

129 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

Midwest Independent Transmission System
Operator, Inc. and ALLETE, Inc.

Docket No. ER09-1727-001

ORDER ON COMPLIANCE FILING

(Issued December 30, 2009)

1. On December 4, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and ALLETE, Inc. (ALLETE) (collectively, Applicants) submitted a filing to comply with the Commission's November 24, 2009 Order in this proceeding,¹ which addressed filings associated with ALLETE's planned acquisition of certain high-voltage direct current transmission facilities (HVDC Line) from Square Butte Electric Cooperative (Square Butte). In this order, we will conditionally accept Applicants' compliance filing, which contains a revised Agency Agreement and associated revisions to Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to provide transmission service over high-voltage direct current facilities, including the HVDC Line, subject to a further compliance filing.

I. Background and Compliance Filing

2. As described more fully in the Initial Order, ALLETE proposes to buy from Square Butte an existing 465-mile, 250 kV HVDC Line (and associated facilities) that runs from Center, North Dakota to Duluth, Minnesota. ALLETE is a transmission-owning member of Midwest ISO. Once ALLETE takes ownership of the HVDC Line, it will delegate to Midwest ISO, pursuant to the Agency Agreement, certain specified rights and responsibilities with respect to the HVDC Line, including the authority to provide point-to-point HVDC transmission service and generator interconnection services over

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,172 (2009) (Initial Order).

the HVDC Line. Midwest ISO will provide service over the HVDC Line pursuant to a new section 27A (and other related provisions) of its Tariff.

3. On December 4, 2009 Applicants submitted a joint filing to comply with the Initial Order. They state that the filing includes the changes that the Commission directed them to make to the Agency Agreement and the Midwest ISO Tariff.²

II. Notice of Filings and Responsive Pleadings

4. Notice of Applicants' filing was published in the *Federal Register*, 74 Fed. Reg. 66631 (2009), with interventions and protests due on or before December 14, 2009. None was filed.

III. Discussion

A. Agency Agreement

5. In the Initial Order, the Commission conditionally accepted the Agency Agreement, subject to Applicants revising it to: (1) charge average (instead of incremental) losses for firm transmission service taken over the HVDC Line;³ and (2) clarify how Midwest ISO will distribute the revenue it collects for service over the HVDC Line.⁴

6. We find that the changes Applicants made to the Agency Agreement comply with the Commission's directives in the Initial Order. In their compliance filing, Applicants revised the Agency Agreement to provide that Midwest ISO will charge average losses for firm transmission service over the HVDC Line and to make clear that Midwest ISO will distribute to ALLETE all revenue Midwest ISO collects for service over the HVDC line.

² In the same filing, but in a separate docket (ER09-1728-001), Applicants submitted, also to comply with the Initial Order, a revised Interconnection and Operating Agreement among ALLETE, Square Butte, and Midwest ISO (Interconnection Agreement). On December 10, 2009, in Docket No. ER09-1728-002, Applicants submitted an amended Interconnection Agreement. Applicants' compliance with the Initial Order with respect to the Interconnection Agreement will be addressed by separate order.

³ Initial Order, 129 FERC ¶ 61,172 at P 34.

⁴ *Id.* P 32.

B. Rates for HVDC Service

7. In the Initial Order, the Commission conditionally accepted the proposed rates for transmission service over the HVDC Line, subject to Applicants: (1) revising ALLETE's formula rate to include the schedule of depreciation rates that ALLETE will use in calculating the revenue requirement; (2) revising Schedules 7 and 8 so that provisions for ALLETE's HVDC service is in a new, separate section of those schedules; and (3) explaining how they will implement a proposed \$0 charge to avoid rate pancaking for service on the HVDC Line and on Midwest ISO's alternating-current system, and revising the Tariff accordingly.⁵

8. We find that Applicants have complied with the directives in the Initial Order associated with the rates for service on the HVDC Line. In their compliance filing, Applicants filed the schedule that contains the relevant depreciation rates and revised Schedules 7 and 8 of the Midwest ISO Tariff so that rates for service on the HVDC Line are in separate sections. They also explained that any new request for firm point-to-point transmission service on Midwest ISO's alternating-current system that sinks at the HVDC Line will be charged a \$0 rate and included this \$0 rate in the new sections of Schedules 7 and 8. However, Applicants did not provide a tariff designation for the schedule of depreciation rates that ALLETE will use as part of its formula rate. Therefore, we direct Applicants, in the compliance filing we require below, to refile the schedule of depreciation rates with the proper designation for inclusion in the Midwest ISO Tariff.

