

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

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

City of Pella, Iowa

v.

Docket No. EL14-6-000

Midcontinent Independent System Operator, Inc. and
MidAmerican Energy Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued February 26, 2014)

1. In this order, we set for hearing and settlement judge procedures a complaint filed by the City of Pella, Iowa (Pella) against Midcontinent Independent System Operator, Inc. (MISO)¹ (Complaint) concerning compensation for generation redispatch under a settlement agreement among Pella, MISO, and MidAmerican Energy Company (MidAmerican) (Settlement Agreement). We also dismiss MidAmerican as a respondent to the Complaint. Further, we establish a refund effective date of October 23, 2013.

I. Background

2. On July 2, 2010, in Docket No. EL10-77-000, Pella filed a complaint and petition for declaratory order against MISO and MidAmerican. Pella asked the Commission to classify Pella's 69 kV facilities as transmission facilities under the MISO Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff). Pella also argued that MISO and MidAmerican had violated sections 205, 206, 211, and 212 of the Federal

¹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

Power Act (FPA)² and Commission policy by failing to recognize Pella's facilities as transmission facilities and by failing to compensate Pella for its facilities.

3. On February 2, 2011, the Commission issued an order granting in part and denying in part Pella's complaint and request for declaratory order.³ The Commission found that Pella's 69 kV facilities are transmission facilities. However, the Commission denied Pella's complaint to the extent that it argued that MISO and MidAmerican had acted improperly by failing to compensate Pella for its facilities. In particular, the Commission found that Pella's 69 kV facilities were not integrated with MISO's transmission system and, as a result, Pella was not eligible to receive credits for its facilities under section 30.9 of the Tariff. The Commission based its decision on the fact that Pella's 69 kV facilities were directly interconnected to 69 kV facilities owned by MidAmerican that had been classified as distribution facilities. The Commission found that MISO and MidAmerican had not violated the Tariff or the FPA by declining to include Pella's 69 kV facilities for revenue sharing under the Tariff. On March 4, 2011, in Docket No. EL10-77-001, MidAmerican, Pella, and certain of the MISO transmission owners filed requests for rehearing. MISO subsequently filed an answer to the requests for rehearing. Pella and MidAmerican each filed an answer to MISO's answer.

4. After issuance of the Commission's order, MidAmerican reviewed the delineation of its own electrical facilities and determined that its non-radial 69 kV electrical facilities previously classified as local distribution, including the facilities that are interconnected with Pella's facilities, were now performing transmission functions.⁴ The Commission approved this re-delineation on July 16, 2012.⁵

5. On January 30, 2012, in Docket No. EL10-77-000, MidAmerican, Pella and MISO filed a Settlement Agreement that resolved all of the issues that were raised in that proceeding. The Commission approved the Settlement Agreement on July 16, 2012.⁶

² 16 U.S.C. §§ 824d, 824e, 824j, 824k (2012).

³ *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,081 (2011) (February 2011 Order).

⁴ *City of Pella, Iowa v. Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,029, at P 7 (2012) (Order Approving Settlement).

⁵ *MidAmerican Energy Co.*, 140 FERC ¶ 61,028 (2012).

⁶ Order Approving Settlement, 140 FERC ¶ 61,029.

6. On October 23, 2013, pursuant to section 206 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure,⁷ Pella filed the Complaint. Pella alleges that MISO has denied Pella compensation for generation redispatch in support of the grid in contravention of the Settlement Agreement. Pella explains that the Complaint is limited to the actions of MISO with respect to the Settlement Agreement; however, because MidAmerican is a party to the Settlement Agreement, it has named MidAmerican in the Complaint for technical reasons, even though MidAmerican has not violated the Settlement Agreement.⁸

7. Pella states that it filed the Complaint in Docket No. EL10-77-001 in addition to this proceeding because Pella seeks to enforce the Settlement Agreement, which related to Docket Nos. EL10-77-000 and EL10-77-001.⁹ Pella asks the Commission to consolidate these proceedings.

II. Notice of Filing and Responsive Pleadings

8. Notice of the Complaint was published in the *Federal Register*, 78 Fed. Reg. 65,306 (2013), with comments and interventions due on or before October 31, 2013. Alliant Energy Corporate Services, Inc., Missouri River Energy Services (Missouri River), and the MISO Transmission Owners¹⁰ filed timely motions to intervene.

⁷ 16 U.S.C. § 824e; 18 C.F.R. § 385.206 (2013).

⁸ Complaint at n.1.

⁹ *Id.* at 2.

¹⁰ The MISO Transmission Owners in this proceeding are 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; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; 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; 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; Prairie Power Inc.; South Mississippi Electric
(continued...)

MidAmerican filed a motion to intervene and an answer. MISO filed an answer and a motion to strike. Pella responded to those answers and the motion to strike.

