

141 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER13-12-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 30, 2012)

1. On October 2, 2012, the Midwest Independent Transmission System Operator, Inc. (MISO) and American Transmission Company LLC, by its corporate manager, ATC Management Inc. (collectively, ATC), submitted proposed revisions to Attachment MM of MISO's Open Access Transmission and Energy Markets Tariff (Tariff)¹ and to establish a new Attachment MM-ATCLLC.² ATC requests an effective date of December 1, 2012. As discussed below, we accept the filing effective December 1, 2012.

I. Background

2. As a transmission-owning member of MISO, ATC's annual transmission revenue requirement is calculated pursuant to a company-specific formula set forth in Attachment O of the MISO Tariff.³ Under that formula, ATC calculates a projected revenue

¹ MISO joins the filing as the administrator of the Tariff.

² MISO, FERC Electric Tariff, [ATTACHMENT MM - ATCLLC, Multi-Value Project Charge \(MVP Charge\), 0.0.0](#); [ATTACHMENT MM - ATCLLC, Rate Formula Template Utilizing Attachment O - ATCLLC Data, 0.0.0](#); [ATTACHMENT MM - ATCLLC, Annual True-Up Procedures, 0.0.0](#); [ATTACHMENT MM - ATCLLC, 2012 Annual Attachment MM True-up Calculation, 0.0.0](#).

³ ATC's company-specific Attachment O formula is set forth in Attachment O – ATCLLC of the MISO Tariff. The basic formula was established by settlement accepted by the Commission in *American Trans. Co. LLC*, 97 FERC ¶ 61,139 (2001). The rate sheets establishing ATC's formula rate were subsequently transferred to the

(continued...)

requirement by October 1st of each year for the following calendar year. That projected revenue requirement is then used to calculate transmission rates charged during that calendar year for network and point-to-point transmission services provided under Schedules 7, 8, and 9 of the MISO Tariff. Following the end of the calendar year, ATC calculates an actual revenue requirement for the previous calendar year and compares the actual revenue requirement with revenues actually collected to determine whether there was a net over or under recovery. Any such over or under recovery is then “trued-up” through an adjustment to the revenue requirement projected by ATC for the subsequent calendar year.⁴

3. On December 16, 2010, the Commission authorized MISO and transmission owners providing service under the MISO Tariff to collect, under Attachment MM, the revenue requirement associated with certain projects identified as Multi-Value Projects (MVPs),⁵ provided such projects were approved in the MISO Transmission Expansion Plan (MTEP).⁶ On December 8, 2011, pursuant to Attachment FF of the MISO Tariff, the MISO Board of Directors approved 15 additional transmission construction projects

MISO Tariff. See *Midwest Indep. Trans. Sys. Op., Inc.*, 97 FERC ¶ 61,260 (2001). In *American Trans. Co. LLC and Midwest Indep. Trans. Sys. Op., Inc.*, 107 FERC ¶ 61,117 (2004), the Commission accepted a settlement modifying ATC’s formula rate structure to, among other things, permit inclusion of Construction Work in Progress (CWIP) in rate base in the calculation of transmission rates and allow current year expensing of Preliminary and Survey and Investigation (Pre-Certification) costs for new transmission investments.

⁴ October 2 Transmittal Letter at 2-4.

⁵ Under Section 1.429A of MISO’s Tariff, an MVP is one or more Network Upgrades that address a common set of Transmission Issues and satisfy the conditions listed in Sections II.C.1, II.C.2, and II.C.3 of Attachment FF.

