

102 FERC ¶ 61,346  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER02-871-000

ORDER ACCEPTING CERTAIN SCHEDULES,  
GRANTING MOTION TO WITHDRAW CERTAIN SCHEDULES,  
AND ACCEPTING AND SUSPENDING, SUBJECT TO HEARING AND  
SETTLEMENT JUDGE PROCEDURES, CERTAIN TARIFF REVISIONS

(Issued March 28, 2003)

## Introduction

1. In this order we accept, without suspension or hearing, proposed Schedules 7, 8 and 9. We also accept Midwest ISO's proposed Schedule 10-B for filing and, suspend it for a nominal period, to become effective February 1, 2002, subject to refund. For reasons discussed below, we establish hearing procedures but hold the hearing in abeyance pending settlement judge procedures. We also grant Midwest ISO's motion to withdraw Attachments J and K to its Open Access Transmission Tariff (OATT). This order benefits transmission customers of the Midwest ISO by clarifying the application of the Midwest ISO OATT.

## Background

2. Order No. 2000 directed public utilities to participate in an Regional Transmission Organization (RTO) that would be operational by December 15, 2001.<sup>1</sup> In pursuit of this directive, Midwest ISO took advantage of the Commission's statement that "phased

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<sup>1</sup>See Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,229 (1999), order on reh'g, Order No. 2000-A, FERC Stats. and Regs. ¶ 31,092 (2000) (Order No. 2000 and Order No. 2000-A, respectively).

startup and other operational implementation deadlines are reasonable,"<sup>2</sup> and notified the Commission that it was unable to launch its entire menu of jurisdictional services on December 15, 2001. On December 14, 2001, Midwest ISO filed a letter outlining the Midwest ISO's Commercial Operations Plan. Midwest ISO also notified the Commission that on February 1, 2002, it expected to begin providing jurisdictional transmission services, both point-to-point and network transmission service, over the facilities that the Midwest ISO Transmission Owners (TOs) turned over to Midwest ISO's operational control.

3. Midwest ISO initially anticipated providing full operations, including administration of the transmission service under its OATT, effective December 15, 2001. Because the OATT operational date was deferred until February 1, 2002, Midwest ISO could not begin collecting its Schedule 10<sup>3</sup> cost and therefore filed a proposed interim cost recovery adder, Schedule 10-B, to be effective beginning January 1, 2001 and terminating January 31 of that same month.<sup>4</sup>

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<sup>2</sup>Id., FERC Stats. & Regs. ¶ 31,089 at 31,230.

<sup>3</sup>Schedule 10 is the mechanism by which Midwest ISO recovers the cost of operations under its OATT. Schedule 10 is designed to recover all costs that are not recovered under Schedule 1 (Scheduling, System Control and Dispatch Service), Schedule 16 (Financial Transmission Rights Administrative Service Cost Recovery Adder) and Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) of Midwest ISO's OATT. These costs include Midwest ISO's costs associated with building and operating the Security Center, "running" the ISO, and administering the Midwest ISO OATT. The monthly rate is calculated based on budgeted costs and estimated MWhs of transmission service, trued-up the following month and capped at 15 cents/MWh. Any costs incurred in excess of the 15 cent/MWh would be deferred until after the transition period, to be recovered later, plus financing costs, as an additional adder under Schedule 10. The deferred costs would be amortized monthly over five years and recovered from all customers taking service under the tariff.

<sup>4</sup>The proposed Schedule 10-B (Interim ISO Cost Adder) permitted Midwest ISO to bill its TOs and International Transmission Company (ITC) monthly capital costs and the portion of its operating costs, consistent with the services Midwest ISO provided prior to the Midwest ISO OATT's February 1, 2002, effective date. The Interim ISO Cost Adder recovered costs for Reliability Services (Security Coordination), Electronic Scheduling, Operations Planning, Maintenance Coordination, Market Monitoring, and RTO services such as OASIS-related services and Electronic Scheduling System. The

(continued...)

