

149 FERC ¶ 61,171
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Midcontinent Independent System
Operator, Inc.

Docket No. ER14-2154-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 28, 2014)

1. In this order, we approve a request by Midcontinent Independent System Operator, Inc. (MISO) to allow for regional cost sharing of the City of Rochester, Minnesota, acting by and through its Rochester Public Utility Board (RPU), for its ownership stake in the Hampton-Rochester-La Crosse transmission project, which is currently under development. We also accept proposed revisions to Attachment FF-4 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), effective December 1, 2014, as requested. We conditionally accept proposed revisions to Schedules 7, 8, and 9 to incorporate RPU's existing facilities in Pricing Zone 20 (the Southern Minnesota Municipal Power Agency (SMMPA) pricing zone), effective December 1, 2014, as requested, subject to MISO submitting on behalf of RPU a compliance filing within 15 days of the date of this order reflecting RPU's commitment to provide refunds.¹ We establish hearing and settlement judge procedures for the proposed revisions to Schedules 7, 8, and 9.

I. Background

2. MISO is a Commission-approved Regional Transmission Organization (RTO) that provides transmission service pursuant to rates, terms, and conditions of its Tariff. Among other things, MISO provides Point-to-Point Transmission Service and Network Integration Transmission Service under its Tariff. RPU is a member of SMMPA, a joint

¹ Alternatively, the effective date will be the date the Commission makes Schedules 7, 8, and 9 effective when it issues an order approving Schedules 7, 8, and 9 following the hearing and settlement judge procedures ordered below.

action agency. While SMMPA is a transmission-owning member of MISO, RPU has not transferred functional control of its existing transmission facilities to MISO and is therefore not currently a transmission-owning member. A portion of RPU's electric load is served by SMMPA through a partial requirements contract.

3. The Hampton-Rochester-La Crosse transmission project is a 345 kV transmission project and is one of several projects being developed by a consortium of utilities through CapX2020. CapX2020 is a joint initiative of 11 transmission-owning utilities in the Midwest that was formed to upgrade and expand the electric transmission grid. Besides RPU, other owners of the project include Xcel Energy Services Inc. (Xcel)/Northern States Power Company, Dairyland Power Cooperative, SMMPA, and WPPI Energy. RPU's ownership share of the project is nine percent.² The MISO Board of Directors approved the Hampton-Rochester-La Crosse transmission project through the 2008 MISO Transmission Expansion Plan (MTEP) as a Baseline Reliability Project.³

4. On June 9, 2014, MISO submitted the instant request. MISO proposes to allow cost sharing for RPU's ownership share in the Hampton-Rochester-La Crosse project as a MISO Transmission Owner, upon the project's completion. In its filing, MISO requests that the Commission confirm that RPU will be eligible for cost sharing upon becoming a MISO Transmission Owner. MISO states that RPU and several existing MISO Transmission Owners have participated collaboratively on the project, the project has been modeled with RPU as a part of the studies, and the project has been vetted through the MTEP process.⁴ MISO notes that RPU would be eligible for cost sharing only for the portion of the Hampton-Rochester-La Crosse project that MISO has approved for inclusion in Schedule 26.⁵

² See *Dairyland Power Coop.*, 142 FERC ¶ 61,100, at n.5 (2013).

³ As a Baseline Reliability Project approved in 2008, the Hampton-Rochester-La Crosse transmission project is subject to regional cost sharing approved in *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007) (RECB I Order), with 20 percent of approved project costs shared on a regional postage stamp basis, and the remaining 80 percent allocated on the basis of a Line Outage Distribution Factor analysis. The costs of Baseline Reliability Projects subject to regional cost sharing are recovered through rates calculated pursuant to Attachment GG and assessed pursuant to Schedule 26 of the Tariff.

⁴ MISO Transmittal Letter at 4.

⁵ *Id.* n.1.

5. In addition, MISO submits that the Commission has approved use of four criteria to determine whether a potential MISO Transmission Owner is eligible for cost sharing for its eligible ownership costs.⁶ First, the project must have been vetted and approved as an Appendix A Network Upgrade through the Attachment FF MTEP planning process provided for under the Tariff. Second, the entire load responsibility of the new Transmission Owner member that will be served under the Tariff was being served: (1) in a MISO pricing zone in existence at the time of the Network Upgrade approval; and (2) under the Tariff as Network Integration Transmission Service, or under Grandfathered Agreements with an existing Transmission Owner, at the time the Network Upgrade was approved under the MTEP planning process. Third, the new Transmission Owner member must convert all of its load that is under a Grandfathered Agreement to Network Integration Transmission Service upon integration as a Transmission Owner member. Fourth, the MISO Board of Directors approves the membership application of the new Transmission Owner member and the Transmission Owner transfers functional control of its contiguous transmission facilities to MISO (i.e., fully integrates) before any of the new Transmission Owner's costs are included in allocated costs under the Tariff.

