124 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Midwest, LLC — Docket Nos. ER08-796-000
Midwest Independent Transmission System Operator, Inc. — ER08-796-001

ORDER ACCEPTING TARIFF SHEETS
AND REQUIRING COMPLIANCE

(Issued August 7, 2008)

1. ITC Midwest, LLC (ITC Midwest) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (Applicants) have jointly submitted a proposal to apply to ITC Midwest the tariff language in the Midwest ISO Open Access Transmission and Energy Market Tariff (Tariff)[1] that governs the assignment of the costs of network upgrades required to accommodate the interconnection of new or increased generation to the International Transmission Company (International Transmission) and Michigan Electric Transmission Company LLC (METC) transmission systems (Application). For the reasons described below, we will accept the proposed tariff sheets, to become effective December 20, 2007.

Background

2. The Commission has accepted tariff sheets proposed by Midwest ISO and two other ITC Holdings Corp. operating subsidiaries, International Transmission and METC, which modified the Midwest ISO Tariff by revising Attachment FF, which governs how costs are allocated among and within transmission provider zones. The filing added language in section III.A.2.d, which allocates the costs of generation interconnections.[2] Section III.A.2.d. provides generally that the interconnecting customer funds the entire

[1] FERC Electric Tariff, Third Revised Volume No. 1.

[2] *Int'l Transmission Co.*, 120 FERC ¶ 61,220 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008) (*ITC-METC*).

cost of the network upgrades. However, the transmission owner will reimburse the interconnection customer half of this cost under certain circumstances.[3]

3. In *ITC-METC* the Commission accepted new subsection III.A.2.d.3, which authorizes International Transmission and METC to reimburse generation customers that interconnect to their transmission systems for *all* the costs paid for network upgrades if the customers otherwise qualify for cost sharing under Attachment FF (100 percent reimbursement). The Commission has separately accepted this 100 percent reimbursement policy for the American Transmission Company LLC (American Transmission) transmission system.[4]

4. ITC Midwest bought the jurisdictional transmission assets of Interstate Power & Light Company (Interstate), thus enabling ITC Midwest to offer transmission service in Iowa, southern Minnesota, Missouri and northwest Illinois.[5]

<u>The Application</u>

5. Applicants propose to offer ITC Midwest's interconnection customers the same 100 percent reimbursement policy that the Commission approved for International Transmission and METC[6] and for American Transmission. They state that the incremental cost of such reimbursement, beyond the cost that otherwise would be shared regionally or sub-regionally under Attachment FF, would be recovered from transmission customers in the ITC Midwest pricing zone under the Tariff's Attachment O formula rate for ITC Midwest. Thus, the 100 percent reimbursement provisions proposed here would not impose increased transmission costs on other Midwest ISO pricing zones.

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[3] Section III.A.2.d reflects the recommendations of Midwest ISO's Regional Expansion Criteria and Benefits (RECB) Task Force. The Commission conditionally accepted and suspended Midwest ISO's proposed tariff sheets, based on these recommendations, and established a technical conference. *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006). We denied requests for rehearing and clarification, addressed the supplemental evidence of the technical conference, and accepted Midwest ISO's compliance filing. *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006).

[4] *See Am. Transmission Co.*, 120 FERC ¶ 61,221 (2007), *reh'g denied*, 123 FERC ¶ 61,065 (2008) (*American Transmission*).

[5] *See ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007).

[6] *See* note 2, *supra*.

6. Applicants ask that the proposed revisions to subsection III.A.2.d.3 become effective the day after the Application was filed. Thus, the 100 percent reimbursement policy would apply to interconnection agreements executed on or after April 5, 2008. Applicants state that 54 projects in the Midwest ISO generator interconnection queue seek interconnection to the ITC Midwest transmission system, and that this number includes 48 renewable energy projects. They state also that Commission acceptance of the Application will level the playing field between generation constructed by incumbent utilities, which recover their unreimbursed costs from their retail customers through regulated retail rates, and independent generators, which have to absorb any such costs themselves.[7]

Notice and Responsive Filings

7. Notice of the Application was published in the *Federal Register*, 73 Fed. Reg. 21,921 (2008), with interventions and protests due on or before April 25, 2008. Motions to intervene were filed by: Alliant Energy Corporate Services, Inc., on behalf of its operating subsidiaries Interstate Power and Light Company and Wisconsin Power and Light Company (together, Alliant); the American Wind Energy Association and Wind on the Wires (together, American Wind); the Electric Power Supply Association (EPSA); FPL Energy, LLC (FPL Energy); Great River Energy (Great River); Iberdrola Renewables, Inc. (Iberdrola); Integrys Energy Group, Inc.; the Midwest ISO Transmission Owners (Transmission Owners); [8] the Midwest Municipal Transmission

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[7] Application Transmittal Letter at 5- 8.

