E/KU the Midwest ISO's Schedule 16-related costs, net of any pre-paid financial obligations. Schedule 17-A (Energy Market Support Administrative Service Cost Recovery Adder) contains the formula designed to recover from LG&E/KU the Midwest ISO's Schedule 17-related costs, net of the pre-paid financial obligations. The proposed formulas contain a credit for pre-paid financial obligations included as part of the exit fee LG&E/KU will pay to the Midwest ISO. As proposed, the three new schedules will cease to be effective upon the earlier of: (1) realization by LG&E/KU of the credit allocated to them under each proposed schedule, based on the yet-to-be-filed final exit fee; or (2) eight years from their effective date.

Notices and Responsive Filings

6. Notice of the July 31 Filing was published in the *Federal Register*, 71 Fed. Reg. 45,814 (2006), with protests and interventions due on or before August 18, 2006. Notice

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[3] *LG&E Energy LLC*, 114 FERC ¶ 61,282, *order on reh'g*, 116 FERC ¶ 61,020 (2006).

[4] *Id.* P 60.

[5] *Id.* P 53.

[6] The effective date for such withdrawal was September 1, 2006.

of the August 8 amendment was published in the *Federal Register*, 71 Fed. Reg. 47,494 (2006), with protests and interventions due on or before August 29, 2006. On August 17, 2006, E.ON U.S., on behalf of LG&E/KU, filed a motion for leave to intervene and comments. On August 21, 2006, Wisconsin Electric Power Company (Wisconsin Electric) filed a motion to intervene and comments.

7. LG&E/KU claim that each of the three proposed schedules contains the same error, in one variable, in their formulas. Specifically, LG&E/KU are concerned about the credit component in the formulas, which is tied to the portion of the exit fee that is allocable to each schedule. LG&E/KU assert that while the dollar amount of the credit is expressed in *monthly* values in each formula, this credit is divided by a number expressed in *annual* values, thereby distorting the calculation of LG&E/KU's obligations under each schedule. LG&E/KU add that they cannot comment on the eight-year life for each of these schedules since they have not yet received the exit fee calculation from the Midwest ISO.

8. Wisconsin Electric "largely supports the Midwest ISO's proposed schedules to specify the fees for certain tariff services that are applicable to E.ON U.S."[7] Wisconsin Electric states that it has some concerns about the description of the methodology used to calculate Monthly Network Load in one variable on one proposed tariff sheet, but that it will try to resolve its concern with the Midwest ISO. Wisconsin Electric states that if it fails to resolve its concerns, it reserves its right to expand its comments to the Commission by August 29, 2006, the comments deadline. Wisconsin Electric did not file any further comments.

Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the Midwest ISO's request for waiver of the 60-day prior notice requirement.[8]

10. We find that the new schedules proposed by the Midwest ISO are appropriate to recover costs from LG&E/KU after they withdraw from the Midwest ISO and that the formulas, with one exception, are just and reasonable. Therefore, we will conditionally accept the Midwest ISO's proposed schedules, subject to a compliance filing adjusting

[7] Wisconsin Electric Comments at 4.

[8] *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

one aspect of the formulas and clarifying the basis for the eight-year time frame, as discussed below.

11. We agree with LG&E/KU's concern that the Midwest ISO, in its three proposed schedules, is not consistent with its use of monthly or annual values for determining LG&E/KU's obligations under each schedule. Therefore, we will direct the Midwest ISO to revise in a compliance filing all three formulas so that they are calculated correctly using monthly values. As noted above, LG&E/KU are required to make another filing with the Commission that breaks down the final exit fee they will pay to the Midwest ISO, and LG&E/KU states that any comments it may have about the eight-year term of the schedules is dependent on that filing.[9] Therefore, the Midwest ISO's three proposed schedules are conditionally accepted, subject to the outcome of the compliance filing LG&E/KU makes with the final exit fee.

The Commission orders:

(A) The Midwest ISO's filing is conditionally accepted, as discussed in the body of this order, effective September 1, 2006.

(B) The Midwest ISO is hereby directed to submit a compliance filing, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

[9] *See supra* note 4.