

112 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER05-1230-000

ORDER CONDITIONALLY ACCEPTING TARIFF FILING

(Issued September 15, 2005)

1. In this order, we accept for filing the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposal to extend the time for initiating disputes involving services under Module C of its Transmission and Energy Markets Tariff (TEMT). We also waive the 60-day prior notice requirement of section 205 of the Federal Power Act (FPA)¹ so that the filing may become effective on July 22, 2005, as requested.

Background and Filing

2. On July 26, 2005 (July 26th Order),² the Commission approved the Midwest ISO's May 27, 2005 proposal to correct typographical errors within the TEMT and to make minor revisions clarifying particular provisions, including a modification of the dispute initiation period. In the instant filing submitted on July 21, 2005, the Midwest ISO asserts that discussions with its stakeholders resulted in the determination that the proposal approved in the July 26th Order will not provide an adequate period of time for the initiation of disputes involving services under Module C of the TEMT. The Midwest ISO also states that stakeholders requested an extension of the time presently provided under the TEMT to "research facts pertaining to potential disputes because in some instances necessary facts are not available until after the currently applicable dispute initiation period."

3. Accordingly, the Midwest ISO proposes to extend the 65-day from Operating Day time limit presently provided for initiating disputes involving services under Module C of the TEMT to 115 days from the Operating Day. The Midwest ISO also claims that it will

¹ 16 U.S.C. § 824d(d) (2000). *See also* 18 C.F.R. § 35.3(a) (2005).

² Midwest Independent Transmission System Operator, Inc., 112 FERC ¶ 61,122 (2005).

amend the Market Dispute provisions of the Business Practices Manual for Market Settlements to correspond with the proposed time extension.³ According to the Midwest ISO, this proposal has wide stakeholder support.

4. The Midwest ISO requests an effective date of July 22, 2005 for the proposed tariff sheet. It states that waiver of the 60-day prior notice requirement would permit the accommodation of disputes initiated from the first day of operation under the TEMT, *i.e.*, April 1, 2005.

Notice of Filing and Responsive Pleadings

5. Notice of the Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 44,095 (2005), with interventions and protests due on or before August 11, 2005. Consumers Energy Company filed a motion to intervene. Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. (collectively, Duke) and Wisconsin Electric Power Company (WEPCO) filed motions to intervene and comments. The Midwest ISO filed an answer to WEPCO's comments.

6. WEPCO and Duke state that they support the Midwest ISO's proposal to extend the time period for market participants to initiate disputes under Module C from 65 days after the Operating Day to 115 days after the Operating Day. WEPCO acknowledges the insufficiency of the 65-day dispute window and asserts that its experience to date has been that accurate and complete settlement data has not been available by 55 days after the Operating Day. Duke asserts that the Midwest ISO's proposal promotes an orderly and efficient dispute resolution process by providing adequate time for market participants to gather relevant information and evaluate the need for and parameters of any potential disputes.

7. Duke states that it supports the Midwest ISO's request for waiver of the notice requirement to ensure that disputes initiated from the start of the energy markets on April 1, 2005 will be covered under the revised dispute deadline.

8. WEPCO alleges that lengthening the dispute resolution process may have a negative impact on market participants. WEPCO expressed the concern that it will take at least an additional 50 days to finalize accounts. It contends that the proposed extension may increase the uncertainty of the amounts in dispute and subject market participants to a potential uplift of charges. Therefore, WEPCO suggests that the Commission require the Midwest ISO to modify its proposal to include a sunset date at which time the 115-day window will expire and revert back to the original, 65-day time limit.

³ See Midwest ISO Business Practices Manual for Markets Settlements, Manual No. 5, Version 7, at 5-1 (June 8, 2005), *available at* http://www.midwestmarket.org/publish/Document/20f443_ffd16ced4b_7e670a3207d2?v=8.

9. On August 26, 2005, the Midwest ISO filed an answer to WEPCO's comments. It agrees that a sunset date for the extended settlement period is necessary. The Midwest ISO also asserts that it is committed to returning to its 105-day settlement period as soon as practicable.⁴ It is willing to notify the Commission and market participants, through a compliance filing in this docket, when an appropriate sunset date for the extended settlement period is identified.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

11. We find that the proposed extension of the window for initiating disputes involving services under Module C of the TEMT is appropriate and consistent with the July 26th Order.⁵ It also addresses market participants' concerns, previously noted in the July 26th Order, regarding the time frame for the initiation of disputes.⁶ Moreover, we note the Midwest ISO's assertion that this filing enjoys wide stakeholder support.

12. We agree with WEPCO that when the Midwest ISO determines that market settlement issues are resolved such that accurate and complete settlement data is available by 55 days after the Operating Day, the Midwest ISO should propose a sunset date for the

⁴ Midwest ISO Answer at P 3. We note the initial dispute window is 65 days, but the final settlement statement is issued 105 days from the Operating Day.

⁵ See July 26th Order at P 14 ("We also decline to direct the Midwest ISO to extend the initial dispute window from May 31, 2005 until September, 2005. Nothing precludes the Midwest ISO from exercising discretion to provide additional time uniformly to all market participants to resolve disputes that arise during the initial phase of the energy markets, when policies and procedures are being used for the first time").

⁶ *Id.* at P 11 ("It appears unreasonable that a market participant is precluded from initiating a dispute if a resettlement should occur after the window of opportunity has closed."). We also note the Midwest ISO submitted a compliance filing to the July 26th Order in Docket No. ER05-1029-001, which further responds to the Commission's resettlement concerns.

expiration of the extended dispute initiation time limit. This will add certainty to market participants' financial accounts by reducing the time-frame for resettlement and, in turn, decreasing market participants' exposure to dispute-related uplift. Accordingly, market participants will be able to ascertain their final financial responsibilities and exposures in their respective accounts within a reasonably brief time period. The Midwest ISO is charged with conducting market settlements, and is, therefore, in a unique position to determine an appropriate sunset date. Thus, we direct the Midwest ISO to submit a compliance filing within 90 days of the date of this order that identifies the proposed sunset date. In addition to the proposed sunset date, the compliance filing should include information describing any updates to the market settlement program.⁷

13. The Commission will generally grant waiver of the 60-day prior notice requirement if good cause is shown and the filing is made prior to the commencement of service.⁸ We share the Midwest ISO's concern that disputes dating back to the first day of market operations will be foreclosed under the currently applicable tariff provisions, unless the requested effective date is applied. In this circumstance, we find good cause to grant the request for waiver of the prior notice requirement and permit an effective date of July 22, 2005.

The Commission orders:

The Midwest ISO's filing is hereby accepted effective July 22, 2005, as requested, subject to the compliance filing requirement described in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷ We note the Midwest ISO recently passed an audit of its market settlement internal controls for the first two months of operations. Press release is available at: http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-779a0a48324a/2005-08-29%20news%20rel%20-%20Midwest%20ISO%20Market%20Settlement%20Contro&.pdf?action=download&_property=Attachment.

⁸ *E.g.*, *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 at 61,339 (1992); *Cleveland Electric Illuminating Company*, 76 FERC ¶ 61,156 at 61,923 (1996).