C. Tariff Changes

9. In the Initial Order, the Commission conditionally accepted Midwest ISO's proposal to include in its Tariff standardized terms and conditions of service applicable to HVDC facilities. The Commission conditioned its acceptance on Midwest ISO revising its Tariff to: (1) provide customers with access to the system impact study methodology for HVDC service; (2) revise the *pro forma* service agreements for HVDC service to state that Midwest ISO must make a filing under section 205 of the Federal Power Act (FPA)⁶ before it can be released from any obligations or responsibilities under the service agreements; (3) remove the proposed 270-day deadline for Midwest ISO to complete certain system impact studies for HVDC service or to provide justification as to why Midwest ISO needs time beyond the standard 60-day deadline; and (4) provide

⁵ *Id.* P 44-46.

⁶ 16 U.S.C. § 824e (2006).

conditional firm service on HVDC facilities that will be covered by section 27A of the Tariff.⁷

10. We find that Midwest ISO has fulfilled the first compliance obligation noted above by making changes to its Tariff to provide customers with access to the system impact study methodology for HVDC service. Midwest ISO has also fulfilled the second obligation noted above by revising the *pro forma* HVDC service agreements to state that Midwest ISO must make a filing under section 205 of the FPA before it is released from any obligations or responsibilities under the service agreements.

11. With respect to the third requirement, regarding the proposed 270-day deadline for certain system impact studies for HVDC service, we will reject Midwest ISO's request to retain the new longer deadline. As discussed further below, Midwest ISO argues that it needs to extend the system impact study deadline for certain system impact studies for HVDC service, but we find that its arguments are similar to those the Commission rejected in Order No. 890.⁸

12. Applicants explain that, under its proposal, requests for service on HVDC facilities that are between the current firm limit and the conductor limit may be accommodated by upgrading equipment at either end of the circuit, and those requests would fall under the standard 60-day timeframe. In contrast, requests that are above that limit, as determined by adding the requested amount to the confirmed service sold, plus any higher-queued study requests, would result in Midwest ISO tendering the system impact study agreement concurrently with informing the customer that the request is over and above what can be accommodated without the construction of an upgrade or a new circuit. Applicants state that, in such circumstances, the customer will be informed that the study will be completed in 270 days or as soon as practicable. The customer then can make the business decision of whether to proceed and indicate its choice by executing the system impact study agreement or not.

13. Applicants state that their proposed alternative 270-day timeframe is necessary for HVDC facilities because an upgrade or a new circuit will almost always be necessary once an existing HVDC line is already fully subscribed. They state that, practically, the construction of an upgrade or a new circuit will require the relevant customer to obtain

⁷ Initial Order, 129 FERC ¶ 61,172 at P 56-59.

⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299, (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

the necessary funding, permitting, and routing to construct. Applicants argue that these additional steps require information that could not be gained within the standard 60-day system impact study timeframe. Applicants note, therefore, that if Midwest ISO is held to the standard 60-day window, it could become subject to system impact study timeline violations or be forced to provide customers with incomplete system impact studies.

14. Applicants state that, should the Commission determine that the standard 60-day timeframe provides better customer service than the proposed 270-day timeframe, an alternative would be for Applicants to collaborate on a set of higher-level cost-and-time estimates for new facilities than would normally be provided under a traditional system impact study, and provide those results to the customer within the standard 60-day timeframe. Applicants believe that this alternative is inferior to the original proposal and customers might object to this “one-size-fits-all” approach, but it would meet the nominal timing requirements.

15. We will reject Applicants’ request to extend the *pro forma* 60-day deadline to complete system impact studies for service over HVDC facilities. We also reject their alternative request to provide a lower-quality system impact study within the 60-day deadline. Applicants’ request for a longer deadline is similar to those the Commission considered in Order No. 890 when it decided to impose late study penalties for transmission providers that do not meet the 60-day due diligence requirement. The Commission found that the 60-day deadline and associated penalties were appropriate, particularly given the flexibility the Commission built into the penalty regime, which allows transmission providers to avoid penalties for delays that result from factors beyond the transmission providers’ control.⁹

