

140 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

MidAmerican Energy Company

Docket No. EL12-57-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 16, 2012)

1. On April 20, 2012, as supplemented on June 8, 2012, MidAmerican Energy Company (MidAmerican) filed a petition for declaratory order requesting the Commission to approve its proposed re-delineation and re-classification of its electric facilities between transmission and local distribution (2011 Delineation). In this order, we grant the petition, as discussed below.

I. Background

2. MidAmerican is a public utility engaged in the production, transmission, and distribution of electricity for domestic, commercial, and industrial use in the States of Iowa, Illinois, and South Dakota and the sale of and distribution of natural gas at retail in the States of Iowa, Illinois, South Dakota, and Nebraska. MidAmerican owns and operates electric transmission and distribution facilities. MidAmerican integrated its electric generation and transmission facilities with the Midwest Independent Transmission System Operator, Inc. (MISO). Transmission service across MidAmerican's facilities is pursuant to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

3. MidAmerican states that its first application of the Commission's seven-factor test¹ to analyze MidAmerican's electrical facilities and delineate them between

¹ See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,771 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy*

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transmission and distribution, was in 1998 in the context of the Illinois retail access program (1998 Delineation).² In *MidAmerican Energy Company*, the Commission granted MidAmerican's request for classification, deferring to recommendations of the Iowa Utilities Board (Iowa Commission) and the Illinois Commerce Commission (Illinois Commission) and approving the 1998 Delineation. MidAmerican further states that the 1998 Delineation generally classified non-radial 345 kV and 161 kV facilities as transmission with the exception of certain local area load-serving high voltage facilities which were classified as distribution along with all of the radial 345 kV and 161 kV facilities and all of the 69 kV and 34.5 kV facilities.

4. On July 2, 2010, the City of Pella (Pella) filed a petition for a declaratory order and a complaint against MISO and MidAmerican asking the Commission to reclassify Pella's non-radial 69 kV facilities as transmission facilities eligible for inclusion under the MISO Tariff and to find that MISO and MidAmerican violated the Federal Power Act (FPA) and Commission policy by failing to recognize Pella's 69 kV facilities as integrated transmission facilities (Pella proceeding). The Commission determined that Pella's 69 kV facilities constituted transmission facilities, but that those facilities were not integrated with MISO's transmission facilities and, as a result, Pella was not eligible to receive credits for those facilities.³ The Commission further found that neither MISO nor MidAmerican violated any of the applicable provisions of the Tariff or the FPA. MidAmerican, Pella, and the MISO Transmission Owners filed motions for clarification or requests for rehearing of the Commission's order, which remain pending before the Commission.

5. On January 30, 2012, MidAmerican filed a Settlement Agreement entered into by MidAmerican, Pella and MISO (Pella Settlement). The Pella Settlement is pending before the Commission and is intended to dispose of all issues that were raised or could have been raised in the Pella proceeding and to terminate the proceeding in its entirety. The Pella Settlement requires MidAmerican to file the 2011 Delineation with the Commission. The Pella Settlement also requires MidAmerican to take certain steps that will result in inclusion of the Pella 69 kV non-radial facilities and the MidAmerican 69 kV non-radial facilities as part of the MISO transmission system.

Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² *MidAmerican Energy Co.*, 90 FERC ¶ 61,105 (2000).

³ *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc. and MidAmerican Energy Co.*, 134 FERC ¶ 61,081 (2011).

6. In the April 20, 2012 filing, MidAmerican states that approval of the 2011 Delineation will fulfill the objectives of the Pella Settlement.⁴ MidAmerican therefore, proposes to reclassify the following from distribution facilities to transmission facilities: (1) non-radial 69 kV facilities; and (2) non-radial 161 kV facilities connecting to such 69 kV facilities. In support, MidAmerican includes a Technical Report for Delineation of Transmission and Local Distribution Facilities (2011 Delineation Report), and the Iowa Commission's approval and recommendation that the Commission approve MidAmerican's 2011 Delineation.

7. According to MidAmerican, there have been substantial changes in the use of the MidAmerican electrical system between the time that the 1998 Delineation was prepared and the 2011 Delineation was conducted. MidAmerican states that the 2011 Delineation Report shows that the previous determinations with respect to non-radial 345 kV and 161 kV facilities being classified as transmission are still appropriate. In addition, the 2011 Delineation Report shows that the high voltage distribution facilities should be reclassified from local distribution to transmission.

