

138 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Midwest LLC

Docket No. ER11-4272-002

ORDER CONDITIONALLY ACCEPTING REVISED AND RESTATED AGREEMENT
FOR INTEGRATED TRANSMISSION AREA

(Issued February 10, 2012)

1. On August 10, 2011, as amended on September 8, 2011, ITC Midwest LLC (ITC Midwest) filed a notice of succession to the Revised and Restated Agreement for Integrated Transmission Area (AITA) among Midwest Independent Transmission System Operator, Inc. (MISO), Interstate Power and Light Company (IPL), and Central Iowa Power Cooperative (CIPCO). We conditionally accept the notice of succession to the AITA, subject to a compliance filing, to be effective October 10, 2011, as discussed in the body of this order.

I. Background

2. ITC Midwest is a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings) and a transmission-owning member of MISO. In 2007, ITC Holdings, its newly-formed subsidiary ITC Midwest, and IPL filed with the Commission an application under section 203 of the Federal Power Act¹ (FPA) for authority for IPL to sell, and ITC Midwest to acquire, all of IPL's jurisdictional transmission assets. The Commission approved the application,² and ITC Midwest acquired IPL's transmission assets on December 20, 2007.³

3. At the time of ITC Midwest's acquisition of IPL's transmission assets, the IPL system itself had been created from the combination of several other utilities. Through a series of mergers and reorganizations, the IPL system included transmission assets that had previously been owned and operated by Iowa Electric Light and Power Company, Iowa

¹ 16 U.S.C. § 824b (2006).

² *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

³ August 10, 2011 Transmittal Letter at 2-3.

Southern Utilities Company, IES Utilities, and Interstate Power Company. Thus, when ITC Midwest acquired the IPL transmission system, it acquired assets – including agreements and service obligations – that over the years had been owned and operated by multiple different entities.⁴

4. ITC Midwest and other ITC Holdings operating companies have recently undertaken a comprehensive review of all of their contracts to ensure compliance with the Commission’s filing requirements, especially those agreements that had been assigned to ITC Holdings’ operating companies through various sales and mergers. As a result of this review, ITC Midwest has identified agreements that should be, but are not, on file with the Commission or that should have been, but were not, identified as ITC Midwest rate schedules through a notice of succession. To date, they have filed over 100 late-filed agreements and notices of succession as a result of the review. The instant filing is a late-filed notice of succession.⁵

II. The AITA

5. IPL, CIPCO, and MISO entered into the AITA on March 10, 2006. The origin of the AITA is a 1980 agreement between IPL and CIPCO’s predecessors in interest, which provided for coordinated planning and operation of the interconnected transmission systems of IPL and CIPCO. In 2004, IPL and MISO submitted an amendment to the 1980 agreement that extended the term of the agreement, added MISO as a signatory, and revised the terms to reflect that MISO has operational authority over the IPL transmission system and that any future amendments would be subject to negotiation and approval by all three parties. The parties ultimately filed the AITA, which incorporated the 1980 agreement and the 2004 amendment into a single agreement. The Commission accepted the AITA for filing as Service Agreement No. 1615 under the MISO Open Access Transmission and Energy Markets Tariff (Tariff).⁶

6. As a result of ITC Holdings’ 2007 acquisition of IPL’s transmission assets, ITC Midwest has succeeded IPL’s transmission obligations under the AITA. However, ITC

⁴ *Id.* at 3.

⁵ It appears that, contrary to the requirements of section 35.16 of the Commission’s regulations, 18 C.F.R. § 35.16 (2011), ITC Midwest failed to timely file the notice of succession. We remind ITC Midwest that it must submit required filings on a timely basis or face possible sanctions by the Commission.

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER05-386-002 (Apr. 11, 2006) (delegated letter order).

Midwest has not previously filed a notice of succession to recognize that it assumed IPL's transmission-related responsibilities under the AITA.

III. Notice of Succession

7. On August 10, 2011, ITC Midwest filed a notice of succession as a cover sheet to the AITA, which states that, as a result of the sale of jurisdictional transmission assets, ITC Midwest has succeeded to the rights and obligations of IPL under the AITA. ITC Midwest states that it is not seeking to make any substantive changes to the AITA or the manner in which the parties have been operating under it. ITC Midwest explains that the purpose of the instant filing is to notify the Commission that ITC Midwest has succeeded to IPL's obligations under the AITA. ITC Midwest has designated the AITA as ITC Midwest Rate Schedule No. 35.⁷ ITC Midwest requests an effective date of October 10, 2011. On September 8, 2011, ITC Midwest amended the filing to remove extraneous pages that it had inadvertently included in the version of the AITA contained in the August 10, 2011 filing.

IV. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 51,020 (2011), with interventions and protests due on or before August 31, 2011. Notice of ITC Midwest's September 8, 2011, amendment was published in the *Federal Register*, 76 Fed. Reg. 58,259 (2011), with interventions and protests due on or before September 29, 2011. Resale Power Group of Iowa and WPPI Energy (collectively, RPGI-WPPI) filed a timely motion to intervene and comments. On September 30, 2011, CIPCO filed a motion to intervene out-of-time and comments in support of the filing. On October 7, 2011, ITC Midwest filed an answer to RPGI-WPPI's comments.

9. On November 4, 2011, Commission staff issued a deficiency letter to ITC Midwest to gather additional facts related to the AITA.⁸ On December 13, 2011, ITC Midwest filed a response to the deficiency letter, as detailed below. Notice of the deficiency letter response was published in the *Federal Register*, 76 Fed. Reg. 80,357 (2011), with interventions and protests due on or before January 3, 2012. No additional interventions or comments were filed.