16. The Commission also rejected requests to create broad categories of extenuating circumstances that would exempt transmission providers from late study penalties or related posting requirements. As the Commission explained in Order No. 890-A, evaluating circumstances that cause a transmission provider to repeatedly miss study deadlines (which might include, for example, complexities associated with a system impact study for service on HVDC facilities) is best done on a case-by-case basis. The Commission also noted that failure to meet the 60-day due diligence deadline does not lead unavoidably to late study penalties, since a transmission provider can explain to the Commission, in the notification filing that transmission providers must make when they do not complete studies on a timely basis, that extenuating circumstances exist to excuse non-compliance with the 60-day deadline. Granting broad exemptions for any particular types of requests, the Commission explained, would undermine the Commission’s ability to gather information regarding the reasons for processing delays and, in turn, ensure that

⁹ See, e.g., Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1343-44, 1352.

those delays are justified under the circumstances.¹⁰ Accordingly, we direct Midwest ISO, in the compliance filing we require below, to remove from its Tariff the proposed 270-day deadline for Midwest ISO to complete certain system impact studies for HVDC service.

17. Finally, in compliance with the fourth requirement, which was for Midwest ISO to provide conditional firm service on HVDC facilities that are covered by section 27A of the Tariff, Midwest ISO has revised its Tariff to include the standard *pro forma* conditional firm service for HVDC facilities, provided that the Commission also accepts proposed tariff language that delays the effectiveness of conditional firm service until firm capacity becomes available to provide such service on the particular HVDC facility (such as the HVDC Line). Midwest ISO explains that the HVDC Line is fully subscribed with long-term firm service under pre-existing agreements until at least 2013. For this reason, Midwest ISO states that it currently cannot offer conditional firm service on the HVDC Line. The delayed effectiveness is also appropriate, according to Midwest ISO, because it has no experience with providing conditional firm service and its software and systems do not include such an option.¹¹

18. We will conditionally accept Midwest ISO's proposal to provide standard conditional firm service on an HVDC facility, but to delay effectiveness until firm capacity on the HVDC facility is available. Midwest ISO is correct that, because of the characteristics of HVDC facilities, and because, under section 27A of the Tariff, Midwest ISO is not incorporating HVDC facilities into its energy markets, conditional firm service will not be available so long as the entire capacity of an HVDC facility is already reserved as long-term firm service. In ALLETE's case, the HVDC Line is reserved as long-term firm service under pre-existing agreements (at least until 2013 or until the HVDC Line is upgraded to increase its capacity). We note, however, that Midwest ISO's proposed new section 27A.16 to its Tariff states that the effectiveness of conditional firm

¹⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 744. We also reject Midwest ISO's claim that the 60-day deadline may force it to provide customers with incomplete system impact studies. The Commission again addressed similar claims in Order No. 890, noting that the transmission provider is required under the *pro forma* OATT to provide a *complete* study to the transmission customer and providing an incomplete system impact study to a customer would be a tariff violation. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1344.

¹¹ Midwest ISO generally is not required to offer conditional firm transmission service because it operates an energy market. However, because HVDC facilities covered by section 27A of the Tariff will not be part of the energy market, the Commission found that customers should have access to conditional firm service on HVDC facilities. *See* Initial Order, 129 FERC ¶ 61,172 at P 59.

service provided pursuant to section 27A for any HVDC facility will be delayed until *long-term* firm transmission capacity becomes available on that HVDC facility. In fact, Midwest ISO may be able to offer conditional firm service on an HVDC facility if *any* firm service becomes available. Therefore, we direct Midwest ISO to delete the phrase “long-term” from section 27A.16 of its Tariff and to submit revised tariff sheets in the compliance filing we require below.

D. Interconnection Requests

19. In the Initial Order, the Commission conditionally accepted Midwest ISO’s proposed changes to the Generator Interconnection Procedures in its Tariff, subject to Midwest ISO removing section 15.1 from its Generator Interconnection Procedures, which appeared to inappropriately limit HVDC interconnection studies to only interconnection requests that have associated pending or confirmed long-term firm service requests on the HVDC facility.¹² The Commission also directed Applicants to include in the compliance filing a copy of the transition plan for the transfer of the pending interconnection requests on the HVDC Line.¹³

20. We find that Applicants have complied with the directives in the Initial Order associated with interconnection requests. Midwest ISO has removed section 15.1 from its Generator Interconnection Procedures, and Applicants have included the interconnection request transition plan in their compliance filing.

The Commission orders:

Applicants’ compliance filing is hereby conditionally accepted, subject to Applicants making a further compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² Initial Order, 129 FERC ¶ 61,172 at P 71.

¹³ *Id.*