

136 FERC ¶ 61,160
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, Inc.	Docket Nos. ER11-2700-004 ER11-2700-000 ER11-2700-001 ER11-2700-002 ER11-2700-003 (Consolidated)
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ORDER ON COMPLIANCE FILING, ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued September 2, 2011)

1. On June 13, 2011, Midwest Independent Transmission System Operator, Inc. (MISO) submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), on behalf of Central Minnesota Municipal Power Agency (CMMPA) and Midwest Municipal Transmission Group (MMTG) (collectively, CMMPA/MMTG), as administrator of the Tariff in compliance to the Commission's directives in its May 13, 2011 order conditionally accepting MISO's proposed Tariff revisions.¹ In this order, we will set MISO's compliance filing for hearing and settlement judge proceedings. We also consolidate this filing with the ongoing proceeding in Docket Nos. ER11-2700-000, ER11-2700-001, ER11-2700-002, and ER11-2700-003, which is currently in settlement judge procedures.

I. Background

2. On January 19, 2011, as amended on January 21, 2011, March 4, 2011 and March 16, 2011, in Docket No. ER11-2700, MISO filed revisions to its Tariff to include CMMPA's company-specific Attachment O formula rate template (CMMPA-Agency Attachment O) and revised Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131 (2011) (May 13 Order).

Point Transmission Service), Schedule 8 (Non-Firm Point-to-Point Transmission Service) and Schedule 9 (Network Integration Transmission Service) to reflect the addition of CMMPA as a pricing zone in connection with its proposed integration into MISO (Integration Filing). The Integration Filing arose out of CMMPA/MMTG's petition for declaratory order in Docket No. EL08-32-000 where CMMPA/MMTG sought authorization for certain rate incentives for CMMPA's investment in the Brookings Project (Incentives Petition).²

3. The May 13 Order addressed the Integration Filing by conditionally accepting MISO's proposed Tariff revisions for filing, subject to a compliance filing, and establishing hearing and settlement judge procedures. The Commission directed MISO to make a compliance filing: (1) revising Schedule 7, 8, and 9 of its Tariff to clarify which entities will be included within each pricing zone;³ (2) revising CMMPA-Agency Attachment O to correct Note II or providing for CMMPA to provide appropriate support for its proposal to use the hypothetical capital structure until 2045;⁴ and (3) revising CMMPA-Agency Attachment O to remove all populated figures.⁵

II. Notice of Filing and Responsive Pleadings

4. Notice of MISO's filing was published in the *Federal Register*, 76 Fed. Reg. 35,876, with interventions and protests due on or before July 5, 2011. On July 5, 2011,

² The Brookings Project is a 240-mile, 345 kV transmission line that will run from Brookings County, South Dakota, to the Southeast Twin Cities in Minnesota, as well as a 10-mile, 230 kV line from a new Hazel Creek substation to a substation in Granite Falls, Minnesota. *See Cent. Minn. Mun. Power Agency & Midwest Mun. Transmission Group*, 134 FERC ¶ 61,115 (2011) (Incentives Declaratory Order).

³ May 13 Order, 135 FERC ¶ 61,131 at P 67-68.

⁴ The Incentives Declaratory Order provided that a hypothetical capital structure could be used to calculate CMMPA's Annual Transmission Revenue Requirement for "both the Brookings Project construction period and for the life of [CMMPA's] bond issuances, which is anticipated to be 30 years." Incentives Declaratory Order, 134 FERC ¶ 61,115 at P 33. Contrary to this, Note II of the proposed CMMPA-Agency Attachment O, as amended March 16, 2011, indicated that the hypothetical capital structure will be used until 2045, which may be more than the anticipated 30 years. May 13 Order, 135 FERC ¶ 61,131 at P 53.

⁵ *Id.* P 54 ("the formula is the rate (and not the inputs)").

MISO Transmission Owners⁶ submitted comments. On July 20, 2011, CMMPA/MMTG filed an answer to MISO Transmission Owners' comments.

III. Discussion

A. Procedural Matters

5. 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 will accept CMMPA/MMTG's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Compliance Filing

6. CMMPA/MMTG state that they have revised Schedules 7, 8 and 9 of MISO's Tariff as directed by the May 13 Order. In addition, CMMPA/MMTG state that it has provided a redlined and clean version of CMMPA-Agency Attachment O. Because MISO has requested that CMMPA/MMTG begin providing data consistent with FERC Form No. 1 filing requirements,⁷ CMMPA/MMTG states that the Attachment O template

⁶ MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; 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 (GRE); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; 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. (NSP Companies); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁷ See May 13 Order, 135 FERC ¶ 61,131 at P 46-50, 55.

submitted in this compliance filing is different than the template originally submitted in the Integration Filing. However, CMMPA/MMTG state that the changes to the template are in compliance with the May 13 Order. Finally, CMMPA/MMTG state that it has amended Note II of CMMPA-Agency Attachment O to clarify that 2045 is its anticipated termination year based on an anticipated bond issuance year of 2015.

2. MISO Transmission Owners Comments

7. MISO Transmission Owners do not object to most of the modifications contained in the compliance filing; however, MISO Transmission Owners maintain that certain changes reflected in CMMPA-Agency Attachment O go beyond what the Commission directed in the May 13 Order. In addition, MISO Transmission Owners state that other aspects of CMMPA-Agency Attachment O require clarification or modification to be consistent with Commission precedent.