⁷ The AITA also remains designated as Service Agreement No. 1615 under the MISO Tariff.

⁸ *ITC Midwest LLC*, Docket No. ER11-4272-000 (Nov. 4, 2011) (delegated letter order).

1. Comments

10. In their comments, RPGI-WPPI note that the notice of succession attached to the AITA in the instant filing states that ITC Midwest has succeeded to the rights and obligations of IPL, which suggests an unqualified succession by ITC Midwest to IPL's interests in the AITA. However, RPGI-WPPI state that such an unqualified succession is inconsistent with a transmission succession agreement entered into between IPL, ITC Midwest, and CIPCO on December 21, 2007 (Succession Agreement),⁹ which states that ITC Midwest succeeded to IPL's rights and obligations in the AITA only partially. As RPGI-WPPI explains, the Succession Agreement indicates that IPL only partially assigned the AITA to ITC Midwest. RPGI-WPPI state that, in contrast to the apparent full assignment ITC Midwest has proposed in the notice of succession submitted in the instant filing, Attachment 42 to the Succession Agreement identifies 36 provisions of the AITA that were only partially assigned to ITC Midwest or fully retained by IPL. RPGI-WPPI expresses concern that the apparent inconsistency between the notice of succession and the Succession Agreement has a material impact on the rates, terms, and conditions of service for MISO transmission customers. Therefore, RPGI-WPPI request that the Commission require ITC Midwest to clarify the division of rights and obligations as between IPL and ITC Midwest under the AITA.

11. In its comments, CIPCO requests that the Commission accept the AITA. CIPCO argues that the instant filing is no more than a filing submitted by ITC Midwest to ensure that it is in compliance with Commission rules, includes no substantive material or changes for review, and only reflects a transaction approved by the Commission and consummated by the parties almost four years ago.

2. ITC Midwest's Answer

12. In its answer in response to RPGI-WPPI's comments, ITC Midwest clarifies that it did not intend to suggest that it has assumed all rights and obligations under the AITA. Rather, ITC Midwest states that it has succeeded to only IPL's transmission-related obligations under the AITA. ITC Midwest states that it did not intend to disturb the parties'

⁹ The Succession Agreement is not on file with the Commission as a rate schedule. ITC Midwest recently submitted it to the Commission in Docket No. ER11-4486-000 for informational purposes. This is the version of the Succession Agreement that we will refer to in this order. We also note that the question of whether or not ITC Midwest should be required to file the Succession Agreement is at issue in another proceeding in Docket Nos. ER11-2715-000, ER11-2715-001, and EL10-68-000 (consolidated). *See Interstate Power. & Light Co.*, 135 FERC ¶ 61,185 (2011). On February 2, 2012, the parties filed a settlement agreement, which is pending.

understanding of the AITA or how they have been operating under it by filing the notice of succession. ITC Midwest explains that the filing is only meant to fulfill its obligation to notify the Commission when it succeeds to jurisdictional obligations under a previously-filed agreement such as the AITA. ITC Midwest also attached to its answer, for informational purposes, the Succession Agreement that RPGI-WPPI refer to in their comments. ITC Midwest states that the Succession Agreement further clarifies the specific obligations under the AITA to which ITC Midwest has succeeded.

3. Deficiency Letter

13. As noted above, Commission staff issued a deficiency letter to ITC Midwest to gather additional facts related to the AITA. The deficiency letter required ITC Midwest to provide additional details so that the Commission could understand which of IPL's rights and obligations under the AITA are being succeeded to by ITC Midwest.¹⁰

14. In its response to the deficiency letter, ITC Midwest submitted a chart detailing the delineation of rights and obligations between IPL and ITC Midwest under each section of the AITA. ITC Midwest explains that the chart identifies each section of the AITA, gives a general description of its terms, and describes how IPL and ITC Midwest share the rights and responsibilities of each section.¹¹ ITC Midwest requests that the Commission find that the chart complies with the information requested by the deficiency letter. In addition to the chart, ITC Midwest submitted a revised notice of succession as a cover sheet to the AITA to clarify that it has assumed only the transmission-related rights and obligations of IPL under the AITA.

V. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene of RPGI-WPPI serve to make them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), the Commission will grant CIPCO's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

¹⁰ ITC Midwest's Deficiency Letter at 2.

¹¹ ITC Midwest notes that although the Succession Agreement delegates section 6.08, Exhibit III and Exhibit IV to ITC Midwest, responsibility for these items in fact rests with IPL. In all other respects, ITC Midwest states, the delegation of duties reflected in the attached chart follows the Succession Agreement.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ITC Midwest's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

17. We will accept for filing ITC Midwest's notice of succession to the AITA, as revised in ITC Midwest's deficiency letter response to clarify that ITC Midwest has succeeded to only IPL's transmission-related rights and obligations under the AITA. We also find that, as requested by RPGI-WPPI in its comments and required by the deficiency letter, ITC Midwest has sufficiently clarified the rights and responsibilities of the parties under the AITA. However, we find it necessary that ITC Midwest revise the AITA to reflect the delineation of rights and responsibilities of the parties, as reflected in the chart it submitted in response to the deficiency letter. ITC Midwest must submit, in a compliance filing due within 30 days of this order, a revised version of the AITA that describes to which entity each right and responsibility has been assigned. ITC Midwest should revise each relevant section of the AITA so that it is clear which party retains rights and responsibilities under each section.

The Commission orders:

The AITA is hereby conditionally accepted effective October 10, 2011, as requested, subject to a compliance filing submitted within 30 days of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.