

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Ameren Services Company and Northern
Indiana Public Service Company
Complainant**

Docket Nos. EL07-86-000

v.

**Midwest Independent Transmission System
Operator, Inc.,
Respondent**

Great Lakes Utilities, et al.

EL07-88-000

Complainant

v.

**Midwest Independent Transmission System
Operator, Inc.,
Respondent**

**Wabash Valley Power Assoc., Inc.,
Complainant**

**EL07-92-000
(Consolidated)**

v.

**Midwest Independent System Operator, Inc.,
Respondent**

**Wabash Valley Power Assoc., Inc.,
Complainant**

EL09-_____

v.

**Midwest Independent Transmission System
Operator, Inc.
Respondent**

**SECOND COMPLAINT AND MOTION FOR CONSOLIDATION OR,
ALTERNATIVELY, MOTION FOR EXTENSION OF REFUND PERIOD
OF WABASH VALLEY POWER ASSOCIATION, INC.**

Pursuant to Rules 206 and 212 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure¹, Wabash Valley Power Association, Inc. ("Wabash Valley") submits this Second Complaint and Motion for Consolidation or, Alternatively, Motion for Extension of Refund Period ("Second Complaint") against the

¹ 18 C.F.R. §§ 385.212 and 385.713

Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) regarding the allocation of revenue sufficiency guarantee (“RSG”) charges to market participants under the Midwest ISO Open Access Transmission Energy Markets Tariff (“TEMT”). Wabash Valley makes this filing to ensure that refunds are available for the entire period between August 10, 2007 and a date in which the Commission’s recent orders of November 10, 2008 becomes final and refunds have been issued.²

The Commission recently issued an order addressing three (3) Section 206 Complaints on November 10, 2008. On August 10, 2007, a Complaint was filed by Ameren Services Company, on behalf of its affiliates,³ and Northern Indiana Public Services Company, in Docket No. EL07-86-000 regarding allocation of RSG Charges. On August 17, 2007, the Midwest TDUs⁴ filed a Conditional Complaint and Motion to Consolidate in Docket No. EL-07-88-000 raising the same RSG issues for purposes of protecting their interests in an early refund effective date. On October 24, 2007, Wabash Valley filed a Second Conditional Complaint and Motion to Consolidate in Docket No. EL07-92-000 raising the same RSG issues to protect its interests in an early refund effective date. Similarly, the Complainants in the three Complaints contended that the Midwest ISO TEMT provisions regarding allocation of RSG charges and their application did not adhere to cost causation principles and were unjust, unreasonable and unduly discriminatory. The Complaints argued that there is no justification for differentiating virtual supply offers and generators with regard to RSG allocations on the basis of whether they were drawing energy.

² *Ameren Services, et al v. Midwest ISO*, 125 FERC ¶ 61,161 (“Second Paper Hearing Order”) and *Ameren Services, et al, v. Midwest ISO*, 125 FERC ¶ 61,162 (2008) (“Order on Rehearing”).

³ The Ameren affiliates include: Ameren Energy Marketing Company, Union Electric Company, d/b/a AmerenU, Central Illinois Public Service Company, d/b/a AmerenCIPS, Central Illinois Light Company, d/b/a AmerenCILCO, and Illinois Power Company, d/b/a AmerenIP (collectively “Ameren”).

⁴ The Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power, Inc.

On November 28, 2007, the Commission granted in part and denied in part the relief requested in the Complaints. The Commission found that the existing RSG cost allocation methodology may be unjust, unreasonable, and unduly discriminatory and/or preferential and set the matter for paper hearing procedures and investigation to develop a record upon which to establish an alternative RSG cost allocation methodology.⁵ The Commission held the paper hearing in abeyance to allow the Midwest ISO stakeholder process time to resolve the issue and to give the Midwest ISO a chance to file a revised cost allocation methodology pursuant to its stakeholder process.⁶ A refund effective date was set for August 10, 2007.⁷ A subsequent Order in regard to the paper hearing was issued on August 21, 2008, in which initial and reply briefs were to be filed on September 22 and October 10, 2008.⁸ On November 10, 2008, the Commission issued the Second Paper Hearing Order in these proceedings, within the fifteen month refund period provided for in Section 206(b) of the Federal Power Act, finding that Complainants had met their burden in demonstrating that the RSG charges cost allocation was unjust and unreasonable and that proposed RSG cost allocation methods were just and reasonable and required refunds.