8. On June 8, 2012, MidAmerican filed a supplement informing the Commission of the Illinois Commission's approval of the 2011 Delineation.

II. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the Federal Register, 77 Fed. Reg. 29,633 (2012), with answers, interventions, and protests due on or before May 21, 2012. MISO, Missouri River Energy Services, and Iberdrola Renewables, Inc. filed timely motions to intervene. Pella and the Indianola Municipal Utilities Board of Trustees, Iowa (the Indianola Board) each filed timely motions to intervene and comments in support of the filing.

10. Pella states that, as is required by the Pella Settlement, Pella confirms that it does not contest re-delineation of MidAmerican's 69 kV networked facilities and that it

⁴ MidAmerican also states that approval of the 2011 Delineation will fulfill the objectives of a settlement with Clipper Windpower Development Company, LLC. See *MidAmerican Energy Co.*, 138 FERC ¶ 61,028 (2012) (approving a settlement agreement between MidAmerican and Clipper Windpower Development Company, LLC, as modified).

supports and seeks an expedited Commission consideration and ruling on this case. Pella further states that it is pleased to make this confirmation and that a re-delineation is appropriate and supports the public interest.

11. The Indianola Board states that it supports the filing and seeks expedited Commission consideration.

III. Discussion

A. Procedural Matters

12. 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.

B. Substantive Matters

1. MidAmerican's Filing

13. MidAmerican states that the 2011 Delineation Report applies each of the seven factors of the Commission's seven-factor test to MidAmerican's transmission and distribution plant, using a variety of types of analytical methods, including power flow analysis, estimates of distances between facilities, and current facility utilization. The facilities studied were those with voltages of 345 kV, 161 kV, 69 kV, and 34.5 kV and below.

14. MidAmerican states that there were many consistent results in the 1998 and 2011 analyses. Specifically, both analyses showed the same results for certain facilities: (1) all non-radial 345 kV and 161 kV lines perform a transmission function and should be categorized as transmission facilities; (2) 345 kV and 161 kV substations which connect 345 kV and 161 kV transmission lines together perform a transmission function and should be categorized in whole or in part as transmission facilities; (3) the 161 kV portion of load-serving substations should be classified as transmission facilities; and (4) radial 345 kV and 161 kV lines, as well as radial 69 kV lines and all of the 34.5 kV lines should remain categorized as distribution facilities.

15. However, MidAmerican states that there is one group of key differences related to the 69 kV facilities. MidAmerican explains that, since the 1998 Delineation, MidAmerican, as well as other utilities interconnected with MidAmerican, have participated in the MISO real time and day-ahead energy markets. As a result, the generation across the market footprint is used to efficiently serve the load in the market footprint and the MidAmerican system has seen increased transfers in support of the market. MidAmerican states that the result of this change is that MidAmerican's networked facilities, including those with voltages at 69 kV and above, serve a broader

area than previously. MidAmerican explains that consequently the 2011 Delineation Report concludes that all non-radial 69 kV lines should be categorized as transmission facilities and certain associated 69 kV substations should also be categorized as transmission. MidAmerican adds that the result of the delineation of these 69 kV facilities to transmission accounts is that all MidAmerican non-radial 345 kV, 161 kV, and 69 kV facilities have been determined to perform transmission functions.

16. MidAmerican states that, to determine which substations should be classified as transmission, MidAmerican classifies substations consistent with the facilities connecting to each substation; when both transmission and distribution lines connect to a substation, it is considered a combination substation and a specific methodology was used to allocate the investment between transmission and distribution accounts. MidAmerican explains that combination substations where all components are transmission remain or are reclassified as transmission.

17. According to MidAmerican, it is a significant effort to account for combination substations as opposed to substations classified as 100 percent distribution. This additional effort stems from the complexity of accounting to both transmission and distribution accounts for new capital projects at substations with both types of facilities. Thus, MidAmerican used a “three or more” test to classify portions of 69 kV substations as transmission when at least three 69 kV or greater non-radial lines or at least two non-radial 69 kV lines and one 69 kV capacitor connect to the substation. The 69 kV substations which do not pass the “three or more” test remain classified as 100 percent distribution. Common facilities, such as substation land, rock, fence, and control buildings are allocated between transmission and distribution by pro-rating based on the original cost of the transmission and distribution facilities located in the substation. MidAmerican explains that the reclassification will cause the additional non-radial 161 kV and 69 kV facilities to be accounted for and ultimately reflected in FERC-jurisdictional transmission rates.

