

111 FERC ¶ 61,350
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Transmission Company LLC	Docket Nos. ER05-237-001 ER05-238-001 ER05-239-001 ER05-240-002 ER05-241-001 ER05-262-001
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Midwest Independent Transmission System Operator, Inc.	Docket No. EL05-70-000
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ORDER ON REHEARING AND DIRECTING FILING

(Issued June 2, 2005)

1. This order grants a request for rehearing by American Transmission Company LLC (ATCLLC) of the unpublished letter order issued pursuant to delegated authority in this proceeding on January 10, 2005 (Letter Order) and directs the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to make a filing in Docket No. EL05-70-000. This order benefits customers by avoiding imposing unnecessary responsibilities on a regional transmission organization (RTO) and assuring that the terms and conditions of jurisdictional service are just and reasonable.

Background

2. In a letter order issued August 12, 2004, the Commission conditionally accepted a filing made by Ameren Services Company (Ameren), a transmission-owning member of the Midwest ISO, an RTO, to extend the term of a system-to-system interconnection agreement with Southwestern Power Administration (SWPA).¹ The Commission found that the agreement contained provisions concerning the coordinated operation of

¹ See *Ameren Services Co.*, 108 FERC ¶61,189 (2004) (*Ameren*).

transmission facilities under the Midwest ISO's control and that the transmission and interconnection issues contained in the agreement were not properly the subject of a bilateral agreement solely between Ameren and SWPA. Accordingly, the Commission conditionally accepted the agreement, subject to Ameren filing a revised agreement with the Midwest ISO as a signatory. The Commission stated that the revised agreement should reflect that the Midwest ISO has operational authority over the Ameren transmission system, including the interconnection with SWPA, and provide that all future amendments to the agreement will be subject to negotiation and approval by all three parties.

3. On November 18 and November 24, 2004, ATCLLC filed Distribution-Transmission Interconnection Agreements (Agreements) with six municipal distribution systems as service agreements under its open access transmission tariff (OATT).² The Letter Order noted that the Agreements contain provisions for the coordinated operation of transmission facilities under the Midwest ISO's control, and, consistent with *Ameren*, conditionally accepted the Agreements for filing, and directed ATCLLC to file revised agreements that include the Midwest ISO as a signatory and provide that all future amendments to the Agreements will be subject to negotiation and approval by all three parties.

4. On February 9, 2005, ATCLLC filed a request for rehearing. ATCLLC argues that the precedent cited in the Letter Order involved an interconnection agreement between two transmission facilities operators that established protocols that affected the operation and reliability of the two interconnected transmission systems but did not mention, much less provide deference to, the Midwest ISO's authority for operational control over the transmission facilities of one of the contracting parties. In contrast, ATCLLC states, the Agreements are for local distribution-transmission interconnection and respect the Midwest ISO's authorities. ATCLLC argues that the reasons for RTO involvement in agreements for transmission-transmission interconnection do not pertain to the relationship embodied in a distribution-transmission interconnection agreement where either: (1) the performance of obligations does not significantly impact the transmission system; or (2) the RTO's governing agreements with its transmission owners, as between the Midwest ISO and its transmission owners, establish that the transmission owner will manage operational and contractual relationships with distribution systems. ATCLLC states that the Midwest ISO's operational and legal authorities over other entities involved in the operation and administration of the

² The municipal systems are: Mount Horeb Electrical Utility; Mazomanie Electric Utility; Wisconsin Dells Electric Utility; Pioneer Power and Light; Stoughton Municipal Utilities; and Prairie du Sac Utilities.

transmission system are clearly established in the Midwest ISO Agreement,³ the Midwest ISO Transmission and Energy Markets Tariff (TEMT), and accompanying schedules and protocols, and that the Agreements expressly recognize the applicability of these Midwest ISO responsibilities and authorities. Finally, ATCLLC states that the Midwest ISO agrees that its insertion into these types of agreements is unnecessary.