4. Several months prior to Midwest ISO filing the Interim Cost Adder, UtiliCorp United, Inc.<sup>5</sup> submitted a membership application to Midwest ISO. Midwest ISO's Board of Directors accepted the application on July 19, 2001. Soon thereafter, UtiliCorp filed an application with the Commission to secure approval of transfer of operational control of its facilities to Midwest ISO. On September 13, 2001, the Commission issued an order approving the transfer subject to certain state regulatory approvals.<sup>6</sup> UtiliCorp filed an application with the Missouri Public Utility Commission (Missouri Commission) for authority to transfer operational control over its transmission facilities to Midwest ISO. Soon after the Missouri Commission set the matter for hearing, UtiliCorp filed a notice to voluntarily withdraw its application. The Missouri Commission granted this motion to withdraw the application on January 3, 2002. To date, Aquila has not renewed this application.

### **Proposed Tariff Revisions**

5. On January 29, 2002, Midwest ISO submitted for filing in the instant docket information regarding the recent developments in its phased initiation of jurisdictional service as well as proposed revisions to Schedules 7 (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service), 8 (Non-Firm Point-To-Point Transmission Service), and 9 (Network Integration Transmission Service), Schedule 10-B, and Attachments J (Scheduling Table) and K (Congestion Relief) to its OATT. Midwest ISO proposes to modify Schedules 7, 8, and 9 to account for the fact that it will begin operation without UtiliCorp's facilities (and those of Lincoln Electric (Neb) System (LES) whose only integration with Midwest ISO was through contract rights over third-party systems to UtiliCorp's facilities).

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<sup>4</sup>(...continued)

Commission accepted Schedule 10-B for filing, suspended it, made it effective on January 1, 2002, subject to refund, and consolidated the protests with the settlement judge proceedings in Docket No. ER02-111-000. See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,188 (2002). On February 24, 2003, the Commission accepted, among other things, Midwest ISO's interim Schedule 10-B. See Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,193 (2003).

<sup>5</sup>UtiliCorp changed its name to Aquila, Inc., in March 2002.

<sup>6</sup>See UtiliCorp United, Inc., 96 FERC ¶ 62,256 (2001).

6. Midwest ISO proposes to modify Schedule 10-B, the Interim Cost Adder (which was initially designed to terminate on January 31, 2002) in order to continue UtiliCorp's obligation to pay a share of Midwest ISO's costs pending the transfer of UtiliCorp's facilities to Midwest ISO's operational control.
7. Midwest ISO requests that the Commission waive the prior notice requirement for an effective date of February 1, 2002.
8. On March 26, 2002, MISO filed a motion to defer Commission action in this proceeding.

#### **Notice of the Filing, Responsive Pleadings, and Other Procedural Filings**

9. Notice of the filing was published in the Federal Register,<sup>7</sup> with interventions and protests due on or before February 19, 2002. The parties shown in the appendix filed timely or untimely interventions, protests, or comments. We will discuss these pleadings in more detail below.
10. On December 20, 2002, Aquila filed a motion for expedited action and a protest.
11. On January 31, 2003, Midwest ISO filed an answer to Aquila's protest. Also on this date, Midwest ISO filed a motion to withdraw its March 26, 2002, request for deferral. Midwest ISO also requests withdrawal of proposed Attachment J because a later version was accepted for filing in Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,302 (2002). In that same motion, Midwest ISO incorporated by reference its uncontested request for deferral of Commission action on Attachment K until its energy markets are operational in December 2003. Midwest ISO moved to withdraw Attachment K from this docket as well and to monitor that attachment in Docket Nos. ER02-1767-000, et seq., and ER02-2577-000, et seq., Midwest ISO's filings relating to the operations of its energy markets.
12. On February 19, 2003, Aquila filed an answer to Midwest ISO's answer.

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<sup>7</sup>67 Fed. Reg. 30,905 (2002).