III. Complaint, Responsive Pleadings, and Motion to Strike

A. Complaint

9. Pella requests that the Commission enforce the terms of the Settlement Agreement.¹¹ Pella argues that MISO has denied Pella compensation for generation redispatch in support of the grid in direct contravention of the Settlement Agreement.¹² Pella states that section 1.1 describes the benefits that Pella's generation provides to the MISO grid and sections 1.2 and 1.3 explain how Pella will be paid for its re-dispatch costs.¹³ Pella argues that, pursuant to section 1.2, when MISO executed the Settlement Agreement, MISO agreed to compensate Pella under the Tariff and Business Practice Manual and Commission and MISO rules after specified conditions occurred.¹⁴ Pella states that those conditions were met when Pella's Southeast Switching Station went into service on April 26, 2012 and an Appendix G Agency Agreement was executed under the MISO Transmission Owners Agreement through Cedar Falls Utilities. Pella claims that, while prior to the February 2011 Order and Settlement Agreement MISO arbitrarily discriminated against transmission below 100 kV, now MISO is discriminating against Pella's generation that is attached to Pella's 69 kV transmission that serves grid purposes.¹⁵

10. Pella disagrees with MISO's claim that Pella must satisfy additional conditions before its obligation to pay Pella can begin.¹⁶ Pella states that MISO claims that the language of section 1.2 that states that "Pella will be paid for its re-dispatch under the

Power Association; 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.

¹¹ Complaint at 2, 3, 6.

¹² *Id.* at 5-6, 10.

¹³ *Id.* at 10-11, 22.

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 11, 22.

MISO Tariff and Business Practice Manual and FERC and MISO rules” means that Pella’s generation cannot be compensated when operated in support of the grid unless various steps are taken to qualify for compensation. Pella states that MISO asserts that Pella’s generation must either be placed in front of the meter or be behind the meter generation that qualifies as emergency demand response under Schedule 30 of the Tariff, which provides for compensation only in rare North American Electric Reliability Corporation (NERC) emergency events.¹⁷ Thus, Pella contends that MISO indicates that it will not compensate Pella for operating its generation if that generation is not dispatched as part of MISO’s energy markets.¹⁸

11. Pella argues that these additional constraints and qualifications were not included in or contemplated by the Settlement Agreement.¹⁹ Pella maintains that the language “Pella will be paid under the MISO Tariff and Business Practice Manual and FERC and MISO rules” means that Pella will be paid under and through the Tariff, not that Pella must put its generation in front of the meter or otherwise satisfy unspecified and non-existent settlement conditions.²⁰ Pella argues that the phrase provides a mechanism for payment, not an excuse for non-payment.²¹ Pella contends that the Settlement Agreement was structured so that, before MISO took control of the Pella 69 kV transmission facilities (which provide area transmission support), MidAmerican and Pella would share the costs of operating Pella’s generation needed to support the grid and, after MISO took control of Pella’s 69 kV facilities and the MidAmerican Pella-Area 69 kV facilities pursuant to an Appendix G Agency Agreement, MISO would compensate Pella for its generation operations in support of the grid.²² Pella argues that MISO’s restrictive reading negates the express purpose of Article I of the Settlement Agreement to provide a mechanism to provide Pella for consideration for its generation “dispatch[] in order to provide voltage support and reliability in the Pella area electric system, including facilities of MidAmerican, Central Iowa Power Cooperative and ITC Midwest LLC 69 kV and other transmission and distribution facilities.”²³

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 11-12, 22.

²⁰ *Id.* at 13.

²¹ *Id.* at 22.

²² *Id.* at 14.

²³ *Id.* at 22-23.

12. Pella asserts that MISO does not point to anything in the Settlement Agreement that contemplates or memorializes additional conditions precedent to its obligation to compensate Pella's generation.²⁴ Pella adds that words "under the MISO Tariff" by themselves cannot accomplish this outcome and are illogical if read to negate the immediately preceding statement that "Pella will be compensated." Pella states that the Settlement Agreement envisions that, after Pella transmission was recognized as MISO transmission, MISO, and not MidAmerican, would compensate Pella for the operation of Pella's generation. Pella argues that nothing in the Settlement Agreement suggests that compensation would be limited or that Pella would be required to seek eligibility under Schedule 30.²⁵ Pella adds that MISO's reading of the Settlement Agreement to deny compensation to Pella's behind the meter generation is unsustainable because the parties knew that Pella's generation was all behind the meter and that the purpose of Article I was to provide for MISO's future compensation of Pella's generation.²⁶

13. Pella contends that reading sections 1.2 and 1.3 of the Settlement Agreement in full shows that all conditions for compensation have been satisfied.²⁷ Pella points out that execution of an Appendix G Agency Agreement was the only prerequisite contained in the Settlement Agreement. Pella explains that that agreement is the Tariff mechanism by which Pella has granted MISO authority to offer and provide service over its transmission facilities.²⁸ Pella notes that MISO requested that they enter into an Appendix G Agency Agreement and that the agreement incorporates by reference the terms of the Tariff.²⁹ Pella claims that, because an Appendix G Agency Agreement was executed, MidAmerican ended cost-sharing and Tariff-based compensation of Pella's grid support began.³⁰

²⁴ *Id.* at 14.