18. MidAmerican states that, should the Commission approve the 2011 Delineation, MidAmerican expects to execute an Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Non-transferred Transmission Facilities (Appendix G of the MISO Transmission Owners Agreement) that will subject its networked 69 kV facilities to MISO functional control. MidAmerican further states it expects to take such other actions required of it as identified in Article III of the Pella Settlement in order to effectuate the inclusion of non-radial 69 kV facilities in transmission rates and in revenue sharing agreements with municipal utilities owning such facilities.

2. Commission Determination

19. The Commission has jurisdiction over the “transmission of electric energy in interstate commerce” and “the sale of electric energy at wholesale in interstate

commerce.”⁵ The Commission does not, however, have jurisdiction over facilities used in local distribution.⁶ In Order No. 888, the Commission articulated a so-called seven-factor test to determine what facilities would be subject to the Commission’s jurisdiction.⁷ The Commission stated that it examines the following seven factors that indicate facilities are local distribution rather than transmission facilities: (1) local distribution facilities are normally in close proximity to retail customers; (2) local distribution facilities are primarily radial in character; (3) power flows into local distribution systems; it rarely, if ever, flows out; (4) when power enters a local distribution system, it is not reconsigned or transported onto some other market; (5) power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) meters are based at the transmission/local interface to measure flows into the local distribution system; and (7) local distribution systems will be of reduced voltage.⁸ The Commission further stated that it would defer to state commission recommendations provided such recommendations are consistent with the essential elements of Order No. 888.⁹

20. The Illinois Commission and the Iowa Commission have approved the 2011 Delineation. Consistent with Order No. 888, we are persuaded to defer to the state commissions and adopt their determinations regarding the facilities that are the subject of the application before us in this proceeding.¹⁰ Accordingly, we will grant MidAmerican’s petition for declaratory order.

⁵ 16 U.S.C. § 824(b)(1) (2006).

⁶ *Id.*

⁷ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,771.

⁸ *Id.*

⁹ *Id.* at 31,783-784. See, e.g., *MidAmerican Energy Co.*, 90 FERC ¶ 61,105; *Northeast Utilities Service Co.*, 107 FERC ¶ 61,246 (2004); *Nevada Power Co.*, 88 FERC ¶ 61,234 (1999).

¹⁰ We note that MidAmerican indicates that certain 69 kV combination substations are networked facilities, but that MidAmerican does not propose to reclassify them for reasons of accounting practicality. However, as that classification is outside the scope of this petition, we are not addressing the classification of those 69 kV combination substations or MidAmerican’s proposal to use the “three or more” test to continue to classify these substations as distribution. Moreover, to the extent that Applicants were to make future filings before the Commission to assess the costs of such facilities to

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21. Although we accept the state commissions' classification, we reiterate our finding in Order No. 888 that, to the extent any facilities, regardless of their original nominal classification, in fact, prove to be used by public utilities to provide transmission service in interstate commerce in order to deliver power and energy to wholesale purchases, such facilities become subject to this Commission's jurisdiction and review.¹¹ In addition, the rates, terms, and conditions of all wholesale and unbundled retail transmission service provided by public utilities in interstate commerce are subject to this Commission's jurisdiction and review.¹²

The Commission orders:

MidAmerican's petition for a declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

wholesale transmission customers, MidAmerican would have to demonstrate that the proposed pricing methodology for such facilities (direct assignment or otherwise) is appropriate. *See MidAmerican Energy Co.*, 90 FERC ¶ 61,105 at 61,338.

¹¹ In Order No. 888, the Commission explained that "a public utility's facilities used to deliver electric energy to a wholesale purchaser, whether labeled 'transmission,' 'distribution,' or 'local distribution,' are subject to the Commission's exclusive jurisdiction under sections 205 and 206 of the FPA." Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,969.

¹² Transmission service in interstate commerce by public utilities, including the rates, terms, and conditions for such service, remains within this Commission's exclusive jurisdiction. 16 U.S.C. §§ 824, 824d, 824e (2006).