

127 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Missouri River Energy Services and
Midwest Independent Transmission System
Operator, Inc.

Docket No. ER08-370-006

Missouri River Energy Services and Western
Minnesota Municipal Power Agency

Docket No. EL08-22-004

ORDER GRANTING REQUEST FOR CLARIFICATION

(Issued April 3, 2009)

1. On December 18, 2008, the Commission granted rehearing¹ of its September 30, 2008 Order Accepting and Suspending Proposed Tariff Sheets, Granting Interim Declaratory Relief, Consolidating Proceedings, and Establishing Hearing and Settlement Judge Procedures.² In the Rehearing Order, the Commission permitted Missouri River Energy Services (MRES) and the Western Minnesota Municipal Power Agency (Western Minnesota) to combine their financial data for the purposes of calculating MRES's rates pursuant to its formula rate template in Attachment O of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) Transmission and Energy Markets Tariff (Tariff). Otter Tail Power Company (Otter Tail) requests clarification or, in the alternative, rehearing with respect to two issues related to the Rehearing Order. For the reasons set forth below, the Commission grants the request for clarification.

Background

2. This proceeding arose out of filings by MRES and Midwest ISO, and MRES and Western Minnesota, related to proposed tariff revisions surrounding MRES's application to become a transmission-owning member of the Midwest ISO. On December 20, 2007,

¹ *Missouri River Energy Services*, 125 FERC ¶ 61,300 (2008) (Rehearing Order).

² *Missouri River Energy Services*, 124 FERC ¶ 61,309 (2008) (Initial Order).

MRES and Midwest ISO submitted proposed revisions to the *pro forma* formula rate template under Attachment O of Midwest ISO's Tariff. At the same time, MRES and Western Minnesota filed a request for a declaratory order that would permit them to combine their financial data for the purpose of calculating MRES's rates pursuant to its formula rate template in Attachment O of the Tariff.

3. In the Initial Order, the Commission accepted for filing MRES's Attachment O proposal and suspended it for a nominal period, to become effective October 1, 2008, subject to refund. The Commission found that the proposed Attachment O involved issues of material fact that could not be resolved on the record before the Commission, and were thus more appropriately addressed in hearing and settlement judge procedures. The Commission also set MRES and Western Minnesota's petition for declaratory order for hearing, finding that the issues raised in response to MRES and Western Minnesota's petition for declaratory order were so closely intertwined with those raised in the Attachment O filing that they should be included in the hearing. The Commission granted the petition for declaratory order on an interim basis to allow MRES to implement its transmission formula rate proposal, and to transfer control over its transmission assets to the Midwest ISO, while the hearing is ongoing.

4. MRES and Western Minnesota sought rehearing of the Initial Order. As relevant here, they first argued that the Commission failed to answer the threshold question posed for decision in their petition for declaratory relief: whether, given the integrated relationship between MRES and Western Minnesota, it is proper to consolidate their financial information to create a single set of books to use for purposes of Attachment O. Second, MRES and Western Minnesota contended that the Commission erred by including the petition for declaratory order in the questions set for hearing. They argued that the points raised by Otter Tail and Basin Electric Power Cooperative (Basin Electric) in response to the Petition were non-issues, and thus a hearing was not required. They also stated that Otter Tail and Basin Electric were not operating in good faith in questioning the relationship between MRES and Western Minnesota. MRES and Western Minnesota noted that they have long-term relationships with both Otter Tail and Basin Electric, and that Basin Electric has had access to the combined financial statements in the past.

5. On rehearing, the Commission found that there are significant contractual, historical and financial relationships between MRES and Western Minnesota – including the sharing of staff and the performing of agency duties for one another – that justified the combining of financial statements. The Commission ruled that, based on the unique business relationship between the two organizations, combining their financial statements will provide accurate representation of costs for both MRES and Western Minnesota for use in calculating MRES's Attachment O. The Commission found that many of the questions raised by protestors to MRES and Western Minnesota's petition for declaratory

relief were not relevant, and should be raised instead in the hearing on MRES's Attachment O filing.

Request for Clarification

6. Petitioner Otter Tail requests clarification on two items. First, Otter Tail asks the Commission to clarify that its ruling decided only the threshold issue of whether to include Western Minnesota's costs in Attachment O, and not how to include such costs in Attachment O. Otter Tail points to Commission precedent that indicates that "accounting does not dictate ratemaking."³ It argues that the Commission's determination on the accounts of MRES and Western Minnesota only begins the ratemaking inquiry; all other issues concerning the justness and reasonableness of MRES's proposed rate under Attachment O remain to be decided in the pending proceeding.

7. Second, Otter Tail asks the Commission to confirm that it has neither accepted nor relied upon MRES's and Western Minnesota's allegation that Otter Tail has not acted in good faith in questioning the relationship between MRES and Western Minnesota. Otter Tail states that it did not respond to this allegation out of deference to the Commission's policy against filing answers to requests for rehearing, and because it was unlikely that the Commission would credit the allegations. Otter Tail notes that the Commission's Rehearing Order appears to give no credence to the allegations, only noting them without further discussion. Otter Tail argues that although it is broadly familiar with MRES and Western Minnesota, they have never before sought to impose costs on Otter Tail on an automatic pass-through basis using a detailed transmission rate formula. Such pass-through poses serious risks to Otter Tail, and represents uncharted territory.

8. Finally, Otter Tail argues that if the Commission does not provide the requested clarifications, then the Commission failed to provide a reasoned basis for its order and should grant rehearing.⁴

Discussion

9. We grant Otter Tail's request for clarification. As to the first item, the Commission was explicit in the Rehearing Order that the order did not rule on how the combined financial statements would be used in the Attachment O filing. The

³ Otter Tail at 6 (citing *Williston Basin Interstate Pipeline Co.*, 55 FERC ¶ 61,340, at 62,008 (1991); *Consolidated Gas Supply Corp.*, 14 FERC ¶ 61,029, at 61,053-54 (1981)).

⁴ Otter Tail at 9 (citing *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578, 593 (D.C. Cir. 1979)).

Commission's decision was solely that the financial statements of MRES and Western Minnesota should be combined for the purposes of the Attachment O filing, based on a review of the nature of the business relationship between the two parties:

Parties should still examine the issues raised by the Commission in our Initial Order in the hearing on MRES's Attachment O filing; namely, what revisions to MRES's Attachment O formula are necessary to reflect the specific relationship between MRES and Western Minnesota, and how those entities can use their consolidated financial reporting practice to ensure that the formula results in a just and reasonable annual transmission revenue requirement.⁵

10. As to the second item, we clarify that the Commission's determination in the Rehearing Order did not rely upon MRES's and Western Minnesota's argument that Otter Tail did not act in good faith when it questioned the relationship between those two entities.

The Commission orders:

Otter Tail's request for clarification of the Rehearing Order is hereby granted, as discussed in the body of this order.

By the Commission.

Kimberly D. Bose,
Secretary.

⁵ Rehearing Order, 125 FERC ¶ 61,300 at P 13.