

transmission service, it receives credits against the transmission rate until it has been paid back, with interest. The Commission observed that Midwest ISO's pro forma IA did not contain a mechanism to provide transmission service credits for network upgrades and that the Commission had conditioned its acceptance of the pro forma IA on Midwest ISO providing credits consistent with Commission policy. The problem with the method in the IA is that whether FPL Energy receives the correct transmission service credits could not be tested or verified, since the power sale agreement was not filed with the Commission; and in any event, it would be difficult, if not impossible, to establish what Otter Tail would have paid for FPL Energy's power absent the credit. Accordingly, the Commission accepted the unexecuted IA, subject to Midwest ISO refiling the agreement in compliance with Commission policy.

II. Instant Filings

A. Compliance Filing

5. On September 25, 2003, Midwest ISO filed a revised IA providing for transmission credits with interest, consistent with Commission policy. As discussed later in the order, the revised IA states that credits will be provided in the form of cash payments. In addition, Midwest ISO revised the Letter Agreement to be consistent with the modified IA.

B. Rehearing Request

6. Otter Tail asserts on rehearing, however,² that the Commission did not provide a reasoned basis for rejecting the methodology in the IA. Otter Tail states that the IA and Letter Agreement recognize FPL Energy's entitlement to transmission credits³ and that FPL Energy has simply agreed to receive compensation for the transmission credits through the rate in the PPA. Otter Tail argues that this is merely an additional, voluntary arrangement regarding the ultimate treatment of the transmission credits. It also says that the proposed crediting mechanism is no different in concept than allowing credits to be assigned, which the Commission has approved. In addition, Otter Tail contends that the Commission's rejection of the proposed crediting methodology would result in FPL

² Otter Tail filed its request for rehearing on October 9, 2003.

³ Otter Tail states that its approach is consistent with Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,136 (2001) and Consumers Energy Company, 95 FERC ¶ 61,233 (2001), reh'g denied, 96 FERC ¶ 61,132 (2001).

Energy receiving a double credit,⁴ thereby violating Commission policy, which only requires one credit for network upgrades.

7. However, Otter Tail says that it will withdraw its request for rehearing if the Commission accepts Midwest ISO's compliance filing.

III. Notice of Filings and Pleadings

8. Notice of Midwest ISO's compliance filing was published in the Federal Register, 68 Fed. Reg. 57,686 (2003), with comments, interventions or protests due on or before October 16, 2003.

9. On October 16, 2003, Otter Tail filed comments supporting Midwest ISO's compliance filing.

IV. Analysis

A. Compliance Filing

10. Midwest ISO's revised IA provides that credits will be provided in the form of monthly cash payments. It states, in pertinent part, that: "[t]ransmission credits and interest will be made in sixty (60) monthly payments beginning with the first calendar month after the later of Transmission Owner's notice as provided in Appendix C or Generator demonstrates commercial operation of the Facility."⁵ The modified IA also allows parties to adopt an alternative payment schedule that accelerates reimbursement of the amounts paid by Generator.⁶

11. In addition, to comport with the revised IA, Midwest ISO modified the Letter Agreement to supersede and replace the July 11 Letter Agreement. The new Letter Agreement notes that Generator would be entitled to a cash equivalent refund (i.e., credit) equal to the total amount paid for network upgrades (including any tax gross-up or tax-

⁴ Otter Tail asserts that Midwest ISO would be providing transmission credits from Otter Tail revenues to FPL Energy for transmission service over Otter Tail's transmission facilities while credits are also being provided pursuant to the PPA. See Rehearing Request at 10.

⁵ See Midwest ISO Compliance Filing, Appendix A, Section 1.7.

⁶ Id.

related payments), to be paid by the Transmission Owner⁷ within five years of the date the facilities are placed in service.

12. We will accept the revised IA, as it contains a mechanism for providing credits with interest, through monthly cash payments, which is consistent with Commission policy.⁸ If the parties wish to adopt any alternative payment schedule, they must file it with the Commission, pursuant to section 205 of the Federal Power Act.⁹

B. Rehearing Request

13. Our acceptance of Midwest ISO's compliance filing moots Otter Tail's rehearing request, which Otter Tail intends to withdraw upon our acceptance of the filing.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby accepted, as discussed in the body of this order.

(B) Otter Tail's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁷ See Midwest ISO Compliance Filing, Appendix F, Letter Agreement at 3.

⁸ Midwest Independent Transmission System Operator, Inc. 97 FERC ¶ 61,136 (2001) citing Consumers Energy Company, 95 FERC ¶ 61,233 (2001), order denying reh'g, 96 FERC ¶ 61,132 (2001).

⁹ 16 U.S.C. § 824d (2000).