⁶ *Midwest Indep. Trans. Sys. Op., Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh’g*, 137 FERC ¶ 61,074 (2011), *appeal pend’g* (MVP Orders). The transmission owners’ revenue requirements for MVPs are calculated pursuant to Attachment MM and recovered from transmission customers through charges assessed pursuant to Schedule 26-A of the Tariff.

as MVPs, two of which ATC has the obligation to construct.⁷ ATC states that it is presently incurring costs associated with the MVPs for which it is entitled to collect a revenue requirement.⁸

II. Filing

4. ATC and MISO propose to establish a new Attachment MM-ATCLLC which uses language in the currently effective Attachment MM with two modifications: (1) to reflect ATC's previously-approved treatment of Pre-Certification costs, i.e., to expense them in the year of occurrence;⁹ and (2) to incorporate an annual true-up procedure that is largely identical to the annual Attachment O and Attachment GG true-up procedures previously accepted by the Commission for use by ATC and reflected in Attachment O-ATCLLC and Attachment GG-ATCLLC respectively, thus establishing a true-up between ATC's annual projected revenue requirement recovered under Attachment MM and its actual annual revenue requirement.¹⁰

5. ATC states that the current Attachment MM formula rate template does not specifically incorporate a provision for the expensing of Pre-Certification costs. ATC also notes that its proposed true-up will adjust the annual revenue requirement each year to reflect its actual annual revenue requirement from the previous rate period. Furthermore, ATC states that adding a true-up mechanism to Attachment MM-ATCLLC will ensure that transmission customers receiving service under Schedule 26-A will be

⁷ The 2011 MTEP included projects 3127 and 2844 (generally referred to as the North LaCrosse-North Madison Cardinal-Spring Green-Dubuque and Pleasant Prairie - Zion transmission line projects) that were identified as MVPs which ATC has the obligation to construct and which form a part of MISO's first MVP portfolio. October 2 Transmittal Letter at n.10.

⁸ October 2 Transmittal Letter at 9.

⁹ ATC describes the primary substantive change here as adding a provision to include Pre-Certification costs for MVPs in the annual revenue requirement calculated under Attachment MM-ATCLLC. ATC's proposal includes conforming edits to remove Pre-Certification expense from the development of the Annual Allocation Factor for Transmission Operation and Maintenance and the Annual Allocation Factor for Other Operation and Maintenance. Regarding the treatment of CWIP, ATC states that no modification was required to the generic language in Attachment MM in order to permit ATC to include its CWIP in rate base associated with MVPs. October 2 Transmittal Letter at 6.

¹⁰ October 2 Transmittal Letter at 1.

treated in the same manner as transmission customers receiving service under Schedules 7, 8, 9, and 26.¹¹ Finally, ATC states that it proposes non-substantive modifications in Attachment MM-ATCLLC to, among other things, reference various line items of Attachment O-ATCLLC.

III. Notice of Filing and Responsive Pleadings

6. Notice of MISO's filing was published in the *Federal Register*, 77 Fed. Reg. 62,506, with interventions and protests due on or before October 23, 2012.
7. Timely motions to intervene were filed by Wisconsin Electric Power Company and American Municipal Power, Inc. The MISO Transmission Owners¹² filed a timely motion to intervene and comments. ATC filed an answer to the comments.
8. In their comments, the MISO Transmission Owners state that although they do not oppose the approval of Attachment MM-ATCLLC, including the adoption of a mechanism to allow for the recovery of Pre-Certification expenses, they state that the Commission should condition any approval of proposed section 3(a)(xi)(4) on the requirement that ATC's recovery of Pre-Certification expenses be limited to the costs

¹¹ *Id.* at 2.

¹² 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; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; 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.

associated with facilities that ATC is entitled to construct and own consistent with the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement) and the Tariff. MISO Transmission Owners cite to the following language from the Transmission Owners Agreement:

Ownership and the responsibility to construct facilities which are connected to a single Owner's system belong to that Owner, and that Owner is responsible for maintaining such facilities. Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners' facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.¹³

9. The MISO Transmission Owners assert that recent Commission orders have found that these provisions are "unambiguous as to ownership and the responsibility of owners to build facilities."¹⁴ The MISO Transmission Owners argue that transmission customers should not be obligated to pay the Pre-Certification expenses of ATC (or any other transmission owner) for facilities that the transmission owner is not authorized to construct under the Transmission Owners Agreement and the Tariff.¹⁵

