UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER06-790-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 26, 2006)

1. In this order, we accept for filing the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to Schedules 16 and 17 of its Open Access Transmission and Energy Markets Tariff (TEMT), effective May 26, 2006, as requested. The proposed revisions will conform the language of the TEMT regarding exit fees for withdrawing Midwest ISO members to the language of the Midwest ISO Transmission Owners Agreement.[1]

I. Background

2. On September 24, 2002, the Midwest ISO filed Schedules 16 and 17 to its Open Access Transmission Tariff proposing cost recovery mechanisms for the provision of Financial Transmission Rights Administrative Service and Energy Market Support Administrative Service, respectively.[2] In addition to proposing charges for customers' participation in the Midwest ISO's markets, the Midwest ISO also proposed exit fees to recover deferred costs associated with each service from transmission owners who withdraw from the Midwest ISO. The deferred Schedule 16 and 17 costs that would be recovered in the exit fees include all undepreciated capital expenditures and unamortized deferred costs plus the net interest costs over the remaining life of the debt instruments used to finance the development of the service. The Commission accepted the proposed schedules for filing, suspended them, and made them effective November 25, 2002,

[1] Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation.

[2] The TEMT, which also includes Schedules 16 and 17, superseded the Open Access Transmission Tariff on April 1, 2005. *See Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169 (2005).

subject to refund and subject to the outcome of a paper hearing.[3] The Commission summarily ruled that the Schedule 16 and 17 exit fees did not violate Article V of the Midwest ISO Transmission Owners' Agreement,[4] but included the exit fees' methodology for allocating undepreciated and unamortized deferred costs to the withdrawing transmission owner among the issues to be addressed in the paper hearing. On September 16, 2004, the Commission issued an order in response to the information received pursuant to the paper hearing. With respect to the proposed exit fees, it rejected the proposed exit fee allocation methodology and instead required the Midwest ISO to negotiate the methodology for allocating undepreciated and unamortized deferred costs with a withdrawing transmission owner and file it with the Commission on a case-by-case basis.[5]

3. On October 7, 2005, as amended on January 10, 2006, LG&E Energy LLC, on behalf of its public utility operating company subsidiaries, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), filed an application under sections 203 and 205 of the Federal Power Act[6] to withdraw their transmission facilities from the Midwest ISO. LG&E/KU had officially given notice of their intent to withdraw in December 2004, consistent with the Midwest ISO Transmission Owners Agreement. By order issued March 17, 2006, the Commission conditionally approved the proposed withdrawal. As pertinent here, the Commission approved the methodology agreed upon by LG&E/KU and the Midwest ISO for calculating LG&E/KU's Schedule 16 and 17 exit fee obligation.[7]

II. Proposed Revisions to Schedules 16 and 17

4. On March 27, 2006, the Midwest ISO submitted proposed revisions to the exit fee provisions of Schedules 16 and 17 that would eliminate references to the specific costs to be recovered from withdrawing transmission owners, *i.e.*, the undepreciated and

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[3] *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003).

[4] Article V, section 2(B) of the Midwest ISO Transmission Owners Agreement provides, in pertinent part, that "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner."

[5] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,235 (2004), *reh'g denied*, 111 FERC ¶ 61,051 (2005).

[6] 16 U.S.C. §§ 824(b), (d) (2000), *as amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 983-84 (2005) (EPAct 2005).

[7] *Louisville Gas and Electric Company*, 114 FERC ¶ 61,282, *reh'g pending*, (2006) (March 17 Order).

unamortized deferred costs and associated financing costs. As revised, Schedules 16 and 17 would simply provide that the withdrawing transmission owner is responsible for all Schedule 16- and 17-related "financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal…based on the outcome of a negotiated or contested settlement accepted by the Commission."[8] The Midwest ISO also proposes to remove from the Table of Contents and the definitions sections of the TEMT the defined terms "Unrecovered Schedule 16 Costs" and "Unrecovered Schedule 17 Costs," in order to conform those sections to the revisions proposed to Schedules 16 and 17.

