

123 FERC ¶ 61,308
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, Inc.

Docket No. OA08-115-000

ORDER ON NOTIFICATION FILING

(Issued June 27, 2008)

1. On April 30, 2008, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing (Notification Filing) indicating that it failed to process certain System Impact Studies (SIS) and Facilities Studies (FS) (together, transmission studies) within the 60 day timeframes prescribed by sections 19.9 and 32.5 of its Open Access Transmission and Energy Markets Tariff (TEMT)¹ and Order No. 890.² After reviewing the Notification Filing, we conclude that Midwest ISO shall not be subject to monetary operational penalties for the two calendar quarters giving rise to this Notification Filing.

I. Background

2. In Order No. 890, the Commission determined that certain changes to the *pro forma* OATT were necessary to increase the transparency and expediency of transmission service processing by transmission providers, including regional transmission organizations (RTOs) and independent system operators (ISOs).³ As a part

¹ On May 15, 2008, the Commission approved Midwest ISO's Order No. 890 compliance filing, effective October 11, 2007, which incorporated *pro forma* Open Access Transmission Tariff (OATT) sections 19.9 and 32.5 into its TEMT without modification. *See Midwest Indep. Transmission Sys. Operator, Inc.* 123 FERC ¶ 61,154, at P 40 (2008).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1353.

of that effort, the Commission concluded that transmission providers could be subject to operational penalties when they fail to use due diligence to process transmission studies within 60 days, as prescribed in sections 19.3, 19.4, 19.9, 32.3, 32.4, and 32.5 of the *pro forma* OATT.⁴

3. Among the changes made to the *pro forma* OATT, Order No. 890 required transmission providers to keep track of and publicly post information on their processing of transmission studies. Under sections 19.9 and 32.5 of the *pro forma* OATT, if a transmission provider processes more than 20 percent of non-affiliates' transmission studies outside of the 60 day due diligence deadlines for any two consecutive quarters, it must make a notification filing with the Commission.⁵ After making this filing, transmission providers may be subject to increased posting requirements⁶ as well as monetary and non-monetary operational penalties.⁷ Transmission providers will be subject to operational penalties if they process 10 percent or more of non-affiliates' transmission studies outside the 60 day deadlines for each of the two calendar quarters immediately following the quarter that triggered the notification filing. The operational penalty will be assessed for each calendar quarter for which an operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered the transmission provider's notification filing. The operational penalties will continue to be assessed each quarter until the transmission provider completes more than 90 percent of all non-affiliated transmission studies within the 60 day deadlines.⁸

4. The transmission provider may be excused from operational penalties, however, if it explains in its notification filings the extenuating circumstances that prevented it from meeting the 60 day deadlines and, in turn, demonstrate that it has used due diligence in processing the relevant transmission studies, notwithstanding its inability to meet the 60 day target.⁹ The notification filing thus gives the transmission provider "the right to

⁴ *Id.* P 1319, 1340-54.

⁵ For purposes of calculating the percentage of SIS and FS processed outside the 60 day due diligence deadlines, *pro forma* OATT section 19.9(ii) specifies that the percentage should be calculated by dividing the number of studies that the transmission provider completed on time during the quarter by the total number of studies it completed during the quarter.

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319-20.

⁷ *Id.* P 1340.

⁸ *See pro forma* OATT at section 19.9(iii).

⁹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 743-46.

document and describe any unique complexities that particular requests introduce into the study process and that prevent the transmission provider from completing the study” within the 60 day due diligence timeframe.¹⁰

5. Order No. 890 required transmission providers to begin tracking their processing of transmission studies in the fourth quarter of 2007.¹¹ Section 19.9(i) of the *pro forma* OATT requires transmission providers to make notification filings with the Commission within 30 days of the end of the second consecutive quarter in which it processes 80 percent or less of non-affiliates, transmission studies within 60 days. Thus, transmission providers that were late in processing transmission studies for the first two consecutive quarters following the effective date of Order No. 890 were required to make notification filings no later than April 30, 2008.

II. Midwest ISO’s Notification Filing

6. On April 30, 2008, Midwest ISO provided notification to the Commission that it had processed more than 20 percent of its SIS outside of the 60 day due diligence deadlines for two consecutive quarters.¹² Midwest ISO states that in the fourth quarter of 2007, eight of the nine SIS that Midwest ISO completed (89 percent) took more than 60 days to finish. Midwest ISO states that in the first quarter of 2008, 5 of the 17 SIS that Midwest ISO completed (29 percent) took more than 60 days to finish.¹³ Midwest ISO contends that, while it has not met the 60 day completion deadlines for all of its transmission studies in the last two quarters, it has exercised due diligence and extenuating circumstances exist to justify waiver of the operational penalties.¹⁴

7. Midwest ISO describes specific challenges it faced for the five studies that it completed beyond the 60 day deadline in the first quarter of 2008 (i.e., the quarter that triggered the notification filing), which Midwest ISO states often resulted from actions of

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1341.

¹¹ The penalty regime became effective at the same time as the rest of the new *pro forma* OATT. *See id.* P 1341.

¹² Midwest ISO notes that, as an RTO, it has no affiliates and, thus, 100 percent of its SIS and FS study requests are from non-affiliates.

¹³ Midwest ISO notes that each of the Transmission Service Request (TSR) studies requested was an SIS and that no FS were completed in either the 4th quarter of 2007 or the 1st quarter of 2008.

