

161 FERC ¶ 61,173
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Midcontinent Independent System Operator, Inc.

Docket No. ER17-1014-000

ORDER ON TARIFF FILING

(Issued November 16, 2017)

1. On February 22, 2017, Midcontinent Independent System Operator, Inc. (MISO) submitted, under section 205 of the Federal Power Act (FPA),¹ proposed revisions to the Formula Rate for Otter Tail Power Company (Otter Tail) included in Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).² MISO and Otter Tail (together, Filing Parties) state that they are submitting the proposed revisions to include the annual transmission revenue requirements associated with Basin Electric Power Cooperative's (Basin Electric) eligible transmission facilities located within the Otter Tail pricing zone. On April 26, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,³ the proposed Tariff revisions were accepted for filing, suspended for a nominal period, to become effective May 1, 2017, as requested, subject to refund and further Commission order.⁴
2. As discussed below, in this further order, we accept Filing Parties' filing, subject to condition, effective May 1, 2017.

¹ 16 U.S.C. § 824d (2012).

² MISO February 22 Filing, Transmittal Letter at 1 (Filing).

³ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 159 FERC ¶ 62,086 (2017).

I. Filing

3. Filing Parties propose to implement the crediting arrangement under section 30.9 of the Tariff⁵ and the proposed Attachment O-OTP to allow Basin Electric to receive credits for its eligible transmission facilities under the Tariff.

4. Filing Parties state that section 30.9 of the Tariff requires that to provide credits to network customers associated with their existing transmission facilities, (1) the customer must be a network customer; (2) the customer must demonstrate that the transmission facilities are integrated into the plans or operations of MISO; and (3) the transmission facilities must serve MISO's power and transmission customers. Filing Parties state that the proposed Tariff revisions establish a fair and adequate procedure for Basin Electric to demonstrate that it satisfies these three requirements with respect to certain of its existing transmission facilities. In addition, Filing Parties propose a crediting procedure to ensure no double billing of the credits and that all crediting is transparent and tied to Basin Electric's annual transmission revenue requirements for those integrated transmission facilities located in the Otter Tail pricing zone.

5. Filing Parties request an effective date of May 1, 2017 for the proposed Tariff revisions.⁶ Filing Parties further request waiver of section 35.13(d) of the Commission's regulations, 18 C.F.R. § 35.13(d) (2017), to the extent applicable, and any other applicable requirement of 18 C.F.R. Part 35, if necessary, in order to permit acceptance of the proposed Tariff revisions.⁷

II. Notice and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 82 Fed. Reg. 12,219 (2017), with interventions and protests due on or before March 15, 2017. Great River Energy filed a timely motion to intervene. Missouri River Energy Services (Missouri

⁵ Section 30.9 states:

The [n]etwork [c]ustomer that owns existing transmission facilities that are integrated with the Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the [n]etwork [c]ustomer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider or ITC to serve its power and transmission customers.

⁶ Filing at 6.

⁷ *Id.* at 6-7.

River) and Basin Electric and Central Power Electric Cooperative, Inc. (Basin Electric and Central Power) submitted timely motions to intervene and comments. On March 30, 2017 and March 31, 2017, respectively, MISO and Otter Tail filed answers. On April 10, 2017, Basin Electric and Central Power filed an answer to MISO's and Otter Tail's answers.

A. Comments

7. Basin Electric and Central Power contend that MISO and Otter Tail are proposing to treat network customers differently from transmission owners within MISO, and that this is unjust, unreasonable, and unduly discriminatory.

8. Basin Electric and Central Power argue that, like transmission owners, they should be allowed to deviate from MISO's Attachment O rate template when calculating their section 30.9 credits.⁸ For example, Basin Electric and Central Power explain that MidAmerican's section 30.9 procedures allow for the utilization of formula rate templates "substantially similar to a [MISO] Attachment O rate template."⁹ Basin Electric and Central Power contend that language should be added to the procedures to allow deviations from the Attachment O, provided they have been accepted for filing by the Commission.

