

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 26, 2006

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket No. ER06-1418-000

Midwest Independent Transmission System Operator, Inc.
Attn: Lori A. Spence, Esq., Associate General Counsel
701 City Center Drive
Carmel, IN 46032

Dear Ms. Spence:

1. On August 28, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to Attachment R (Small Generator Interconnection Procedures and Small Generator Interconnection Agreement) of its Open Access Transmission and Energy Markets Tariff (TEMT or tariff) to conform with the tariff revisions conditionally accepted for Attachment X (Large Generator Interconnection Procedures and Large Generator Interconnection Agreement) of the TEMT in the Commission's February 3, 2006 Order in Docket No. ER06-18-000.¹ As discussed below, the Commission will accept the proposed tariff revisions, to become effective February 5, 2006, as requested, subject to the outcome of the proceedings in Docket Nos. ER06-18-000 and ER06-192-000.

2. In the August 28 filing, the Midwest ISO proposed tariff revisions to make the terms and conditions that apply to large generators under Attachment X, which were conditionally accepted in the February 3 Order, applicable to small generators under Attachment R. Specifically, the Midwest ISO has revised Attachment R to provide reference to Attachment FF (Transmission Expansion Planning Protocol) of the TEMT in Article 5.2.1 (Repayment of Amounts Advanced for Network Upgrades) and has

¹ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (2006), *reh'g pending* (February 3 Order).

renumbered the Articles to add a new Article 5.2.1.1. The Midwest ISO has deleted the original Article 5.2.1.1 of Attachment R, which contained the repayment provisions that are now found in Attachment FF and Attachment GG (Network Upgrade Charge) of the TEMT. The Midwest ISO requests the Commission accept its proposed revisions effective February 5, 2006, consistent with the effective date of the tariff revisions conditionally accepted in the February 3 Order.

3. Notice of the August 28 filing was published in the *Federal Register*, 71 Fed. Reg. 53,436 (2006), with interventions and protests due on or before September 18, 2006. Timely motions to intervene and comments were filed by Consumers Energy Company (Consumers) and the Midwest Stand-Alone Transmission Companies (MSATs).²

4. In its comments, Consumers states that although it is not requesting that the Commission reject the August 28 filing, it has concerns about Attachment FF, which is proposed to be incorporated into Attachment R. Consumers is concerned about the impact the 50 percent crediting mechanism of Attachment FF has on the Safe Harbor tax rule under the Internal Revenue Service's Revised Procedure 2005-35. Consumers states that because under Attachment FF generators only receive 50 percent back of the advances they make to the transmission owning utility, the Safe Harbor may no longer apply and the unreimbursed balance may be construed as taxable income. Consumers states that its comments are intended to serve as a notice to the Midwest ISO and the stakeholders that it believes that certain tax consequences should be brought to the attention of the Planning Advisory Committee and the Organization of MISO States (OMS) as an "unintended consequence."³

5. In their comments, the MSATs state that ATCLLC is considering filing revisions to the cost allocation provisions in Attachment FF to permit ATCLLC to continue its previous practice of reimbursing Interconnection Customers for 100 percent of the

² For the purposes of their filing, the MSATs include: American Transmission Company LLC (ATCLLC), International Transmission Company d/b/a ITC*Transmission*, and Michigan Electric Transmission Company, LLC.

³ Consumers references paragraph 130 of the February 3 Order. That paragraph dealt with a different issue than the one raised by Consumers in this proceeding. However, paragraph 130 does state: "[W]e note that language in Attachment FF, commits the Transmission Provider and the Tariff Working Group to review designations of cost responsibility for unintended consequences and to report such consequences to the Planning Advisory Committee and the OMS." February 3 Order, 114 FERC ¶ 61,106, at P 130.

amounts received from them under the terms of interconnection agreements for the construction of Network Upgrades and Transmission Owner Interconnection Facilities. The MSATs ask that, to the extent the proposed tariff revisions incorporate Attachment FF into Attachment R, the Commission ensure that the existing rights of any transmission owner to file alternative reimbursement provisions are not prejudiced.

6. 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.

7. We will accept for filing the Midwest ISO's proposed revisions to Attachment R of its TEMT, effective February 5, 2006, as requested. However, the Commission will accept the proposed tariff revisions subject to the outcome of the proceedings in Docket Nos. ER06-18-000 and ER06-192-000. Attachment FF is currently pending rehearing and compliance in Docket No. ER06-18-000; accordingly, the changes incorporated in Attachment R must be dependent on the outcome of that proceeding. Moreover, the tariff sheets accepted herein supersede tariff sheets proposed in Docket No. ER06-192-000, in which the Midwest ISO requested variations from the *pro forma* Small Generator Interconnection Procedures and Small Generator Interconnection Agreement that the Commission adopted in Order No. 2006.⁴ Docket No. ER06-192-000 is currently pending action by the Commission; accordingly, the changes incorporated into Attachment R must be dependent on the outcome of that proceeding as well.

8. In response to the MSATs, we do not believe that the proposed tariff revisions will prejudice any existing right of the Transmission Owners under the TEMT or the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation (Midwest ISO TO Agreement), or any existing right available under Commission precedent to make a filing to propose alternative reimbursement provisions different than those set forth in Attachment FF.

9. In response to Consumers' concerns, we find that any specific comments regarding tax concerns are beyond the scope of the August 28 filing. However, Consumers' comments should serve as adequate notice of the potential tax issue, and we

⁴ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed. Reg. 34,189 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005), *order on reh'g*, Order No. 2006-A, 70 Fed. Reg. 71,760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification*, Order No. 2006-B, 71 Fed. Reg. 42,587 (July 27, 2006), FERC Stats. & Regs. ¶ 31,221 (2006).

expect the Midwest ISO to comply with Attachment FF and propose any necessary revisions.

By direction of the Commission.

Magalie R. Salas,
Secretary.