¹⁴ Midwest ISO states that it will address studies that are still incomplete (and the extenuating circumstance that may apply) when those studies are finished.

third parties over which Midwest ISO has no control. Midwest ISO describes those challenges, as follows:

(1) Study No. A302: Delivery of study request for a proposed 600 MW generator;

Midwest ISO states that considering the size and related technical challenges (e.g., insufficient infrastructure and customer's request of additional sensitivity work), the scope of this study request was too great to have been completed within 60 days.

(2) Study No. A364: Delivery study for wind farm connecting to Minnkota Power Cooperative, Inc;

Midwest ISO states that it could not have prevented the delay that arose in completing this study due to the challenges Midwest ISO faced in negotiating with a non-jurisdictional entity and an incomplete interconnection study performed by a different transmission provider.

(3) and (4) Study Nos. A367 and A368: Group study for large inter-regional delivery requests;

Midwest ISO states that the group study involved very large, inter-regional delivery requests (from Iowa to Louisiana/Mississippi) totaling more than 700 MW. Midwest ISO also states that this group study required multiple complex scenarios and coordination across Midwest ISO seams with PJM. Midwest ISO states that given the complexity, size, inter-regional nature and negotiations with other affected transmission providers that this group study request was too great to have been completed within 60 days.

(5) Study No. A387: Study request by *ad hoc* group formed under Midwest ISO's Transmission Owner Agreement;

Midwest ISO states that an *ad hoc* group requested analysis of multiple seasons and specific scenarios requiring additional work and development of non-standard models. Midwest ISO states that developing non-standard models representing the scenarios requested extended the study beyond the standard scope, thereby delaying completion of the study.

8. Midwest ISO also provides several reasons why, as a general matter, it has been unable to meet the study deadlines. Midwest ISO states that it must weigh the considerable time constraints within which it is to complete the various studies requested by its customers and transmission owners against its other obligations as an RTO. Midwest ISO also states that it is at a disadvantage to non-RTO vertically integrated transmission providers because non-RTOs have to manage far fewer study requests and can choose to reallocate resources away from requests of their affiliated marketers in order to address non-affiliated study requests nearing the 60 day deadline. Furthermore,

Midwest ISO states that regional and local reliability criteria regarding TSRs require greater detail from RTOs than non-RTO transmission providers, since an RTO by nature includes multiple transmission systems, each with its own nuances that must be taken into account in each SIS.

9. Midwest ISO argues that the six-fold improvement it made between the fourth quarter of 2007 (11 percent completed within 60 days) and the first quarter of 2008 (71 percent completed within 60 days) is evidence that it has identified and resolved any internal processes that caused delay in the past and that it is on track to complete all studies within the prescribed deadlines in upcoming quarters. Midwest ISO states that, for instance, it is currently reorganizing its human resources to develop a group of full-time employees with a singular and concentrated focus on long-term TSRs, which it expects to be in place by the end of May 2008. Furthermore, Midwest ISO states that it has revised its study processes to reduce the number and frequency of excessive or repetitious “requested sensitivities” in studies of transmission owners and transmission customers, which it states was a recurring theme in the 5 studies that exceeded the 60 day completion deadlines in the 1st quarter of 2008.¹⁵

III. Notice of Filing

10. Notice of Midwest ISO’s Notification Filing in was published in the *Federal Register*, 73 Fed. Reg. 28,108 (2008), with interventions and protests due on or before May 21, 2008. Exelon Corporation and Duke Energy Corporation filed timely motions to intervene.

IV. Discussion

A. Procedural Issues

11. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

12. Upon review of the extenuating circumstances outlined in the Notification Filing, we agree that Midwest ISO has used due diligence in completing the studies in the quarter that triggered the Notification Filing, notwithstanding those studies being completed in more than 60 days. For instance, Midwest ISO describes certain extenuating circumstances related to the size, interregional nature, negotiations with non-

¹⁵ Midwest ISO Transmittal at 7.

jurisdictional entities and/or other transmission providers, and certain technical challenges that prevented Midwest ISO from completing transmission studies within the 60 day due diligence deadlines during that quarter. In addition, Midwest ISO states that additional requests for sensitivity analysis from the customers related to the transmission studies also caused some of the delay.

13. The detail provided by Midwest ISO in describing the extenuating circumstances for each of the transmission studies on a study-by-study basis is persuasive. In addition, we acknowledge and encourage Midwest ISO's proactive measures to help prevent future transmission studies from being completed in more than 60 days (i.e., realignment of staff with a singular and concentrated focus on long-term TSRs and modifications to its study processes). In light of these considerations, we conclude that the extenuating circumstances described by Midwest ISO excuse its non-compliance during the period covered by the Notification Filing. Therefore, the submission of the Notification Filing will not trigger the application of operational penalties in the quarter following that filing.

14. Although we have determined that extenuating circumstances excused Midwest ISO's non-compliance during the period covered by the Notification Filing, we nonetheless remain concerned regarding Midwest ISO's future compliance with the 60 day due diligence deadlines, particularly since Midwest ISO states that it is in the process of implementing structural changes to improve its performance. If Midwest ISO processes more than 20 percent of the transmission studies outside of the 60 day due diligence deadline for the second quarter of 2008, the "two consecutive quarters" requirement will be triggered and Midwest ISO will need to file another notification filing.¹⁶ We expect any notification filings to also include an update on the steps Midwest ISO is taking to prevent future non-compliance.

The Commission orders:

We hereby find that Midwest ISO is not subject to operational penalties giving rise to this notification filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319.