6. With respect to the first criteria, MISO states that the project was approved and vetted as an Appendix A Network Upgrade project through the MTEP planning process. For the second criteria, MISO explains that RPU's load was being served under the Tariff as Network Integration Transmission Service at the time the Hampton-Rochester-La Crosse project was approved under the MTEP planning process; RPU's load was and is currently included in MISO planning models. For the third criteria, MISO states that RPU has no excluded load that is served through a Grandfathered Contract or Agreement; all RPU load is included in the MISO planning and cost allocation process. Finally, for the fourth criteria, MISO explains that once the MISO Board of Directors approves RPU's application as a new Transmission Owner member, and upon transfer of functional control of RPU's existing contiguous transmission facilities (i.e., full integration), RPU will recover its Network Upgrade revenue requirements allocated under the Attachment FF protocols and recoverable from existing pricing zone loads pursuant to the applicable Tariff recovery mechanism (i.e., Attachment O and Attachment GG).⁷

7. MISO proposes revisions to Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service), Schedule 8 (Non-Firm Point-to-Point Transmission Service), and Schedule 9 (Network Integration Transmission Service) of the Tariff to

⁶ *Id.* at 3-5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,203 (2011)).

⁷ *Id.* at 6-7.

incorporate RPU in Pricing Zone 20 (the SMMPA pricing zone), for the purpose of recovering the costs of RPU's existing facilities (i.e., its Attachment O revenue requirement), upon transferring control of the existing facilities to MISO and upon approval as a MISO Transmission Owner. MISO also proposes revisions to Attachment FF-4 of the Tariff to add RPU to the list of Transmission Owners integrating local planning resources into MISO's planning processes. MISO is not amending Attachment FF-1 to reflect RPU projects that will be excluded from MTEP since RPU does not have any projects to exclude.

II. Notice and Responsive Pleadings

8. Notice of MISO's filing was published in the *Federal Register*, 79 Fed. Reg. 34,521 (2014), with interventions and protests due on or before June 30, 2014.

9. RPU filed a timely motion to intervene. SMMPA filed a timely motion to intervene and comments. Xcel filed a motion to intervene out-of-time. On July 15, 2014 MISO filed a motion to answer and answers to SMMPA's comments. On July 17, 2014, Xcel filed a motion to answer and answer to SMMPA's comments.

A. Comments

10. SMMPA does not object to MISO's request for approval of RPU's eligibility for cost sharing for its participation in the cost-shared facilities of the Hampton-Rochester-La Crosse project. However, it is concerned about the accuracy and consequences of the proposed revisions to Schedules 7, 8, and 9 of the Tariff, which list RPU as a Transmission Owner in Zone 20, to which SMMPA also belongs. SMMPA states that the Hampton-Rochester-La Crosse project will be physically located in Zone 16; thus it is unclear why MISO proposes to add RPU as a Transmission Owner in Zone 20.⁸

11. SMMPA argues that MISO should be required to clarify which, if any, of RPU's existing facilities MISO proposes to include in Zone 20 for ratemaking purposes, and if so, the timing and manner in which the related costs would be included in Zone 20 rates. SMMPA contends that the inclusion of costs for existing RPU facilities in Zone 20 rates would raise questions regarding SMMPA's internal cost allocation among its members. SMMPA argues that any issues regarding allocation of Zone 20 revenues between SMMPA and other Transmission Owners should be the subject of a joint pricing zone agreement and would be beyond the scope of this proceeding. Consequently, SMMPA contends that the Commission should clarify that any order accepting MISO's proposed

⁸ SMMPA Protest at 3-4.

revisions to Schedules 7, 8, and 9 to the Tariff to add RPU as a Transmission Owner in Zone 20 should not determine any particular method for sharing Zone 20 revenues.⁹

