

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

MidAmerican Energy Company

Docket Nos. ER05-1235-002
ER06-847-001

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued September 1, 2006)

1. In this order, we conditionally accept a compliance filing by MidAmerican Energy Company (MidAmerican) subject to MidAmerican filing another compliance filing, as more fully discussed below. MidAmerican's compliance filing contains new provisions filed in response to the Commission's order dated June 15, 2006¹ and new provisions filed in response to Order No. 676.²

Background

A. Attachment K filings and orders

2. On July 22, 2005, MidAmerican filed to add Attachment K to its Open Access Transmission Tariff (OATT). In this filing, MidAmerican proposed to contract with a Transmission Service Coordinator (TSC) that would administer various OATT-related functions with respect to transmission service provided over MidAmerican's transmission system.³ Generally, MidAmerican's filing proposed that the TSC would assume responsibility for, among other things: (1) evaluation and approval of all transmission service requests; (2) calculation of total transfer capability and available transmission capacity not otherwise calculated by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO); (3) operation and administration of MidAmerican's Open

¹ *MidAmerican Energy Company*, 115 FERC ¶ 61,326 (2006) (June 15 Order).

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, FERC Stats. & Regs. ¶ 31,216 (2003).

³ The history of this proceeding is discussed in more detail in the June 15 Order.

Access Same-Time Information System (OASIS); (4) evaluation, processing and approval of all generation interconnection requests, and performance and/or oversight of related interconnection studies;⁴ and (5) coordination of transmission planning.

3. In the Commission's order dated December 16, 2005,⁵ the Commission conditionally accepted MidAmerican's proposal subject to MidAmerican making certain modifications to Attachment K to its OATT to address concerns regarding the TSC's independence and MidAmerican's compliance with an earlier audit report finding that MidAmerican did not fully comply with Commission rules, regulations, and requirements concerning its transmission service, and directing MidAmerican to enact the report's recommended corrective actions, including some that would be satisfied by the TSC.⁶ Additionally, the Commission required MidAmerican file the final agreement with the TSC (TSC Agreement) with the Commission after it had selected the TSC. On April 7, 2006, MidAmerican filed under Federal Power Act (FPA) section 205⁷ an executed TSC Agreement with TranServ International, Inc. (TranServ) and a compliance filing addressing the modifications to Attachment K to MidAmerican's OATT that were required by the December 16 Order.

4. In the June 15 Order, the Commission conditionally accepted the TSC Agreement and compliance filing subject to the filing of the compliance filing at issue here.

B. Order No. 676

5. In Order No. 676, the Commission required public utilities to incorporate by reference the OASIS-related standards established by the Wholesale Electric Quadrant of the North American Energy Standards Board, effective July 1, 2006. The Commission also stated that public utilities could include these Order No. 676-related revisions when they made their next OATT-related filing prior to July 1, 2006. Additionally, the Commission stated in Order No. 676 that to the extent that a public utility's OASIS

⁴ As an independent entity, the TSC would administer generator requests to interconnect with the MidAmerican system. The TSC would be responsible for implementing and applying MidAmerican's generator interconnection procedures in accordance with MidAmerican's OATT, queuing all such requests, performing studies necessary for such requests, and providing all notices related to such requests.

⁵ *MidAmerican Energy Company*, 113 FERC ¶ 61,274 (2005) (December 16 Order).

⁶ *See Id.* at P 4 n. 6, *citing to MidAmerican Energy Company*, 112 FERC ¶ 61,346 (2005).

⁷ 16 U.S.C. § 824d (2000).

obligations are administered by an Independent System Operator (ISO) or Regional Transmission Organization (RTO) and are not covered in its OATT, the public utility will not need to modify its OATT to meet these particular requirements.⁸

C. Instant Filing

6. On July 17, 2006, MidAmerican filed a compliance filing both in response to Order No. 676 to incorporate the standards adopted in Order No. 676, and in response to the June 15 Order, which required MidAmerican to make certain changes to its TSC Agreement and to Attachment K of its OATT to track Commission precedent and to ensure the TSC's independence.

Notice and Responsive Pleadings

7. Notice of MidAmerican's filing was published in the *Federal Register*, 71 Fed. Reg. 43126 (2006), with protests and interventions due on or before August 7, 2006. Midwest ISO filed a motion to intervene.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motion to intervene serves to make Midwest ISO a party to this proceeding.

