119 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER07-701-000
Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations	Docket No. AD07-12-000

ORDER REJECTING TARIFF CHANGES WITHOUT PREJUDICE AND ESTABLISHING TECHNICAL CONFERENCE

(Issued May 31, 2007)

1. On April 2, 2007, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed changes to its Open Access Transmission and Energy Markets Tariff (TEMT) in order to add Schedule 10-ERO, providing for recovery of penalties that are imposed on Midwest ISO by the Commission, the Electric Reliability Organization (ERO) or by a duly authorized Regional Entity for violations of mandatory Reliability Standards. In this order, we reject the proposed Schedule 10-ERO without prejudice and establish a staff technical conference to address generically the issues raised by Midwest ISO's proposal concerning Reliability Standard compliance and enforcement in regions with non-profit Independent System Operators (ISOs) or Regional Transmission Organizations (RTOs).

Background

2. Among other things, section 1211 of the Energy Policy Act of 2005 (EPAct 2005)[1] added section 215 to the Federal Power Act (FPA), 16 U.S.C. § 824o, providing for the development and enforcement of mandatory Reliability Standards by an ERO to be certified by the Commission based on appropriate criteria. Penalties for violations of Reliability Standards are to be imposed by the ERO, or by the relevant Regional Entity to which the ERO may delegate some enforcement functions.[2] In addition, FPA section 215 (e)(3) empowers the Commission to impose penalties for violations of Reliability Standards.[3]

3. On February 3, 2006, the Commission issued Order No. 672, implementing the requirements of EPAct 2005 regarding the selection criteria, standard-setting procedures, and other operational aspects of the ERO.[4] Subsequently, by order dated July 20, 2006, the Commission certified the North American Electric Reliability Council, on behalf of its wholly-owned subsidiary, the North American Electric Reliability Corporation, (collectively, NERC) as the ERO, subject to certain compliance requirements.[5]

4. In Order Nos. 672 and 672-A, the Commission denied requests to: (1) exempt non-profit ISOs and RTOs from monetary penalties for violations of the Reliability Standards; and (2) authorize RTOs and ISOs to recover such monetary penalties from their customers on a generic basis. Rather, the Commission stated that it will consider on a case-by-case basis proposals by RTOs or ISOs under FPA section 205, 16 U.S.C. § 824d (2000), to recover the cost of any penalties that may be imposed on them for the

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[1] Pub. L. No. 109-58, § 1211, 119 Stat. 594, 941-46 (2005) (codified at 16 U.S.C. § 824o).

[2] *See* 16 U.S.C. § 824o(d), (e).

[3] *See* 16 U.S.C. § 824o(e)(3),

[4] Rules Concerning Certification of the Electric Reliability Organization; Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards, Order No. 672, FERC Stats. & Regs. ¶ 31,204 (2006), order on reh'g, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

[5] *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062 (2006) ("ERO Certification Order"), *order on reh'g*, 117 FERC ¶ 61,126 (2006) ("ERO Rehearing Order").

violation of Reliability Standards.[6] The instant filing, discussed below, contains Midwest ISO's proposal to pass through these penalties through a new Schedule 10-ERO to Midwest ISO's TEMT.

Midwest ISO's Proposal

5. Currently, Schedule 10 of Midwest ISO's TEMT provides for recovery of all costs of operating the Midwest ISO, exclusive of costs that are recovered under other schedules of the TEMT, from Transmission Customers based on transmission service billing determinants. Midwest ISO proposes to amend its TEMT by adding Schedule 10-ERO to provide for the general authority to recover, from Tariff Customers,[7] costs arising from paying or complying with any penalties assessed by the Commission, the ERO or a Regional Entity for the violation of mandatory Reliability Standards. Under the proposal, Midwest ISO would directly assign the penalty costs to specific Tariff Customers if Midwest ISO determines that the violation is due to their non-compliance with Midwest ISO's directives or requirements, or with Good Utility Practice or any other applicable technical standards under the TEMT. Any direct assignment of penalty costs, however, will only apply following an FPA section 205 filing by Midwest ISO and Commission approval of the direct cost assignment. If Midwest ISO is unable to identify the specific Tariff Customer(s) responsible for the violation, the penalty costs will be allocated under proposed Schedule 10-ERO to all Tariff Customers based on the level of their energy injections and withdrawals from the Midwest ISO transmission system (the same billing determinants used for recovery of energy market administrative costs in Schedule 17 of the TEMT) during the months when the event associated with the penalty occurred.

