

125 FERC ¶ 61,272  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Board of Public Works, Blue Earth, Minnesota

Docket No. EL09-2-000

v.

Midwest Independent Transmission System Operator,  
Inc.

ORDER FINDING COMPLAINT HAS BEEN SATISFIED AND DISMISSING  
COMPLAINT

(Issued December 5, 2008)

1. On October 6, 2008, pursuant to Rules 206 and 602 of the Commission's Rules of Practice and Procedure,<sup>1</sup> Blue Earth Board of Public Works, Blue Earth, Minnesota (Blue Earth) filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and an Offer of Settlement between Blue Earth and Midwest ISO. In this order, we will dismiss the complaint as all issues are satisfied by Blue Earth's proposed resolution, and Midwest ISO's agreement thereto.

2. Blue Earth's complaint alleges that Midwest ISO improperly interpreted and applied its Open Access Transmission and Energy Markets Tariff (Tariff) to deny Blue Earth's entitlement to 5 megawatts of Auction Revenue Rights in the Stage 1A Auction Revenue Rights nomination/allocation period applicable to June 1, 2008 through May 31, 2009. Blue Earth states that during the registration process for Auction Revenue Rights, it designated a generation resource, Alliant/Wisconsin Power & Light's Rock River Generation Unit (Rock River Unit), as a Reserved Source Point in the Baseload Reserved Source Set based on Midwest ISO personnel's representations that baseload Auction Revenue Rights would be allocated based on a transmission capacity or scheduling factor of at least fifty percent. However, Blue Earth contends that close to the end of the registration process, Midwest ISO announced that Baseload Reserved Source Set eligibility should be based on a designated generating unit's capacity factor of at least

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<sup>1</sup> 18 C.F.R. §§ 385.206, 385.602 (2008).

fifty percent. Midwest ISO denied Blue Earth's Reserved Points registration because the Rock River Unit operates at less than a fifty percent capacity factor. Blue Earth contends that Midwest ISO's denial of Auction Revenue Rights is based on a change in Midwest ISO's rules or practices of which Blue Earth states that it did not have adequate notice. But for the representations of Midwest ISO personnel, Blue Earth states that it would have had the opportunity to seek alternative arrangements or take other actions to protect its interests.

3. Blue Earth proposes resolution of the complaint through what it characterizes as an "Offer of Settlement" with the following terms: (1) Blue Earth will waive any claim to long-term transmission rights for Year 1 of the Auction Revenue Rights allocation period (June 1, 2008 to May 31, 2009); and (2) from Year 2 (June 1, 2009 to May 31, 2010) and each subsequent Annual Auction Revenue Rights Allocation period thereafter, Midwest ISO shall treat the Rock River Unit as a Reserved Source Point in the Baseload Reserved Source Set for the purpose of Auction Revenue Rights nomination and allocation into Stage 1A of the registration process. The resulting allocation for Year 2 will determine Blue Earth's long-term transmission rights for all future allocation periods.

4. Midwest ISO filed an answer to the complaint explaining that its Tariff clearly details the eligibility requirements for Auction Revenue Rights, and in cases of conflict, the Tariff prevails over any contrary business practice. Specifically, Midwest ISO states that the Tariff provides that a generating unit is qualified to be included as a Reserved Source Point in the Baseload Reserved Source Set if it has a minimum capacity factor of fifty percent, provided that a transmission capacity factor of at least fifty percent can instead be used in the case of point-to-point transmission service and/or external resources. Midwest ISO asserts that neither condition was satisfied by Blue Earth and that Midwest ISO properly determined that the Rock River Unit would not be designated as a Reserved Source Point.<sup>2</sup>

5. Midwest ISO acknowledges that a previous version of its Auction Revenue Rights registration guidance, and the Business Practices Manual for Auction Revenue Rights, indicated that the scheduling factor would be used where the source and sink for a transmission entitlement are located in different control areas. It argues that the registration guidance was never filed with the Commission and, as such, could be properly revised to correct inconsistency with the Tariff without any need to make a filing with the Commission. Moreover, it states that Blue Earth's detrimental reliance on statements by Midwest ISO that are inconsistent with the Tariff do not constitute a valid basis for overriding the filed Tariff.

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<sup>2</sup> Midwest ISO Answer at 6-7.

6. However, Midwest ISO states that it would be equitable and appropriate to settle this dispute so that Blue Earth can hedge its transmission congestion costs on a long-term basis to help meet its load service obligations. Therefore, while it disagrees with Blue Earth's position on the underlying legal issues of the complaint, based on equitable considerations it agrees with Blue Earth's proposed resolution in the Offer of Settlement.

7. We find that consistent with Rule 206(j) of the Commission's Rules of Practice and Procedure, Midwest ISO has satisfied the issues raised in the complaint.<sup>3</sup> Therefore, we need not address the complaint on the merits and we dismiss the complaint.

The Commission orders:

Blue Earth's complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> *Id.* § 385.206(j).