

125 FERC ¶ 61,300  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Missouri River Energy Services and  
Midwest Independent Transmission System  
Operator, Inc. Docket No. ER08-370-004

Missouri River Energy Services and Western  
Minnesota Municipal Power Agency Docket No. EL08-22-002

ORDER GRANTING REQUEST FOR REHEARING

(Issued December 18, 2008)

1. On October 30, 2008, Missouri River Energy Services (MRES) and the Western Minnesota Municipal Power Agency (Western Minnesota) (together Petitioners) requested rehearing of the Commission's September 30, 2008 Order Accepting and Suspending Proposed Tariff Sheets, Granting Interim Declaratory Relief, Consolidating Proceedings, and Establishing Hearing and Settlement Judge Procedures.<sup>1</sup> Petitioners argue that the Commission erred in setting for hearing their petition for declaratory relief, which requested that Petitioners be allowed to combine their financial data for the purpose of calculating MRES's rates pursuant to its formula rate template in Attachment O of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (Tariff). For the reasons set forth below, the Commission grants the request for rehearing of its Initial Order.

**Background**

2. In the Initial Order, the Commission accepted for filing MRES's proposed transmission formula rate template under Attachment O to Midwest ISO's Tariff and suspended it for a nominal period, to become effective October 1, 2008, subject to refund. The Commission found that the proposed Attachment O involved issues of material fact that could not be resolved on the record before the Commission, and were thus more appropriately addressed in hearing and settlement judge procedures.

---

<sup>1</sup> *Missouri River Energy Services*, 124 FERC ¶ 61,309 (2008) (Initial Order).

3. In their request for declaratory order, Petitioners noted that they have issued combined audited financial statements for over 20 years to reflect their relationship. This relationship includes the fact that MRES is Western Minnesota's only customer and that Western Minnesota owns the majority of generating and transmission facilities that MRES uses to serve its members. Western Minnesota facilitates MRES's generation and transmission construction and acquisition efforts by issuing tax-exempt debt; revenue that MRES collects is pledged as security for repayment of Western Minnesota's debt. According to MRES, Western Minnesota has no employees, and MRES's staff provides administrative services to Western Minnesota through an administrative services contract. MRES also stated that five of MRES's current board members are also members of the board of directors of Western Minnesota. MRES and Western Minnesota also noted that they are tied together by power supply and transmission capacity agreements as well as several projects that Western Minnesota uses to supply power to MRES. MRES and Western Minnesota sought a declaratory order that would permit them to combine their financial data for the purpose of calculating MRES's rates pursuant to its formula rate template in Attachment O of the Tariff.

4. Otter Tail Power Company (Otter Tail) and Basin Electric Power Cooperative (Basin Electric) filed protests to the petition for declaratory order. Otter Tail argued that the petition lacked sufficient detail on the specific relationship between MRES and Western Minnesota, and that the Commission should require further specificity. Basin Electric also asked for further information about how the two entities planned to combine their financial information, and requested that the Commission consolidate the two dockets and hold both for hearing.

5. The Commission found that the issues raised in response to MRES and Western Minnesota's petition for declaratory order were so closely intertwined with those raised in the Attachment O filing that they should be included in the hearing. The Commission noted that in the hearing, parties could explore what, if any, revisions to MRES's Attachment O formula are necessary to reflect the specific relationship between MRES and Western Minnesota, and how these entities can use their consolidated financial reporting practice to ensure the resulting formula is just and reasonable. The Commission granted the petition for declaratory order on an interim basis to allow MRES to implement its transmission formula rate proposal, and to transfer control over its transmission assets to the Midwest ISO, while the hearing is ongoing.

### **Request for Rehearing**

6. In their request for rehearing, Petitioners argue that the Commission erred in setting the petition for declaratory order for hearing, and in granting the petition on an interim basis to allow MRES to join the Midwest ISO.

7. Petitioners argue that the Commission made two errors in setting their petition for declaratory order for hearing. First, the Commission failed to answer the threshold

question posed for decision in the petition: whether, given the integrated relationship between MRES and Western Minnesota, it is proper to consolidate their financial information to create a single set of books to use for purposes of Attachment O. The issue, Petitioners argue, is not how the set of books would be used for purposes of Attachment O, but whether to permit MRES to use this combined information in the first place. Any inquiry into requested variances from the Attachment O formula template, they argue, should take place in Docket No. ER08-370-000. Petitioners state that the question of whether to allow MRES and Western Minnesota to combine their records is not intertwined with the issues of proposed variances from Attachment O. It is, if anything, more fundamental to the ability of MRES to participate in the Midwest ISO as a transmission-owning member than the requested variances from Attachment O.

8. Second, Petitioners argue that the Commission erred by including the petition for declaratory order in the questions set for hearing. They argue that the points raised by Otter Tail and Basin Electric in response to the Petition were non-issues, and thus a hearing was not required. For example, Petitioners state that Western Minnesota has no employees, so there are no employee costs to allocate. Petitioners add that Otter Tail's other requests, including those for the location and ownership of Petitioners' facilities, the allocation of annual transmission revenues, and the specific facilities that will be transferred to the Midwest ISO, were not relevant to the question of combining financial information. They add that Otter Tail's request for information concerning why certain MRES members are not joining Midwest ISO is not relevant. Because Commission precedent prohibits protestors from expanding the scope of a declaratory order, Petitioners argue that the Initial Order erred in granting credence to Otter Tail and Basin Electric's arguments.<sup>2</sup>

9. Petitioners also state that Otter Tail and Basin Electric were not operating in good faith in questioning the relationship between MRES and Western Minnesota. Petitioners note that they have long-term relationships with both Otter Tail and Basin Electric, and that Basin Electric has had access to the combined financial statements in the past. Additionally, all four entities have been subject to a joint Integrated Transmission Agreement for more than 22 years, and Petitioners are currently co-participants with Otter Tail in efforts to develop the Big Stone Unit 2 generating project and in the CAPX-2020 transmission expansion.