To the extent there is an appeal on any matter which may affect Wabash Valley's further rights, Wabash Valley is filing a Second Complaint in order to ensure the potential for refunds from August 10, 2007 all the way up until the point this matter is finalized and refunds are allocated.

I. INTRODUCTION OF PARTIES

Complainant Wabash Valley is a generation and transmission cooperative with its principal place of business in Indianapolis, Indiana. Incorporated in 1963, Wabash Valley is a

⁵ *Ameren Services Company, et al.*, 121 FERC ¶ 61, 205 (2007) ("Complaint Order").

⁶ *Id.*

⁷ *Id.*

⁸ *Ameren Services Company, et al. v. Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61, 173 (the "Paper Hearing Order").

nonprofit corporation existing pursuant to the Indiana Nonprofit Corporation Act. Wabash Valley was formed by its members for the purpose of providing wholesale power and transmission service for resale to their retail customers. More than fifty percent (50%) of Wabash Valley's load is located in the footprint of the Midwest ISO. Wabash Valley's native load consists of thirty members, twenty-eight of which are not-for-profit cooperatives serving electric energy to their members at retail and located in the rural areas of the States of Indiana, Michigan, Illinois, and Missouri.⁹ The two members, Wabash Valley Energy Marketing, Inc. and J. Aron, have market-based rate authority.¹⁰ Of the twenty-eight retail load-serving entities, twenty-two are connected only to the Midwest ISO transmission system; three members are connected only to the Pennsylvania New Jersey Maryland Independent System Operator ("PJM") transmission system; and four are connected to the Midwest ISO and PJM. The issues presented in this brief are significant to Wabash Valley as a not-for-profit corporation whose rate payers are taking the hit for these improper charges. As a non-profit generation and transmission cooperative, Wabash Valley's goal is to provide its rate payers the lowest rate possible and any wrongfully incurred charges have a significant impact on the organization and its rate payers.

Wabash Valley is a load-serving entity which takes service under the Midwest ISO TEMT and, therefore, is directly affected by the RSG charges and has been adversely affected by Midwest ISO TEMT uplift charges resulting from underrecovery of RSG costs.

⁹ These cooperative members are: Boone REMC, Carroll County REMC, Central Indiana Power, Citizens Electric Corporation, Corn Belt Energy, Enerstar Electric Cooperative., Fulton County REMC, Hendricks Power Cooperative, Jasper County REMC, CBEC, Kankakee Valley REMC, Tipmont REMC, LaGrange County REMC, M.J.M. Electric Cooperative, Marshall County REMC, Miami-Cass REMC, Midwest Energy Cooperative, Newton County REMC, Noble REMC, Northeastern REMC, Parke County REMC, Paulding-Putnam EC, Steuben County REMC, Tipmont REMC, United REMC, Wabash County REMC, Warren County REMC and White County REMC.

¹⁰ *J. Aron & Company*, Docket No. ER02-237-000 (Dec. 31, 2001) (unpublished letter order); *Wabash Valley Energy Marketing, Inc.*, Docket No. ER07-146-000 (January 8, 2007) (unpublished letter order).

II. COMMUNICATIONS

Service and all communications regarding this filing should be made upon the following:

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III. SECOND COMPLAINT AND MOTION TO CONSOLIDATE AND/OR MOTION FOR EXTENSION OF REFUND PERIOD

The Complaints submitted in Docket Nos. EL07-86, EL07-88, and EL07-92 and the subsequent briefs filed on September 22, 2008 in those matters clearly demonstrated that the current RSG charge allocation methodology is not just and reasonable and is unduly discriminatory because it does not properly allocate RSG costs to those who caused them.

Therefore, it is not consistent with cost causation. As provided in Docket Nos. EL07-86, EL07-

88, and EL07-92, the current RSG allocation methodology has caused significant uplift charges to load-serving entities rather than to those who caused the costs to occur.

In support of this Second Complaint, Wabash Valley relies on, adopts and incorporates allegations in the Complaints of Docket Nos. EL07-86, EL07-88, and EL07-92 and incorporates briefs and supporting affidavits filed in each of those Dockets on September 22, 2008. Wabash Valley further relies on, adopts, and incorporates the Second Paper Hearing Order of the Commission. These proceedings have shown that there is approximately half a billion dollars uplifted to load-serving entities such as Wabash Valley without any adherence to cost causation principles. The Second Complaint is filed for purposes of ensuring that refunds may be provided for a period between August 10, 2007 and the final date of implementation of the Second Paper Hearing and issuance of refunds.