²⁵ *Id.* at 14-15.

²⁶ *Id.* at 16.

²⁷ *Id.* at 15.

²⁸ *Id.* at 15-16.

²⁹ *Id.* at 16, n.25.

³⁰ *Id.* at 16.

14. Pella adds that the Pella-MidAmerican Interconnection Agreement (Interconnection Agreement) confirms the parties' understanding that MISO will compensate Pella for its generation and demonstrates how that compensation will occur.³¹ Pella explains that the Interconnection Agreement, that was executed by Pella and MidAmerican shortly after the Settlement Agreement was executed, tracks the language of the Settlement Agreement in all relevant respects. Specifically, Pella points out that, when MidAmerican filed the Interconnection Agreement, MidAmerican referenced the Settlement Agreement.

15. Pella notes that, pursuant to section 3.5.2 of the Interconnection Agreement, MISO is required to assume responsibility for compensating Pella's redispatch costs for voltage support and reliability when MISO assumed function control of Pella's facilities from MidAmerican on the re-delineation effective date, which would be no later than September 1, 2012.³² Pella states that, because MISO has been granted this control, it must provide appropriate compensation for grid support.³³ Pella argues that, in contravention of the bargained-for settlement, MISO now asserts that Pella must move its generation in front of the meter or forego compensation for most or all of Pella's grid-supporting generation. Pella asserts that the parties to the Settlement Agreement chose to forego litigation and compromised positions in reliance on the terms of the Settlement Agreement. Pella insists that MISO cannot now impose limitations that were not placed in the Settlement Agreement. Pella asserts that it would be confiscatory to expect Pella and its ratepayers to bear the burden of operating generation without receiving payment for the costs of such operation. Pella argues that it would also be unreasonable to deprive MISO and area transmission owners and electricity users of Pella's readily available generation.³⁴ Pella notes that the Complaint is restricted to Pella's particular situation and does not reach more general policy issues relating to the placement of generation in front of or behind the meter.³⁵

16. Pella contends that any concerns that MISO has about Pella's generation being behind the meter are matters of form over substance because Pella makes its generation generally available to the transmission grid to serve reliability purposes.³⁶ Pella states

³¹ *Id.*

³² *Id.* at 17-18.

³³ *Id.* at 18.

³⁴ *Id.* at 18-19.

³⁵ *Id.* at 18 n.29.

³⁶ *Id.* at 19.

that, while behind the meter generation means generation that is not transmitted over the transmission grid, its generation is interconnected with both distribution and transmission facilities and can be dispatched in support of the grid. In fact, Pella notes that its generation has been operated to the benefit of the grid in planned and unplanned outages and repairs.

17. Pella adds that its generation does not fall within the definitions in the Tariff and Business Practices Manual of behind the meter generation.³⁷ According to Pella, section 1.44 of the Tariff defines behind the meter generation as generation that can be “used to serve wholesale or retail load located behind a [Commercial Pricing Node] that [is] not included in the Transmission Provider’s Setpoint Instructions” and that can be used sometimes to serve load with the Transmission Provider Region pursuant to Grandfathered Agreements. Pella states that section 4.9 of the MISO Resource Adequacy Business Practices Manual defines behind the meter generation “as a generation resource used to serve wholesale or retail load that is located behind a [Commercial Pricing Node] [and] is not included in MISO’s Dispatch Instructions.”³⁸ Pella argues that, in contrast, its generation functions on the transmission grid for reliability purposes and has been dispatched under instructions coordinated with MidAmerican, which serves as the local balancing authority. Pella adds that it uses its generation for grid support, not just for delivery to load located behind the meter. Pella claims that, if this were not the case, it would not seek compensation for the operation of its generation because MISO compensation would not be warranted. Pella adds that it is willing to receive any dispatch instructions that would facilitate its effective support of the grid and operate its generation at MISO’s or MidAmerican’s instructions to support the grid. Pella states that, apart from outages for maintenance and distribution emergencies, its generation would remain generally available.³⁹

18. Pella clarifies that, while it is willing to abide by all reasonable requirements and have its generation treated for operational purposes as if it were in front of the meter, it does not agree to place its generation in front of the meter so that the operation of its generation would set the locational marginal price, a condition that is not part of the Settlement Agreement.⁴⁰

³⁷ *Id.* at 19-20.