**Discussion****A. Procedural Matters****1. Interventions and Responses**

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the notices of intervention and timely, unopposed motions to intervene serve to make the interveners parties to this proceeding. While Rule 213(a)(2) of the Commission's regulations, 18 C.F.R. 385.213(a)(2) (2002), allows responses to protests only at the discretion of the decisional authority, we will allow Midwest ISO's response to Aquila's protest and Aquila's answer to Midwest ISO's answer, as they aided us in understanding the matters at issue in this proceeding.

**2. Withdrawal of Schedules J and K****a. Midwest ISO Proposal**

14. On January 31, 2003, Midwest ISO filed a motion to withdraw the proposed revised Attachments J and K. Midwest ISO, with a large majority of stakeholder approval, seeks to withdraw Attachment J because it has been revised in Docket No. ER01-3142-008 in such a way as to make the instant proposed Attachment J no longer relevant.<sup>8</sup>

15. Midwest ISO seeks to withdraw Attachment K in this docket and to continue to monitor the deferral of Attachment K in Docket Nos. ER02-1767-000, et seq., and ER02-2577-000, et seq. Midwest ISO seeks to defer the implementation of Attachment K until the Midwest ISO energy markets are operative in December 2003. Midwest ISO states that its request to defer implementation of Attachment K is uncontested.<sup>9</sup>

**b. Wisconsin Electric's Protest**

16. Wisconsin Electric objects to the proposed Attachment J. It points out that some of the proposed revisions were rejected in an order issued in Docket No. ER01-3142-

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<sup>8</sup>The Commission accepted, without comment, the proposed revised Attachment J in Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,302 (2002) (June 12 Order).

<sup>9</sup>See Midwest ISO Motion to Withdraw at fn 1.

000, one day after the instant proposed Attachment J was filed.<sup>10</sup> Wisconsin Electric supports the delay of certain provisions of Attachment K as part of Midwest ISO's proposed phased-in approach to implementing its Day-1 Congestion Management.

### **c. Commission Determination**

17. We will grant Midwest ISO's motion to withdraw the proposed Attachment J because it has been superceded by the Attachment J accepted for filing in the June 12 Order. We will also grant Midwest ISO's motion to withdraw Attachment K from this docket; to monitor its development in Docket Nos. ER02-1767-000, et seq. and ER02-2577-000, et seq.; and to defer implementation of Attachment K in its entirety until Midwest ISO's Energy Markets are operative in December 2003. We note that Wisconsin Electric will have ample opportunity to air its concerns about these attachments in those two dockets. This action is consistent with the order issued on November 8, 2002, in those two dockets.<sup>11</sup>

## **B. Substantive Issues**

### **1. Schedules 7, 8, and 9**

18. In the instant filing, Midwest ISO proposes to suspend the availability of rates and service under Schedules 7, 8, and 9 in the OATT for Zone 10: LES; Zone 16: UtiliCorp United, Inc. - Kansas (West Plains Energy); and Zone 17: UtiliCorp United, Inc. - Missouri (St. Joseph Light & Power and Missouri Public Service Co.) effective February 1, 2002. Midwest ISO stated that it would file with the Commission at least thirty days prior to the calendar date for which the rates are to become effective under Schedules 7, 8, and 9 of the OATT.

19. Midwest ISO also states that it recalculated the rates for firm and non-firm point-to-point drive-out and drive-through transmission service under Part (2), the Single System-Wide Rates of Schedules 7 and 8 in order to delete the revenue requirements and

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<sup>10</sup>See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,075 at 61,219, reh'g denied, 99 FERC ¶ 61,198 (2002).

<sup>11</sup>See Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,174 (2002).

billing determinants attributable to both LES and UtiliCorp/Aquila.<sup>12</sup> Midwest ISO states that it will adjust these rates as appropriate once the participation of LES and UtiliCorp/Aquila under the OATT has been determined.

20. No party filed comments addressing the proposed modifications to Schedules 7, 8, and 9.

21. Our review indicates that the unopposed proposed revised rates for Schedules 7, 8, and 9 are just and reasonable. Accordingly, we will grant Midwest ISO's request for waiver of the prior notice requirement and accept these rates for filing, without suspension or hearing to be effective on February 1, 2002.

