

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Ameren Services Company, First
Energy Corp., Northern Indiana
Public Service Company, National
Grid USA, and Midwest Independent
Transmission System Operator, Inc.

Docket Nos. ER02-2233-004
ER02-2233-005

ORDER GRANTING CLARIFICATION, DENYING REHEARING AND
CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued July 23, 2003)

I. Introduction

1. In this order we grant clarification with regards to the nature and timing of the annual actual and projected operating budget filings to be made by Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and GridAmerica.¹ We also deny the rehearing request and conditionally accept the proposed revisions to Midwest ISO's operating protocols and contracts proposed by the GridAmerica Participants² and Midwest ISO (collectively Applicants). In light of the discussion below, we will order Applicants to make a further compliance filing that is consistent with our findings.

¹GridAmerica will be formed by the GridAmerica Companies as a regulated, for-profit transmission company operating within and integrated into Midwest ISO. GridAmerica will be managed by National Grid USA (National Grid). The GridAmerica Companies are: Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a AmerenCIPS (Ameren), American Transmission Systems, Incorporated (ATSI), a subsidiary of FirstEnergy Corp. (FirstEnergy), and Northern Indiana Public Service Company (NIPSCO).

²The GridAmerica Participants include the GridAmerica Companies, GridAmerica LLC (GridAmerica), GridAmerica Holdings, Inc., and National Grid.

II. Background

2. A request for rehearing, a request for clarification, and a compliance filing were filed in response to the Commission's May 15 Order³ that conditionally accepted a compliance filing by Applicants, denied rehearing, clarified a previous order, and established hearing and settlement judge procedures. The Commission also directed: (1) GridAmerica to provide Midwest ISO with an actual and projected budget for services it performs on Midwest ISO's behalf; and (2) Midwest ISO to file its actual and projected annual operating budget for Commission review one year after GridAmerica becomes operational.

A. Clarification Request

3. Midwest ISO seeks clarification that the projected and actual annual operating budgets are to be filed as an informational filing and not as a filing submitted pursuant to Section 205 of the Federal Power Act (FPA).⁴ Midwest ISO also seeks clarification that it be allowed to synchronize the filing of its actual budget with the closing of its books on September 1, 2004, despite the fact that the 12-month period following GridAmerica's incorporation into Midwest ISO will end October 1, 2004. Alternatively, Midwest ISO requests that the Commission permit it to file 12 months of actual and 12 months of projected operating budget data on a revised reporting date of November 1, 2004, in order to incorporate actual September 2004 data into the budgets.

4. The Midwest ISO Transmission Owners (Midwest ISO TOs) filed an answer to the request for clarification. They object to the required annual budget filings being designated as anything other than Section 205 filings.

B. Rehearing Request

5. American Municipal Power-Ohio, Inc. and the City of Cleveland, Ohio (collectively, AMP-Ohio) filed a request for rehearing asserting that the Commission erred when it accepted Section 5.4⁵ of the proposed Independent Transmission Company

³Ameren Services Company, *et al.*, 103 FERC ¶ 61,178 (2003) (May 15 Order).

⁴16 U.S.C. § 824d (2000).

⁵Section 5.4 of the proposed ITC Agreement specifies that Midwest ISO will perform services, consistent with the Midwest ISO Agreement and the Midwest ISO

(continued...)

(ITC) Agreement for filing without further modification. AMP-Ohio asserts that Section 5.4 permits Midwest ISO and/or GridAmerica to abrogate existing transmission rights if honoring these rights would be inconsistent with the Midwest ISO Tariff. AMP-Ohio thus argues that Section 5.4 is inconsistent with Opinion No. 453-A's underlying principle of the retention of transmission rights.⁶

C. Compliance Filing

6. In response to the May 15 Order Applicants made a compliance filing containing: (1) a revised ITC Agreement between GridAmerica and Midwest ISO which modified Section 5.3 to state that after the six-year transition period expires, the Commission will institute a proceeding pursuant to Section 206 of the FPA⁷ with respect to any grandfathered agreements that have not been converted to service under the Midwest ISO Tariff; and (2) revised protocols describing the functions to be performed by GridAmerica, Midwest ISO, and the GridAmerica Companies. Specifically, (1) the ITC Agreement has been revised to specify a date that contracting services will end; and (2) the process and operational protocols have been revised to clarify the manner in which the Applicants will timely approve reservations and the role of GridAmerica in facilitating emergency energy transactions under pre-existing contracts. In addition, Applicants propose to revise the process and operational protocols to clarify ambiguous language to state that the GridAmerica Companies shall also perform regional redispatch as required under certain current agreements under the direction of Midwest ISO.

