

148 FERC ¶ 61,093  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System  
Operator, Inc.

Docket No. ER14-836-001

ORDER ON ENGINEERING DESIGN, PERMITTING AND PROCUREMENT  
AGREEMENT

(Issued August 1, 2014)

1. On March 7, 2014, Midcontinent Independent System Operator, Inc. (MISO) filed, under section 205 of the Federal Power Act (FPA),<sup>1</sup> a revised Agreement for Engineering Design, Permitting and Procurement of Material (E&P Agreement) between Courtenay Wind Farm, LLC (Courtenay) and Otter Tail Power Company (Otter Tail) (together, the Parties) (March 7 Filing), to comply with the February 2014 Letter Order.<sup>2</sup> In this order, we accept MISO's March 7 Filing and we give notice, pursuant to section 388.112(d) of the Commission's regulations,<sup>3</sup> that the Commission is considering the release of information contained in the filing for which MISO claims privileged status, and that MISO has 30 days from the date of this order to file written comments to show cause why the information should not be made public, as explained below.

**I. Background**

2. On December 26, 2013, MISO filed public and non-public versions of the E&P Agreement (December 26 Filing) under section 205. The E&P Agreement states that the Parties will enter into negotiations towards a Generator Interconnection Agreement upon completion of the interconnection studies being conducted by MISO and provides for engineering design, permitting, and procurement of the long lead-time materials

---

<sup>1</sup> 16 U.S.C. 824d (2012) (section 205).

<sup>2</sup> *MISO*, Docket No. ER14-836-000 (Feb. 24, 2014) (delegated letter order) (February 2014 Letter Order).

<sup>3</sup> 18 C.F.R. § 388.112(d) (2013).

associated with interconnection in order to meet Courtenay's interconnection schedule.<sup>4</sup> The E&P Agreement also establishes that Courtenay is responsible for actual costs incurred by Otter Tail to perform the work.<sup>5</sup>

3. The non-public version of the E&P Agreement states dollar amounts of cost estimates for each task of the work and the total amount of the initial payment (Cost Information). In the public version of the E&P Agreement in the December 26 Filing, the Cost Information was withheld and labeled as critical energy infrastructure information (CEII).<sup>6</sup> The February 2014 Letter Order accepted the December 26 Filing, effective December 27, 2013, but found that the Cost Information did not meet the criteria for CEII. Thus, MISO was directed to file a revised version of the E&P Agreement that did not withhold the Cost Information as CEII.<sup>7</sup>

4. The instant filing includes a revised public version of the E&P Agreement in which the Cost Information is no longer marked as CEII, but is instead withheld and labeled as "privileged."<sup>8</sup> MISO states that the Parties assert that the Cost Information qualifies as privileged because it is confidential, financial information directly relating to Otter Tail's construction costs, which, if disclosed, could cause substantial harm to the company's competitive position.<sup>9</sup> MISO contends that the Cost Information is exempt from mandatory disclosure under Exemption No. 4 of the Freedom of Information Act (FOIA),<sup>10</sup> which applies to trade secrets and other confidential business information.

5. MISO asks the Commission to make the revised E&P Agreement effective as of December 27, 2013, consistent with the February 2014 Letter Order.

---

<sup>4</sup> MISO December 26 Filing, E&P Agreement at 3.

<sup>5</sup> *Id.*, E&P Agreement at 4.

<sup>6</sup> *Id.*, E&P Agreement at 4, 7.

<sup>7</sup> February 2014 Letter Order at 1.

<sup>8</sup> MISO March 7 Filing, E&P Agreement at 4, 7.

<sup>9</sup> *Id.*, Transmittal at 2.

<sup>10</sup> 5 U.S.C. § 552 (2012).

## II. Notice and Responsive Filing

6. Notice of MISO's March 7 Filing was published in the *Federal Register*, 79 Fed. Reg. 13,049 (2014), with interventions and protests due on or before March 20, 2014. None were received.

## IV. Commission Determination

7. We will accept the revised E&P Agreement for filing, to become effective on December 27, 2013, as requested. However, we give notice, pursuant to 18 C.F.R. § 388.112(d), that the Commission is considering the release of the Cost Information, and that MISO has 30 days from the date of this order to respond with a more detailed written explanation than that provided with the March 7 Filing to articulate more completely why the Cost Information therein should not be made public.

8. MISO contends that the Cost Information is exempt from mandatory disclosure under FOIA Exemption No. 4.<sup>11</sup> FOIA Exemption No. 4 protects from public disclosure trade secrets and commercial or financial information that is privileged or confidential. A person requesting that material be treated as privileged information must include in its filing a complete and reasoned justification for such treatment.<sup>12</sup> MISO states that Otter Tail's construction costs are financial information that, if disclosed, would cause substantial harm to the company's competitive position. However, MISO does not provide specific information in support of that claim.

### The Commission orders:

(A) MISO's March 7 Filing is hereby accepted effective December 27, 2013, as discussed in the body of this order.

(B) MISO is hereby given notice that the Commission is considering the release of the Cost Information that MISO seeks to protect from disclosure, and that

---

<sup>11</sup> 5 U.S.C. § 552(b)(4) (2012); *see also* 18 C.F.R. § 388.107(d) (2013).

<sup>12</sup> 18 C.F.R. § 388.112(b)(1) (2013); *see also* *Algonquin Gas Transmission, LLC*, 130 FERC ¶ 61,011, at P 48 (2010).

MISO has 30 days from the date of this order to file written comments to show cause why the information should not be made public, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.