## **2. Schedule 10-B**

### **a. Midwest ISO's Proposal**

22. Midwest ISO requests that Schedule 10-B remain in effect only for Aquila so that it can recover its capital costs and the portion of its operating costs commensurate with the services being provided to Aquila. Midwest ISO states that it will terminate the effectiveness of Schedule 10-B when issues concerning the transfer of operational control of Aquila's facilities are resolved.

### **b. Aquila's Protest**

23. On December 20, 2002, Aquila filed what it characterizes as a supplemental protest. Aquila objects to being the only entity served under Schedule 10-B and asserts that the Schedule 10-B charges are excessive because the various RTO services covered by Schedule 10-B are offered on an unbundled basis and Aquila, which takes only the security coordination service, is being charged for other RTO services. Aquila also objects to being charged the capital costs included in Schedule 10-B (e.g., deferred pre-operating costs and costs associated with building the Midwest ISO Security Center) because it is not yet a TO under the OATT and it takes no service under the OATT to serve its load. Finally, Aquila argues that even if the Commission eliminated the capital cost charges and the charges for services other than security coordination, the resulting charge is still unreasonably high and unjustified. Aquila requests that the Commission:

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<sup>12</sup>Midwest ISO notes that it made similar adjustments to Schedules 1 and 2 of the OATT for the same reasons however, the recalculation of the rate formula did not necessitate modification to the text of Schedules 1 and 2. See Transmittal Letter at 8-9.

(1) reject the proposed Schedule 10-B; (2) order Midwest ISO to file a revised Schedule 10-B to include only a rate for security services provided to Aquila; and (3) order Midwest ISO to refund the excessive amounts Aquila has already paid.

**c. Midwest ISO's Answer**

24. On January 31, 2003, the Midwest ISO filed an answer to Aquila's protest. The Midwest ISO argues that Aquila's protest is procedurally defective because Aquila intervened, without comment on February 15, 2002, and waited until more than 9 months later to file a protest based on facts known to it when it filed its original motion to intervene. Midwest ISO also points out that the issue of whether TOs or transmission customers could order RTO services on an a la carte basis was pending in Docket Nos. ER02-111-000 and ER02-652-000, as were issues related to the costs underlying Schedule 10 and Schedule 10-B.

25. Midwest ISO also objects to Aquila's characterization that it is not a Midwest ISO TO member. Midwest ISO points out that Aquila's membership application and membership fee were accepted, thus, Aquila is a TO under the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (TO Agreement) notwithstanding that no Aquila facilities have been transferred to Midwest ISO's operational control.

26. Midwest ISO asserts that the proposal to serve Aquila under Schedule 10-B beyond February 1, 2002 is to accommodate Aquila's attempt to secure state authorization to transfer control of its transmission facilities to Midwest ISO. Midwest ISO points out that it does not offer unbundled RTO services to any of its customers other than ITCs<sup>13</sup> and that but for Schedule 10-B, Aquila would be required to pay the full Schedule 10 adder under that OATT.

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<sup>13</sup>Midwest ISO points out that Schedule 10-B states: "The basis for establishing the portion of its operating costs to be recovered during the interim period is the unbundled RTO Services cost allocation methodology established in Part III of Schedule 10 of this Tariff." Part III of Schedule 10 is entitled "RTO Services for ITCs" and Midwest ISO points out that Aquila is not an ITC nor is it a member of an ITC. Midwest ISO further asserts that the issue of whether all customers should have the right to take unbundled services was settled under terms that left the unbundling option available only to ITCs in Docket No. ER02-111-000 et al. See Midwest ISO Answer at 10-11.

27. Midwest ISO takes issue with Aquila's assertion that the proposed charges are excessive, unjust, or unreasonable. Midwest ISO points out that Aquila has offered no credible evidence that the charges are excessive.<sup>14</sup>

28. Notwithstanding the arguments noted above, Midwest ISO states that it is open to negotiating with Aquila regarding the possibility of amending its charges.

