

Midwest ISO will convert the billing of such charges to a monthly cycle. The Midwest ISO indicates that converting from an annual to a monthly billing cycle will reduce the risk to other transmission customers of having to pay the outstanding balance if one customer files bankruptcy or simply does not make payment. According to the Midwest ISO, this change will also make the billing frequency consistent with other Regional Transmission Organizations (RTOs), such as PJM Interconnection, LLC (PJM). The Midwest ISO states that 77 percent of Credit Practices Working Group (CPWG)⁴ members voted in favor of the proposed revisions.

4. The Midwest ISO requests that the Commission accept its proposed revisions effective September 1, 2006, 30 days prior to the proposed implementation of monthly billing on October 1, 2006, to coincide with the start of the Commission's fiscal year.

Notices and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 30,910 (2006), with interventions and protests due on or before June 2, 2006.

6. Timely motions to intervene were filed by the Midwest Stand-Alone Transmission Companies (MSATs); Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., and its subsidiary, WPS Power Development, LLC (collectively, the WPS Companies). A timely motion to intervene and protest was filed by Wisconsin Electric Power Company (Wisconsin Electric). A timely motion to intervene and comments was filed by Consumers Energy Company (Consumers Energy). On June 21, 2006, the Midwest ISO filed an answer to the protest.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motions to intervene serve to make the entities that filed them, parties to this proceeding.

⁴ The CPWG is the working group, consisting of the Midwest ISO transmission and non-transmission owners, assigned to review and suggest revisions to payment terms and other credit-related provisions of the TEMT. This review by the CPWG is part of the Midwest ISO's stakeholder process. See Transmittal Letter at 3.

⁵ 18 C.F.R. § 385.214 (2006).

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of the Midwest ISO because it has provided information that assisted us in our decision-making process.

Need for the Proposed Revisions and Analysis

Protest and Comment

9. Wisconsin Electric generally supports the Midwest ISO proposal⁷ but is concerned about certain aspects of the proposed tariff provisions. First, Wisconsin Electric states that the billing determinants and the total quantity of monthly network MWhs in the formula proposed by the Midwest ISO is unclear. Second, Wisconsin Electric argues that it is unclear whether the charge resulting from the proposed monthly billing cycle will apply to grandfathered agreements, and that the Midwest ISO should clarify that the MWhs of these entities are included in its calculations, consistent with the Commission's directive to allocate the transmission provider's administrative costs to all load.⁸ Third, Wisconsin Electric maintains that the true-up mechanism within the calculation of the FERC Charge Recovery Rate for the effective 12 month period (FCRR_t) is unclear.⁹ Wisconsin Electric asserts that the true-up mechanism should reflect the difference between the estimated FERC Charge and the Invoiced FERC Charge (IFC) for the proposed period, and requests that the Commission require the Midwest ISO to clarify this in a compliance filing. Fourth, Wisconsin Electric suggests revising the first sentence on Third Revised Sheet No. 969, regarding the difference between the IFC and Collected FERC Charge (CFC), to correspond to the variable definitions on Sheet No. 968 and the addition of the true-up language. Wisconsin Electric proposes adding language as follows:

The difference between the IFC_{pF} and CFC_{pF} charges represents the difference in the estimated invoiced FERC Assessment and the actual collected FERC Assessment from the previous FERC Fiscal Year, as well

⁶ 18 C.F.R. § 385.213(a)(2) (2006).

⁷ Wisconsin Electric notes that it voted in favor of the proposed changes at the CPWG meeting.

⁸ *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033, *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on remand*, 102 FERC ¶ 61,192 (2003), *reh'g denied*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

⁹ Third Revised Sheet No. 968.

as any uncollectible FERC Assessment charges and the true up for the previous FERC Fiscal Year.

10. Lastly, Wisconsin Electric indicates that “interest” is not defined and an interest rate is not specified on Third Revised Sheet No. 970. Wisconsin Electric accordingly recommends that the Midwest ISO specify that interest shall be calculated in accordance with section 35.19 of the Commission’s regulations.

11. Consumers Energy comments that the charges resulting from the proposed monthly billing cycle for September through December 2006 were not budgeted for by Consumers and the Midwest ISO’s other transmission customers, and therefore, would cause unexpected burdens for these customers. Consumers Energy asserts it will not be able to recover its portion of the FERC annual charges in 2006 under its state-regulated power supply cost recovery clause. Accordingly, Consumers Energy proposes that the Midwest ISO allow transmission customers to defer making monthly payments under the revised Schedule 10-FERC until 2007.