5. Also on February 9, 2005, the Midwest ISO filed a motion for late intervention and comments in support of ATCLLC's request for rehearing. In support of its untimely filing, the Midwest ISO states that it "was unaware that it would be called upon by the Commission to accept a new set of responsibilities as a result of these [Agreements]."⁴ The Midwest ISO also explains that it does not consider it necessary or desirable to be involved directly as a party in this type of agreement. The Midwest ISO acknowledges that, given its role over system reliability, it must be made aware of all anticipated uses, including interconnections, of the transmission system and insists on notification, awareness, and coordination. It states that the existing responsibilities and authorities of the Midwest ISO and its transmission owners established in other agreements and tariff rules provide the Midwest ISO the ability to obtain such information and coordination. Therefore, it maintains, its full participation in the Agreements and other, similar distribution-transmission agreements is unnecessary, and, moreover, would be administratively overwhelming for the Midwest ISO and its staff. Finally, the Midwest ISO states that its position with respect to distribution-transmission interconnection agreements in no way affects its involvement in transmission-transmission, or generation-transmission, interconnection agreements, which is critical to its ability to operate the transmission grid in a safe and reliable manner.

Discussion

6. Rule 214(d) of the Commission's Rules of Practice and Procedure⁵ requires that entities seeking late intervention in a Commission proceeding must demonstrate good cause warranting such action. And, where intervention is sought after issuance of a dispositive Commission order, we have found that the movant bears a higher burden.⁶ In

³ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.

⁴ Midwest ISO Motion to Intervene at 3.

⁵ 18 C.F.R. § 385.214(d) (2004).

⁶ See, e.g., *Pacific Gas and Electric Co.*, 100 FERC ¶ 61,097 at P 5 (2002).

this case, we find that the Midwest ISO has demonstrated good cause for failing to intervene earlier, and has provided information that assisted us in our decision-making process, so we will grant its untimely intervention.

7. We will grant rehearing. Upon further reflection, we find that the Agreements respect the Midwest ISO's operational authority over its transmission system.⁷ Therefore, given the administrative burden that the Midwest ISO states would be involved in its participating directly in the negotiation and administration of numerous distribution-transmission interconnection agreements in its footprint, and the limited impact of distribution-transmission interconnection agreements on the transmission system, we will not require that the Midwest ISO become a party to the Agreements. Nor will we require that the Midwest ISO, in the future, become a party as a matter of course to new or amended distribution-transmission interconnection agreements. Rather, we will rely on transmission owners to keep the Midwest ISO informed of all planned uses of its transmission system, including distribution-transmission interconnections, and in conjunction with the Midwest ISO ensure coordination of distribution-transmission interconnections with the Midwest ISO's operation and planning of the transmission system, in accordance with the Midwest ISO Agreement and the Midwest ISO TEMT.⁸ If the Midwest ISO believes that an agreement or any changes to an agreement negatively affect its transmission system, and cannot resolve the matter directly with the parties to the agreement, it may seek action from the Commission through an appropriate filing.

8. Consistent with the determination in Docket No. EL05-70-000 with respect to rate schedule designations, we will require that the agreements here⁹ be designated within the

⁷ For example, section 2.4.1 provides that the parties shall maintain interconnection points in accordance with applicable North American Electric Reliability Council and Midwest ISO standards, and section 2.6 requires the interconnection customer to comply in all respects with orders and directives of the transmission owner and the Midwest ISO that are issued in accordance with good utility practice, with applicable tariffs and laws, and necessary to maintain the integrity of the transmission system.

⁸ Article 4, section II.A of the Midwest ISO Agreement states that each transmission owner shall provide such information to the Midwest ISO as is necessary for the Midwest ISO to perform its obligations under that agreement and its transmission tariff.

⁹16 U.S.C. § 824d(e) (2000).

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Midwest ISO's TEMT.¹⁰ This will ensure that these Agreements are readily accessible to interested parties.¹¹

The Commission orders:

(A) The Midwest ISO's motion for late intervention is hereby granted.

(B) ATCLLC's request for rehearing is hereby granted.

(C) The Midwest ISO is hereby directed to file a response, within 30 days of the date of this order, either designating the Agreements as related to its TEMT and providing that designation, or showing cause why the Agreements should not be so designated, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁰ See Compliance Filing of Midwest ISO, Docket Nos. EL05-70-000 and ER05-803-000 (April 8, 2005).

¹¹ See, e.g., *Duquesne Light Co.*, 110 FERC ¶ 61,286 at P 10 (2005); *American Electric Power Service Corp.*, 110 FERC ¶ 61,276 at P 9-10 (2005); *Delmarva Power & Light Co.*, 110 FERC ¶ 61,186 (2005).