

138 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER12-517-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued January 31, 2012)

1. On December 2, 2011, pursuant to section 205 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (MISO) and the MISO Transmission Owners² (jointly, Filing Parties) proposed revisions to Schedule 37 (MISO Transmission Expansion Plan (MTEP) Project Cost Recovery for American Transmission

¹ 16 U.S.C. § 824d (2006).

² The MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Systems, Incorporated (ATSI)) of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (December 2 Filing). The proposed revisions to Schedule 37 reflect certain provisions contained in Schedule 38 (MTEP Project Cost Recovery for Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky)) of the MISO Tariff, as filed in Docket No. ER12-334-000, which the Commission accepted in an order issued December 30, 2011.³ In this order, we conditionally accept the revised Schedule 37, and grant waiver of the 60-day prior notice requirement, to make it effective January 1, 2012, as requested.

I. Background

2. On December 17, 2009, the Commission conditionally approved ATSI's request to withdraw from MISO and join PJM Interconnection, L.L.C. (PJM).⁴ In the ATSI Realignment Order, the Commission conditioned its approval on, among other things, the submission of a filing that addressed ATSI's remaining financial obligations under the Agreement of Transmission Facilities Owners to Organize Midwest Independent Transmission System Operator, Inc. (MISO Transmission Owners Agreement).⁵ On April 1, 2011, MISO filed a new Schedule 37 to the MISO Tariff. Among other things, Schedule 37 was designed to facilitate the collection and distribution of revenues related to the MTEP Projects associated with the ATSI zone.

3. On May 31, 2011, the Commission conditionally accepted Schedule 37.⁶ MISO and certain MISO Transmission Owners then submitted a compliance filing that revised the conditionally accepted Schedule 37 to remove language that suggests that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligation for MTEP Projects. ATSI has protested MISO's compliance filing to the order issued in the MISO-ATSI Proceeding and is also seeking rehearing on the order. The compliance filing and rehearing are currently pending.

³ See *Midwest Independent Transmission System Operator, Inc.*, 137 FERC ¶ 61,254 (2011) (December 30 Order).

⁴ *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249, *order on reh'g*, 130 FERC ¶ 61,171 (2010) (ATSI Realignment Order).

⁵ *Id.* P 51, n.33. Article Five, section II.B of the MISO Transmission Owners Agreement states that “[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of [the withdrawing Owner’s] withdrawal shall be honored by the Midwest ISO and the withdrawing Owner.”

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,204 (2011) (MISO-ATSI Proceeding).

4. Separately, on October 21, 2010, the Commission approved Duke Ohio's and Duke Kentucky's request to withdraw from MISO and join PJM.⁷ The Duke Realignment Order conditioned the Commission's approval on the submission of a separate filing addressing Duke Ohio's and Duke Kentucky's obligations under the MISO Transmission Owners Agreement regarding the construction of new facilities.⁸ On December 30, 2011, the Commission accepted a new Schedule 38 to the MISO Tariff, which among other things, provides a mechanism to collect and distribute revenues related to the MTEP projects associated with Duke Ohio and Duke Kentucky. The Commission noted that Schedule 38 was drafted to take into account whether ATSI may be allocated MTEP costs pursuant to Schedule 37, an issue pending in the MISO-ATSI Proceeding.⁹

II. Description of the December 2 Filing

5. Filing Parties state that ATSI's withdrawal from MISO and the implementation of Schedule 37 preceded the withdrawal of Duke Ohio and Duke Kentucky from MISO, and they have since determined that additional revisions to Schedule 37 are necessary to coincide with the provisions of Schedule 38 regarding the collection and distribution of revenues of the MTEP projects as they relate to Duke Ohio and Duke Kentucky. They state that the proposed revisions to Schedule 37 clarify definitions regarding the collection and distribution of revenues of certain MTEP projects. Filing Parties also state that the proposed revisions clarify that the payment obligations and revenue allocations in Schedule 37 are based on the pricing zones and MISO Transmission Owners as of ATSI's withdrawal on June 1, 2011, as modified to reflect the division of the historic Duke Zone as reflected in Appendix 1 to Schedule 38.

