

135 FERC ¶ 61,204  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator,      Docket No. ER11-3279-000  
Inc.

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued May 31, 2011)

1. In this order, we conditionally accept for filing Midwest Independent Transmission System Operator, Inc.'s (MISO), Midwest ISO Transmission Owners' (MISO TOs)<sup>1</sup> and American Transmission Systems, Inc.'s (ATSI) (collectively, Applicants) proposed new Schedule 37 (MISO Transmission Expansion Plan (MTEP) Project Cost Recovery For ATSI Zone) and proposed revisions to Attachment GG (Network Upgrade Charge) to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) reflecting the treatment of costs of certain projects upon

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<sup>1</sup> Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; American Transmission Systems, Inc.; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

the withdrawal of ATSI from MISO (MTEP Projects),<sup>2</sup> effective June 1, 2011, as requested.

## **I. Background**

2. On December 17, 2009, the Commission conditionally accepted revisions to PJM Interconnection, L.L.C.'s (PJM) open access transmission tariff (PJM OATT) in connection with ATSI's integration into PJM.<sup>3</sup> The December 17 Order conditioned its approval on the submission of a separate filing addressing ATSI's remaining financial obligations required under Article Five, section II.B of the MISO Transmission Owners Agreement (MISO TO Agreement).<sup>4</sup> In addition, the December 17 Order found that ATSI had satisfied the requirements under Article Five, section II.C of the MISO TO Agreement regarding the construction of new facilities, as ATSI had committed to satisfy its obligations.<sup>5</sup>

3. On February 1, 2011, in Docket Nos. ER11-2814-000 and ER11-2815-000, PJM and ATSI jointly submitted proposed modifications to the PJM OATT to, among other things, transfer ATSI's existing formula rate into the PJM OATT (PJM-ATSI Filing). The proposed formula rate would allow for the recovery of costs for MISO Transmission

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<sup>2</sup> In proposed Schedule 37, section I.G., MTEP Projects are defined as certain transmission projects identified in the MTEP and approved by the MISO Board of Directors prior to ATSI's May 31, 2011 exit from MISO.

<sup>3</sup> *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249, at P 59-61 (2009) (December 17 Order).

<sup>4</sup> *Id.* P 51. Article Five, section II.B of the MISO TO Agreement states: “[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the [MISO] and the withdrawing Owner.” This financial obligation consists of various components, one of which is at issue in this proceeding: the remaining financial obligations incurred under MISO's Regional Expansion Criteria and Benefits (RECB) cost allocation process prior to the effective date of withdrawal.

<sup>5</sup> *Id.* P 54. Article Five, section II.C of the MISO TO Agreement states: “[o]bligations relating to the construction of new facilities pursuant to an approved plan of the [MISO] shall be renegotiated as between the [MISO] and the withdrawing Owner.”

Owners' MTEP Projects from ATSI's wholesale transmission customers.<sup>6</sup> ATSI's formula rate would also provide a credit to its wholesale transmission customers for any amounts received from MISO for MTEP Projects constructed by ATSI, which have been allocated to remaining MISO zones.<sup>7</sup> As discussed below, the Commission addresses the PJM-ATSI Filing in an order being issued concurrently.

## **II. Description of the Instant Filing**

4. On April 1, 2011, Applicants jointly submitted a filing proposing a new Schedule 37 to the MISO Tariff in order to provide a mechanism to collect and distribute revenues related to the MTEP Projects associated with the ATSI zone.<sup>8</sup> Applicants state that the instant filing is necessary because after ATSI's integration into PJM, the remaining MISO Transmission Owners will continue to be obligated to construct certain projects, and wholesale transmission customers serving load in the ATSI zone will continue to be obligated to pay for a portion of the cost of these MTEP Projects. In addition, wholesale transmission customers serving load in the remaining MISO zones will continue to be obligated to pay for previously identified MTEP Projects that ATSI has constructed or remains obligated to construct.

5. Specifically, Schedule 37 provides: (1) a method by which wholesale transmission customers taking service from MISO are charged for MTEP Projects constructed by ATSI and the manner in which MISO will transmit those revenues received to PJM (for ultimate distribution to ATSI and/or its wholesale transmission customers in the form of a credit); and (2) a method by which the revenue requirements

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<sup>6</sup> The PJM-ATSI Filing identifies these same MTEP Projects that MISO Transmission Owners have constructed, or will construct, ATSI remains financially obligated, as "Legacy MTEP Projects."

