

118 FERC ¶ 61,158
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

E.ON U.S., LLC

Docket No. ER06-20-008

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER06-1308-002 and
ER06-1308-003

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING AND
DENYING REHEARING

(Issued February 28, 2007)

1. On November 6, 2006, as amended, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing to comply with the Commission's October 6, 2006 order, which conditionally accepted revisions to Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) related to Louisville Gas and Electric Company's (LG&E) and Kentucky Utilities Company's (KU) withdrawal from Midwest ISO.¹ As discussed below, we will conditionally accept the compliance filing.

2. On December 12, 2006, E.ON U.S., LLC (E.ON), on behalf of its public utility subsidiaries LG&E and KU, filed a request for rehearing and clarification of a letter order issued on November 16, 2006.² The November 2006 Letter Order accepted E.ON's filing of the final exit fee calculation related to LG&E's and KU's withdrawal from Midwest ISO. As discussed below, we deny the requested rehearing and clarification.

¹ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,023 (2006) (October 2006 Order).

² *E.ON U.S., LLC*, Docket No. ER06-20-007 (Nov. 16, 2006) (unpublished letter order) (November 2006 Letter Order).

Background

3. On October 7, 2005, as amended on January 10, 2006, LG&E Energy LLC (now called E.ON), on behalf of LG&E and KU, submitted under sections 203 and 205 of the Federal Power Act³ a proposal to withdraw LG&E's and KU's transmission facilities from the transmission system operated by Midwest ISO.
4. In an order dated March 17, 2006, the Commission conditionally accepted LG&E and KU's proposal to withdraw from Midwest ISO.⁴ The Commission also accepted a proposed methodology to determine the exit fee that LG&E and KU would have to pay to Midwest ISO, and required them to submit the final calculation of that fee in a compliance filing within 30 business days after the effective date of withdrawal from Midwest ISO.⁵ This exit fee methodology is based, in part, on the requirements of the TEMT, which sets forth the financial obligations of a withdrawing entity at Schedules 10, 16, and 17.
5. On July 31, 2006, as amended on August 8, 2006, Midwest ISO submitted for filing with the Commission proposed Schedules 10-C, 16-A, and 17-A to its TEMT. The proposed schedules outlined the fees for certain tariff services that apply to LG&E and KU as a consequence of their withdrawal from Midwest ISO. The Commission in the October 2006 Order conditionally accepted the proposed schedules for filing, subject to: (1) Midwest ISO's filing revised schedules with a change to the formulas in the schedules to include monthly values; and (2) the outcome of LG&E's and KU's compliance filing containing the final exit fee.
6. LG&E and KU withdrew from Midwest ISO effective September 1, 2006.
7. On October 12, 2006, as amended on October 25, 2006, E.ON made a compliance filing with the final exit fee, which was provided to E.ON by Midwest ISO. In its transmittal letter, E.ON noted that it would forward the exit fee payment to Midwest ISO "subject to the right to contest any issues that may be identified after a thorough review

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

⁴ *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282 (March 2006 Order), *order on reh'g*, 116 FERC ¶ 61,020 (2006).

⁵ March 2006 Order at P 57-60.

of the calculations and back-up data.”⁶ E.ON’s compliance filing was accepted in the November 2006 Letter Order.

8. On November 6, 2006, as amended on November 14, 2006 and on November 21, 2006, Midwest ISO submitted a compliance filing, in response to the October 2006 Order, modifying the formulas used in TEMT Schedules 10-C, 16-A, and 17-A to utilize all monthly values and to include the amount of credits (based on the final exit fee) to which LG&E and KU are entitled under each schedule.

Notice of Filings and Responsive Pleadings

9. Notice of Midwest ISO’s compliance filing was published in the *Federal Register*, 71 Fed. Reg. 70,375 (2006), with interventions and protests due on or before December 12, 2007. E.ON filed comments.

E.ON’s Comments on the Compliance Filing

10. E. ON asks the Commission to clarify that any modification to the final exit fee calculation will result in a corresponding adjustment to the amounts of credits to which LG&E and KU are entitled under each of Schedules 10-C, 16-A, and 17-A.

11. E.ON states that it does not object to Midwest ISO’s revised formulas or the amount of credits listed in each schedule. However, as the amount of credits is ultimately based on the exit fee calculation, E.ON requests that the Commission clarify that the final amounts included in the schedules are subject to any subsequent revisions to the exit fee calculation.

12. E.ON notes that it has identified what it believes is an inconsistency between the agreed-to exit fee methodology and the exit fee calculation provided by Midwest ISO. E.ON adds that it has initiated a dispute under the dispute resolution procedure set forth in the withdrawal agreement between itself and Midwest ISO. Thus, if the exit fee is ultimately modified, the credit amounts stated in each of Schedules 10-C, 16-A, and 17-A should also be modified.

⁶ Transmittal Letter at 3, Louisville Gas and Electric Co., *et al.*, Docket No. ER06-20-007 (Oct. 12, 2006).

E.ON's Request for Rehearing or Clarification of the November 2006 Letter Order

13. In its rehearing request, E.ON asks that the Commission acknowledge or accept the statement E.ON made in its compliance filing regarding its right to contest issues later identified with the exit fee calculation. E.ON also requests that the Commission reconsider its November 2006 Letter Order because the final exit fee changed after that order was issued.

Discussion

14. We will conditionally accept Midwest ISO's compliance filing. The credits outlined in Schedules 10-C, 16-A, and 17-A are based on the exit fee, and the October 2006 Order accepted those schedules subject to the outcome of the final exit fee calculation. Accordingly, the credits necessarily must change if the exit fee changes. We note that E.ON has initiated a dispute pursuant to its rights under the dispute resolution procedures in the withdrawal agreement, which may ultimately lead to a change to the final exit fee. Therefore, we will require Midwest ISO to file any revisions to Schedules 10-C, 16-A and 17-A to the TEMT that are required if there is any subsequent change to the final exit fee, within 30 days of such change, or within 30 days of the date of this order, whichever is later.

15. We will deny E.ON's request for rehearing and clarification of the November 2006 Letter Order. Our requirement in the March 2006 Order that E.ON submit Midwest ISO's calculation of the final exit fee was not intended to abridge any rights that E.ON has to dispute and seek adjustment to that exit fee. Accordingly, those rights are unaffected by the November 2006 Letter Order's acceptance of E.ON's filing. E.ON's request for rehearing and clarification of the November 2006 Letter Order is therefore unnecessary to preserve its right to dispute the exit fee calculation. As we explained in the previous paragraph, Midwest ISO is obligated to file changes to its TEMT if the exit fee changes. Because Midwest ISO will file exit fee information if and when any changes to the exit fee are made, we clarify that E.ON does not need to make a further compliance filing to change the exit fee that was accepted by the November 2006 Letter Order.

The Commission orders:

(A) Midwest ISO's compliance filing is conditionally accepted, as discussed in the body of this order.

(B) E.ON's request for rehearing and clarification is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.