[8] For this proceeding, Transmission Owners include: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); 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; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

Group (Midwest Municipal); the Minnesota Office of Energy Security (Minnesota); Outland Renewable Energy, LLC (Outland); and Pioneer Prairie Wind Farm I, LLC (Pioneer).

8. Commenting favorably on the Application are: American Wind; EPSA; FPL Energy; Iberdrola; and Midwest Municipal. Outland and Pioneer request application of the new policy to their interconnection agreements. Transmission Owners made comments described below, and Great River opposes the Application. Minnesota clarified the Minnesota events leading to the Application and the position of the Minnesota Public Utilities Commission. A representative in the Iowa House of Representatives and a representative in the Minnesota House of Representatives filed letters supporting the Application.

9. ITC Midwest filed an answer (ITC Midwest's Answer).

Deficiency Letter and Response

10. On May 29, 2008, staff issued a deficiency letter. On June 11, 2008, ITC Midwest filed a response (ITC Midwest's Response). Notice of the Response was published in the *Federal Register*, 73 Fed. Reg. 35,683 (2008), with interventions and protests due on or before July 2, 2008. None were filed.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §213(a)(2) (2008) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ITC Midwest's Answer because it has provided information that assisted us in our decision-making process.

B. Discussion

1. 100 Percent Reimbursement vs. 50/50 Cost Sharing

13. Transmission Owners ask the Commission, if it accepts the Application, to state expressly, as it did when approving the 100 percent reimbursement policy for American Transmission, International Transmission, and METC, that the 100 percent reimbursement policy does not affect the regional 50/50 cost sharing approach adopted

for transmission owners in the other Midwest ISO pricing zones.[9] Transmission Owners also ask the Commission to recognize the disparity between stand-alone transmission companies who recover all their costs under formula rates and the other transmission owners in Midwest ISO, who, as vertically integrated companies, would face challenges in funding a 100 percent reimbursement methodology if such a methodology were required for their pricing zones.

14. The Commission finds that the ITC Midwest proposal will not undercut the regional 50/50 cost sharing approach adopted through the RECB process. We are not requiring in this order that any other transmission owner offer 100 percent reimbursement. Thus, we need not discuss how other transmission owners recover their costs.

15. Great River, a generation and transmission cooperative that serves load in the ITC Midwest pricing zone, argues that 100 percent reimbursement will increase transmission rates in the ITC Midwest pricing zone and will shift to retail customers the costs of upgrades needed because of generator interconnections. Great River also questions whether these network upgrades will result in reliability or load-serving benefits to the grid. It argues that interconnecting generators in rural areas distant from urban load pockets will require significant transmission upgrades because these transmission systems were designed to serve relatively light loads. Even if there are network benefits, Great River asks why the costs of these benefits should be shouldered by ITC Midwest customers alone.

16. Great River distinguishes ITC Midwest's situation from those of International Transmission and METC.[10] Full reimbursement in the ITC Midwest pricing zone, it argues, will cause market distortion and discrimination between wind power producers, depending on their location. Great River disputes Applicants' claim that 100 percent reimbursement in the ITC Midwest pricing zone will level the playing field between incumbent utilities (with thermal generation units) and independent power producers. Instead, 100 percent reimbursement will distort the market for wind generation by benefiting only wind developers that seek to interconnect to the ITC Midwest system and discriminating unfairly against developers who are reimbursed under the generally applicable 50 percent reimbursement policy. These latter developers will be at a competitive disadvantage when negotiating power contracts or selling into the Midwest ISO energy market, a disadvantage that will be aggravated if the wind power generator in

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[9] Transmission Owners' April 25, 2006 filing at 3 & n.4. Transmission Owners cite *ITC-METC*, 120 FERC ¶ 61,220 at P 35 and *American Transmission*, 120 FERC ¶ 61,221 at P 38.