**d. Aquila's Answer**

29. On February 3, 2003, Aquila filed an answer to Midwest ISO's answer. Aquila disputes Midwest ISO's characterization of the events that led up to Aquila withdrawing and not yet refileing its application for state approval to transfer its transmission facilities to Midwest ISO's operational control. Aquila points out that it is not directly interconnected with any of Midwest ISO's members. At the time the application for membership in Midwest ISO was made, Aquila asserts that UtiliCorp planned to rely on its direct interconnection with Ameren Services Company (Ameren). Aquila asserts that due to circumstances beyond its control, it still does not have a direct interconnection with Midwest ISO, and consequently it cannot take the panoply of services offered by Midwest

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<sup>14</sup>Midwest ISO points out that Aquila's comparison of what it paid Southwest Power Pool (SPP) for security coordination falls short of proving Aquila's point. First, Midwest ISO asserts that SPP was not an RTO and was not designed to provide the panoply of services of an RTO. Second, Midwest ISO points out that SPP did not offer unbundled service so any reference to a fee solely for security coordination services is an unsubstantiated estimate. Third, Midwest ISO asserts that Aquila offers no evidence that the revenue collected by Midwest ISO under Schedule 10-B exceeds the cost of providing that service. Finally, Midwest ISO argues that the Commission has already considered and rejected similar complaints by later joining companies that were assessed charges related to Midwest ISO's capital start-up. See Alliance Companies, et al., 99 FERC ¶ 61,105 (2002).

ISO.<sup>15</sup> However, Aquila stated that it is open to participating in settlement judge procedures regarding this issue.<sup>16</sup>

**e. Commission Determination**

30. Our preliminary analysis indicates that Schedule 10-B has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed Schedule 10-B for filing, suspend it for a nominal period, effective, subject to refund, on February 1, 2002, and set the matter for hearing.<sup>17</sup>

31. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>18</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>19</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their

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<sup>15</sup>Aquila points out that Ameren switched from Midwest ISO to the Alliance RTO but the settlement permitting this change would have enabled Aquila to utilize the Ameren interconnection to fully participate in Midwest ISO. After the Commission issued its order in *Alliance Companies, et al.*, 97 FERC ¶ 61,327 (2001), Aquila, left without a direct interconnection to Midwest ISO, withdrew its pending state application. Aquila states that Ameren (through GridAmerica) plans to join Midwest ISO later this year and, as a result, Aquila is preparing to resubmit its state application.

<sup>16</sup>See Aquila's answer in support of appointment of a settlement judge.

<sup>17</sup>We also find good cause to grant Midwest ISO's request for waiver of the prior notice requirement.

<sup>18</sup>18 C.F.R. § 385.603 (2002).

<sup>19</sup>If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience. ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed Schedule 10-B is hereby accepted for filing and suspended for a nominal period, effective February 1, 2002, subject to refund.

(B) Schedules 7, 8, and 9 of the Midwest ISO OATT are hereby accepted for filing, without suspension or hearing, effective February 1, 2002.

(C) Midwest ISO's motion to withdraw Attachments J and K is hereby granted as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held on the justness and reasonableness of Schedule 10-B. As discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to conduct settlement judge negotiations.

(E) Pursuant to Rule 603 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

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(G) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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### **Appendix**

Aquila Inc. (Aquila)

Dairyland Power Cooperative and Southern Minnesota Municipal Power Agency

Dynegy Power Marketing, Inc.

Midwest ISO Transmission Owners (collectively, Midwest ISO TOs or TOs)

Mirant Americas Energy Marketing, LP and Mirant Zeeland, LLC

Sunflower Electric Power Corporation

Reliant Resources, Inc.

UtiliCorp United, Inc.

Wisconsin Electric Power Corporation (Wisconsin Electric)

Wisconsin Public Service Corporation and Upper Peninsula Power Company