Order No. 676 Compliance Filing

A. Proposal

9. In its July 17 filing, MidAmerican also filed a proposed Attachment L to its OATT in compliance with Order No. 676, to adopt the Order No. 676-required OASIS standards, by reference with a proposed effective date of July 1, 2006. MidAmerican included in Attachment L the specific language required by the Commission and also noted that Midwest ISO is involved in various OASIS administrative functions.

B. Commission Determination

10. We accept MidAmerican's Order No. 676-related compliance filing but remind MidAmerican that Attachment L, which contains the standards for OASIS administration,

⁸ Order No. 676 at P 1,20,100.

⁹ 18 C.F.R. § 385.214 (2006).

must be further revised when the TSC begins operation, because the TSC will be performing OASIS administration functions for MidAmerican pursuant to Attachment K. Since two entities (*i.e.*, Midwest ISO and the TSC) will each be performing OASIS administration functions for transactions over MidAmerican's transmission system, when MidAmerican makes the required revisions to Attachment L, MidAmerican should further clarify how OASIS administration for transactions over its system will be split between the two entities. Specifically, MidAmerican should reference Schedule F of the Mid-Continent Area Power Pool (MAPP) Restated Agreement and Attachment K of its OATT.

11. We will permit a July 1, 2006 effective date because Order No. 676 has already established July 1, 2006, as the effective date.

Compliance Filing to Commission's June 15 Order

A. Proposal

12. The Commission required MidAmerican to make certain modifications to the TSC Agreement and Attachment K to the MidAmerican OATT. Of special note, MidAmerican was required to:

- modify the provisions regarding the supplying of data to the TSC to address the Commission's concerns expressed in *Entergy Services, Inc.*¹⁰ that a TSC have access to all information necessary to perform its functions;
- modify section 2.2 of Attachment K and section 13.1 of the TSC Agreement to require the TSC to inform the Commission concerning anything that could impair the independence of the TSC;¹¹
- modify the definition of Independent Contractor in section 2.5 of Addendum B to Attachment K;¹² and

¹⁰ *Entergy Services, Inc.*, 115 FERC ¶ 61,095 at P 107 (2006) (*Entergy*) ("[i]n order for the [transmission service coordinator] to perform its functions in an independent, transparent and reliable manner, it must have unfettered access to all information necessary to perform the functions it has undertaken under contract. Therefore, we will require Entergy to provide explicitly that the [transmission service coordinator] will have full access to any data it requests in performing its functions in the executed [transmission service coordinator] Agreement"); *see also* June 15 Order at P 40-42.

¹¹ *Id.* at P 45; MidAmerican transmittal at 6.

¹² June 15 Order at P 55.

- state in the TSC Agreement that MidAmerican would file with the Commission for approval prior to changing the scope of the work done by the TSC under section 20 or any actions under sections 17 and 18 which permit MidAmerican to stop work performed by TranServ and to carry out work not done by TranServ.¹³

13. MidAmerican states that it made these changes, with one exception relating to section 8.2 of the TSC Agreement, which concerns the requirement to supply data to the TSC. As will be discussed below, MidAmerican states that it did not reference another section of the TSC Agreement, as required by the June 15 Order, because it thought the reference may have been in error.

14. Additionally, MidAmerican states that its right to stop TranServ's work or to carry out that work itself was designed to create flexibility to ensure prompt compliance with OATT and North American Electric Reliability Council (NERC) obligations under limited circumstances. MidAmerican states that the required changes to sections 17 and 18 unnecessarily eliminated a NERC compliance and cost savings provision that was designed to benefit transmission customers. MidAmerican nevertheless accepts the Commission's required change, but urges the Commission to ensure that, if it should become necessary, the Commission will take prompt and, if necessary, emergency action if requested by MidAmerican to promote compliance and cost management.

B. Commission Determination

15. The Commission conditionally accepts MidAmerican's June 15 Order-related compliance filing, subject to MidAmerican filing another compliance filing to address concerns described below. Additionally, the Commission provides MidAmerican with guidance with respect to the modifications to sections 17 and 18 of the TSC Agreement.

16. With respect to the modification to the supplying of data provisions, MidAmerican is correct that the reference in the June 15 Order was incorrect. The correct reference is not section 7.2,¹⁴ but section 7.3, Dispute Resolution by Contract Managers, as modified by the June 15 Order. MidAmerican is required to make a compliance filing, within 30 days of the date of this order, that references section 7.3 in section 8.2, Supply of Data.