B. Answers

12. MISO contends that SMMPA's concerns are premature because MISO has not determined that the non-cost shared portion of RPU's Hampton-Rochester-La Crosse project ownership belongs in Zone 20. MISO explains that its proposed revisions to Schedules 7, 8, and 9 of the Tariff relate to RPU's existing transmission facilities in Zone 20, not the Hampton-Rochester-La Crosse project facilities, which are not yet in service. With respect to SMMPA's question of whether RPU's existing transmission facilities should be represented in SMMPA pricing zone rates, MISO explains that it made its filing with the understanding that RPU currently owns existing transmission facilities that are eligible for cost recovery in the SMMPA zone. MISO notes that SMMPA does not appear to take issue with that fact.¹⁰

13. MISO agrees with SMMPA that SMMPA's concerns regarding revenue allocation between RPU, SMMPA, and SMMPA members should be addressed outside of this proceeding, in the context of a joint pricing zone agreement. It asserts that RPU's inclusion as a Zone 20 Transmission Owner does not automatically change the transmission rate for that zone, which does not occur until RPU becomes a Transmission Owner and populates its Attachment O. MISO states that because RPU and SMMPA appear not to have resolved important zonal rate issues to their mutual satisfaction, and to avoid delay in obtaining Commission approval of RPU's ability to cost-share its portion of the Hampton-Rochester-La Crosse facilities eligible for such cost sharing (which is the critical path for RPU's integration), if the Commission does not approve the proposed revisions to Schedules 7, 8 and 9, then the Commission should nonetheless approve the request for cost sharing.¹¹

14. Xcel also contends that SMMPA's concerns regarding the allocation of RPU's Hampton-Rochester-La Crosse project ownership costs are outside the scope of this proceeding, which lacks a request for any particular cost allocation by MISO. Xcel further argues that the geographic location is not relevant to the cost allocation, which is

⁹ *Id.* at 5.

¹⁰ MISO Answer at 3.

¹¹ *Id.* at 4.

based on the benefits of a project. According to Xcel, such a determination need not be made in this proceeding.¹²

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make RPU and SMMPA parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant Xcel's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of MISO and Xcel because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

17. We find the proposed request for cost-sharing of RPU facilities is just and reasonable.¹³

18. We also find MISO's proposed revisions to Attachment FF-4 to be just and reasonable, and will accept the Tariff revisions, effective December 1, 2014, as requested.

19. MISO's proposed revisions to Schedules 7, 8, and 9 of the Tariff raise issues of material fact 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.

20. Our preliminary analysis indicates that the proposed revisions to Schedules 7, 8, and 9 of the Tariff have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we will conditionally accept the proposed revisions to Schedules 7, 8, and 9 to the Tariff to reflect the proposed integration of RPU into MISO with respect to RPU's existing

¹² Xcel Answer at 3-4.

¹³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,203, at P 13 (2011) (Missouri River).

facilities, effective December 1, 2014, as requested, subject to MISO submitting on behalf of RPU a compliance filing within 15 days of the date of this order reflecting RPU's commitment to provide refunds as of December 1, 2014. We will set the proposed revisions to Schedules 7, 8, and 9 for hearing and settlement judge procedures. Alternatively, the effective date will be the date the Commission makes Schedules 7, 8, and 9 effective when it issues an order approving Schedules 7, 8, and 9 following the hearing and settlement judge procedures ordered below.¹⁴

21. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.¹⁵ 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.¹⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order 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.

The Commission orders:

(A) MISO's revisions to Attachment FF-4 are hereby accepted, effective December 1, 2014, as requested, as discussed in the body of this order.

(B) MISO's revisions to Schedules 7, 8, and 9 of the Tariff are hereby conditionally accepted for filing, effective December 1, 2014, as requested, subject to MISO submitting on behalf of RPU a compliance filing within fifteen (15) days of the

¹⁴ We note that in other instances the Commission has established a prospective effective date when non-public utilities have submitted their proposals for cost recovery for Commission review without committing to provide refunds. *See Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 2 (2012).

¹⁵ 18 C.F.R. § 385.603 (2014).

¹⁶ 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 days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/availjudge.asp>).

date of this order reflecting RPU's commitment to provide refunds as of December 1, 2014 or, alternatively the effective date will be the date the Commission makes Schedules 7, 8, and 9 effective when it issues an order approving Schedules 7, 8, and 9 following hearing and settlement judge procedures, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER14-2154-000 concerning the issue of which of RPU's existing facilities should be included in Zone 20 for ratemaking purposes. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D), (E), and (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), 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.

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

(F) 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.