Notice and Responses

7. Notice of the compliance filing was published in the Federal Register, 68 Fed. Reg. 35,395 (2003), with comments, protests, and motions to intervene due on or before June 20, 2003.

8. Wisconsin Electric Power Company (WEPCo) filed comments on the compliance filing that addressed typographical errors in the revised Schedule 3. Wisconsin Public Service Corporation and Upper Peninsula Power Company (WPSC/UPPC) filed a joint

⁵(...continued)

OATT, on GridAmerica's behalf, when GridAmerica is unable to perform such services.

⁶Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,033 (2001) (Opinion No. 453), order on reh'g, 98 FERC ¶ 61,141 (2002) (Opinion No. 453-A), order on remand, 102 FERC ¶ 61,192 (Remand Order), order denying reh'g, 104 FERC ¶ 61,012 (2003).

⁷16 U.S.C. § 824e (2000).

motion to intervene in the compliance filing docket without substantive comment. Reliant Resources, Inc. (Reliant) also filed a motion to intervene in the compliance filing docket without substantive comment.

III. Discussion

A. Procedural Matter

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make WPSC/UPPC and Reliant parties to the compliance filing docket.

B. Request for Clarification

10. We will grant the Applicants' clarification request that their actual and projected annual operating budgets be treated as information filings. In Midwest Independent Transmission System Operator, Inc., the Commission conditionally accepted for filing Midwest ISO's Schedules 16 and 17 to its OATT. Schedules 16 and 17 contain mechanisms to recover the costs associated with implementing Financial Transmission Rights and Energy Markets, respectively. With regard to concerns about the level of proposed expenditures, the Commission directed Midwest ISO to submit detailed informational filings and stated:

Midwest ISO's informational filings will be used to indicate the expected expenditures and monitor the progress made by Midwest ISO. However, we note that the informational filings are not intended to form the basis of an automatic prudence review of reported costs. Rather, these filings are intended to give the parties advance notice of potential cost issues which they can then raise via an appropriate filing with the Commission. [footnote omitted]⁸

11. We find that similar circumstances exist here. Like Schedules 16 and 17, the Schedule 10 Cost Adder is a mechanism designed to recover Midwest ISO's administration costs. Applicants' annual operating budgets will indicate the expected expenditures to be included in the Schedule 10 Cost Adder. As was the case in Midwest ISO, Applicants' operating budgets are intended to give parties and the Commission advance notice of potential cost issues. Thus, Applicants' annual operating budgets are

⁸101 FERC ¶ 61,221 (2002), order on reh'g, 103 FERC ¶ 61,035 at P 13 (2003) (Midwest ISO).

informational in nature and should be filed as such.⁹ We also find that, as with the informational filing directed for the Schedules 16 and 17 Cost Adders, both Applicants must submit, at a minimum, detailed information suitable for a full cost review.

12. It is also important to note that participants in Midwest ISO agreed that Midwest ISO would be permitted to recover certain costs in the Schedule 10 Cost Adder and to cap the Schedule 10 Cost Adder at 15 cents/kwh during the 6-year transition period.¹⁰ The parties proposed, and the Commission found to be just and reasonable, that the otherwise recoverable Schedule 10 Cost Adder charges that exceeded the cap would be deferred, with interest, and their recovery amortized over a 5-year period beginning after the transition period had lapsed. The parties also agreed, and the Commission approved as just and reasonable, that Midwest ISO must make a Section 205 filing of the Schedule 10 Cost Adder charges that it proposes to recover after the end of the transition period.¹¹

13. The Schedule 10 Cost Adder is a formula-type mechanism that the Commission has found to be just and reasonable and the parties have agreed to cap the adder at 15 cents/kwh during the transition period. Therefore we find that the submittal of Applicants' operating budgets simply informs parties and the Commission of potential costs and project expenditures that will be inputs into the formula. The submission of the operating budgets will not change the approved Schedule 10 Cost Adder mechanism, nor will the operating budgets affect the operation of the cap, therefore we will treat Applicants'

⁹We distinguish ISO New England, 101 FERC ¶ 61,305 (2002), from the case here because in that case the Commission was presented with proposed rate changes based upon revisions to projected revenue requirements. See ISO New England, 101 FERC ¶ 61,305 at P 11. Here, Midwest ISO's Schedule 10 Cost Adder has a cap that is fixed until the end of the transition period and any proposed new or deferred Schedule 10 Cost Adder charges will have to be supported in a Section 205 filing at the end of that transition period.

¹⁰Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 (September 16 Order), order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC ¶ 61,372 (1998).

