

126 FERC ¶ 61,109
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. OA08-106-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued February 11, 2009)

1. On April 15, 2008, pursuant to section 206 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission and Energy Markets Tariff (Tariff) in order to comply with Order No. 890-A.² In this order, we accept Midwest ISO's revised Tariff, as modified, and subject to a further compliance filing, as discussed below.

I. Background

2. In Order No. 890-A, the Commission granted limited rehearing and clarification of Order No. 890, largely affirming its reforms. The Commission in Order No. 890-A continued its Order No. 890 objectives of ensuring that electric transmission service is provided on a nondiscriminatory, just and reasonable basis, helping to improve the foundation for a competitive electric power market, and providing for more effective regulation and transparency in the operation of the transmission grid.

¹ 16 U.S.C. § 824e (2006).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

3. The revisions in Order No. 890-A address, among other things, how transmission providers process service requests, under what circumstances long-term customers may renew (rollover) their transmission service, the ability of network customers to designate certain resources, and how point-to-point customers may reassign transmission capacity. As discussed in further detail below, the Commission also directed transmission providers to address certain issues related to the calculation of available transfer capability (ATC) and the calculation of incremental costs for purposes of imbalance charges.

II. Midwest ISO's Compliance Filing

4. Midwest ISO states that it incorporates the Order No. 890-A revisions adopted in the *pro forma* Open Access Transmission Tariff (OATT) or, where necessary, demonstrates that existing Tariff provisions are "consistent with or superior to" the modifications adopted in the *pro forma* OATT.

5. In addition, Midwest ISO explains that it revised its Tariff in Docket No. OA08-53-000 by amending Attachment FF (Transmission Expansion Planning Protocol) to comply with the transmission planning principles promulgated in Order No. 890. Midwest ISO notes that Order No. 890-A made several clarifications to the Order No. 890 transmission planning principles. However, Midwest ISO states that it believes that its amended Attachment FF (Transmission Expansion Planning Protocol) complies with both Order Nos. 890 and 890-A. Midwest ISO further explains that the Commission has not yet acted on its proposed Attachment FF (Transmission Expansion Planning Protocol) and that it is not making any revisions to that part of its Tariff in the instant filing.³

6. Midwest ISO requests that, pursuant to Order Nos. 890 and 890-A, its revised tariff sheets be made effective April 15, 2008, the date of its compliance filing in this proceeding.

III. Notice of Filing and Responsive Pleadings

7. Notice of Midwest ISO's filing was published in the *Federal Register*, 73 Fed. Reg. 24,064 (2008), with interventions and protests due on or before May 6, 2008.

³ The Commission accepted the Midwest ISO's revised Attachment FF (Transmission Expansion Planning Protocol) on May 15, 2008, *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164 (2008) (May 15 Planning Order), and directed a further compliance filing, which Midwest ISO submitted on August 13, 2008, in Docket No. OA08-53-001. That compliance filing is currently pending before the Commission.

Consumer's Energy Company, Exelon Corporation, Duke Energy Corporation, and American Municipal Power-Ohio, Inc. filed timely motions to intervene raising no substantive issues. Great Lakes Utilities, Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, and Wisconsin Public Power, Inc. (collectively, Midwest TDUs) filed a timely motion to intervene and protest. Southwestern Electric Cooperative, Inc. (Southwestern) filed a timely motion to intervene and protest. On May 19, 2008, Midwest ISO filed an answer to the protests.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

10. We find that Midwest ISO's filing, with certain modifications, complies with Order No. 890-A. Accordingly, we accept Midwest ISO's filing, as modified, to be effective April 15, 2008, as requested, subject to a further compliance filing, as discussed below.

11. At the time that Midwest ISO tendered its filing, two related proceedings were pending, Midwest ISO's filing in Docket No. OA08-14-000 made in compliance with Order No. 890 on October 11, 2007 (October 11 Compliance Filing) and its revisions to Attachment FF (Transmission Expansion Planning Protocol), filed in Docket No. OA08-53-000 on December 7, 2007 (December 7 Attachment K Filing). Both of these filings were accepted by the Commission on May 15, 2008, subject to certain modifications.⁴

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154 (2008) (May 15 Compliance Order), *order on reh'g*, 126 FERC ¶ 61,108; May 15 Planning Order, 123 FERC ¶ 61,164 (2008). A further compliance filing directed in the May 15 Planning Order was filed on August 13, 2008 in Docket No. OA08-53-001 and is currently pending.