9. Basin Electric and Central Power note that the proposed procedures limit the amount of time that network customers have to submit their annual Attachment O updates, and require network customers to submit Attachment O updates by May 1 in order to be eligible to receive credits for that year, a month earlier than the June 1 date by which MISO requires transmission owners to submit their Attachment O updates. Basin Electric and Central Power also argue that Otter Tail has included provisions that would give Otter Tail and MISO almost unlimited discretion to deny section 30.9 credits to Otter Tail's network customers.¹⁰ Specifically, they contend that section 3 of the proposed section 30.9 Credits Calculations Procedures gives both MISO and Otter Tail the ability to request additional documentation, and provides that network customers that fail to supply such information in a timely manner will not be eligible for section 30.9 credits. Basin Electric and Central Power contend that under the proposed language, Otter Tail or MISO could submit an information request on May 31 and then reject the

⁸ Basin Electric and Central Power Protest at 9-10.

⁹ *Id.* at 10.

¹⁰ *Id.* at 6-7 (citing February 22 Filing, Attachment A, Otter Tail Power Company Network Customers Section 30.9 Credits Calculations Procedures, § 3).

rate on June 1 for failure to respond.¹¹ They argue that no such provisions are contained in the Formula Rate Protocols that apply to transmission owners.¹² Further, they argue that any inaccuracy in data submitted by a network customer should be able to be corrected after June 1.¹³

10. Basin Electric and Central Power further argue that the proposal to require network customers to comply with MISO's Annual Update, Information Exchange, and Challenge Procedures contained in MISO's Formula Rate Protocols makes it impossible for network customers to also comply with Otter Tail's more restrictive procedures.¹⁴

11. Basin Electric and Central Power also argue that Otter Tail's proposed Note GG to its Formula Rate Template is too broad, potentially allowing for the inclusion in Otter Tail's annual transmission revenue requirement of the entire revenue requirements of all transmission customers with integrated transmission facilities, including those who do not receive section 30.9 credits or who receive credits for a portion of their facilities. Basin Electric and Central Power contend that the first sentence of Note GG should be revised to clarify that only customers receiving section 30.9 credits are included. Basin Electric and Central Power further argue that the reference to Note GG on line 7 of Otter Tail's Attachment O is redundant and should be deleted.¹⁵

¹¹ *Id.*

¹² *Id.* at 4-7.

¹³ *Id.* at 11-13.

¹⁴ *Id.* at 7-8 (citing February 22 Filing, Attachment A, Otter Tail Power Company Network Customers Section 30.9 Credits Calculations Procedures, § 6). Section 6 states:

Each eligible [network customer] will follow the Annual Update, Information Exchange, and Challenge Procedures as provided in the Formula Rate Protocols in Attachment O of the [Tariff]. If the initial implementation of an Attachment O rate that includes the [network customer's] revenue requirements occurs off-cycle (i.e. any date other than June 1), the eligible [network customer] shall, as part of its immediately next Annual Update, provide the same information required for the Annual Update not just for the upcoming Rate Year, but also for all periods since implementation of the eligible [network customer's] rate, and all such information shall be reviewed pursuant to the Annual Update, Information Exchange, and Challenge Procedures as provided in the Formula Rate Protocols.

¹⁵ *Id.* at 13-14.

12. Basin Electric and Central Power contend that the Commission should suspend the filing for a nominal period and make the revisions effective May 1, 2017, subject to a compliance filing.¹⁶

13. Missouri River states that it does not object to the proposed implementation of a section 30.9 crediting mechanism to allow Basin Electric to receive facility credits. However, Missouri River argues that the proposed Tariff revisions subject network customers to stricter filing requirements than otherwise required by the Tariff and different requirements than those required for transmission owners pursuant to the MISO Formula Rate Protocols. Missouri River states that the proposed revisions provide Otter Tail with preferential and discriminatory access to a network customer's Attachment O information. Missouri River further claims that under the proposed Tariff language, Otter Tail is enabled to exclude recovery of a network customer's revenue requirement for an entire year based on subjective and vague criteria.¹⁷ Missouri River requests Otter Tail to confirm, and the Commission to require that: (1) Basin Electric's Attachment O Formula Rate Template be populated to include supporting information prior to implementation in rates and consistent with the deadlines and provisions required by the MISO Formula Rate Protocols; (2) line item 10 of the Formula Rate Template be populated to include Basin Electric's load located in the Otter Tail pricing zone and associated with its Otter Tail pricing zone facilities consistent with the requirements and deadlines established by the MISO Formula Rate Protocols; and (3) the proposed Tariff provisions be fully consistent with the requirements and deadlines established by the MISO Formula Rate Protocols.