[10] *See* note 2, *supra*.

the ITC Midwest pricing zone requests Network Resource Interconnection Service from Midwest ISO, which Great River says allows deliverability across the Midwest ISO region.

17. Great River states further that while 100 percent reimbursement in ITC Midwest's pricing zone will undoubtedly facilitate renewable generation development there, it will exacerbate problems in the Midwest ISO interconnection queue.[11] Great River characterizes this transmission development as piecemeal, and urges a more holistic approach to addressing transmission limitations to provide for renewable resources. It cites Midwest ISO's statement that interconnections for wind generation in remote locations will likely require transmission facilities with a minimum voltage of 345 kV and that transmission upgrades are a high hurdle for any single generation developer to overcome.[12]

18. We do not agree with Great River that the proposal will result in an increased zonal rate without benefits to other customers within the ITC Midwest zone. The approach to interconnection pricing proposed here looks beyond the direct usage-related benefits of transmission system enhancements.[13] It recognizes that benefits can take the form of improved reliability, improved ability to import generation due to counterflows that are created from the exporting generator, and reduced locational marginal prices (LMP). In an energy market with LMP, such as Midwest ISO's, when supply is increased, the load affected by that increased supply will benefit from lower energy prices because the new supply will generally displace more expensive generation, which would otherwise have been dispatched. Thus, other transmission customers can benefit from the increased amount of generation in their pricing zone even if that new generation capacity is not sold to them.[14] Moreover, we have found that 100 percent reimbursement

[11] For a discussion of those problems, see *Interconnection Queuing Practices*, Order on Technical Conference, 122 FERC ¶ 61,252 (2008) (Technical Conference Order).

[12] Great River's intervention at 7 & n.9, *citing* Midwest ISO's April 21, 2008 compliance filing in Docket No. AD08-2-000 at 7.

[13] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 694 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 584 (*citing Entergy Services, Inc. v. FERC,* 319 F.3d 536 (D.C. Cir. 2003) (*Entergy*)), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC,* 475 F.3d 1277 (D.C. Cir. 2007).

[14] *See ITC-METC,* 123 FERC ¶ 61,065 at P 19. *See also Entergy* at 543-44.

for network upgrades is just and reasonable,[15] and that different rate proposals can be just and reasonable.[16]

19. As to Great River's argument that other developers elsewhere in Midwest ISO who are subject to the 50 percent reimbursement policy will be disadvantaged, we point out first that when developers create business plans, they consider numerous factors in deciding where to site a project, not just whether they will be reimbursed 100 percent or 50 percent. These factors include, for instance, the cost of network upgrades required for interconnection, the proximity to fuel sources, rights of way, any congestion and/or the time required for the necessary network upgrades to be built permitting delivery of the generation. We reiterate that different rate proposals in different pricing zones can be just and reasonable, and that some sites are more advantageous than others for particular generators, depending on the circumstances, as we mentioned above.

20. Finally, regarding the argument that 100 percent reimbursement will exacerbate the problems with Midwest ISO's interconnection queue, we note that Great River does not explain how that would occur.

2. <u>Effective Date</u>

21. Two generator development companies, Outland and Pioneer, point to the proposed application of the 100 percent reimbursement to interconnection agreements executed on or after April 5, 2008. Pioneer requests that the Commission apply the tariff amendment to Pioneer Prairie's interconnection agreement, which was executed effective February 7, 2008.[17] Outland states that the applicability of the proposal to certain unexecuted interconnection agreements is somewhat unclear.[18] Both parties want to receive 100 percent reimbursement for their projects.

22. Outland's subsidiary Summit Wind LLC (Summit) is developing a wind generation facility in Minnesota. The Commission has accepted and suspended the unexecuted interconnection agreement for this facility and established hearing and settlement judge procedures.[19] The parties in that docket disagree regarding cost

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[15] Order No. 2003 at P 694.

[16] *See Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Co.*, 498 U.S. 211, 224 (1991); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

[17] Pioneer's Comments at 4 and 5.

[18] Outland's Intervention at 3.

[19] *Midwest Ind. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,113 (2008).

responsibility for the proposed network upgrades identified in the unexecuted interconnection agreement.