The Midwest ISO’s Answer

12. The Midwest ISO disagrees with Wisconsin Electric’s argument that the billing determinants and the total quantity of MWhs need clarification. According to the Midwest ISO, the proposal includes the defined term “Transmission Service,” which the Tariff defines as “Point-To-Point Transmission Service provided under Module B of this Tariff on a firm and non-firm basis and the Network Integration Transmission Service under Module B of this Tariff.”¹⁰ The Midwest ISO explains that Module B of the TEMT defines how monthly Network Transmission Service is determined, and how MWhs of transmission service are calculated by multiplying the reservation capacity by the duration of the reservation. The Midwest ISO explains that the proposal clarifies that the total MWhs of transmission service are for each transmission customer.¹¹ Therefore, the Midwest ISO asserts that the divisor is the sum total of the MWhs of Transmission Service for each customer forecasted to occur over the period the FERC Annual Charge is applicable. The Midwest ISO states that in making this determination, the most current twelve months of historical billing data and historical value are taken into account. However, the Midwest ISO is not opposed to adding the following language to specify the formula to be used to compute the divisor¹²:

¹⁰ Midwest ISO June 21, 2006 Answer at 5 (quoting TEMT Sheet No. 136).

¹¹ See Third Revised Sheet No. 967.

¹² The divisor or $ETTSP_t$ is the Estimated Total Transmission Service Provided for the effective 12-month period.

where $ETTSP_t$ shall be equal to the most recent twelve months of historical data for Transmission Service multiplied by 1.02 to account for expected growth in usage during the upcoming billing period less any known and measurable adjustments. The calculation variables and results, including any known and measurable adjustments, will be published to the Transmission Provider's website each year.

13. In its answer, the Midwest ISO also addresses Wisconsin Electric's request for clarification regarding the applicability of the proposed monthly charges to grandfathered agreements. The Midwest ISO states that it has not requested any change to the basis upon which the Schedule 10-FERC charges are assessed. The Midwest ISO explains that the Schedule 10-FERC charges are based on the Part 382 of the Commission's regulations which provides the definition of Public Utility and the associated cost determinations,¹³ and that under the Midwest ISO's TEMT grandfathered agreements are charged Schedule 10 costs.

14. The Midwest ISO also addresses Wisconsin Electric's protest regarding clarification of the language relating to the true-up mechanism in calculation of $FCRR_t$. The Midwest ISO states that it agrees with Wisconsin Electric's suggested language and that upon Commission order, the Midwest ISO will incorporate that language into the Tariff.

15. Lastly, the Midwest ISO responds to Wisconsin Electric's suggestion that interest be calculated in accordance with the Commission's regulations. The Midwest ISO states that the interest will be calculated in accordance with the provisions of Attachment L, section V(B)(1) of the Tariff, to add "...will accrue interest at the Transmission Provider's overnight bank rate..."¹⁴ The Midwest ISO indicates that it is willing to add language to the end of the first sentence as follows: "fund and shall earn interest at the Transmission Provider's overnight bank rate."¹⁵ The Midwest ISO maintains this language is superior to that proposed by Wisconsin Electric because it reflects the reality of the Midwest ISOs' opportunity to earn interest on cash balances.

Commission Determination

16. We will conditionally accept the proposed revisions to the Midwest ISO's Tariff converting the billing cycle of transmission customers subject to Schedule 10-FERC from an annual billing cycle to a monthly billing cycle. We agree with the Midwest ISO that

¹³ 18 C.F.R. Part 382 (2006).

¹⁴ Midwest ISO June 21, 2006 Answer at 7.

¹⁵ *Id.*

the proposed monthly billing schedule aligns with the schedule used in PJM¹⁶ and that the proposed tariff change will reduce the risk to other transmission customers of any nonpayment by a bankrupt or nonpaying entity. The Midwest ISO proposed further revisions in its answer, in response to the protest submitted by Wisconsin Electric. We will also accept the changes proposed by the Midwest ISO in its Answer, as discussed below.

