

127 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Aquila, Inc.

Docket No. ER09-414-000

ORDER GRANTING PROPOSED WITHDRAWAL
FROM MIDWEST ISO TRANSMISSION OWNERS' AGREEMENT

(Issued May 1, 2009)

1. On December 15, 2008, Aquila, Inc. (Aquila) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),¹ a request to withdraw from the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) transmission owners' agreement (TO Agreement).² On February 2, 2009, Aquila filed with the Commission to defer action in order to provide the parties' time to resolve the outstanding issues raised in the proceeding. On March 4, 2009, Aquila submitted a supplemental filing addressing Aquila's financial obligations relating to Aquila's withdrawal request (Supplemental Filing).

2. Aquila states that its withdrawal from the TO Agreement will facilitate its full participation in the Southwest Power Pool (SPP) regional transmission organization (RTO), from which it currently receives a number of transmission related services. Aquila further states that its withdrawal request is appropriate given the issuance of an October 9, 2008 Missouri Public Service Commission (Missouri Commission) order

¹ 16 U.S.C. § 824d (2006).

² Aquila is the successor-in-interest of UtiliCorp United, Inc. and the predecessor-in-interest of Kansas City Power & Light Company and Greater Missouri Operations Company. For convenience, the abbreviated name Aquila, as used in this order, refers to any of these three entities.

rejecting Aquila's request to join the Midwest ISO.³ For the reasons discussed below, we grant Aquila's withdrawal from the TO Agreement, to become effective, as requested, on November 8, 2008.

Background

3. Aquila states that it is a party to the TO Agreement. Aquila states that while its application to join the Midwest ISO was granted by the Commission,⁴ control over its facilities was never transferred to the Midwest ISO and thus the conditions applicable to its requested authorization remained unsatisfied, due to the pendency of its state authorization requests before the Missouri Commission.⁵

4. Aquila states while it never became a fully-integrated transmission owner in the Midwest ISO, it receives security coordination service under Schedule 10-B of the Midwest ISO Transmission Energy and Markets Tariff (Tariff) and other transmission-related services such as tariff administration, scheduling and regional planning from SPP. Aquila states that its receipt of security coordination service from the Midwest ISO was possible, under the Commission's authorizations, because no additional state authorizations were required. Aquila states that while the price for the security coordination services was initially disputed between Aquila and the Midwest ISO, a settlement agreement (Schedule 10 Settlement) was subsequently reached. Based on the

³ See *Aquila, Inc.*, Missouri Commission Case No. EO-2008-0046 (Oct. 9, 2008) (October 9 Order).

⁴ See *Midwest Independent Transmission System. Op., Inc.*, 84 FERC ¶ 61,231, *order on recons.*, 85 FERC ¶ 61,250, *order on reh'g*, 85 FERC ¶ 61,372 (1998), *initial decision*, 89 FERC ¶ 63,008 (1999), *aff'd and clarified*, Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh'g*, Opinion 453-A, 98 FERC ¶ 61,141 (2002) (becoming effective as of February 1, 2002).

⁵ On August 29, 2001, Aquila initiated a proceeding with the Missouri Commission to secure the necessary state approvals. However, this application was subsequently withdrawn, on January 2, 2002, due to the then-anticipated withdrawal from the Midwest ISO of the transmission owner (Ameren Corporation) whose tie lines would have connected Aquila to the Midwest ISO. A second application, filed June 20, 2003, was dismissed without prejudice, given the pendency of related unresolved issues. A third application, filed August 20, 2007, was rejected in the October 9 Order, based in part on studies showing greater net benefits attributable to Aquila's membership in the SPP RTO.

Schedule 10 Settlement, Aquila was assessed at a discounted rate under Schedule 10-B of the Tariff, until such time as: (i) the necessary state approvals were secured by Aquila; and (ii) system integration and electrical connectivity was completed.⁶

5. Aquila requests that it be permitted to withdraw from the TO Agreement, effective November 8, 2008, pursuant to the provisions of Article VII, section A.3 of the TO Agreement, which provides for withdrawal from the TO Agreement “in the event any state regulatory authority refuses to permit participation by a signatory.”⁷ Aquila states that the Missouri Commission, in its October 9 Order, rejected Aquila’s request to join the Midwest ISO.⁸ In support of its request, Aquila states that it is located contiguous to the SPP footprint and has only limited direct interconnections to the Midwest ISO. Aquila further states that it already receives a number of RTO services from SPP, including point-to-point transmission service, scheduling, reserve sharing and regional transmission planning services. In addition, Aquila states that it is a member of the SPP regional reliability council.