³⁸ *Id.* at 20.

³⁹ *Id.* at 20-21.

⁴⁰ *Id.*

19. Pella points out that, at the time of the Settlement Agreement, Pella was in the process of shutting down its coal plant and had reached an agreement with Missouri River under which Pella would become a Missouri River member and Missouri River would supply Pella's power from outside of Pella.⁴¹ Pella argues that, under these circumstances, it would not be practical or just to place Pella's facilities in front of the meter, which would result in a significant increase in the cost of the power delivered to Pella.⁴² Pella argues that it should not be financially penalized for running generation to support the grid, particularly when other utilities are the source of the reliability concerns that Pella acts to alleviate.

20. Pella also argues that MISO cannot arbitrarily treat Pella's facilities differently from other 100 kV and higher facilities that serve comparable functions.⁴³ Pella alleges that MISO places sub-100 kV facilities under Appendix G rather than Appendix H and then declines to compensate generation attached to facilities under Appendix G. Pella states that, to the extent MISO treats facilities operating below 100 kV differently than facilities 100 kV and above, including generation attached to those facilities, it should not treat Pella's qualifying facilities in this manner because Pella's facilities are necessary to grid reliability and are part of the MISO transmission system. Pella asserts that the Settlement Agreement recognizes that Pella's facilities benefit the grid and that it documented some of those benefits, such as voltage support, in that proceeding.⁴⁴ Pella also provides additional support to demonstrate the reliability benefits it provides.⁴⁵

21. Pella asserts that, if MISO refuses to compensate generation dispatch because the attached transmission is comprised of sub-100 kV facilities, it is voltage-based discrimination that constitutes a collateral attack on the Settlement Agreement. Pella states that the Commission recognized that the classification of facilities must be based upon function, not voltage, and that its facilities meet the seven-factor test.⁴⁶ Pella argues

⁴¹ *Id.* at 21. Pella notes that, although this information is based upon statements made during dispute resolution proceedings that generally are confidential, those discussions may be divulged to the extent necessary to enforce a settlement. *Id.* at 21 n.36.

⁴² *Id.* at 21.

⁴³ *Id.* at 23.

⁴⁴ *Id.* at 23-24.

⁴⁵ *Id.* at 24-27.

⁴⁶ *Id.* at 27.

that, taken together, the Settlement Agreement and Commission's finding that Pella's facilities qualify as transmission make clear that Pella's 69 kV facilities qualify for compensation now. Pella notes that, although the Commission found that Pella's facilities were not integrated with MISO facilities because MidAmerican's connecting 69 kV facilities were not recognized as transmission, the Settlement Agreement and the subsequent re-designation of MidAmerican's facilities that allowed Pella's facilities to be networked facilities eliminate remaining obstacles to Pella's eligibility for compensation.⁴⁷ Pella argues that, to the extent MISO denies compensation and treats Pella's facilities as non-qualifying sub-100 kV facilities, MISO reopens issues settled by the parties in the Settlement Agreement and re-creates the status-type arguments that it made when it argued that Pella's transmission should be excluded from the grid. Pella states that its transmission and generation are connected and act together to support the same grid.

22. Pella claims that the "MISO Tariff and Business Practice Manual and FERC and MISO rules" do not preclude compensation when Pella operates its generation to support the grid.⁴⁸ Pella argues that the definition of "emergency" in the Tariff encompasses the types of events that necessitate the dispatch of Pella generation to support the MISO grid. Pella indicates that, consistent with the definition, its generation is dispatched under abnormal system conditions requiring action to maintain system stability and to prevent loss of load or equipment damage. Pella adds that, even if there were some general prohibition or practice to preclude compensation for the reliability events when Pella's generation is dispatched, the Commission's approval of the Settlement Agreement provides Commission recognition and approval of the need for compensation in this instance. Pella argues that this point is especially true when in the underlying case the parties opposed to Pella supported a bright-line test precluding recognition of 69 kV transmission needed by the grid pursuant to an arbitrary voltage delineation.⁴⁹ Pella states that MISO now accepts Pella's 69 kV transmission but refuses to recognize Pella's attached generation, continuing the discrimination that led to Pella's complaint and was resolved by the Settlement Agreement.

23. Pella also contends that the Commission's approval of the Settlement Agreement precludes MISO's arguments against compensation and compels MISO to comply with the Settlement Agreement.⁵⁰ Pella asserts that the compensation to which it is entitled

⁴⁷ *Id.* at 28.

⁴⁸ *Id.* at 29.

⁴⁹ *Id.* at 29-30.

