

153 FERC ¶ 61,173
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 17, 2015

In Reply Refer To:
Otter Tail Power Company
Docket No. ER15-2671-000

Wright & Talisman, P.C.
Attention: Wendy B. Warren and
Patrick L. Morand
1200 G Street, NW, Suite 600
Washington, DC 20005

Dear Ms. Warren and Mr. Morand:

1. On September 18, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Otter Tail Power Company (Otter Tail)³ filed under Otter Tail Power's Control Area Services and Operations Tariff (Otter Tail Tariff) an executed Facilities Service Agreement (Agreement), between itself and Great River Energy (Great River),⁴ establishing a monthly network upgrade charge based on Option 1 pricing under Attachment FF of the MISO Open Access Transmission, Energy

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2015).

³ Otter Tail states that it is an investor-owned utility and transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO). Otter Tail Filing at 1. Otter Tail provides electricity to residential, industrial, farm, commercial, and municipal customers over a 70,000 square mile area within Minnesota, North Dakota, and South Dakota. *Id.*

⁴ Otter Tail states that Great River is a cooperative electric utility engaged in the business of generating, transmitting, and selling electric power and energy in the states of Minnesota, North Dakota, and Wisconsin. Great River owns and operates approximately 4,600 miles of transmission lines and is a transmission-owning member of MISO. *Id.*

and Operating Reserve Markets Tariff (MISO Tariff) (Otter Tail Filing). Otter Tail requests an effective date of August 26, 2015 for the Agreement. Waiver of the 60 day-prior notice requirement is granted pursuant to section 35.11 of the Commission's regulations,⁵ and we accept this filing subject to condition, as discussed below.

2. Otter Tail states that, in 2007, Great River submitted two requests to MISO for interconnection of its Spiritwood generation facility located in Stutsman County, North Dakota.⁶ The first request, designated as MISO Queue No. G645 (G645 Project) was for 50 MW.⁷ The second request, designated as MISO Queue No. G788 (G788 Project), was to increase the net output of the Spiritwood facility by 49 MW for a total of 99 MW.⁸

3. Otter Tail states that on June 4, 2008, MISO, Otter Tail, and Great River (collectively, the Parties) entered into a conforming Large Generator Interconnection Agreement (GIA) for the G645 Project, which was designated as Original Service Agreement No. 1972 and reported in MISO's electric quarterly report (Original GIA).⁹ Otter Tail states that the Parties explained in the Original GIA that MISO had not yet completed the necessary interconnection studies for the G788 Project, and that the generating facility was being restricted to 50 MW until the appropriate interconnection studies were completed for the entire 99 MW project.¹⁰ Otter Tail states that the Original GIA addressed the construction of interconnection facilities associated with the G645 Project only.¹¹

4. Otter Tail states that the Original GIA required, among other things, Otter Tail to install network upgrades to its Spiritwood substation.¹² Otter Tail states that, consistent with the MISO Tariff, Great River was directly assigned cost responsibility for the

⁵ 18 C.F.R. § 35.11 (2015).

⁶ Otter Tail Filing at 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* (citing Original GIA, Appendix A).

¹¹ *Id.*

¹² *Id.* (citing Original GIA, Appendix A § 3(b) & Exhibits A6 and A10).

network upgrades and that the cost of the network upgrades was approximately \$1,420,217 as reflected in the Original GIA.¹³ Otter Tail states that Great River provided the up-front funding for the network upgrades between 2008 and 2009, and that Otter Tail completed the work on or about June 21, 2009, but as a result of several delays the Spiritwood facility did not enter into commercial operation until November 1, 2014.¹⁴

5. Otter Tail states that the Original GIA, and the MISO Tariff in effect at that time, required Great River to fund the costs of the network upgrades, and provided for Otter Tail to reimburse Great River pursuant to one of several options.¹⁵ Otter Tail states that it elected Option 1 under Attachment FF of the MISO Tariff, which allowed Otter Tail to reimburse Great River 100 percent of the funding for the network upgrades that Great River provided, and then recover that amount, subject to a 50 percent-50 percent sharing of those costs, through a monthly charge established in a service agreement to be filed with the Commission (i.e., the Agreement).¹⁶ Further, Otter Tail states that its election of Option 1 under Attachment FF of the MISO Tariff applies only to the network upgrades associated with the G645 Project.¹⁷