6. Midwest ISO argues that the proposed Schedule 10-ERO follows the broad outlines of the cost allocation scheme that the Commission approved in the comparable context of reliability-related penalties that could be imposed on the California Independent System Operator (CAISO), and is consistent with Commission precedent.[8]

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[6] Order No. 672 at P 634-35; Order No. 672-A at P 55-58.

[7] The TEMT defines Tariff Customers as Transmission Customers and Market Participants.

[8] Midwest ISO Transmittal Letter at 5 n.24. Midwest ISO references section 2.5.26.5 and Appendix F (Part C) of CAISO's Open Access Transmission Tariff, which, Midwest ISO states, provides for CAISO's recovery of the cost of any penalties the Western Systems Coordinating Council (now the Western Electricity Coordinating Council) imposes on CAISO by: (1) directly assigning penalty costs to Scheduling

(continued)

7. Midwest ISO states that its Reliability Subcommittee is reviewing potential refinements to its policy and procedures regarding the pass-through of penalty costs. Pending the outcome of this review, however, Midwest ISO believes it is necessary to make the present filing so that its authority to pass-through penalty costs is in place no later than June 1, 2007, the date that the mandatory Reliability Standards become fully enforceable and violators can be assessed penalties.

Notice of Filing and Responsive Pleadings

8. Notice of Midwest ISO's filing was published in the Federal Register,72 Fed. Reg. 18,231 (2007), with interventions and protests due on or before April 23, 2007.

9. Consumers Energy Company; DC Energy Midwest, LLC; Duke Energy Shared Services, Inc. on behalf of its franchised utility affiliates, Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; and Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC filed timely motions to intervene. Reliant Energy, Inc. (Reliant) filed a motion to intervene out of time.

10. Timely motions to intervene and protests or comments were filed by Ameren Services Company (Ameren), on behalf of its public utility operating companies;[9] American Municipal Power – Ohio, Inc., on behalf of itself and its members (AMP-Ohio); American Transmission Company LLC, by its corporate manager, ATC Management Inc. (collectively ATCLLC); Constellation Generation Group, Inc., Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation); Detroit Edison Company (Detroit Edison); Edison Electric Institute (EEI); Exelon Corporation (Exelon); FirstEnergy Service Company, on behalf of

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Coordinators representing market participants to which such penalties are attributable; or (2) to the extent the penalties are not attributable to specific market participants, recovering such penalty costs from all transmission customers by adding the penalties as a cost component of CAISO's Grid Management Charge. In this regard, Midwest ISO cites *California Independent System Operator Corp.*, 88 FERC ¶ 61,182 at 61,591 (1999).

[9] The Ameren Companies include Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS, Illinois Power Company d/b/a AmerenIP, Union Electric Company d/b/a AmerenUE, Ameren Energy Marketing Company, Ameren Energy Generating Company and AmerenEnergy Resources Generating Company.

its affiliates American Transmission Systems, Inc., Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, and FirstEnergy Solutions (collectively, FirstEnergy); Integrys Energy Group, Inc. and its subsidiaries Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc. (collectively, Integrys Energy Group); International Transmission Company and Michigan Electric Transmission Company, LLC; Michigan Public Power Agency and Michigan South Central Power Agency (collectively, Michigan Agencies); Midwest ISO Transmission Owners (Midwest ISO TOs);[10] and Wisconsin Electric Power Company (Wisconsin Electric).