⁵⁰ *Id.* at 28-29.

under the Settlement Agreement serves the public interest because it makes its generation available to support the grid.⁵¹ Pella claims that the Interconnection Agreement and MidAmerican's operating and planning studies completed in 2012 recognize that Pella's generation redispatch is necessary for grid reliability.⁵² Pella adds that MISO has not, and cannot, reasonably contest that Pella's generation benefits grid reliability, and that its generation is available, does provide and ought to provide grid support during threatened outages due to weather events and equipment failures.⁵³

24. Pella argues that, even if there were no Settlement Agreement, it cannot reasonably be asked to operate its generation for reliability and voltage support without being paid.⁵⁴ Pella states that it cannot envision any circumstance under which the Commission would expect a party to operate generation precipitated by or for others without compensation.⁵⁵ Pella requests that the Commission find that MISO violates FPA section 206 because it unjustly and unreasonably refuses to compensate Pella for operating generation for grid support.⁵⁶ Pella contends that MISO has not pointed to anything in the Tariff that bars it from doing so.⁵⁷ Pella claims that, just as MISO appropriately compensates behind the meter generation during NERC emergency events, it should compensate Pella for running generation to avoid the occurrence of such severe events.⁵⁸ Pella argues that it should be compensated for its reasonable costs when it supports the grid, comparable with MISO's payment to other utilities that provide such services.⁵⁹ Pella states that its requested relief reflects the common purpose of regional transmission organizations generally: to promote grid reliability and improve efficiencies

⁵¹ *Id.* at 31.

⁵² *Id.* at 32.

⁵³ *Id.* at 28-29.

⁵⁴ *Id.* at 3, 6.

⁵⁵ *Id.* at 28-29.

⁵⁶ *Id.* at 2, 3, 6, 31.

⁵⁷ *Id.* at 31, 33-34.

⁵⁸ *Id.* at 33.

⁵⁹ *Id.* at 32.

in transmission grid management. Pella argues that, consistent with cost causation principles, the Commission should order relief.⁶⁰

25. Pella contends that MISO's claimed entitlement to force Pella to place its generation in front of the meter is unjust and unreasonable. Pella states that MISO would penalize Pella for operating its generation in support of the grid rather than encourage Pella to run its generation to aid reliability and efficiency. Pella claims that there is no technical reason why Pella's facilities must be placed in front of the meter for the MISO grid to benefit.⁶¹ Pella states that it has given MISO authority to transmit power over its transmission facilities and permitted MISO to direct Pella to run its generation for grid support. Pella asserts that, by executing an Appendix G Agency Agreement and granting MISO authority to direct operation of its generating facilities for grid support, Pella has given MISO the necessary tools to use Pella's facilities for reliability enhancement. Pella states that, to the extent necessary and/or advantageous, Pella is willing to satisfy additional, reasonable technical requests from MISO, whether related to dispatch instructions, metering, or other capabilities. Pella argues that whether Pella's generation is registered with the market and identified as in front of the meter for market participation purposes is not related to whether that generation enhances reliability and should be compensated consistent with FPA section 206. Pella adds that, even if MISO can claim some stricture in the Tariff or elsewhere that precludes compensation, the Settlement Agreement and equities require that the Commission waive such provision to allow compensation.

26. Pella notes that the issue is not whether Pella is willing to operate its generation at MISO's or MidAmerican's request; it is.⁶² Pella explains that system conditions in the MidAmerican-Pella and surrounding area require the use of Pella's generation.⁶³ Pella claims that the failure to obtain relief would either cause Pella's ratepayers to bear the burden of Pella operating generation for others' benefit or potentially result in the unavailability of generation that can and should be used to maintain grid reliability, voltage support and other grid benefits.⁶⁴ Pella states that denial of relief would be particularly unjustified when dispatch is precipitated by problems or work on neighboring transmission systems not owned or maintained by Pella.

⁶⁰ *Id.* at 33.

⁶¹ *Id.* at 34.

⁶² *Id.* at 35.

⁶³ *Id.*

⁶⁴ *Id.* at 33.

B. MISO Answer and Motion to Strike

27. MISO argues that the Commission should deny the Complaint.⁶⁵ MISO states that it, MidAmerican, and Pella have taken the steps outlined in the Settlement Agreement to ensure Pella can be compensated for its 69 kV facilities under the Tariff.⁶⁶ MISO states that both parties are bound by the terms of the Settlement Agreement and cannot unilaterally change these terms.⁶⁷