23. Outland refers to the statement in the Application's transmittal letter that the 100 percent reimbursement option would be available for interconnection agreements "executed after the filing" of the Application,[20] which was April 4, 2008. Outland states: "[b]ased on this statement, Outland assumes the option would be available to Summit, which . . . is a party to an unexecuted interconnection agreement currently pending before the Commission. Outland anticipates that a settlement agreement will be filed . . . that confirms this understanding and/or that otherwise provides for satisfactory resolution of the case-specific issues in that proceeding."[21]

24. Pioneer states that its interconnection agreement for an Iowa wind generation project provides for 50 percent reimbursement of the cost of network upgrades. [22] Pioneer asks the Commission to find that the 100 percent reimbursement provisions apply to Pioneer's interconnection agreement. It adds that Midwest ISO and ITC Midwest do not oppose this request.[23]

25. ITC Midwest's answer states that ITC Midwest has no objection to application of the new 100 percent reimbursement policy to Pioneer's project "[i]n these circumstances," and to Summit's project "[i]n the circumstances of this specific case."

26. Because ITC Midwest did not describe the particular circumstances on which it relied, staff issued a deficiency letter on May 29, 2008 requiring ITC Midwest to provide further information explaining how it would implement its proposed policy. Specifically, the deficiency letter required ITC Midwest to state the circumstances to which ITC Midwest referred and how ITC Midwest had evaluated these circumstances; it also required any relevant case citations. Additionally, the deficiency letter asked whether the circumstances of these two cases are unique or whether there are other similarly-situated interconnection agreements for which ITC Midwest would support application of an effective date earlier than the April 5, 2008 date proposed in the Application. Lastly, the deficiency letter required ITC Midwest to show how it would implement the 100 percent

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[20] Outland's Intervention at 3-4, *citing* Application Transmittal Letter at 3-4.

[21] *Id.* 3-4.

[22] Conforming interconnection agreements are reported in the EQR; they do not have to be filed/approved individually.

[23] Pioneer's April 24, 2008 filing at 5.

reimbursement policy in a not unduly discriminatory manner with regard to pre-April 5, 2008 applications.

27. ITC Midwest's Response states, among other things, that it acquired Interstate's transmission assets on December 20, 2007, and that between that date and the proposed effective date of April 5, 2008, the interconnection agreement with Pioneer was the only interconnection agreement that ITC Midwest executed.

28. Regarding Summit's situation, ITC Midwest states that although an unexecuted interconnection agreement is before the Commission, Summit has not yet executed an interconnection agreement with ITC Midwest. Summit will be eligible for the new proposed interconnection policy because execution will occur after April 5, 2008. Summit will receive the same treatment as any other generator executing an interconnection agreement after that date.

C. Commission Determination

29. ITC Midwest's statements in its Response do not respond entirely to the questions posed in Staff's deficiency letter. ITC Midwest states that between December 20, 2007, the date that it acquired Interstate's transmission assets, and the proposed effective date of April 5, 2008, the interconnection agreement with Pioneer was the only interconnection agreement that ITC Midwest executed. We find that the effective date of the tariff must comport with ITC Midwest's application of the reimbursement policy and further that the reimbursement policy must be implemented in a not unduly discriminatory manner. Thus, we will interpret ITC Midwest's willingness, stated in its Answer, and repeated in its Response, to give Pioneer 100 percent reimbursement. We will interpret its reference to December 20, 2007, the date on which it acquired Interstate's transmission assets, as indicating ITC Midwest's intent to make December 20, 2007, the date on which the new pricing regime becomes effective.[24] Any other interconnection agreements that ITC Midwest has executed on or after December 20, 2007, will also fall under section III.A.2.d.3's provisions. We find good cause to grant this effective date, and will require Applicants to submit tariff sheets corrected to show this effective date within 15 days of the issuance of this order.

30. Concerning Summit's unexecuted interconnection agreement, currently pending in settlement procedures, we agree with ITC Midwest that, should it and Summit settle their differences and execute an interconnection agreement, this agreement will be eligible for

[24] ITC Midwest's Answer at 3 and Response at 3.

100 percent reimbursement because it will have been executed after the effective date for these tariff revisions.[25]

The Commission orders:

(A) ITC Midwest's tariff sheets are hereby conditionally accepted, effective December 20, 2007, as discussed in the body of this order.

(B) ITC Midwest and Midwest ISO are hereby directed to submit a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[25] *See* ITC Midwest's Response at 3.