11. A number of protests express concern that Midwest ISO's recovery of all penalty costs will make the penalties ineffective. For example, Ameren suggests that Midwest ISO should be required to reduce management bonuses to fund penalty costs when its actions cause the incurrence of the penalty.[11] Wisconsin Electric states that,

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[10] The Midwest ISO TOs for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc. The Midwest ISO TOs state in their intervention that the individual owners may file separate comments addressing issues not discussed in these comments.

[11] Ameren Services April 23, 2007 Protest at 8.

notwithstanding the not-for-profit structure under which Midwest ISO operates, automatic pass-through of penalty costs to Midwest ISO members for violations over which they had no control defies the purpose of the penalty, which is to prevent impairment of reliability.[12] Constellation argues that the Commission must consider alternative motivational mechanisms, such as non-monetary penalties, when taking enforcement action against not-for-profit entities such as Midwest ISO for violations of the Reliability Standards. Otherwise, according to Constellation, the Commission will create a gap in its enforcement program.[13] Michigan Agencies similarly argue that automatic pass-through removes an incentive to comply with Reliability Standards and is inconsistent with the Commission's statement in Order No. 672 that RTOs may only seek pass-through of ERO penalties on a case-by-case basis.[14] Integrys Energy Group argues that Midwest ISO has no right to rely on Schedule 10-ERO to uplift ERO or Regional Entity reliability penalties to all customers without a section 205 filing under the FPA.[15]

12. Some parties object to the direct assignment aspect of Midwest ISO's proposal. EEI and ATCLLC argue that it would inappropriately allow Midwest ISO to assume responsibilities in the Reliability Standard enforcement process that are reserved for the ERO or Regional Entity.[16] EEI argues that Midwest ISO lacks the necessary independence to enforce Reliability Standards.[17] Exelon and FirstEnergy argue that Midwest ISO should raise its concerns in the ERO/Regional Entity enforcement proceeding, if it believes that one of its customers, rather than Midwest ISO itself, is responsible for a Reliability Standard violation.[18] FirstEnergy argues that the proposal could subject an entity choosing to defend itself in the ERO/Regional Entity and Midwest ISO proceedings to additional legal costs, second-guessing regarding its legal rights and

[12] Wisconsin Electric April 23, 2007 Protest at 4.

[13] Constellation April 23, 2007 Protest at 4-6.

[14] Michigan Agencies April 23, 2007 Protest at 4-5.

[15] Integrys Energy Group April 23, 2007 Protest at 5-11.

[16] EEI April 23, 2007 Comments at 2-3; ATCLLC April 23, 2007 Comments at 5-7.

[17] EEI April 23, 2007 Comments at 3.

[18] Exelon April 23, 2007 Protest at 4; FirstEnergy April 23, 2007 Comments at 4-5.

obligations, and unnecessary controversy and confusion.[19] Constellation argues that any market participant that is in a position to affect the reliability of the bulk-power system will already be subject to Reliability Standards that are targeted to that entity's specific role, and the ERO or Regional Entity can be expected to take enforcement action directly against such an entity if it is found to have violated a Reliability Standard.[20] Constellation argues that Midwest ISO's proposal could subject such entity to double penalties, or to penalties that exceed the Commission's authority, if, *e.g.*, the entity were subject to a $1 million penalty directly by the ERO or Regional Entity and a second $1 million penalty passed through by Midwest ISO with respect to the same event.[21] Constellation also argues that Midwest ISO's direct assignment proposal fails to provide adequate advance notice of the consequences of a Tariff Customer's action and does not afford Tariff Customers adequate due process.[22] Wisconsin Electric and American Transmission argue that, when penalties result from failure to perform by counterparties to Midwest ISO under specific agreements, Midwest ISO should invoke its rights to recover the penalty costs under such specific agreements, not under the TEMT.[23]