6. Otter Tail states that, because it has elected Option 1, it will reimburse the amounts advanced by Great River for the network upgrades and recover those costs from Great River through a monthly charge.¹⁸ Otter Tail claims that the cost of the network upgrades as installed, pursuant to Otter Tail's final accounting, is \$1,457,372, an amount which Otter Tail states includes interest, but subtracts five years' worth of depreciation expense.¹⁹ Otter Tail explains that, because the network upgrades were placed into service five years prior to the generator achieving commercial operation, the costs of the facilities were reduced to account for depreciation.²⁰ Otter Tail states that the Agreement

¹³ *Id.* (citing Original GIA, Appendix A, Exhibit A10).

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3 (citing Original GIA § 11.4.1; MISO Tariff, Attachment FF § III.A.2.d).

¹⁶ *Id.* (citing MISO Tariff, Attachment FF, Section III.A.2.d(1)).

¹⁷ *Id.*

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.*

sets forth the terms and charges to recover the costs of the network upgrade from GRE, subject to the 50 percent-50 percent sharing.²¹

7. Otter Tail states that, consistent with the then-applicable Attachment FF of the MISO Tariff and Section 11.4.1 of the Original GIA, Great River's 50 percent network upgrade cost responsibility amounts to \$728,686.²² Otter Tail states that it developed a total revenue requirement of \$2,041,874 over the 15-year term of the Agreement, based on a fixed carrying charge of 24.59 percent used by Otter Tail under its 2010 Attachment GG to the MISO Tariff in effect at the time the facilities were completed for the G645 Project.²³ Otter Tail states that this total revenue requirement of \$2,041,874 was first divided by 15 to determine an annual revenue requirement, and then divided again by 12 to yield a monthly revenue requirement for the network upgrade charge of \$11,344.²⁴

8. Otter Tail states that, under the Agreement, Otter Tail is required to reimburse Great River for the amounts Great River advanced for the network upgrades, plus interest, within 10 days of receiving security in a form acceptable to Otter Tail.²⁵ Otter Tail states that Great River is required to pay Otter Tail the network upgrade charge no later than the 10th day of each month, beginning 30 days after the requested effective date of August 26, 2015, and to make such payments for the duration of the Agreement.²⁶

9. Otter Tail states that the Agreement comports with the Original GIA and the MISO Tariff that was in effect at the time the Parties executed the Original GIA, and therefore is just and reasonable. In order to support its use of Option 1, Otter Tail explains that the Commission recently affirmed that "it is MISO's Tariff as in effect at the time of the execution of the [GIA] . . . that controls in determining whether Option 1

²¹ *Id.*

²² *Id.* at 4-5.

²³ *Id.* at 5.

²⁴ *Id.*

²⁵ *Id.* The Agreement's security provision states that the irrevocable letter of credit is to be in the amount of \$2,041,874 from a bank of a credit rating of at least AA- and terms reasonably acceptable to Otter Tail. Otter Tail Filing, Attachment A at 3.

²⁶ Otter Tail Filing at 5.

pricing may be applied to network upgrades that were identified in [that GIA].”²⁷ Otter Tail states that the Original GIA was executed on June 4, 2008, and the MISO Tariff in effect at that time provided for Option 1.²⁸ Otter Tail further explains that the Agreement addresses only those network upgrades included in the Original GIA and does not address the additional network upgrades included in subsequent revisions of the Original GIA.²⁹

10. Otter Tail requests the Commission grant an effective date of August 26, 2015 for the Agreement. Pursuant to Section 35.11 of the Commission’s regulations, 18 C.F.R. § 35.11, Otter Tail also requests waiver of the Commission’s 60-day notice requirement set forth at 18 C.F.R. § 35.3. Otter Tail claims that waiver is appropriate because the Agreement is a service agreement under the applicable tariff and is being filed within 30 days of the proposed effective date.³⁰ Furthermore, Otter Tail claims that this effective date is necessary to allow Otter Tail to begin collecting the amounts to which it is entitled under Option 1.

11. Notice of the Otter Tail Filing was published in the *Federal Register*, 80 Fed. Reg. 57,599 (2015), with interventions and protests due on or before October 9, 2015. None was filed.