B. Answers

14. In their respective answers, both MISO and Otter Tail argue that network customers are not similarly situated to transmission owners under the Tariff. Instead, MISO and Otter Tail argue, network customers are similarly situated to other transmission customers. Otter Tail notes that certain responsibilities and obligations come with being a transmission owner, and MISO notes that transmission owners have the ability to submit revisions to the Tariff, while transmission customers do not. Otter Tail contends that the proposed section 30.9 crediting procedures are identical to those of other transmission owners.¹⁸

¹⁶ *Id.* at 14.

¹⁷ Missouri River Comment at 3-4.

¹⁸ MISO Answer at 3-4; Otter Tail Answer at 6-10.

15. MISO argues that the May 1 time requirement for the submission of information is necessary to permit MISO to review the materials for inclusion in transmission rates. MISO notes that the timing for submission of Attachment O information for transmission owners utilizing a historical test period is May 1, just as it is under the proposed section 30.9 procedures.¹⁹ With respect to complying with MISO's Annual Update, Information Exchange, and Challenge Procedures contained in MISO's Formula Rate Protocols, MISO notes that this treatment ensures that a network customer is treated the same as other transmission owners utilizing a historical test period and permits corrections in the event that an error is discovered after the June 1 rates have been filed.²⁰

16. Otter Tail contends that the proposed Tariff revisions are based on provisions recently accepted by the Commission for the inclusion of section 30.9 credits for network customers of Montana-Dakota Utilities. Otter Tail notes that those provisions apply to Basin Electric, but that Basin Electric did not object to those provisions.²¹

17. Otter Tail contends that it is appropriate for it to be granted the ability to request additional documentation from network customers. However, Otter Tail states that it agrees to remove this provision in a compliance filing.²²

18. Otter Tail contends there is no need to modify Note GG or remove the reference to Note GG from line 7 of Otter Tail's Attachment O. Otter Tail contends that when the entirety of Note GG is read together, it is clear that Otter Tail's Attachment O will only include the revenue requirements of transmission customers with facilities who are eligible to receive section 30.9 credits.²³

19. In their answer, Basin Electric and Central Power withdraw their protest concerning the requirement to submit Attachment O updates by May 1. They state that they understand that the rate updates are a two-stage process: an initial submission to

¹⁹ MISO Answer at 5-6. *See also* Otter Tail Answer at 8.

²⁰ MISO Answer at 5-7 (citing February 22 Filing, Attachment A, Otter Tail Power Company Network Customers Section 30.9 Credits Calculations Procedures, § 6).

²¹ Otter Tail Answer at 4-5.

²² *Id.* at 5-6.

²³ *Id.* at 11.

MISO by May 1, and a public posting on June 1 that triggers the Information Exchange and Challenge Procedures.²⁴

20. However, they argue that neither MISO nor Otter Tail addressed the merits of their protest that Otter Tail's proposal that network customers will be ineligible for credits if they do not submit an annual update by May 1 or correct inaccurate information in a timely fashion is unjust and unreasonable. Basin Electric and Central Power argue that the fact that similar provisions have been accepted for filing in proceedings in which no protest was filed, i.e., delegated letter orders, does not make Otter Tail's procedures just and reasonable.²⁵ Basin Electric and Central Power contend that MISO can file customer-specific Attachment O rate templates on behalf of network customers, as it does for the formula rates of non-public utility transmission owners. Finally, Basin Electric and Central Power contend that prohibiting network customers from using company-specific rate templates results in inconsistency between Otter Tail's rates, which are based on projections, and their network customer's costs, which are based on historic data.

III. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by MISO, Otter Tail, and Basin Electric and Central Power because they have provided information that assisted us in our decision-making process.

²⁴ Basin Electric and Central Power Answer at 2-3.

²⁵ *Id.* at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER16-888-000 (Mar. 29, 2016) (delegated letter order); *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER10-3180-000 (Nov. 10, 2010) (delegated letter order)).