28. MISO claims that this case presents a straightforward contract interpretation dispute and should be resolved based upon the terms of the Settlement Agreement.⁶⁸ MISO states that the key sentence in this dispute is section 1.2 of the Settlement Agreement that states that “Pella will be paid for its re-dispatch costs *under the MISO Tariff and Business Practice Manual and FERC and MISO rules.*”⁶⁹ MISO contends that Pella seeks to render superfluous and meaningless the italicized portion of this provision, particularly, the reference to the Tariff and Business Practice Manual.⁷⁰ MISO asserts that, under Pella’s construction, MISO must pay for Pella’s re-dispatch costs regardless of whether the Tariff and Business Practice Manual provide for such compensation. MISO objects to this reading because it is contrary to the express language of the Settlement Agreement. MISO claims that, to receive compensation under section 1.2, Pella must qualify its generation under a specific provision or program set forth in the Tariff and must adhere to those Commission-approved terms, conditions, and qualifications.⁷¹ Specifically, MISO states that the Pella facilities are not a generating resource because Pella has not registered them to participate in MISO’s energy and operating reserve market. MISO adds that the facilities are used to serve Pella’s load located behind a Commercial Pricing Node and are not included in MISO’s Setpoint Instruction.⁷² MISO states that, for these reasons, the Pella generation facilities are

⁶⁵ MISO Answer and Motion to Strike at 4.

⁶⁶ *Id.* at 4, 6.

⁶⁷ *Id.* at 4 (noting that unilateral changes are subject to the *Mobile-Sierra* public interest presumption under section 7.1 of the Settlement Agreement).

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 2, 7-8 (emphasis added by MISO).

⁷⁰ *Id.* at 2.

⁷¹ *Id.* at 3-4.

⁷² *Id.* at 8, nn.29-30.

considered behind the meter generation under the Tariff, which has limited opportunities for compensation under the Tariff and Business Practice Manual and, hence, under the Settlement Agreement.⁷³

29. MISO argues that the Commission should construe the Settlement Agreement as written, without recourse to extrinsic evidence, because section 1.2 clearly states that compensation is due only under the terms of the Tariff and Business Practice Manual.⁷⁴ MISO contends that the words themselves are clear and either defined in the Settlement Agreement or have a unique and fixed meaning not susceptible to multiple interpretations.⁷⁵ MISO asserts that the sentence in which these words are used is clear because it states that, after Pella's re-dispatch cost sharing with MidAmerican ends, Pella will be paid for its re-dispatch costs under the Tariff and Business Practice Manual and Commission and MISO rules.⁷⁶ MISO claims that, in the face of this unambiguous language, Pella attempts to negate its meaning either by focusing on some words at the expense of the others or by straining other provisions of the Settlement Agreement to create an artificial conflict with section 1.2.⁷⁷ MISO argues that its construction is consistent with the finding in *Owensboro Municipal Utilities v. Louisville Gas and Electric Co.* that a party to a contract dispute was bound by contractual language incorporating that party's tariff.⁷⁸

30. MISO adds that the Commission should reject Pella's extrinsic evidence because it violates the Settlement Agreement's integration clause, negotiated settlement clause and provisions providing for privileged status for all negotiations and discussions that led to its execution.⁷⁹ MISO argues that the extrinsic evidence is either inadmissible or irrelevant and should be rejected because it renders express contractual terms meaningless or superfluous. Specifically, MISO contends that: (1) the Interconnection Agreement cannot confirm MISO's understanding that MISO will compensate Pella for

⁷³ *Id.* at 8.

⁷⁴ *Id.* at 9-10 (citing *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984)).

⁷⁵ *Id.* at 10, n.40.

⁷⁶ *Id.* at 10-11.

⁷⁷ *Id.* at 11-14.

⁷⁸ *Id.* at 12-13 (citing *Owensboro Municipal Utilities v. Louisville Gas and Electric Co.*, 145 FERC ¶ 61,072, at PP 22, 27 (2013)).

⁷⁹ *Id.* at 3.

its generation because MISO is not a party to the Integration Agreement; (2) the Interconnection Agreement does not contradict MISO's interpretation of the disputed language; it merely restates the language; (3) the integration clause in section 11.1 of the Settlement Agreement supersedes the testimony offered by Pella's witnesses; (4) section 11.3 of the Settlement Agreement precludes Pella from offering witness testimony regarding an individual's understanding of MISO's acceptance of certain principles; and (5) settlement privilege precludes Pella's witnesses from providing their recollections of confidential settlement negotiations.⁸⁰

31. MISO claims that Pella has not met the applicable requirements of the Tariff and Business Practice Manual to qualify for compensation under section 1.2 of the Settlement Agreement.⁸¹ MISO state that the simplest way for Pella to obtain compensation would be to register its generating facilities for participation in its energy and operating reserves markets. MISO states that Pella's generating facilities primarily serve Pella's municipal load and are behind the meter.⁸² MISO claims that the Complaint confirms that Pella is unwilling to change this status and register its generation for participation in MISO's energy and operating reserve markets. MISO contends that this choice necessarily limits compensation under the Tariff and Business Practice Manual. MISO explains that Schedule 30 of the Tariff provides the only other opportunity for Pella to receive compensation, explaining that it applies to behind the meter generators that resolve certain MISO-declared emergencies.⁸³ MISO alleges that Pella has not taken the necessary steps to qualify under Schedule 30, so it cannot participate in the Emergency Demand Resources initiative.⁸⁴ MISO claims that Pella does not dispute that its 69 kV facilities are now included in the MISO's rates and asserts that Pella is receiving appropriate compensation for these transmission facilities as set forth in the Settlement Agreement.⁸⁵

⁸⁰ *Id.* at 15-17.

