

121 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Docket Nos. ER07-1372-000
Inc. ER07-1372-001

ORDER DENYING MOTION FOR TRANSCRIPTION
OF TECHNICAL CONFERENCE AND CLARIFYING PRIOR ORDER

(Issued December 3, 2007)

1. On November 29, 2007, the Midwest TDUs,¹ the Coalition of Midwest Transmission Customers, the Indianapolis Power & Light Company, and the Organization of MISO States (collectively, Joint Movants) filed a “Joint Motion for Transcription of Technical Conference” and request for expedited treatment. The Joint Movants ask that the December 6, 2007 technical conference in this proceeding (December 6 Technical Conference) be transcribed. In the alternative, the Joint Movants ask the Commission to authorize them to arrange, at their own expense, for a court reporter and/or other means of recording the technical conference. For the reasons stated below, we deny the motion and clarify our prior order.

Discussion

2. On November 19, 2007, the Commission issued an order directing staff to convene a technical conference to explore the issues raised by the market power analysis and proposed mitigation plan included as part of the Midwest Independent Transmission

¹ For purposes of their filing, the Midwest TDUs include: Great Lakes Utilities, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Municipal Energy Agency of Nebraska, Southern Minnesota Municipal Power Agency and Wisconsin Public Power Inc.

System Operator, Inc.'s (Midwest ISO's) proposal for an Ancillary Services Market.² A notice of staff technical conference establishing the December 6 Technical Conference was issued the same day.³

3. The Order Establishing Technical Conference directed "the Commission staff to convene a technical conference to explore the issues raised by the Midwest ISO's market power analysis and proposed mitigation plan."⁴ The order also stated that "[t]he record from the technical conference and any subsequent comments will provide the Commission with a better understanding of the nature of the proposed ancillary services market in the Midwest ISO . . . [and] will provide the Commission with a better basis to determine if the Midwest ISO mitigation proposal will result in effective mitigation, and ultimately result in just and reasonable and not unduly discriminatory or preferential rates."⁵ In hindsight, we now realize that this was a misstatement. The December 6 Technical Conference was intended to be a staff-led, informal technical conference, and was not intended to be an on-the-record conference nor a hearing. It was intended to provide for an informal exchange and to provide informal guidance on the Midwest ISO's market power analysis and proposed mitigation plan. Parties will have the opportunity to file formal written comments after the technical conference and those formal written comments will become part of the record upon which the Commission will make a decision in this proceeding.

4. As we stated in the California Refund Proceedings,⁶ it is within the Commission's discretion to choose an informal technical conference with no transcription where the decision not to allow transcription does not deprive any party of its due process rights; staff will not make substantive decisions that would otherwise be in the province of the Commission; and parties have ample notice and opportunity to participate in the technical conference.⁷ The Commission must "[balance] consideration of the usefulness of the

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,190 (2007) (Order Establishing Technical Conference).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket Nos. ER07-1372-000 and ER07-1372-001, Notice of Staff Technical Conference (Nov. 19, 2007).

⁴ Order Establishing Technical Conference, 121 FERC ¶ 61,190 at P 1.

⁵ *Id.* P 18.

⁶ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,220, *vacated and reissued*, 112 FERC ¶ 61,222 (2005), *reh'g denied*, 121 FERC ¶ 61,184 (2007).

⁷ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 121 FERC ¶ 61,184 at P 175-79.

transcript against the potential that transcription of the technical conference would chill the atmosphere”⁸ Here we find that an informal technical conference, without a transcript, is more appropriate.

5. Moreover, as the purpose of the December 6 Technical Conference is merely to provide for an informal exchange and for informal staff guidance, neither the conference nor that informal staff guidance is binding on the Commission.

The Commission orders:

The motion for transcription is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *Id.* P 176.