13. Other parties support the direct assignment aspect of Midwest ISO's proposal. Ameren believes that, if the ERO or Regional Entity is not able to examine the violation with sufficient detail or granularity to identify the individual party or parties that caused the violation, then Midwest ISO should be allowed to allocate the penalty to the party or parties that caused the violation, given that Midwest ISO is the market operator and should have sufficient understanding of the market to determine cost causation.[24] Midwest ISO TOs support direct assignment, but request that the Commission condition acceptance on allowing entities that would be the target of any potential penalties to participate in the ERO enforcement investigation as early as possible, to ensure due process.[25] Ameren and Midwest ISO TOs argue, however, that the proposal gives

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[19] FirstEnergy April 23, 2007 Comments at 4.

[20] Constellation April 23, 2007 Protest at 10.

[21] *Id*.

[22] Constellation April 23, 2007 Protest at 8.

[23] Wisconsin Electric April 23, 2007 Protest at 3; ATCLLC April 23, 2007 Comments at 7-8.

[24] Ameren Services April 23, 2007 Protest at 7.

[25] Midwest ISO TOs April 23, 2007 Protest at 7.

Midwest ISO too much discretion as to whether to seek direct assignment of penalty costs. They request that the Commission require that Midwest ISO file with the Commission its allocation proposal for each penalty, instead of only when Midwest ISO seeks direct assignment, in order to ensure appropriate allocation of each penalty.[26] Ameren requests that the Commission condition acceptance on the requirement that Midwest ISO take affirmative steps to seek direct assignment of each penalty.[27]

14. On May 8, 2007, Midwest ISO filed an answer to the protests. Midwest ISO argues that Order No. 672 does not specifically require a separate FPA section 205 filing for recovery of each penalty.[28] It submits that its Schedule 10-ERO filing is the appropriate section 205 filing for the Commission's evaluation and acceptance of Midwest ISO's proposed penalty allocation mechanism - the proceeding provides interested parties due opportunity to respond to Midwest ISO's proposal and, after the parties are heard, and once the Commission finds the tariff mechanism just and reasonable, further FPA section 205 filings would be needed only for direct assignment, which would involve individualized determinations of cost causation.[29]

15. Midwest ISO argues that, given its non-profit nature, it should be permitted to either directly assign or generally pass-through the full amount, including compliance costs, of any penalties that the ERO or Regional Entity may impose on Midwest ISO.[30] It states that as a non-profit entity, it does not have its own revenues from which to pay anything, whether penalties or any other operational costs.[31] Midwest ISO argues that pass-through mechanisms such as it proposes are merely a cost allocation tool – they do not require the assigning/passing entity to have the authority to impose the charges whose

[26] Ameren Services April 23, 2007 Protest at 4-5; Midwest ISO TOs April 23, 2007 Protest at 5-7.

[27] Ameren Services April 23, 2007 Protest at 5.

[28] Midwest ISO May 8, 2007 Answer at 11.

[29] *Id.*

[30] *Id.* at 5.

[31] *Id.*

costs are being assigned/passed through, nor do they require the allocation pool to consist only of entities subject to the standards or requirements that gave rise to the charges.[32]

16. Midwest ISO disputes claims that a pass-through authorization would diminish its accountability or its reliability.[33] It states that its commitment to reliability is ensured by its very structure as an independent stake-holder-driven enterprise.[34] Midwest ISO argues that there is no opportunity or incentive to "cut corners for the sake of improved quarterly earnings" and that the reliability tools and the culture of protecting the system are the direct result of the participation and direction provided by those who will bear the cost of any pass-through penalty.[35] Those parties will then respond to any penalty with appropriate improvements in systems or processes to ensure that the violation is not repeated, including, if necessary, the replacement of employees and officers that may have failed in their duties.[36] Thus, according to Midwest ISO, ISOs and RTOs are unique and the treatment of reliability penalties, as well as the allocation of penalty costs, should reflect that organizational structure.[37]

