

168 FERC ¶ 61,102
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Midwest Energy, Inc.

Docket No. ER19-1777-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued August 21, 2019)

1. On May 3, 2019, as supplemented on July 8, 2019 (Supplement), Midwest Energy, Inc. (Midwest) filed, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ a request for waiver of certain sections of its formula rate implementation protocols (Protocols) set forth in Addendum 14 of Attachment H of Southwest Power Pool, Inc.'s (SPP) Open Access Transmission Tariff (Tariff). Specifically, Midwest requests waiver of sections 3 and 4.A of its Protocols to allow postponement of the May 10, 2019 deadline for posting its 2019 Annual Update, and the November 15, 2019 deadline for filing the 2019 Annual Update with the Commission, respectively. In this order, we grant Midwest's request for waiver.

I. Background

2. Midwest is a customer-owned Kansas corporation, operating on a not-for-profit cooperative basis, and is a transmission owning member of SPP with its facilities under the functional control of SPP. Under Midwest's Protocols, Midwest must post, or cause to be posted, its recalculation of its annual transmission revenue requirement and network transmission service rates (i.e., the Annual Update) on SPP's Open Access Same-Time Information System (OASIS) website on or before May 10 of each year. Subsequently,

¹ 18 C.F.R. § 385.207(a)(5) (2018).

following the required discovery and review periods,² Midwest must submit the Annual Update to the Commission by November 15 of that same year.³

3. On December 1, 2016, in Docket No. ER17-469-000, SPP submitted proposed revisions to Midwest's formula rate template, Protocols, and transmission rates, based on 2015 test year data. The proposed revisions were set for hearing and settlement judge procedures.⁴ The parties reached an uncontested settlement in that proceeding, which was approved by the Commission, effective January 1, 2017.⁵

4. On March 8, 2018, the Kansas legislature enacted a law that removed the Kansas Corporation Commission's (Kansas Commission) jurisdiction over Midwest's transmission rates, as recovered through the SPP Tariff. On July 2, 2018, SPP filed proposed revisions to Midwest's Protocols to reflect the change in jurisdiction. The proposed revisions were accepted under delegated authority.⁶

5. On July 3, 2018, Midwest filed a request for waiver of certain sections of its Protocols in order to exempt it from the requirement that it file its Annual Updates with the Kansas Commission while the Commission considered SPP's July 2, 2018 filing. Midwest also requested that the Commission shorten the combined discovery and review periods required under the Protocols for its 2017 and 2018 Annual Updates to 60 days.⁷ The Commission granted Midwest's requested waiver of its Protocols related to filing its

² The discovery period is a 120-day period during which interested parties may serve reasonable information requests on Midwest, and the review period is a 150-day period during which interested parties may review calculations and notify Midwest of any specific challenges. The discovery and review periods are concurrent. SPP Tariff, Attachment H, Midwest Protocols, section 3.D(ii), (iv).

³ *Id.* at sections 3.A., 4.A.

⁴ *Sw. Power Pool, Inc.*, 158 FERC ¶ 62,233 (2017).

⁵ *Sw. Power Pool, Inc.*, 163 FERC ¶ 61,133 (2018). The proposed revisions to Midwest's Protocols set forth in the settlement were accepted under delegated authority. *Sw. Power Pool, Inc.*, Docket No. ER17-469-002 (Aug. 3, 2018) (delegated order).

⁶ *Sw. Power Pool, Inc.*, Docket No. ER18-1919-000 (Aug. 21, 2018) (delegated order).

⁷ The 2017 and 2018 Annual Updates are based on 2016 and 2017 test year data, respectively.