10. The MISO Transmission Owners state that the Commission should condition any approval of Attachment MM-ATCLLC on the following requirements: (1) such Pre-Certification costs may only be included in Attachment MM-ATCLLC to the extent that such costs relate to projects or segments of projects that ATC is entitled to construct and own consistent with the Transmission Owners Agreement and Tariff; or (2) ATC is obliged to submit a filing with the Commission to recover Pre-Certification costs associated with projects or segments of projects that ATC will not construct and own.¹⁶

¹³ MISO Transmission Owners Agreement, Appendix B, § VI.

¹⁴ MISO Transmission Owners Comments at 4 (citing *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 97 (2012); *Xcel Energy Servs. Inc. v. Am. Transmission Co. LLC*, 140 FERC ¶ 61,058, at P 60 (2012)).

¹⁵ MISO Transmission Owners Comments at 4.

¹⁶ *Id.* at 4-5.

11. In its answer, ATC states that the concerns identified by the MISO Transmission Owners are already addressed by the proposed language of Attachment MM-ATCLLC. ATC explains that the proposed Attachment MM-ATCLLC would only apply to those MVPs identified in Attachment FF of the Tariff. Specifically, section 2 of the proposed Attachment MM-ATCLLC states “[t]his Attachment MM-ATCLLC applies to those MVPs that are determined under Attachment FF to be subject to this Attachment MM-ATCLLC”¹⁷ ATC explains that the reference to Attachment FF of the Tariff specifically incorporates section V of Attachment FF which provides for designation of entities to construct, own, and/or finance projects included in the recommended MTEP.¹⁸ ATC states that it fully expects to apply Attachment MM-ATCLLC to those projects governed by Attachment FF and the Transmission Owners Agreement. Thus, ATC states that the MISO Transmission Owners’ concerns are already addressed by the proposed language in Attachment MM-ATCLLC.

12. However, ATC states that it does not oppose making changes to the proposed Attachment MM-ATCLLC in the manner identified by the MISO Transmission Owners. ATC states that it fully understands and appreciates that it is authorized to recover only those costs that are attributed to projects that have been identified in the Attachment FF process. ATC further states that the condition requested by the MISO Transmission Owners does not change the effect of Attachment MM-ATCLLC nor does it change the projects to which Attachment MM-ATCLLC would apply. Therefore, should the Commission conclude that such clarifying language is appropriate, ATC would accept the approval with such condition.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer filed by ATC because it has provided information that assisted us in our decision-making process.

¹⁷ ATC Answer at 2-3.

¹⁸ MISO, FERC Electric Tariff, [ATTACHMENT FF, Transmission Expansion Planning Protocol, 2.0.0](#).

B. Commission Determination

15. We accept Attachment MM-ATCLLC and make it effective December 1, 2012 as requested. We find that Attachment MM-ATCLLC incorporates previously accepted rate treatment for ATC and true-up mechanisms for ATC. Because the proposed Attachment MM-ATCLLC includes language stating that Attachment MM-ATCLLC applies to those MVPs that are determined under Attachment FF to be subject to the Attachment MM-ATCLLC, we find that the condition requested by MISO Transmission Owners is not necessary. As ATC explains, the reference to Attachment FF of the Tariff specifically incorporates section V of Attachment FF, which provides for designation of entities to construct, own, and/or finance projects included in the recommended MTEP.¹⁹ Thus, once ATC is designated to construct an MVP under Attachment FF, it can recover the costs of that MVP pursuant to its Attachment MM, including recovery of Pre-Certification costs as currently incurred. However, ATC would need to file for approval to recover costs, including Pre-Certification costs, for any other projects, through Attachment MM-ATCLLC and Schedule 26-A.

The Commission orders:

MISO's tariff sheets are hereby accepted, effective December 1, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ MISO, FERC Electric Tariff, [ATTACHMENT FF, Transmission Expansion Planning Protocol, 2.0.0](#).