17. With respect to the direct assignment aspect of its proposal, Midwest ISO states that, if the ERO enforcement process efficiently determines and assigns individual responsibility for reliability violations, there may correspondingly be less occasion (but not necessarily never any occasion) for Midwest ISO to itself seek a direct assignment of some or all of the costs of a penalty assessed against it.[38] According to Midwest ISO, if a Tariff Customer's own violation results in the imposition of ERO or Regional Entity penalties on both the Tariff Customer and Midwest ISO, it would still be appropriate for Midwest ISO to directly assign its own penalty cost to the offending Tariff Customer as a dual matter of funding and indemnity.[39] In such a situation, it is not so much that the

[32] *Id*. at 6.

[33] *Id*. at 8.

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 9.

[38] *Id*. at 12.

[39] *Id*. at 12 and 13.

Tariff Customer is in effect being doubly penalized by the ERO or Regional Entity, but rather that it is being held civilly responsible for also causing damage to all other Midwest ISO Tariff Customers.[40] Midwest ISO states that it will also avoid any duplication of, or conflict with, the investigation or other proceedings of the ERO or Regional Entity.[41] If the ERO or Regional Entity specifically finds that an individual cause cannot be determined for a violation within Midwest ISO's footprint, and that Midwest ISO shall be deemed to have command responsibility for the situation, Midwest ISO will not investigate the matter further in the absence of any reasonable basis for believing it is in a position to possibly make a better determination of causation than the ERO or Regional Entity.[42]

18. On May 18, 2007, Integrys Energy Group filed an answer to Midwest ISO's answer.

Discussion

Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[43] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In view of the early stage of this proceeding, its interest, and the absence of undue prejudice or delay, we will grant Reliant Energy, Inc.'s motion to intervene out of time.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[44] prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept Midwest ISO's and Integrys Energy Group's answers because they provided information that assisted us in our decision-making process.

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[40] *Id*. at 13.

[41] *Id*. at 15.

[42] *Id*. at 15 and 16.

[43] 18 C.F.R. § 385.214 (2006).

[44] 18 C.F.R. § 385.213(a)(2) (2006).

Substantive Matters

21. We find that Midwest ISO's proposal raises issues concerning the Reliability Standard compliance and enforcement process that may be common in other regions with ISOs and RTOs, and that these issues are best addressed on a generic basis. Accordingly, as discussed below, we will hold a staff technical conference in Docket No. AD07-12-000, and encourage the participation of NERC, the Regional Entities, Midwest ISO, the other ISOs and RTOs, and their members, to explore these issues. Pending the outcome of this generic proceeding, we reject Midwest ISO's filing as premature, without prejudice. Midwest ISO has not justified its proposal in light of the fundamental issues discussed below (including but not limited to the balancing of due process rights among parties), which will be addressed in the technical conference described below. Midwest ISO is free to file another proposal to establish tariff mechanisms to pass-through reliability penalties after further guidance from the Commission following the technical conference. In the meantime, if the ERO or a Regional Entity files a notice of penalty with the Commission, or if the Commission initiates a proceeding to impose a penalty, Midwest ISO may seek to recover that penalty through an individual FPA section 205 filing.

22. In Order Nos. 672 and 672-A, while declining to exempt non-profit ISOs and RTOs from penalties for violation of Reliability Standards, the Commission recognized that ISOs and RTOs have unique characteristics that the ERO or Regional Entity may take into consideration in determining an appropriate and effective sanction.[45]

23. Similarly, in Order No. 693, the Commission addressed concerns about the manner in which users, owners, and operators would be responsible for compliance with the Reliability Standards in the context of ISOs and RTOs, or any other organization that pools resources and where decision-making and implementation are performed by separate entities. The Commission explained that, in establishing mandatory Reliability Standards, its intent was to allow the appropriate user, owner, or operator of the bulk-power system to be identified for each Reliability Standard, and more specifically to identify the actual user, owner or operator that would be responsible for complying with the requirements in the Reliability Standards, so that there would be neither gaps nor