⁸¹ *Id.* at 17.

⁸² *Id.* at 3.

⁸³ *Id.* at 3, 17-18.

⁸⁴ *Id.* at 3, 6 nn.21, 18.

⁸⁵ *Id.* at 7.

32. MISO contends that requiring MISO to pay Pella outside of the specific redispatch compensation structure and procedures established by the Tariff and Business Practice Manual is unjust and unreasonable.⁸⁶ First, MISO states that, as a public utility and Regional Transmission Organization, it is required to operate in strict conformity with its Tariff. MISO claims that Pella's suggestion that MISO impose charges to pay Pella under an unstated, unfiled rate is contrary to the FPA and filed rate doctrine. MISO argues that Pella has failed to meet its burden of demonstrating that the existing provisions of the Tariff that provide compensation for redispatch, including qualification requirements, are unjust and unreasonable and that its proposed replacement is just and reasonable.⁸⁷ Second, MISO insists that it has extensive procedures and criteria that determine, pursuant to NERC reliability standards, how emergencies are declared and resolved.⁸⁸ MISO argues that, rather than asking to be paid on a unique basis not contemplated by the Tariff or described in the Settlement Agreement, Pella should comply with the requirements of Schedule 30 in order to receive compensation.⁸⁹ MISO adds that Pella's discussion of past events is irrelevant because Pella has not qualified under Schedule 30 and none of these events were MISO-declared emergencies. Finally, MISO states that, because Pella's and MidAmerican's 69 kV facilities are not part of the bulk electric system or monitored by MISO under normal conditions, MidAmerican and Cedar Falls Utilities are responsible for reliability of this area as the transmission operators for the 69 kV facilities.⁹⁰ MISO offers that, nonetheless, MISO could commit the Pella generating facility if an operating guide specifying that Pella is needed to protect MISO load existed.⁹¹ MISO explains that: (1) MISO, MidAmerican, Pella, and other affected parties would need to develop and agree upon the new guide; (2) MISO would need to be involved in the decision to run the Pella generating facilities under such a guide; and (3) Pella's generation would need to be registered under the Tariff. MISO claims that, without these protections, any compensation to Pella would be inconsistent with the FPA. MISO argues that Pella's request to consolidate its Complaint with the prior proceeding

⁸⁶ *Id.* at 19.

⁸⁷ *Id.* at 19, n.77.

⁸⁸ *Id.* at 19-20.

⁸⁹ *Id.* at 20.

⁹⁰ *Id.* at 20-21.

⁹¹ *Id.* at 21. MISO states that the current operating guide for the Pella area does not provide this option.

in Docket No. EL10-77 should be denied because the Order Approving Settlement is administratively and judicially final.⁹²

33. Finally, MISO requests that the Commission strike the following materials: (1) Reising Testimony at 18:5 through 19:7 and 21:17 through 21:22; (2) Peterson Testimony at 16:15 through 18:14 and 19:14 through 20:13; and (3) Ex. PELLA-14.⁹³ MISO claims these statements and materials violate sections 11.1, 11.2 and 11.3 of the Settlement Agreement.

C. MidAmerican Answer

34. MidAmerican notes that, when the Commission noticed the Complaint, it stated that the Complaint was against MISO and MidAmerican, notwithstanding that Pella has explained that the Complaint is only against MISO.⁹⁴ MidAmerican asks that Commission acknowledge that MidAmerican is not a respondent to the Complaint, and explains how it has met requirements in the Settlement Agreement.⁹⁵ MidAmerican adds that MISO, not MidAmerican, must decide whether Pella's generation facilities meet the requirements for compensation under the Tariff.⁹⁶

35. MidAmerican states that all similarly situated parties should be treated the same under the Tariff. MidAmerican states that section 40.3.3.a, and subsection xviii thereof, of the Tariff outline the procedures for compensation and for generation redispatch associated with voltage and local reliability. MidAmerican also states that it is not opposed to Pella receiving compensation for voltage and local reliability generation redispatch consistent with the Tariff. MidAmerican notes that its 69 kV connected generation is registered in MISO's energy markets and is available for dispatch, including dispatch for reliability. Therefore, MidAmerican expects to receive compensation after MISO assumes functional control of certain local facilities below 100 kV.⁹⁷

⁹² *Id.* at 6 n.20.