10. The request for rehearing also argues that the Commission erred in allowing the petition for an interim period, subject to further order, to permit MRES to implement its transmission formula rate proposal, and to transfer control over its transmission assets to the Midwest ISO, while the hearing is ongoing. Petitioners argue that this interim

---

<sup>2</sup> Request for Rehearing at 10 (citing *Entergy Servs., Inc.*, 104 FERC ¶ 61,136, at 62,259-60 (2003)).

approval is “inimical to making long-term commitments” because it could later be revoked or conditioned. This would mean that MRES could not rely upon being able to use a combined financial statement to recover costs, and it would hinder Western Minnesota’s ability to obtain financing for new transmission investment. MRES, Petitioners state, will not be able to move forward to implement its transmission rate proposal under the interim approval.

### **Discussion**

11. We grant Petitioners’ request for rehearing. Upon further consideration, we find that the nature of the business relationship between MRES and Western Minnesota justifies granting the petition for declaratory relief to allow the combining of the two parties financial statements for the purposes of calculating MRES’s transmission rates under Attachment O of the Midwest ISO Tariff. We agree that hearing is not required on the petition, and that many of the issues raised by protestors can be addressed in the hearing on MRES’s Attachment O filing.

12. Basin Electric argues in its original protest that MRES failed to provide adequate information to show how financial information will be combined, and that consolidation for hearing is required for MRES’s two filings based on a desire to prevent double counting or misallocation of costs. While we agree that it is important to correctly allocate costs, this allocation bears on the Attachment O filing rather than the petition for declaratory relief. Allowing MRES to combine its financial statements with Western Minnesota does not determine how costs will ultimately be allocated for purposes of Attachment O; it merely allows MRES to calculate fully its annual transmission revenue requirement by including information from both MRES and Western Minnesota in the calculation. Reporting the parties’ financial data separately would distort MRES’s capital and operating costs in providing transmission service because Western Minnesota functions as MRES’s financing affiliate. Allowing Petitioners to combine their financial information would allow more information to be factored into the design and calculation of MRES’s Attachment O formula rate, since it would provide a more detailed accounting of the costs of owning, operating and maintaining the transmission facilities that MRES will include under the Tariff than a financial statement reflecting MRES’s costs on a stand-alone basis.

13. Parties should still examine the issues raised by the Commission in our Initial Order in the hearing on MRES’s Attachment O filing; namely, what revisions to MRES’s Attachment O formula are necessary to reflect the specific relationship between MRES and Western Minnesota, and how those entities can use their consolidated financial reporting practice to ensure that the formula results in a just and reasonable annual transmission revenue requirement.

14. Otter Tail raised a variety of questions in its protest that it argued should be answered before the Commission approves the petition. Otter Tail asked why Western

Minnesota or MRES's members owning transmission facilities are not joining Midwest ISO. However, as Petitioners note, this issue is not relevant to the petition, and we agree that protestors may not broaden the scope of a limited petition for declaratory order by raising non-germane issues.<sup>3</sup> MRES states that it plans to join Midwest ISO as a transmission-owning member, and the inclusion of both MRES and Western Minnesota as Midwest ISO members is unnecessary to the transfer of control, operation or cost allocations associated with the transmission facilities at issue. Western Minnesota has title of the facilities and acts as a financial agent, but does not operate the facilities.

15. Otter Tail also asked several questions about Western Minnesota and the nature of its arrangements with MRES, including how many employees Western Minnesota has, what facilities both Western Minnesota owns and whether each will be within Midwest ISO, what signed agreements exist between MRES and Western Minnesota, how any facilities in the Midwest ISO will be allocated between transmission pricing zones, and what the details are surrounding any lease payments from transmission facilities owned by MRES customers. Some of these questions were addressed by MRES in its response to the Commission's March 14, 2008 deficiency letter. This response included a listing of the membership of Western Minnesota, a copy of the Transmission Capacity Contract between MRES and Western Minnesota, a description of the facilities intended for entry into Midwest ISO, and Energy Information Association Schedules 4 and 7 prepared on a combined basis and as a split of the combined total between MRES and Western Minnesota. We agree with Petitioners that the remaining questions surrounding the details of the ownership of specific transmission facilities and lease payments are not relevant to the determination of whether Petitioners should be allowed to combine their financial information for the purposes of Attachment O. Concerns over the specific facilities and payments that should be included within Attachment O should be raised in the hearing on MRES's Attachment O filing.

16. Upon further review, we find that there are significant contractual, historical and financial relationships between MRES and Western Minnesota that justify the combining of financial statements, including the sharing of staff and the performing of agency duties for one another. Based on the unique business relationship between the two organizations, combining their financial statements will provide accurate representation of costs for both MRES and Western Minnesota for use in calculating MRES's Attachment O.

---

<sup>3</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,196, at P 74 (2003).

The Commission orders:

(A) Petitioners' request for rehearing of the Initial Order is hereby granted, as discussed in the body of this order;

(B) Petitioners' petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.