[45] *See* Order No. 672 at P 634; Order No. 672-A at P 56. As noted earlier, while not providing generic authorization for ISOs' and RTOs' recovery of penalties for Reliability Standard violations, the Commission provided that it would consider proposals by ISOs and RTOs to recover penalties on a case-by-case basis under FPA section 205. *See* Order No. 672 at P 635; Order No. 672-A at P 58.

redundancy in responsibility for compliance with the requirements of a Reliability Standard.[46]

24. Thus, the Commission has recognized that the organizational structure and financial model of ISOs and RTOs may present unique circumstances for compliance with and enforcement of Reliability Standards. However, the Commission did not intend that FPA section 205 proceedings initiated by ISOs and RTOs to recover penalty costs would involve new, additional investigations of violations of Reliability Standards beyond any investigations done in connection with the Commission's, ERO's or Regional Entity's assessment, in the first instance, of penalties. In this regard, the Commission is concerned that the direct assignment aspect of Midwest ISO's proposal both will result in duplicative investigations of Reliability Standard violations – in the context of any ERO/Regional Entity or Commission enforcement proceeding and any Midwest ISO FPA section 205 proceeding -- and also will result in parties bringing issues directly to the Commission that should be addressed in the ERO/Regional Entity or Commission enforcement proceeding in the first instance. Specifically, it is unclear why a Tariff Customer that Midwest ISO would directly assign a penalty under its proposal would not already be registered with the ERO for compliance with the relevant Reliability Standard, and correspondingly subject to investigation and a penalty in the ERO/Regional Entity or Commission enforcement proceeding.

25. In addition, Midwest ISO's proposal is targeted at Tariff Customers, and does not address how responsibility for penalty costs is to be addressed between Midwest ISO and those owners and operators of the bulk-power system (such as transmission owners and balancing authorities) with which Midwest ISO has agreements allocating operational responsibilities outside of the TEMT. Do such agreements present situations similar to those envisioned by Midwest ISO's proposal, where Midwest ISO would be assessed a penalty for violating a Reliability Standard due to its counterparties' failure to perform under such agreements? If not, could those arrangements serve as a model for tariff provisions and Reliability Standard compliance strategies that would avoid situations envisioned by Midwest ISO's proposal with respect to Tariff Customers? We are also concerned about the lack of due process should entities directly assigned penalties not have had an opportunity to represent their interests in the ERO/Regional Entity or Commission enforcement proceeding.

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[46] *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 at P 141-45 (2006) (Reliability Final Rule).

26. We believe that these issues and other issues raised by Midwest ISO's proposal concerning the Reliability Standard compliance and enforcement process would benefit from exploration on a generic basis in a staff technical conference in Docket No. AD07-12-000 with participation of interested parties such as NERC, the Regional Entities, Midwest ISO, the other ISOs and RTOs, and their members. Participants in the technical conference would have an opportunity to address such issues as: (1) how each ISO's or RTO's regional tariffs and other operational agreements and protocols allocate responsibilities among the parties; (2) what provisions exist in those tariffs, agreements, and protocols to establish responsibility for penalty costs; (3) what provisions exist that may prevent an entity from being registered for compliance with relevant Reliability Standards if their failure to perform under such tariffs, agreements, and protocols leads to a violation of Reliability Standards; and (4) what policies for any pass-through of penalty costs by ISOs and RTOs would both best provide due process for entities that would ultimately be required to pay penalty costs and also avoid redundant investigations and litigation of Reliability Standard violations. The Commission will schedule and convene this staff technical conference in Docket No. AD07-12-000 through further orders and/or notices.

The Commission orders:

Midwest ISO's proposed Schedule 10-ERO to its TEMT, providing for recovery of penalties that are imposed on Midwest ISO by the ERO, a Regional Entity or the Commission, is hereby rejected, without prejudice to refiling, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.