Annual Updates with the Kansas Commission, but declined to grant Midwest's request to expedite the required discovery and review periods.⁸

6. On October 25, 2018, Midwest filed a request for waiver of section 4.A of its Protocols in order to exempt it from the requirement that it file its 2017 and 2018 Annual Updates with the Commission by November 15 of each year in order to provide its customers with the full discovery and review periods required under the Protocols. The Commission granted Midwest's requested waiver.⁹ On February 25, 2019, Midwest filed its 2017 Annual Update with the Commission, to be implemented by SPP as of February 1, 2019.¹⁰ This is the rate that is currently in effect for Midwest.¹¹

II. Waiver Request

7. Midwest requests waiver of sections 3 and 4.A of its Protocols to allow postponement of the May 10 posting deadline and the November 15 filing deadline, respectively. Midwest explains that, due to the various proceedings described above, Midwest's Annual Updates for 2017 and 2018 were delayed. According to Midwest, it posted its 2018 Annual Update to SPP's OASIS on October 26, 2018 and provided customers with the required discovery and review periods under the Protocols. Midwest explains that, following the discovery and review periods for its 2018 Annual Update, two errors were discovered—a classification error that affects only the 2018 Annual Update and a cost allocation error with effects going back to the 2016 Annual Update.¹²

8. Regarding the classification error, Midwest asserts that SPP determined that a certain project was inadvertently included in Midwest's base plan funding when it should have been directly assigned. Midwest states that correcting the error results in no change to Midwest's revenue requirement, but does result in a shift of \$108,000 from non-zonal customers to zonal customers, out of an approximately \$18.2 million net revenue requirement. Regarding the cost allocation error, Midwest asserts that due to a lag in updating the estimated to actual costs of certain projects once those projects went into

⁸ *Midwest Energy, Inc.*, 164 FERC ¶ 61,164, at PP 15, 21 (2018) (September Order).

⁹ *Midwest Energy, Inc.*, 166 FERC ¶ 61,003 (2019).

¹⁰ *Midwest Energy, Inc.*, 2017 Annual Update to Formula Rate, Docket No. ER19-1126-000 (Feb. 25, 2019).

¹¹ Supplement at 5.

¹² *Id.*

service, Midwest calculated its 2016, 2017, and 2018 Annual Updates based on the estimated, rather than the final costs of those regional projects. Midwest states that this error affected the cost allocation between its regional and zonal customers, and that correcting the error results in a shift from non-zonal customers to zonal customers of approximately \$50,000 for 2016, \$100,000 for 2017, and \$152,000 for 2018.¹³

9. Midwest asserts that it was unable to complete a final resolution of those errors, including amounts for a true-up, prior to the May 10 posting deadline. Midwest explains that it elected to resolve these errors, rather than posting an inaccurate 2019 Annual Update subject to change, in an effort to balance transparency and efficiency.¹⁴

10. Further, according to Midwest, its approved settlement in Docket No. ER17-469 included a requirement that Midwest issue a refund to its customers based on the change in rates agreed upon in the settlement.¹⁵ Thus, Midwest states that its 2019 Annual Update will include a true-up that affects Midwest's rates back to 2016. Midwest asserts that, in order to calculate a correct true-up, which will provide refunds with interest to its customers, Midwest must know the exact date that the 2018 Annual Update will become effective. Midwest states that it proposes to provide the corrected 2018 Annual Update to SPP, customers, and other interested parties by early July 2019 with a shortened ten-day review and comment period, and file the 2018 Annual Update with the Commission shortly thereafter.¹⁶

11. Midwest states that, in considering requests for waiver of tariff provisions, the Commission generally requires that: (1) the applicant acted in good faith; (2) the requested waiver is limited in scope; (3) the waiver addresses a concrete problem that needs to be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties. Midwest asserts that its request satisfies the standard for waiver and should be granted.¹⁷

12. First, Midwest explains that it acted in good faith to request sufficient time to correct the errors discovered in its 2018 Annual Update, which must be corrected before it can calculate its 2019 Annual Update. Further, Midwest asserts that waiver will allow

¹³ *Id.* at 5-6.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 6.

¹⁷ Filing at 3.