<sup>7</sup> Specifically, ATSI proposed a revision to its formula rate which sets forth the method by which its transmission customers are charged for MTEP Projects constructed by remaining MISO TOs, the method by which PJM will transmit the revenues received from its transmission customers to MISO for distribution to MISO TOs, as well as the manner by which PJM will distribute revenues received from MISO for MTEP Projects ATSI is obligated to construct to ATSI.

<sup>8</sup> Schedule 37 addresses MTEP Projects approved for regional cost sharing as either Baseline Reliability Projects or Market Efficiency Projects. Schedule 37 does not address the recovery of Multi Value Project (MVP) costs. Applicants state that, if necessary, a future filing will address the recovery of MVP costs, if any, from the zones of MISO Transmission Owners that withdraw from MISO.

for MISO Transmission Owners' MTEP Projects will be derived and billed to PJM and the manner in which MISO will distribute revenues received from ATSI zone wholesale transmission customers to remaining MISO Transmission Owners. Applicants maintain that the proposed Schedule 37 and the PJM-ATSI Filing are intended to work together and are both necessary to ensure MTEP Project costs are recovered and distributed properly.

6. Applicants also propose revisions to Attachment GG, which sets forth the formula rate for calculating the MISO Transmission Owners' revenue requirements for network upgrades subject to regional cost sharing, to acknowledge the new provisions of Schedule 37.<sup>9</sup>

7. Applicants state that ATSI is on track to withdraw its facilities from MISO and integrate into PJM effective June 1, 2011. Therefore, Applicants request that the Commission make the proposed Tariff revisions effective on June 1, 2011.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of Applicant's filing was published in the *Federal Register*, 76 Fed. Reg. 19,986 (2011), with interventions and protests due on or before April 22, 2011. Consumers Energy Company, Duke Energy Corporation, and Wisconsin Electric Power Company filed timely motions to intervene. American Municipal Power, Inc. (AMP) and the Office of the Ohio Consumers' Counsel (Ohio Counsel) filed timely motions to intervene and protests. MISO TOs filed a timely motion to intervene and comments. On May 10, 2011, AMP and MISO TOs filed answers.

### **IV. Discussion**

#### **A. Procedural Issues**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept AMP's and MISO TOs' answers and will, therefore, reject them.

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<sup>9</sup> Annual revenue requirements for MTEP Projects are calculated pursuant to the formula set forth in Attachment GG of the Tariff and recovered in a charge calculated and assessed under Schedule 26 of the Tariff.

## B. Comments and Protests

10. In their comments, MISO TOs state that upon further review they have determined that a correction to the Tariff language regarding certain revenue distributions to ATSI is needed. Specifically, MISO TOs state that the Commission should require new section 2(h)(v) of Attachment GG be revised to add “Drive-through and drive-out” before “Point-to-Point Transmission Service reservations” so that it reads “ATSI will no longer receive a pro rata share of the Schedule 26 revenues collected by the Transmission Provider related to Drive-through and drive-out Point-to-Point Transmission Service reservations.” According to MISO TOs, this change is necessary to properly exclude from the revenue distribution only the drive-through and drive-out point-to-point transmission service reservations and not all point-to-point transmission service reservations; this will ensure that the revenue distribution matches the charges to collect the revenue requirements.<sup>10</sup> Finally, MISO TOs maintain that they are authorized to state that MISO does not oppose making this correction on compliance.<sup>11</sup>

11. Ohio Counsel and AMP argue that acceptance of the proposed Tariff revisions will allow MISO to pass through MTEP Project costs to wholesale transmission customers in the ATSI zone once ATSI has joined PJM. According to Ohio Counsel and AMP, ATSI’s unilateral business decision to switch Regional Transmission Organizations (RTO) should not require transmission customers to pay *simultaneously* for the construction of transmission projects planned and approved in both MISO and PJM. AMP states that under Applicants’ proposed Schedule 37, ATSI’s wholesale transmission customers will not “enjoy the same service *and prices* to which they would have been entitled absent ATSI’s withdrawal.”<sup>12</sup> Ohio Counsel states that by its own terms, Applicant’s proposed Schedule 37 is expressly intended to implement and facilitate the billing of MISO MTEP Project costs to ATSI wholesale transmission customers who are no longer taking MISO transmission service. For example, Ohio Counsel notes the Schedule 37 Introduction and Purpose section, which states that “effective June 1, 2011, transmission *customers* taking transmission service for deliveries in the ATSI Zone are responsible for a portion of MTEP Projects constructed or approved by the [MISO]

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<sup>10</sup> MISO TOs Comments at 3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> AMP Protest at 5 (citing December 17 Order, 129 FERC ¶ 61,249 at P 50 (emphasis added by AMP)).