⁹³ *Id.* at 21-22.

⁹⁴ MidAmerican Answer at 1-2.

⁹⁵ *Id.* at 3-4.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.* at 5-6.

36. MidAmerican notes that Pella's customers do benefit from the improved reliability that results when its local generation is run and that costs should be shared by the beneficiaries and the load serving entity.⁹⁸ MidAmerican adds that Pella's generation is called upon because it is the only generation that addresses the local reliability issues in that particular area.⁹⁹ MidAmerican states that it encounters this situation in many other areas of the MidAmerican system where MidAmerican's generation is the only generation effective at resolving 69 kV issues and notes that MidAmerican is not compensated by MISO for dispatching that generation.

D. Pella Answer

37. Pella responds that MISO distorts the meaning and misinterprets the intent of section 1.2 of the Settlement Agreement to justify not compensating Pella and ignores the remainder of Article I and the purpose of the Settlement Agreement.¹⁰⁰ Pella argues that MISO's objections to the evidence of the parties' intent ignores that, under MISO's interpretation, there would be no likely circumstance under which Pella would be paid for its redispatch.¹⁰¹ Pella contends that it would be unfeasible for it to place its generation in front of the meter for economic purposes.¹⁰² Pella argues that MISO has not substantively responded to Pella's argument that it would be unjust, unreasonable, unduly discriminatory, preferential, and non-comparable for Pella to provide grid support without compensation.¹⁰³

38. Pella agrees that MidAmerican's actions are not the subject of the Complaint.¹⁰⁴ Pella states that MidAmerican's request that MISO expeditiously complete its development of criteria for when MISO will assume functional control of < 100 kV facilities at the request of a transmission owner does not bear on the Complaint. Pella adds that MidAmerican's desire that MISO take functional control of its transmission so that MISO will pay for its operation of its own generation that is similar to Pella's

⁹⁸ *Id.* at 6.

⁹⁹ *Id.* at 7.

¹⁰⁰ Pella Answer at 6-19.

¹⁰¹ *Id.* at 20-22.

¹⁰² *Id.* at 21.

¹⁰³ *Id.* at 22.

¹⁰⁴ *Id.* at 23.

generation is also not relevant to this proceeding.¹⁰⁵ Finally, Pella states that whether MidAmerican generation should be treated like Pella's generation is not relevant to this proceeding.

39. Finally, Pella argues that the motion to strike is unfounded and contrary to the Settlement Agreement and law.¹⁰⁶

IV. Discussion

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Pella's answer because it has provided information that assisted us in our decision-making process.

42. The Commission's policy is to consolidate matters only if a trial-type evidentiary hearing is required to resolve common issues of law and fact and consolidation will ultimately result in greater administrative efficiency.¹⁰⁷ The Order Approving Settlement terminated the proceedings in Docket Nos. EL10-77-000 and EL10-77-001. Accordingly, we will deny Pella's request to consolidate Docket No. EL14-6-000 with Docket No. EL10-77-001.

43. MidAmerican asks that we acknowledge that it is not a respondent to the Complaint. Pella agrees that MidAmerican's actions are not the subject of the Complaint. Accordingly, we will dismiss MidAmerican as a respondent in this proceeding. MISO is the true respondent for purposes of this proceeding.

¹⁰⁵ *Id.* at 24.

¹⁰⁶ *Id.* at 24-37.

¹⁰⁷ See *Southern Cal. Edison Co.*, 129 FERC ¶ 61,304, at P 26 (2009), amended by 130 FERC ¶ 61,092 (2010); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008), order on reh'g, 127 FERC ¶ 61,164 (2009), order on remand, 134 FERC ¶ 61,155, reh'g denied, 136 FERC ¶ 61,222 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008).

B. Commission Determination

44. We find that Complaint raises issues of material fact concerning the meaning of the Settlement Agreement language that the parties executed that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

45. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹⁰⁹ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

46. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,¹¹⁰ we will set the refund effective at the earliest date possible, i.e., October 23, 2013, the date of the Complaint.¹¹¹

¹⁰⁸ 18 C.F.R. § 385.603 (2013).

¹⁰⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

¹¹⁰ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹¹¹ The Commission may order refunds for past periods where a public utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. See *DTE Energy Trading, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*,
(continued...)

47. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by January 30, 2015. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by November 30, 2015.

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 the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the Complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days

111 FERC ¶ 61,062, at P 28, *order on reh'g*, 113 FERC ¶ 61,214 (2005), *reh'g denied*, 119 FERC ¶ 61,109 (2007); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established in Docket No. EL14-6-000 pursuant to section 206(b) of the FPA will be October 23, 2013, as discussed in the body of this order.

(F) MidAmerican is dismissed as a respondent to the Complaint, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.