

135 FERC ¶ 61,101
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 29, 2011

In Reply Refer To:
Missouri River Energy Services and
Midwest Independent Transmission System
Operator, Inc.;
Missouri River Energy Services and
Western Minnesota Municipal Power Agency
Docket Nos. ER08-370-008
EL08-22-006

Van Ness Feldman, P.C.
1050 Thomas Jefferson Street, NW
7th Floor
Washington, DC 20007

Attention: David P. Yaffe, Esq.
Attorney for Missouri River Energy Services and
Western Minnesota Municipal Power Agency

Reference: Motion to Withdraw Filing

Dear Mr. Yaffe:

1. On March 23, 2011, you submitted for filing with the Commission, on behalf of Missouri River Energy Services (MRES) and Western Minnesota Municipal Power Agency (Western Minnesota) (together, Applicants), a motion pursuant to section 205 of the Federal Power Act (16 U.S.C. § 824d) and sections 35.17(c) and 212 of the Commission's Rules and Regulations, 18 C.F.R. §§ 35.17(c) and 385.212 (2010), to withdraw MRES's Attachment O tariff rate formula filing under Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) and to terminate the consolidated dockets.
2. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 22,696 (2011) with comments, protests, or interventions due on or before April 22, 2011. No comments were submitted.

3. Applicants request withdrawal of MRES's December 20, 2007 filing, made jointly with Midwest ISO, of a proposed MRES-specific cash flow Attachment O to accompany MRES's application to join the Midwest ISO as a transmission-owning member. On September 30, 2008, the Commission accepted MRES's proposed cash flow Attachment O for filing, suspended it for a nominal period, and set the filing for hearing and settlement judge procedures.¹ On March 4, 2010, Administrative Law Judge Steven A. Glazer issued an Initial Decision.² MRES, Commission Trial Staff and Otter Tail Power Company filed exceptions to the Initial Decision on April 5, 2010.

4. Applicants indicate that MRES has determined that it will now use the *pro forma* version of the Midwest ISO Tariff's non-levelized Attachment O rather than the cash flow template proposed in its initial filing, and that this change in circumstances provides good cause for the Commission to grant its request to withdraw that filing. Applicants state that neither MRES nor Midwest ISO will be required to seek separate approval from the Commission to enable MRES to use the *pro forma* Attachment O template. Additionally, Applicants argue that because the proposed Cash Flow Attachment O did not become effective, this change will not constitute a change in a filed rate, and no refunds will be due.

5. Applicants commit to incorporate the findings of the Initial Decision in this proceeding in the implementation of the *pro forma* Attachment O.³ Applicants also affirm that MRES will follow the Uniform System of Accounts and will implement, as relevant, the intent of the Joint Stipulation Agreement entered into by MRES, Otter Tail, and Trial Staff. Applicants also indicate that MRES intends to combine its financial information with that of Western Minnesota for purposes of developing the MRES transmission cost, as approved by the Commission in an earlier order.⁴ Applicants request Commission action by May 1, 2011, due to time restrictions posed by the pending Multi Value Project designation of the Brookings transmission line and other requirements associated with joining Midwest ISO by June 1, 2011.

¹ *Missouri River Energy Services, Inc.*, 124 FERC ¶ 61,309 (2008) (September 30 Order).

² *Missouri River Energy Services, Inc.*, 130 FERC ¶ 63,014 (2010).

³ Applicants make three specific commitments with respect to the Initial Decision related to inputs to the Attachment O formula. These include checking peak capacity figures, providing on an annual basis workpapers related to the ratio of MRES's Midwest ISO zone transmission plant to all of its gross transmission plant, and providing additional workpapers related to the updating of accounts and subaccounts.

⁴ *Missouri River Energy Services, Inc.*, 125 FERC ¶ 61,300 (2008).

6. Although Applicants state that MRES's proposed cash flow Attachment O did not become effective, we disagree. The Commission's September 30 Order accepted and suspended for a nominal period the tariff sheets to become effective October 1, 2008, subject to refund.⁵ Therefore, since the Commission's regulations do not provide for the withdrawal of a rate schedule on file, Applicants' motion for withdrawal is not valid under Commission regulations. Section 35.17(c) of the Commission's regulations applies to the withdrawal of tariff filings prior to Commission action.⁶ As such, MRES's filing is not available for withdrawal. However, given the absence of any objection, and the apparent absence of any detriment to the public interest, we will treat the motion for withdrawal as a notice of cancellation under section 35.15 of the Commission's regulations⁷ and accept the proposed cancellation.⁸ We also affirm our prior order finding that MRES may combine its financial information with that of Western Minnesota for purposes of developing the MRES transmission cost under Attachment O.⁹

7. Under section 35.15 of the Commission's regulations, a notice of cancellation must be made at least 60 days but no more than 120 days prior to the effective date of the cancellation. The Commission may, however, for good cause shown, provide that the notice of cancellation shall be effective as of a date prior to the date of filing or the date the filing would be effective under the rules. Based on circumstances of this proceeding and the time-sensitive nature of Applicants' interests in joining Midwest ISO, we will allow the cancellation to become effective May 1, 2011, as requested.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁵ MRES has not yet transferred its facilities to Midwest ISO's control, and therefore it has not operated under the accepted cash flow Attachment O.

⁶ 18 C.F.R. § 35.17(c) (2010).

⁷ 18 C.F.R. § 35.15 (2010).

⁸ See, e.g. *New England Power Pool*, 71 FERC ¶ 61,155 at 61,465 (1995) (treating a notice of withdrawal as a notice of cancellation and accepting); *Canal Electric Co.*, 29 FERC ¶ 61,330 at 61,685 (1984) (same).

⁹ *Missouri River Energy Services, Inc.*, 125 FERC ¶ 61,300 (2008).