6. Aquila asserts that its transition from limited Midwest ISO participation to full SPP participation is the most economic and efficient option for serving the needs of its retail and wholesale customers. Specifically, Aquila asserts that its withdrawal from the TO Agreement and full membership into SPP will produce net benefits (approximately \$66 million in savings) for Aquila’s customers, based on a study examining the ten-year

⁶ See *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,049 (2003) (order approving Schedule 10 Settlement).

⁷ Article VII, section A.3 provides as follows:

In the event any state regulatory authority refuses to permit participation by a signatory or imposes conditions on such participation which adversely affect a signatory in the sole judgment of that signatory, such signatory or any other signatory that is, in its sole judgment, adversely affected by such regulatory action (whether or not the signatory is subject to that regulatory authority’s jurisdiction) may, no later than thirty (30) days after the date of such action, or after any such signatory concludes reasonably that the state regulatory authority has refused to act, and upon notice to all signatories, withdraw from this Agreement. In such event, the signatories shall negotiate in good faith to determine whether changes should be made to this Agreement or the Transmission Tariff to address the reasons for such signatory’s withdrawal.

⁸ See *supra* note 5.

period, 2008-2017.⁹ Aquila further states that its withdrawal request, if granted, will have no adverse effects on system reliability, will create no new seam between the relevant regions, or result in rate pancaking as applicable to these markets. In addition, Aquila notes that its affiliate, Kansas City Power & Light Company (KCP&L), whose facilities interconnect with Aquila's transmission system, is also an SPP member (a circumstance that will yield additional efficiencies in the event Aquila joins SPP).¹⁰

7. Aquila states that it has satisfied the TO Agreement withdrawal requirements. First, Aquila states that it provided proper notice of its intent to withdraw, on October 20, 2008, and further satisfied its withdrawal obligations by making the instant filing.¹¹ Aquila adds that it is authorized to withdraw from the TO Agreement under the regulatory out clause set forth at Article VII, section A.3.

Notice of Filing and Responsive Pleadings

8. Notice of Aquila's filing was published in the *Federal Register*, with protests and interventions due on or before January 12, 2009. Motions to intervene were timely filed by the Midwest ISO; a coalition of Midwest ISO Transmission Owners;¹² American Municipal Power – Ohio, Inc.; SPP; the Coalition of Midwest Transmission Customers;

⁹ Aquila filing at attachment B (March 27, 2007 cost-benefit analysis).

¹⁰ In July 2008, Aquila was acquired by Great Plains Energy Incorporated (Great Plains), the parent company of KCP&L.

¹¹ See Midwest ISO TO Agreement at Article VII, section D (“[n]o signatory shall withdraw from this Agreement pursuant to the provision of this Article Seven, unless such signatory shall have filed a notice of withdrawal with the FERC and FERC has approved or accepted such notice or has otherwise allowed the notice to become effective.”).

¹² Ameren; American Transmission Company LLC; American Transmission Systems, Inc.; Columbia, MO Water & Light Dept.; Springfield, IL Water, Light & Power; Duke Energy Business Services, LLC; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; Michigan Electric Transmission Company LLC; Michigan Public Power Agency; Minnesota Power; Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

and Consumers Energy Company. A protest was filed by the Midwest ISO addressing the extent of Aquila's exit fee obligations to the Midwest ISO under the TO Agreement. The Midwest ISO maintains that Aquila's financial obligations could exceed \$11 million.¹³

Supplemental Filing

9. As noted above, on March 4, 2009, Aquila submitted the Supplemental Filing, addressing Aquila's remaining financial obligations to the Midwest ISO under the TO Agreement. Under the Supplemental Filing, Aquila agrees to pay to the Midwest ISO, within ten days of the effective date of this order, \$1.5 million. In return, the Midwest ISO agreed to withdraw its protest and states that it supports Commission approval of Aquila's request to withdraw from the TO Agreement. Notice of the Supplemental Filing was published in the *Federal Register*, with protests and interventions due on or before April 9, 2009. None was filed.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

11. We grant Aquila's unopposed request, as supplemented, to withdraw from the TO Agreement, effective November 8, 2008, as requested.

¹³ The Supplemental Filing addresses and resolves these obligations. In its protest, the Midwest ISO asserts that an exit fee is required based on Aquila's asserted breach of the Schedule 10 Settlement, specifically, the conditions pursuant to which Aquila was permitted to receive security coordination services from the Midwest ISO at a discounted rate. The Midwest ISO argues, among other things, that Aquila failed to diligently pursue its requests before the Missouri Commission.

The Commission orders:

Aquila's request, as supplemented, to withdraw from the TO Agreement is hereby granted, effective November 8, 2008, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.