8. Specifically, MISO Transmission Owners note that portions of the revised Schedules 7, 8, and 9 make reference to the pricing zone allocation of 89 percent to the NSP Zone and 11 percent to the GRE Zone, which have been set for hearing and settlement judge procedures. Accordingly, MISO Transmission Owners request that the Commission clarify in its order that the compliance filing is not intended to, and does not, prejudice the outcome of the Commission-ordered procedures in this docket.⁸

9. Further, MISO Transmission Owners state that the purpose of a compliance filing is to make the changes directed by the Commission and that additional changes beyond the scope of the Commission's directive cannot be included in a compliance filing. MISO Transmission Owners maintain that the Commission in the May 13 Order did not authorize or direct CMMPA/MMTG to make several of the revisions that CMMPA/MMTG have proposed in this compliance filing.⁹ However, MISO Transmission Owners state that they do not oppose considering these proposed revisions in the ongoing settlement judge procedures in this docket, and suggest that the settlement judge procedures established by the May 13 Order are an appropriate venue for discussion of these proposed revisions.¹⁰

⁸ MISO Transmission Owners Comments at 5.

⁹ *Id.* at 6-7 (arguing that the May 13 Order did not authorize or direct CMMPA/MMTG to establish line items that allow them to recover construction work in progress and associated allowance for funds used during construction expenses).

¹⁰ *Id.* at 7.

10. In addition, MISO Transmission Owners maintain that other aspects of the compliance filing must be modified to be consistent with Commission policy. MISO Transmission Owners request that additional revisions be made to CMMPA-Agency Attachment O to clarify that, absent a separate 205 filing, CMMPA cannot recover any abandoned plant cost.¹¹ Also, MISO Transmission Owners note that, on June 3, 2011, MISO and MISO Transmission Owners submitted a joint filing in Docket No. ER11-3704 to revise portions of Attachment O to clarify that the revenue requirements for Multi-Value Projects (MVP) calculated under Attachment MM and recovered under Schedule 26-A of the Tariff are to be subtracted from revenue requirements calculated under Attachment O. MISO Transmission Owners request that the Commission require CMMPA to make identical revisions to its Attachment O template, especially since its only transmission facility (Brookings Project) may be designated as a MVP and subject to cost sharing pursuant to Attachment MM and Schedule 26-A.¹²

3. CMMPA Answer

11. In its answer, CMMPA/MMTG state that MISO Transmission Owners seek a number of unnecessary changes. CMMPA/MMTG argue that MISO Transmission Owners have requested additional revisions to CMMPA's Attachment O template to create matters to bargain over in the ongoing settlement discussions;¹³ however, CMMPA/MMTG state that it would not be opposed to incorporating some of these requested revisions into the Tariff. Finally, CMMPA/MMTG note that, as a matter of course, their compliance filing is subject to the outcome of the settlement discussions or any further Commission order.¹⁴

4. Commission Determination

12. The CMMPA-Agency Attachment O submitted in this compliance filing is the *pro forma* Attachment O formula rate template used by MISO transmission owners who file FERC Form No. 1, with modifications to, among other things, include provisions previously accepted in the May 13 Order to allow CMMPA to recover the incentives granted by the Commission in the Incentives Declaratory Order. While the May 13 Order did not require CMMPA or MISO to submit a revised CMMPA-Agency Attachment O to be consistent with the ones used by MISO transmission owning

¹¹ *Id.* at 8-9.

¹² *Id.* at 9-11.

¹³ CMMPA Answer at 4.

¹⁴ *Id.* at 5.

members that file FERC Form No. 1, the May 13 Order expressly accepted CMMPA's commitment to provide MISO with a FERC Form No. 1 annually.¹⁵ The CMMPA-Agency Attachment O submitted in this compliance filing is consistent with that commitment.

13. However, MISO's compliance filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we set MISO's proposed revisions to Schedules 7, 8, and 9 of its Tariff as well as the CMMPA-Agency Attachment O for hearing and settlement judge procedures.

14. We find that there are common issues of law and fact in this compliance filing and the filings submitted by MISO, on behalf of CMMPA/MMTG, in Docket Nos. ER11-2700-000, ER11-2700-001, ER11-2700-002, and ER11-2700-003, which were set for hearing and settlement judge procedures in the May 13 Order. Therefore, we will consolidate MISO's compliance filing and the filings in these dockets for the purposes of hearing and decision as well as settlement judge procedures.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I (2011)), a public hearing shall be held concerning MISO's proposed Tariff revisions. However, the hearing will be held in abeyance to give the parties time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

(B) Docket No. ER11-2700-004 is hereby consolidated with the ongoing proceedings in Docket Nos. ER11-2700-000, ER11-2700-001, ER11-2700-002, and ER11-2700-003 for the purpose of hearing and decision and settlement judge procedures, as discussed in the body of this order.

¹⁵ May 13 Order, 135 FERC ¶ 61,131 at P 55.

(C) The settlement judge or presiding judge, as appropriate, designated in Docket Nos. ER11-2700-000, ER11-2700-001, ER11-2700-002, and ER11-2700-003 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.