6. Specifically, the December 2 Filing at issue here revises the definitions of "Midwest ISO Transmission Owner" to clarify that it includes any transmission owner or independent transmission company in MISO, as of the date of ATSI's withdrawal, responsible for the construction of, or payment for, MTEP Projects under the MISO Tariff. The December 2 Filing also includes a definition for "Midwest ISO Zones" which describes the transmission pricing zones that MISO will use to develop transmission rates and allocate revenues. The definition also clarifies that the zonal definitions for Duke Ohio, Duke Kentucky and Duke Energy Indiana, Inc. are as set forth in Appendix 1 of Schedule 38. In addition, the December 2 Filing includes several revisions throughout Schedule 37 to clarify the rights and responsibilities of Duke Ohio and Duke Kentucky

⁷ *Duke Energy Ohio, Inc and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058 (2010) (Duke Realignment Order), *reh'g denied*, 134 FERC ¶ 61,235 (2011).

⁸ *Id.* P 76.

⁹ December 30 Order, 137 FERC ¶ 61,254 at P 16.

with respect to MTEP projects associated with Schedules 37 and 38. Filing Parties state that these revisions are consistent with the reciprocal revisions of Schedule 38. Finally, they propose revisions to section IV.D of Schedule 37 to clarify the calculation of the ATSI *pro rata* share used for revenue distribution and to section V.A in order to correct the constructing owner of Project 286 listed thereunder to include Missouri River Energy Services.

7. Filing Parties note that they have included the changes proposed in the MISO-ATSI Proceeding in the December 2 Filing. They explain that they did this because the revisions pending in the MISO-ATSI Proceeding were filed pursuant to a Commission directive, and because they reflect an effective date prior to the changes being submitted in the December 2 Filing. Filing Parties request waiver of the 60-day prior notice requirement,¹⁰ asking that the Commission make the December 2 Filing effective January 1, 2012, to reflect Schedule 38 and Duke Ohio's and Duke Kentucky's withdrawal from MISO, both of which will be effective January 1, 2012.

III. Notice of Filing and Responsive Pleadings

8. Notice of the December 2 Filing was published in the *Federal Register*, 76 Fed. Reg. 77,220 (2011), with interventions and protests due on or before December 23, 2011. Wisconsin Electric Power Company filed a timely motion to intervene. ATSI filed a timely motion to intervene and conditional protest.

IV. Discussion

A. Procedural Issues

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. ATSI Protest

10. ATSI states that, as Filing Parties acknowledge, ATSI, MISO, and certain MISO Transmission Owners are currently litigating a number of issues regarding Schedule 37 in the MISO-ATSI Proceeding.¹² ATSI asserts that an issue pending before the Commission in the MISO-ATSI Proceeding is relevant here, namely, whether MISO is authorized by the MISO Tariff or the MISO Transmission Owners Agreement to charge

¹⁰ 18 C.F.R § 35.3(a) (2011).

¹¹ 18 C.F.R. § 305.214 (2011).

¹² ATSI Protest at 4.

costs associated with MTEP projects to ATSI as distinct from the transmission customers in the ATSI zone who paid those costs before ATSI's withdrawal from MISO.¹³

11. ATSI notes that, Filing Parties have utilized the version of Schedule 37 that is pending before the Commission in the MISO-ATSI Proceeding. ATSI explains that it does not believe that there is a need for the Commission to address here the issues already pending in the MISO-ATSI Proceeding. Rather, ATSI argues that, in light of the pending rehearing requests and compliance filings in the MISO-ATSI Proceeding, any order accepting Filing Parties' proposed revisions to Schedule 37 in this proceeding should specify that the Commission's acceptance is subject to the outcome of the ATSI-MISO Proceeding. ATSI contends that, if the Commission does not grant this request, ATSI protests the December 2 Filing to preserve its rights.¹⁴

C. Commission Determination

12. We conditionally accept the proposed revisions to Schedule 37. In addition, we grant ATSI's request to condition this order on the outcome of the MISO-ATSI Proceeding. We acknowledge that the revised Schedule 37 contains provisions that are at issue in the pending MISO-ATSI Proceeding, and we thus find it necessary to make our acceptance of Schedule 37 subject to the outcome of the MISO-ATSI Proceeding.

13. We will grant Filing Parties' request for waiver of the 60-day prior notice requirement. We find that they have provided good cause for the requested waiver¹⁵ and we will allow the December 2 Filing to become effective January 1, 2012, as requested.

¹³ *Id.*

¹⁴ *Id.* at 4-5.

¹⁵ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The Commission orders:

The December 2 Filing is hereby conditionally accepted for filing, effective January 1, 2012, as requested, subject to the outcome of the MISO-ATSI Proceeding, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.