

155 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System
Operator, Inc.

Docket No. ER16-936-000

ORDER ON FACILITIES CONSTRUCTION AGREEMENT

April 11, 2016

1. On February 12, 2016, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ a facilities construction agreement between MISO and Wolverine Power Supply Cooperative, Inc. (Wolverine) (Agreement). For the reasons discussed below, we will accept the Agreement, effective February 13, 2016, as requested.

I. Background

2. MISO states that the Agreement conforms to the *pro forma* facilities construction agreement and contains pending language filed with the Commission in Docket No. ER16-696-000.² MISO requests the Commission accept the Agreement subject to the outcome in Docket No. ER16-696-000, *et al.*

3. MISO requests that the Commission waive its sixty day notice requirement in section 35.3(a) of the Commission's regulations and make the Agreement effective as of February 13, 2016.³

¹ 16 U.S.C. § 824d (2012).

² MISO, Compliance Filing, Docket No. ER16-696-000 (filed Jan. 8, 2016).

³ 18 C.F.R. § 35.3(a) (2015).

II. Notice of Filing and Responsive Pleading

4. Notice of the Agreement was published in the *Federal Register*, 81 Fed. Reg. 8955 (2016), with interventions and protests due on or before March 4, 2016. Consumers Energy Company (Consumers) and Wolverine filed timely motions to intervene. Consumers also filed comments. On March 17, 2016, Wolverine filed an answer to Consumers' comments.

5. Consumers states that the network upgrades identified in the Agreement should not be paid for by transmission customers in the Michigan Joint Pricing Zone because Wolverine voluntarily elected, as part of the MISO study process, to modify the point of interconnection from the least costly to a more expensive option. Consumers notes that MISO and Wolverine also filed a corresponding generator interconnection agreement for the same location as the Agreement in Docket No. ER16-943-000 (February 16 GIA),⁴ and states that the February 16 GIA specifies that Wolverine is responsible for the additional cost of the selected option, but that the Agreement is not clear on this issue.⁵ Consumers requests that the Commission direct Wolverine to amend the Agreement to make clear that the cost of the network upgrades included within the Agreement will not be included in Wolverine's Attachment O, and not be shared with the rest of the Michigan Joint Pricing Zone, or at a minimum, that Wolverine commit on the record that it will not seek to share such costs with transmission customers of the Michigan Joint Pricing Zone. Additionally, Consumers states that the 69-to-138 kV conversion of the Gaylord to Advance line, which is identified on Original Sheet No. 35 of the Agreement, is not consistently identified in the February 16 GIA and the Agreement. Consumers argues that the February 16 GIA and the Agreement should be reconciled to be consistent.⁶

6. In its answer, Wolverine argues that Consumers appears to be conflating cost responsibility for the Specified Network Upgrades on Wolverine's system, which are the only network upgrades at issue in the Agreement, with cost responsibility for the entirely separate Network Upgrades on the Michigan Electric Transmission Company, LLC (METC) system, which are addressed only in the February 16 GIA. Wolverine states that the Specified Network Upgrades on the Wolverine system are subject to Attachment FF of the MISO Open Access Transmission, Energy and Operating Reserve

⁴ MISO, Generator Interconnection Agreement, Docket No. ER16-943-000 (filed Feb. 16, 2016).

⁵ Consumers Comments at n.2.

⁶ *Id.* at 2-4.

Markets Tariff (Tariff), which governs eligibility for cost reimbursement. Wolverine states that Attachment FF specifically provides that the interconnection customer is solely responsible for funding all network upgrades, unless it is interconnecting to the transmission system of American Transmission Company, International Transmission Company, or METC, which have alternative rules for reimbursement. As such, Wolverine states that the Specified Network Upgrades will be funded by Wolverine in its capacity as an interconnection customer and cannot be included in Attachment O for rate recovery from the Michigan Joint Pricing Zone customers, and thus there is no need to amend the Agreement. Finally, Wolverine states that to remove any doubt, it clarifies on the record that the costs of the Specified Network Upgrades set forth in Appendix A of the Agreement will be excluded from Attachment O for purposes of rate recovery through the Michigan Joint Pricing Zone. Additionally, Wolverine argues that Consumers' other arguments are not relevant to this proceeding.⁷

III. Discussion

A. Procedural matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer submitted by Wolverine because it has provided information that assisted us in our decision-making process.

B. Commission Determination

9. We will accept the Agreement for filing, subject to the outcome of Docket No. ER16-696-000, *et al.*, effective February 13, 2016, as requested.

10. We find that Wolverine's answer addresses Consumers' concern regarding recovery of Specified Network Upgrades under Attachment O of the MISO Tariff. Specifically, Wolverine states that the costs of the Specified Network Upgrades set forth in Appendix A of the Agreement will be excluded from Attachment O for purposes of rate recovery through the Michigan Joint Pricing Zone.

⁷ Wolverine Answer at 2-3.

11. We reject Consumers' remaining comments. We find that it is acceptable for the term "Network Upgrades" to be used to describe the seven items identified on Original Sheet No. 35 of the Agreement. As noted by Wolverine, the Agreement does not include the broader set of upgrades outlined in the February 16 GIA and instead only includes the specified Network Upgrades to be made on Wolverine's transmission system.⁸ Additionally, the use of "Network Upgrades" in the Agreement is not inconsistent with the definition of Network Upgrades in the MISO Tariff.⁹ We will not address the terms used in the February 16 GIA as that agreement is outside the scope of the current proceeding.

The Commission orders:

The Agreement is hereby accepted, subject to the outcome of Docket No. ER16-696-000, *et al.*, effective February 13, 2016, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating .

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸ *Id.* at 2 & n.3.

⁹ The MISO Tariff defines "Network Upgrades" as: "the additions, modifications, and upgrades to the Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission System or Distribution System, as applicable, to accommodate the interconnection of the Generating Facility(ies) to the Transmission System. Network Upgrades shall not include any HVDC Facility Upgrades." MISO, FERC Electric Tariff, Module A, § 1.N "Network Upgrades" (35.0.0).