17. While MidAmerican states in its transmittal letter that it made the modifications required to section 2.2 of Attachment K and section 13.1 of the TSC Agreement pertaining to the reporting requirements of the TSC, the Commission notes that MidAmerican did not submit any revised tariff pages containing revised section 2.2. MidAmerican is required to submit revised tariff sheets containing revised section 2.2, as directed by the June 15 Order, within 30 days of the date of this order.

¹³ *Id.* at P 44.

¹⁴ *See Id.* at P 41.

18. The Commission required MidAmerican to revise the definition of Independent Contractor in section 2.5 of Addendum B to Attachment K of the OATT to exclude MidAmerican and its affiliates, any transmission customer and any other market participant so that these entities would be unable to perform system impact studies under section 7.1.2 of Addendum B of Attachment K. MidAmerican's modifications are insufficient because the definition of Independent Contractor excludes MidAmerican and its affiliates, any transmission customer and any other market participant, *except when* performing system impact studies. In other words, when section 2.5 and section 7.1.2 of Addendum B are read together, MidAmerican and its affiliates could perform system impact studies, which the Commission explicitly sought to prevent,¹⁵ as compromising the TSC's independence. Therefore, MidAmerican is required to replace the definition of Independent Contractor in section 2.5 of Addendum B with the following definition:

Independent Contractor shall mean a third party that is qualified to perform transmission system studies on behalf of the TSC. An Independent Contractor cannot be the Transmission Provider, an affiliate of the Transmission Provider, any transmission customer, or any other market participant.

19. Finally, with respect to the modifications related to sections 17 and 18, which require MidAmerican to file with the Commission for approval prior to stopping TranServ from working and carrying out the work itself,¹⁶ the Commission notes that the modifications were required in the June 15 Order because MidAmerican did not support

¹⁵ *Id.* at P 4 ("the Commission conditionally accepted MidAmerican's proposal subject to MidAmerican making certain modifications to . . . address concerns regarding the TSC's independence These modifications included, among other things, having the TSC perform the system impact studies from the date it commences service"), and P 55 (referring to "completely exclud[ing] MidAmerican and its affiliates, any transmission customer, and any other market participant").

¹⁶ Section 17 states that if the TSC fails to provide the services required under the TSC Agreement or fails to correct problems with the services, MidAmerican may order the TSC to stop the services required by the TSC Agreement, or any portion thereof, until the TSC has taken all necessary corrective and remedial action. If MidAmerican so directs, the TSC may not seek an extension of time to take corrective or remedial action or reimbursement of any costs MidAmerican may have incurred to take corrective or remedial action.

Section 18 states that if the TSC defaults or neglects to carry out the services required by the TSC Agreement and fails within a seven day period after issuance of written notice from MidAmerican to correct such default or neglect, MidAmerican itself may correct such deficiencies without prejudice to other remedies available to MidAmerican. MidAmerican may assess the TSC for the cost of correcting the deficiency.

the provisions when it filed the executed TSC Agreement. Therefore, the potential impact of these provisions on the scope of the work performed by the TSC and on the TSC's independence was not clear. However, the Commission takes seriously issues of reliability and compliance with NERC obligations. If MidAmerican is concerned that the modifications related to sections 17 and 18 requiring prior Commission approval, as expressed in the June 15 Order, could hinder MidAmerican's compliance with NERC obligations,¹⁷ we encourage MidAmerican to propose appropriate revisions in an FPA section 205 proceeding related to sections 17 and 18 that would address the Commission's concerns, as expressed above and in the June 15 Order, but still allow MidAmerican to maintain compliance with NERC obligations. If MidAmerican were to invoke sections 17 or 18, it must, of course, adequately support any decision to stop TranServ's work and to carry out the work itself.

The Commission orders:

(A) MidAmerican's compliance filing is hereby conditionally accepted, as discussed in the body of this order.

(B) MidAmerican is hereby required to make additional compliance filings within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁷ We note that, in its compliance filing, MidAmerican states that "the Commission's concern about independence as to [Sections 17 and 18] has unnecessarily eliminated a NERC compliance and cost savings provision that was designed to benefit transmission customers" (July 17 compliance filing at 6), but still does not explain how these provisions provide cost savings to customers.