B. Commission Determination

23. We find that the proposed Tariff revisions to Attachment O-OTP are just and reasonable, and not unduly discriminatory, and therefore accept them, subject to condition, effective May 1, 2017.²⁶

24. We disagree that network customers are not able to deviate from MISO's Attachment O rate template. The Commission allows non-conforming transmission service arrangements when it finds that they are just and reasonable and that unique factors necessitate the non-conforming provisions.²⁷ If a Network Customer is unable to recover its costs utilizing a generic Attachment O rate template, it can request to use a deviating rate template as a non-conforming provision of its Network Integration Transmission Service Agreement (Service Agreement). In the event that Basin Electric or any other network customer intends to use a non-conforming Service Agreement, that Service Agreement, including the deviating template, should be submitted to the Commission for approval under section 205 of the FPA.²⁸ In the event that parties cannot agree on an acceptable Service Agreement, MISO's current Tariff contemplates the filing of unexecuted Service Agreements.²⁹

25. Basin Electric and Central Power argue that failing to respond to information requests by June 1 may result in rejection of their section 30.9 credits. Similarly, Missouri River contends that the deadlines established in the 30.9 protocols should match those in the generic MISO Formula Rate Protocols. We note that section 3.a states “[network customers] that fail to supply all information *in a timely manner* will not be

²⁶ The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has “authority to propose modifications to a utility's [FPA section 205] proposal *if the utility consents to the modifications.*” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

²⁷ See *Tucson Electric Power Co.*, 151 FERC ¶ 61,088, at P 22 (2015) (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,018, at P 26 (2011), *pet. for review denied*, *NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013)).

²⁸ Non-conforming agreements must be submitted to the Commission for approval. See 18 C.F.R. §§ 35.1(a) and (g) (2017).

²⁹ See MISO Tariff, Section 29.1, Condition Precedent for Receiving Service.

eligible for [s]ection 30.9 credits.”³⁰ Section 3.b states, in part, “if the [network customer] cannot correct the error in sufficient time to be included in MISO’s annual June 1 rate update cycle, the [network customer] will not be eligible for the [s]ection 30.9 credits for that year.”³¹ We find that this language does not establish June 1 as a cutoff date for network customers to respond to MISO’s information requests and expect MISO to provide network customers a reasonable opportunity to respond to information requests. We further note that the deadlines included in the 30.9 protocols match those in the generic MISO Formula Rate Protocols.

26. Similarly, Basin Electric and Central Power state that errors should be able to be corrected after the June 1 deadline. MISO, in its answer, contends that the reference to the MISO Formula Rate Protocols in the proposed Tariff provisions ensures that network customers have the ability to correct errors. We agree with MISO that network customers have that ability under the Tariff as proposed. While the proposed Tariff language prevents the updating of rates out of cycle, the reference to the Formula Rate Protocols allows for corrections to be reflected in future rates. Further, the proposed Tariff provisions contemplate initial implementation of Attachment O rates that include a network customer’s revenue requirement associated with section 30.9 credits occurring out of cycle and information being submitted in the next annual update cycle, i.e., network customers will not be limited to initially commence receiving credits only on June 1 of each year.³²

27. We note that Otter Tail has agreed to remove the provision that allowed it to request additional documentation from network customers. Therefore, we direct Filing Parties, in its compliance filing, to remove this provision. Removing this provision addresses commenters’ concerns that the proposed Tariff revisions give Otter Tail authority to deny network customers section 30.9 credits.

28. Finally, we agree with Basin Electric and Central Power that Note GG should be modified. We find the first sentence of Note GG to be ambiguous, and we direct Filing Parties to revise Note GG to clarify that only the revenue requirements associated with credits received by network customers for their integrated facilities under section 30.9 are included as line items in Otter Tail’s Formula Rate Template. However, we decline to require changes to the Note GG reference on line 7. We disagree that the reference is

³⁰ February 22 Filing, Attachment A, Otter Tail Power Company Network Customers Section 30.9 Credits Calculations Procedures, § 3.a (emphasis added).

³¹ *Id.* § 3.b.

³² *Id.* § 6.

redundant because Note GG consists of a narrative explanation and not simply a mechanical description of lines 7b and 7c.

The Commission orders:

(A) The proposed Tariff revisions are hereby accepted, subject to condition, effective May 1, 2017, as discussed in the body of this order.

(B) Filing Parties are hereby directed to submit a compliance filing within 30 days of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.