

153 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER15-1480-001

ORDER ON REHEARING

(Issued November 9, 2015)

1. On April 9, 2015, Midcontinent Independent System Operator, Inc. submitted, on behalf of American Transmission Company LLC (ATCLLC), a Common Facilities Agreement (Agreement)¹ between ATCLLC and the City of Cedarburg, Wisconsin (City). On June 1, 2015, the Commission accepted the Agreement for filing, effective June 9, 2015, as requested.² On June 26, 2015, ATCLLC requested rehearing of the June 1 Order. In this order, we grant rehearing of the June 1 Order.

I. Background

2. On January 25, 2008, ATCLLC and the City entered into the Agreement, which provides for the allocation of the cost responsibility for operation and maintenance of the common facilities at a joint use substation and provides a method for either party to request and perform improvements or replacements of the common facilities owned by ATCLLC and the City. Although the Agreement was executed in 2008, ATCLLC stated that at the time of filing the Agreement, ATCLLC “ha[d] not yet been called on to perform services for which it has been compensated under the [A]greement.”³

¹ The Agreement is designated as Midcontinent Independent System Operator, Inc., FERC FPA Electric Tariff, Midwest ISO Agreements, SA 2774, ATC-City of Cedarburg Common Facilities Agreement, 31.0.0.

² See *American Transmission Co.*, Docket No. ER15-1480-000 (June 1, 2015) (unpublished letter order) (June 1 Order).

³ ATCLLC Transmittal Letter at 1.

3. In the June 1 Order, the Commission stated that, pursuant to section 35.3 of the Commission's regulations,⁴ ATCLLC "failed to timely file the Agreement." The June 1 Order further stated that "ATCLLC acknowledges that the Agreement was not filed with the Commission before service commenced as required by [the] Commission's policy." However, the June 1 Order recognized that "no time-value refund is due under the Agreement" because ATCLLC had not charged or collected any payment from the City for the service contemplated by the Agreement.

II. Request for Rehearing

4. In its request for rehearing, ATCLLC argues that the Commission erred in finding that ATCLLC was late in filing the Agreement because no service, jurisdictional or otherwise, had been provided by ATCLLC under the Agreement prior to filing. ATCLLC states that the only service that had been provided under the Agreement was by the City to ATCLLC, and the City is not a public utility. ATCLLC asserts that it filed the Agreement only because it "conceivably could in the future" receive payments under the Agreement. ATCLLC goes on to argue that, in the context of the Commission's notice requirements,⁵ because ATCLLC has not provided any service pursuant to the Agreement, such service has not "commenced" and therefore the Agreement was not late-filed.

5. ATCLLC further argues that the Commission was incorrect in stating in the June 1 Order that "ATCLLC acknowledges that the Agreement was not filed with the Commission before service commenced as required by [the] Commission's policy," because ATCLLC did not make such an acknowledgement in its filing.

III. Commission Determination

6. We grant rehearing. ATCLLC stated in its April 9, 2015 filing that ATCLLC had not yet been called on to perform services for which it has been compensated under the agreement. ATCLLC further states in its request for rehearing that it has not provided service, jurisdictional or otherwise, under the Agreement. Therefore, we agree with ATCLLC that, because no jurisdictional service had been rendered by ATCLLC under the Agreement prior to the filing of the Agreement on April 9, 2015, ATCLLC did not fail to timely file the Agreement in accordance with section 35.3 of the Commission's notice requirements. In addition, we clarify that ATCLLC did not acknowledge in its April 9, 2015 filing that the Agreement was late-filed.

⁴ 18 C.F.R. § 35.3 (2015).

⁵ *Id.*

The Commission orders:

ATCLLC's request for rehearing of the June 1 Order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.