As such, this Second Complaint involves the same issues in Wabash Valley's previous Complaint in Docket No. EL07-92 and the other Complaints in Docket Nos. EL07-86 and EL07-88. The Commission should consolidate this Complaint with those proceedings, particularly because the sole purpose of this Second Complaint is to prevent any gap in a refund coverage. In the alternative, the Commission should extend the refund period in EL07-86, EL07-88, and EL07-92.

IV. RELIEF REQUESTED

Wabash Valley requests that the Commission continue to find that Section 40.3.3.a.ii of the currently effective Midwest ISO TEMT and its application is unjust, unreasonable and/or unduly discriminatory and that such unjustness, unreasonableness, and undue discrimination will continue after November 10, 2008. Additionally, the Commission should consolidate this

Second Complaint with the Complaints in Docket Nos. EL07-86, EL07-88, and EL07-92, or in the alternative should extend the refund period in these matters.

V. OTHER PROCEEDINGS, DISPUTE RESOLUTION, AND REQUESTED TRACK

The proceedings in Docket No. ER04-691 are ongoing and pending involving RSG issues. Wabash Valley is a party to those proceedings. Further, as previously stated, Docket Nos. EL07-86, EL07-88, and EL07-92 are related to these RSG issues and were recently addressed by the Commission in a Second Paper Hearing Order. Further, a recent Complaint was filed by the Midwest TDUs in Docket No. EL09-07 and by Ameren/NIPSCO in Docket No. EL09-_____.

Wabash Valley has sought informal resolution of these issues. There has been no unanimous support and agreement of any method in the Midwest ISO process. Because of the magnitude of the unjust and unreasonable charges, Wabash Valley would request that the refund period continue.

Wabash Valley is not requesting fast-track processing for this Complaint.

VI. SERVICE AND FORM OF NOTICE

Wabash Valley is serving a copy of this Complaint in accordance with Rule 206 of the Commission's rules on practice and procedure.¹¹

Wabash Valley is also including in this filing a Form of Notice as Attachment A hereto.

VII. CONCLUSION

Wherefore, Wabash Valley requests that the Commission continue to find that Section 40.3.3.a.ii of the Midwest ISO TEMT and its application is unjust, unreasonable, and unduly

¹¹ 18 C.F.R. § 385.206(c).

discriminatory; continue to find that alternatives presented by Complainants in EL07-86, *et al.*, are just, reasonable and non-discriminatory RSG provisions that are applied in a just, reasonable, and non-discriminatory manner; establish a refund-effective date which covers any period between the expiration of the refund period in existing Complaint Dockets EL07-86, EL07-88, and EL07-92; and consolidate this Second Complaint with the original Complaints of EL07-86, *et al.*, or in the alternative, extend the refund period in Docket No. EL07-86, *et al.*

Respectfully Submitted,

PARR RICHEY OBREMSKEY & MORTON

By: /s/ Jeremy L. Fetty
Don F. Morton
Jeremy L. Fetty

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CERTIFICATE OF SERVICE

I hereby certify this day I have on this 11th day of November, 2008 caused the foregoing document to be sent by electronic mail to all parties on the list compiled by the Secretary of the Commission in Docket Nos. EL07-86, EL07-88 and EL07-92, and by first-class mail to the contacts for the Respondent as listed on the Commission's list of Corporate officials as follows:

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Vice President & General Counsel
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/s/ Jeremy L. Fetty
Jeremy L. Fetty
On behalf of Wabash Valley Power
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Wabash Valley Power Assoc., Inc.,

EL09-_____

v.

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NOTICE OF COMPLAINT

(November __ 2008)

Take notice that on November 11, 2008, pursuant to Rule 206 of the Rules of Practice and Procedure and Section 206 of the Federal Power Act, Wabash Valley Power Association, Inc. ("Wabash Valley") filed a formal complaint against the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") alleging that the Revenue Sufficiency Guarantee charge allocation provisions of the Respondent's tariff are unjust, unreasonable and unduly discriminatory, and therefore must be revised. Wabash Valley requests that the Federal Energy Regulatory Commission (the "Commission") establish the earliest possible refund-effective date with respect to the necessary revisions.

Wabash Valley states that copies of the Complaint were served upon the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible online at <http://www.ferc.gov>, using the "eLibrary" link, and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For

TTY, call (202) 502-8659.

Comment Date: 5:00pm Eastern Time on November __ 2008

Kimberly D. Bose
Secretary

L-278323

Document Content(s)

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