¹¹See, Op. No. 453, 97 FERC ¶ 61,033 at 61,168-169.

annual operating budgets as informational filings.¹² We agree with Midwest ISO that a Part 35 filing,¹³ is not necessary at this time.¹⁴

14. We will also grant the clarification request regarding the timing of the filing of the actual and projected annual operating budget because we want the parties to place in the record a full year of actual and projected expenses. Accordingly, we will permit Midwest ISO to file its actual and projected annual operating budget within 30 days of its receipt of GridAmerica's actual and projected operating budget for services performed on Midwest ISO's behalf and we direct GridAmerica to file its actual and projected operating budget within 30 days after its fiscal year has ended.

C. Rehearing Request

15. We will deny AMP-Ohio's request for rehearing. The Commission has repeatedly stated that grandfathered agreements must be honored.¹⁵ We expect GridAmerica will honor its commitments to AMP-Ohio because of this requirement and because the Applicants have represented in the compliance filing that the proposed agreements and services do not disturb any obligations to AMP-Ohio. Given the treatment of GridAmerica's members in the current Day-Ahead market environment, we expect that the terms of service raised by AMP-Ohio, including waivers of deposits for network service, NRC curtailment priorities and interconnection capacity rights, can be accommodated in the current market.

16. If Applicants intend to deviate from the terms of service for the AMP-Ohio grandfathered agreements, we expect parties to first conduct negotiations between contracting parties, as we previously required¹⁶ and, if necessary, to make a filing that specifies and adequately supports the reason why the contract term of service that is being

¹²We are mindful of the language in the May 15 Order that directs the Applicants to submit the actual and projected annual operating budgets as Section 205 filings. Upon reflection, we find, for the reasons stated, that these annual budget filings during the transition period should be informational in nature.

¹³18 C.F.R. Part 35 (2003).

¹⁴The foregoing discussion does not preclude parties from filing a complaint, based on information obtained via the informational filings.

¹⁵See, supra fn 5 and 8.

¹⁶See, Op. No. 453-A, 98 FERC ¶ 61,141 at 61,414.

denied. Neither AMP-Ohio nor GridAmerica have indicated that such a circumstance exists now and therefore no further action is required.

17. We recognize that the advent of Day-2 markets will fundamentally change the nature of transmission rights. The transition of grandfathered agreement rights to Day-2 markets, an issue of concern to AMP-Ohio, should be raised and addressed in the context of the Market Rules program being developed by Midwest ISO.¹⁷

D. Compliance Filing

18. The May 15 Order directed the Applicants to make two compliance filings, the first of which was ordered to be submitted by May 30, 2003. Applicants have submitted the first of the two filings. With regard to that filing, the May 15 Order directed Applicants to revise Section 4.1.2 of the ITC Agreement to: (1) limit the period over which contracting services would be provided to a specified time; and (2) clarify how reservations will be approved and emergency energy transactions facilitated under pre-existing contracts in a timely fashion during the transition period.¹⁸

19. Applicants also submitted minor clarifications to the Protocols that specify that Midwest ISO, rather than GridAmerica, will direct regional dispatch.

20. We find that Applicants' compliance filing adequately addresses the issues raised in the May 15 Order. However, we agree with WEPCo that the typographical errors that it points out should be corrected. We will therefore direct the Applicants to make a further compliance filing that contains these corrections.

¹⁷We note that Midwest ISO has already initiated a dialogue with grandfathered agreement customers, as shown in the AMP-Ohio Rehearing Request Attachment-Alternatives For Pre-OATT Transmission Agreements. This attachment details the options for these customers in making the transition to Day-2 markets.

¹⁸Applicants indicate they will submit the second compliance filing earlier than the due date directed in the May 15 Order. See, May 15 Order, 103 FERC ¶ 61,178 at ordering paragraph (G). This filing will be a Supplemental Agreement among GridAmerica, the Midwest ISO TOs, and Midwest ISO. Applicants represent that the Supplemental Agreement will recognize GridAmerica as an ITC while ensuring that GridAmerica and the GridAmerica Companies stand in a relationship with Midwest ISO similar to the relationship between Midwest ISO and the Midwest ISO TOs, as set forth in the Midwest ISO TO Agreement.

The Commission orders:

(A) Applicants' compliance filing is hereby conditionally accepted for filing, as discussed herein.

(B) Applicants' requests for clarification are hereby granted to the extent discussed herein.

(C) Applicants are hereby ordered to file, within 15 days of the date of this order, the revised Schedule 3, consistent with the discussion in this order.

(D) AMP-Ohio's request for rehearing is hereby denied for the reasons stated herein.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.