12. We find that the Agreement’s security provision is inconsistent with the MISO Tariff and Commission precedent. In the White Oak Rehearing Order, the Commission granted in part the rehearing request of NextEra Energy Resources, LLC, who argued, *inter alia*, that the Commission erred in accepting a security provision in the Facilities Service Agreement between Ameren Illinois Company (Ameren) and White Oak Energy LLC (White Oak), an affiliate of NextEra Energy Resources, LLC. The Commission explained that, “Neither the MISO Tariff nor the White Oak [GIA] requires or even

²⁷ *Id.* at 6 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,145, at P 31 (2015) (White Oak Rehearing Order)).

²⁸ *Id.* (citing White Oak Rehearing Order, 152 FERC ¶ 61,145 at P 31 (explaining that “the removal of Option 1 pricing from MISO’s Tariff does not preclude the use of Option 1 to recover costs of network upgrades that are the subject of agreements effective prior to March 22, 2011”) (citing *E.ON Climate & Renewables North America, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,076 (2011), *order on reh’g*, 142 FERC ¶ 61,048, at P 34 (2013))).

²⁹ *Id.*

³⁰ *Id.* (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84 (1993); 18 C.F.R. § 35.3(a)(2)).

contemplates the posting of security under [a Facilities Service Agreement] implementing Option 1 pricing.”³¹ The Commission reasoned that, under Option 1, the interconnection customer provides up-front funding of network upgrades, and that, upon completion of the network upgrades, assuming that White Oak had made all of the required milestone payments, the security requirement under Article 11.5 of the LGIA is reduced to zero.³² Accordingly, the Commission found that the security clause in Article 11.5 of the White Oak GIA governing payments owed for Ameren’s construction costs had been satisfied.³³ The Commission explained that because White Oak satisfied all of its requirements to post security under MISO’s then-current Tariff, White Oak should not be required to post new security under the White Oak Facilities Service Agreement.³⁴ Thus, the Commission required Ameren on compliance to remove the security provision, along with all associated references from the White Oak Facilities Service Agreement.

13. Similarly, in the instant proceeding, Great River satisfied the security requirement of the Original GIA and MISO’s then-current Tariff by providing up-front funding to Otter Tail for the network upgrades,³⁵ and thus Great River should not be obligated to post security again. Therefore, Otter Tail is directed to remove the security provision of the Agreement, along with all associated references, including those in the Agreement’s reimbursement and default provisions. As the removal of the security language from the Agreement’s reimbursement provision may affect the timing of when Great River will be reimbursed funds by Otter Tail,³⁶ the Commission further directs Otter Tail to include a reimbursement mechanism that is not triggered by the receipt of a letter of credit from Great River and is acceptable to Great River.

³¹ White Oak Rehearing Order, 152 FERC ¶ 61,145 at P 39.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *See* paragraph 4, *supra*.

³⁶ The Agreement’s reimbursement provision currently provides that, “Within ten (10) days of *receipt of the letter of credit further described in “Security” below*, [Otter Tail] shall reimburse, and [Great River] shall accept, funds in the amount of \$1,457,372, with such amount including all funds paid by [Great River] to [Otter Tail] for the Facilities and interest accumulated on that amount per the terms of the G645 GIA, as amended.” Otter Tail Filing, Attachment A at 2 (emphasis added).

14. We also find that the Agreement should be filed under the MISO Tariff rather than under the Otter Tail Tariff.³⁷ As Otter Tail explains, the Agreement is related to generator interconnection service. However, the terms and conditions of generator interconnection service are described under the MISO Tariff, not under the Otter Tail Tariff. Inasmuch as the Agreement implements a service under the MISO Tariff, it should be filed under the MISO Tariff.

15. Accordingly, as the Agreement contains a security provision in contravention of Commission precedent established in the White Oak Rehearing Order and inasmuch the Agreement should be filed under the MISO Tariff, we accept this Agreement subject to condition.³⁸ We direct Otter Tail within 90 days of this order to work with MISO, as the MISO Tariff administrator to refile the Agreement under the MISO Tariff removing the Agreement's security provision, along with all associated references.³⁹

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³⁷ See *Union Elec. Co.*, 151 FERC ¶ 61,168, at P 9 (2015).

³⁸ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. See *City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

³⁹ Accordingly, we reject the Otter Tail Tariff record filed in the instant proceeding.