5. The Midwest ISO states that the proposed revisions provide complete consistency between the terms in the Midwest ISO Transmission Owners' Agreement and the terms in the TEMT related to financial obligations of withdrawing transmission owners. Once amended, the TEMT will use the same language as the Midwest ISO Transmission Owners' Agreement to define the financial obligation of transmission owners upon withdrawal. The Midwest ISO requests that the proposed revisions be accepted effective May 26, 2006.

III. Notice and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 18,313 (2006), with interventions and protests due on or before April 17, 2006.

7. Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC submitted a timely, joint motion to intervene. E.ON U.S. LLC (E.ON), formerly known as LG&E Energy LLC, on behalf of its operating companies, LG&E and KU, filed a timely motion to intervene and protest. The Midwest ISO submitted a motion for leave to answer and answer to E.ON's protest.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005),

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[8] TEMT, Schedules 16 & 17, Fourth Revised Sheet Nos. 994, 1002.

prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. <u>Analysis</u>

9. E.ON states in its protest that the proposed changes to Schedules 16 and 17 should be rejected because there is no need to revise the TEMT to reflect the language of the Midwest ISO Transmission Owners' Agreement. E.ON states that the language in the Midwest ISO Transmission Owners' Agreement is necessarily broad, as it imposes on a withdrawing entity the obligation to pay for the financial obligations incurred under several different schedules in the TEMT, including Schedules 16 and 17. It argues that the individual schedules should provide specific charges. E.ON asserts that the revised language, by creating ambiguity and uncertainty, will complicate future proceedings to determine the exit fee obligation of a departing transmission owner. It states that these revisions, if accepted, should only apply to withdrawals for which notice is given after the effective date of the revised tariff sheets.

10. In its answer to E.ON's protest, the Midwest ISO states that the Schedule 16 and 17 exit fee methodology agreed upon by LG&E/KU and the Midwest ISO, and approved by the Commission in the March 17 Order, is consistent with the proposed revisions. It adds that there is no merit to E.ON's claim that the proposed revisions to Schedules 16 and 17 fail to provide adequate notice of the specific financial obligation that would be placed upon a withdrawing transmission owner. The Midwest ISO argues that the proposed revisions are consistent with the Midwest ISO Transmission Owners' Agreement, as it has been accepted by the Commission. It also states that the Commission orders on the originally-proposed Schedule 16 and 17 exit fee provisions explicitly contemplated that the exit fee obligation would not be formulaic, but rather would be negotiated between the Midwest ISO and the withdrawing transmission owner and filed with the Commission on a case-by-case basis.

11. The Commission disagrees with E.ON's arguments that the Schedule 16 and 17 exit fee provisions should not use the language from the Midwest ISO Transmission Owners' Agreement related to obligations of withdrawing Midwest ISO transmission owners. The Midwest ISO Transmission Owners' Agreement permits transmission owners to withdraw from the Midwest ISO as long as they, among other things, provide proper notice to the Midwest ISO, obtain necessary regulatory approvals, and satisfy their obligations incurred prior to withdrawal. This language is specific enough to guide transmission owners through the withdrawal process, but not so prescriptive that the circumstances of each withdrawal cannot be fully considered and accounted for. Moreover, as the Midwest ISO acknowledges in its answer, the Schedule 16 and 17 exit fee provisions, as revised, are consistent with the exit fee methodology agreed upon by LG&E/KU and the Midwest ISO and approved in the March 17 Order. They do not

remove from Schedules 16 and 17 or from the Midwest ISO Transmission Owners' Agreement the withdrawing owner's obligation to pay an exit fee. Rather, these revisions continue to require the Midwest ISO to calculate and file with the Commission, on a case-by-case basis, a just and reasonable exit fee applicable to a withdrawing transmission owner, considering all factors relevant to such determination. The Commission will continue to review the exit fee calculation methodology to determine whether a negotiated exit fee is just and reasonable, as it did with respect to LG&E/KU's proposed withdrawal. We therefore find that the proposed revisions are just and reasonable.

12. Accordingly, the Commission accepts the Midwest ISO's proposed revisions to Schedules 16 and 17 of the TEMT, effective May 26, 2006, as requested. Because the proposed revisions do not affect LG&E/KU, we deny E.ON's request to make the tariff revisions effective only for withdrawals for which notice is given after the proposed effective date.

The Commission orders:

The Midwest ISO's tariff revisions are hereby accepted, effective May 26, 2006, as described in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.