Board of Directors for construction by [MISO] Transmission Owners.”<sup>13</sup> Ohio Counsel also states that Attachment GG includes similar language in section 2(h)(ii). Ohio Counsel and AMP argue that such a result is unjust and unreasonable and they argue that the Commission should not approve the proposed Tariff language that could permit ATSI to charge its wholesale transmission customers for any of the costs of any MTEP Projects billed to ATSI after ATSI has withdrawn from MISO. Therefore, Ohio Counsel and AMP state that the Commission should expressly find that ATSI, rather than its wholesale transmission customers, should fund MTEP Projects costs that were approved prior to ATSI’s withdrawal from MISO and should direct the necessary Tariff changes to implement this ruling with respect to the Applicant’s filing.<sup>14</sup>

### **B. Commission Determination**

12. With regard to MTEP Projects constructed or approved for construction by remaining MISO Transmission Owners, we note that in a contemporaneous order addressing the PJM-ATSI Filing, the Commission finds, among other things, that ATSI failed to demonstrate the justness and reasonableness of its proposal to recover from its wholesale transmission customers the cost of “Legacy MTEP Projects”<sup>15</sup> associated with ATSI’s RTO realignment decision.<sup>16</sup> The Commission therefore accepts and suspends revisions to the PJM OATT, subject to refund and ATSI making a compliance filing to, among other things, remove “Legacy MTEP Project” costs from its formula rates.<sup>17</sup>

13. We generally find appropriate the proposed Schedule 37 and revised Attachment GG mechanisms to collect the costs of MTEP Projects and distribute and credit the revenues associated with the projects. But based on the Commission’s finding in the PJM-ATSI Order that ATSI cannot recover “Legacy MTEP Project” costs at this time without a further showing,<sup>18</sup> we will not accept Applicant’s proposal to recover these

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<sup>13</sup> Ohio Counsel Protest at 6 (citing MISO, FERC Electric Tariff, Schedule 37, MTEP Project Cost Recover for ATSI Zone, (0.0.0) (emphasis added by Ohio Counsel)).

<sup>14</sup> Ohio Protest at 7, AMP Protest at 5-6.

<sup>15</sup> See *supra* note 6.

<sup>16</sup> *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 at P 59 (PJM-ATSI Order).

<sup>17</sup> In the PJM-ATSI Order, the Commission states that its finding is without prejudice to ATSI submitting a new section 205 filing seeking recovery of, among other things, Legacy MTEP Project costs. See PJM-ATSI Order, 135 FERC ¶ 61,198 at P 60.

<sup>18</sup> See *supra* note 17.

costs from ATSI's wholesale transmission customers here. Therefore, consistent with our determination in the PJM-ATSI Order, we conditionally accept MISO's proposed new Schedule 37 and proposed revisions to Attachment GG to the MISO Tariff, effective June 1, 2011, as requested, subject to a compliance filing to be submitted within 30 days of the date of this order. However, as discussed above, we will require Applicants to revise Schedule 37 and Attachment GG in the compliance filing ordered herein to remove or modify certain language that suggests that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligation for MTEP Projects. Consistent with the PJM-ATSI Order, this finding is without prejudice to ATSI seeking to recover "Legacy MTEP Project" costs in a new section 205 filing, with appropriate support.<sup>19</sup>

14. Lastly, the Commission agrees with MISO TOs that additional revisions are needed to Attachment GG. To ensure that revenue distribution matches the charges to collect the revenue requirement for MTEP Projects, Applicants are directed to revise new section 2(h)(v) of Attachment GG to add "Drive-through and drive-out" before "Point-to-Point Transmission Service reservations" as proposed by the MISO TOs.<sup>20</sup>

The Commission orders:

(A) Applicants' filing is hereby conditionally accepted, as modified, to become effective on June 1, 2011, subject to a compliance filing, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>19</sup> See *supra* note 17.

<sup>20</sup> With this addition, section 2(h)(v) of Attachment GG should read "ATSI will no longer receive a pro rate share of the Schedule 26 revenues collected by the Transmission Provider related to Drive-through and drive-out Point-to-point Transmission Service reservations." (The underlined portion refers to language proposed by MISO TOs). See MISO TOs Comments at 4.