Midwest to provide customers with the full discovery and review periods required under the Protocols.¹⁸ Midwest states that it anticipates posting its 2019 Annual Update in early August 2019, once the effective date of the 2018 Annual Update is known, and will then file with the Commission shortly after the discovery and review periods conclude.¹⁹

13. Second, Midwest states that its request is limited in scope. Midwest explains that the sole purpose of the waiver is to allow Midwest to post and file its 2019 Annual Update as required by its Protocols, which Midwest states it will do as soon as practicable. Midwest also asserts that the waiver only affects the 2019 Annual Update. Further, Midwest states that it does not request waiver of any other provision of its formula rate and asserts that no other Tariff provisions are implicated.²⁰

14. Third, according to Midwest, the waiver will remedy a concrete problem. Midwest states that waiver of the May 10 posting deadline will allow Midwest to correct the identified errors and post an accurate 2019 Annual Update. Further, Midwest states that waiver of the November 15 filing deadline will provide Midwest's customers the full benefit of the discovery and review periods once the 2019 Annual Update is posted.²¹

15. Finally, Midwest asserts that the requested waiver poses no threat of an adverse market effect. Midwest contends that the requested waiver would instead have a positive effect by providing customers the full discovery and review periods and allowing Midwest to post and file an accurate 2019 Annual Update. Further, according to Midwest, it anticipates a modest rate increase in its 2019 Annual Update, which will be delayed if the waiver is granted.²²

III. Notice and Responsive Pleadings

16. Notice of Midwest's filing was published in the *Federal Register*, 84 Fed. Reg. 20,874 (2019), with interventions and protests due on or before May 24, 2019. None was filed.

¹⁸ *Id.*

¹⁹ Supplement at 6-7.

²⁰ Filing at 3.

²¹ *Id.*

²² *Id.* at 3-4.

17. Notice of Midwest's Supplement was published in the *Federal Register*, 84 Fed. Reg. 33,767, with interventions and protests due on or before July 18, 2019. None was filed.

IV. Commission Determination

18. We grant Midwest's request for waiver of sections 3 and 4.A of its Protocols. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.²³ As discussed below, we find that Midwest's request for waiver satisfies these criteria.

19. First, we find that Midwest acted in good faith in requesting the waiver after the identification of certain errors in the 2018 Annual Update. Midwest explains that it elected to resolve the errors discovered in its 2018 Annual Update prior to posting and filing its 2019 Annual Update, rather than posting an inaccurate 2019 Annual Update subject to change, in an effort to balance transparency with efficiency. Further, waiver of the November 15 filing deadline will allow Midwest to provide the full review and discovery periods for customers as required under the Protocols.

20. Second, we find that the requested waiver is limited in scope as the sole purpose of the waiver is to allow Midwest to avoid posting an inaccurate 2019 Annual Update and post and file an accurate 2019 Annual Update once the identified errors have been resolved. The waiver request also only applies to the posting and filing deadlines as set forth in the Protocols and does not affect any other Tariff provision.

21. Third, we find that the requested waiver addresses a concrete problem. Midwest states that it cannot calculate the 2019 Annual Update until it knows the effective date of the 2018 Annual Update, which Midwest is finalizing due to two identified errors. Midwest asserts that it will calculate its 2019 Annual Update as soon as it resolves the identified errors. As Midwest explains, waiver of the May 10 posting deadline will allow Midwest to post an accurate 2019 Annual Update, and waiver of the November 15 filing deadline will provide Midwest's customers the full benefit of the discovery and review periods once the Annual Update is posted.

22. Finally, we find that the waiver will not have undesirable consequences, such as harming third parties. We find that the requested waiver will allow Midwest to post and file an accurate 2019 Annual Update and will ensure that Midwest's customers have the

²³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

full discovery and review periods to review and comment on Midwest's 2019 Annual Update.

The Commission orders:

Midwest's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.