17. We find that the only necessary change to specify the billing determinants and the total quantity of MWhs is to state how the $ETTSP_t$ is calculated (*i.e.*, using the most recent twelve months of historical data, applying a 2 percent growth rate, and subtracting any known and measurable adjustments). Otherwise, we agree that the calculation of MWhs of transmission service are clearly spelled out in Module B of its Tariff, as well as Schedules 7, 8, and 9. We find that this is an appropriate addition because it clarifies the calculation of the formula and we direct the Midwest ISO to revise Schedule 10-FERC accordingly.

18. We affirm that the Schedule 10-FERC charges continue to apply to grandfathered agreements. The Commission's regulations under Part 382, and associated cost determination factors, continue to make the Schedule 10 charges applicable to grandfathered agreements.¹⁷ Such cost recovery has also been affirmed since the establishment of the Schedule 10-FERC charge.¹⁸

19. Wisconsin Electric requested clarification of the language regarding the true-up mechanism in the calculation of $FCRR_t$. In its Answer, the Midwest ISO agrees to incorporate Wisconsin Electric's proposed language into the Tariff upon order by the Commission. We agree that the language proposed by Wisconsin Electric in its protest clarifies the calculation of $FCRR_t$ and direct the Midwest ISO to include such revisions in its compliance filing to this order.

20. Regarding the calculation of interest on cash balances, we find that the Midwest ISO's suggested revision specifies the actual rate of interest earned and is consistent with other provisions in the tariff that address interest earned on cash held by the Midwest ISO. In its Answer, the Midwest ISO states that interest will be calculated in accordance with the provisions of Attachment L, Section V(B)(1) of the Tariff and not at the rate specified in the Commission regulations at section 35.19. Accordingly, the Midwest ISO agrees to add the following language to Sheet No. 970: "fund and shall earn interest at the

¹⁶ See PJM Tariff at Original Sheet No. 268.

¹⁷ See 18 C.F.R. § 382.102(b) and 18 C.F.R. § 201(a) (2006).

¹⁸ See *Midwest Independent Transmission System Operator, Inc.*, 373 F.3d 1361 (D.C. Cir. 2004) (finding that the Midwest ISO Schedule 10 applies to all loads, including GFAs).

Transmission Provider's overnight bank rate," if the Commission so directs.¹⁹ The language proposed by the Midwest ISO clarifies how the interest will be calculated. Therefore, we will direct that the Midwest ISO add the proposed language to this provision of its Tariff.

21. As discussed above, Consumers Energy is concerned that under the proposed billing schedule, it will be unable to budget for the monthly bills, given that the proposal seeks to assess monthly bills through the end of the 2006 calendar year. While we understand that implementation of a new billing system may carry a burden for some transmission customers, specifically Consumers Energy, we do not believe that the record establishes it is unduly burdensome or that it outweighs the Midwest ISO's duty to minimize the risk of default to all transmission customers.²⁰ Consumers Energy has stated it will be charged roughly \$500,000 in advance for Schedule 10-FERC 2006.²¹ This amount appears to be *de minimis* when compared to Consumers Energy's \$280 million in net electric operating income in 2005.²² We are also encouraged by the fact that the proposed revisions were approved by 77 percent of stakeholders in the CPWG. Moreover, the proposed monthly billing cycle is consistent with the process used in PJM. PJM's monthly billing cycle was part of the tariff approved by the Commission.²³ Accordingly, we decline to modify the proposed implementation schedule and will allow the tariff revisions to take effect on September 1, 2006, so that monthly billing can proceed on October 1, 2006, congruent with the Commission's fiscal year.

The Commission orders:

(A) The Midwest ISO's proposed tariff revisions are hereby conditionally accepted for filing as discussed in the body of this order, effective September 1, 2006.

¹⁹ Midwest ISO June 21, 2006 Answer at 7.

²⁰ See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,278, at P 21 (2006) (citing the Commission's *Policy Statement on Electric Creditworthiness at P 18*). The ISO/RTO, as the gatekeeper of the markets, should minimize mutualized default risk.

²¹ Consumers Energy Motion to Intervene at 3.

²² See Consumers Energy's Resubmitted FERC Form 1 for 2005, at 115.

²³ *PJM Interconnection, LLC*, 96 FERC ¶ 61,061(2001) (Order Provisionally Granting RTO Status), 101 FERC ¶ 61,345 (2002) (Order Granting RTO Status), *order on reh'ing*, 104 FERC ¶ 61,124 (2003).

(B) The Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.