1. Narrative for Available Flowgate Capacity Values

12. In Order No. 890-A, the Commission affirmed the requirement that each transmission provider post on its Open Access Same-Time Information System (OASIS) a brief, but specific, narrative explaining the reasons for changes in monthly or yearly ATC values on a constrained path as a result of a change in total transmission capacity (TTC) of 10 percent or more.⁵ Because a transmission provider that uses an Available Flowgate Capacity (AFC) calculation methodology does not base changes in ATC on changes in TTC, a transmission provider using an AFC calculation methodology may comply with this requirement by posting narrative explanations of the reasons for changes in AFC inputs that cause ATC or TTC to change by 10 percent or more.⁶ A transmission provider that employs an AFC calculation methodology also must provide a statement in its compliance filing that describes how the methodology was derived. If the transmission provider included this information in an earlier compliance filing, it may refer to that earlier filing.⁷

a. Midwest ISO Filing

13. Midwest ISO states that it does not calculate ATC based on changes in TTC.⁸ Midwest ISO states that it complies with the Commission's narrative explanation requirement by posting narrative explanations for changes in ATC values as a result of 10 percent or more changes in flowgate rating,⁹ including the information on the magnitude of rating change and the reason for the change. Midwest ISO states that the narrative and its contents are consistent with the current North American Energy

⁵ See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 123.

⁶ *Id.* P 127.

⁷ *Id.*

⁸ We note that Midwest ISO uses a flow-based approach (AFC) for selling transmission service. See Midwest ISO's July 13, 2007 Transmittal in Docket No. OA07-57-000 at 4.

⁹ Midwest ISO defines flowgate rating as "the amount of electric power that can flow across the Flowgate under specified system conditions without exceeding the capability of the facilities." Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 1072.

Standards Board draft ATC narrative posting standards developed to meet the Commission's Order No. 890 requirements.¹⁰

14. Midwest ISO states that in its October 11 Compliance Filing, tendered in compliance with Order No. 890, it explained in detail its definition of AFC and its AFC calculation methodology. According to Midwest ISO, that filing also described its process for converting AFC into ATC for OASIS posting, listed the databases used in its AFC assessments, and explained the assumptions used in its AFC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

b. Commission Determination

15. We find that Midwest ISO has not responded to the Commission's directive, for transmission providers using the AFC calculation methodology, to provide a statement in its compliance filing describing how it derived the methodology to determine what changes in AFC inputs cause ATC or TTC to change by 10 percent or more. We find that it is not sufficient for Midwest ISO to state in its transmittal letter that it complies with the narrative explanation requirement without actually describing how the narrative will be derived. Therefore, we direct Midwest ISO to describe how the narrative is derived for posting explanations of the reasons for changes in AFC values as a result of changes in AFC inputs that cause ATC or TTC to change by 10 percent or more.¹¹ We note that in an order issued in Docket No. OA08-14-002 concurrently with the instant order, the Commission grants Midwest ISO a limited waiver from converting AFC into ATC, and posting path ATC, Total Transfer Capability, Capacity Benefit Margin and Transfer Reserve Margin values on its OASIS within the Midwest ISO energy market footprint.¹² In light of our findings there, our directive above will apply only to those portions of Midwest ISO's system for which the AFC to ATC conversion is required. Accordingly, we direct Midwest ISO to file, within 30 days of the date of this order, a further compliance filing that addresses these requirements consistent with Order No. 890-A.

2. Capacity Benefit Margin

16. In Order No. 890, the Commission required a transmission provider to provide a specific and self-contained narrative description detailing its Capacity Benefit Margin

¹⁰ http://www.naesb.org/pdf3/2008_weq_ap_2bv3_2ai3_rec_clean.doc.

¹¹ See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 127.

¹² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,107.

(CBM) practice for both the operating and planning horizons. The Commission stated that the narrative must include: (1) the identification of the entity that performs the resource adequacy analysis for CBM determination; (2) the methodology used to perform generation reliability assessments (e.g., probabilistic or deterministic); (3) an explanation whether the assessment method reflects a specific regional practice; (4) the assumptions used in determining this assessment; and (5) the basis for the selection of paths on which CBM is set aside.¹³

17. Furthermore, in Order No. 890, the Commission required a transmission provider to explain its definition of CBM and list the databases used in its CBM calculations.¹⁴ It also required a transmission provider to demonstrate that there is no double-counting of contingency outages when performing CBM, TTC, and transmission reserve margin (TRM) calculations.¹⁵

18. In Order No. 890-A, the Commission upheld its findings in Order No. 890 regarding CBM practices.¹⁶ Further, in Order No. 890-A, the Commission reiterated that it did not mandate a particular methodology for allocating CBM over transmission paths and flowgates. There, the Commission declined to prescribe a specific method for how CBM should be obtained or allocated or otherwise determine the amount of capacity that the transmission provider has to set aside in response to requests from multiple load-serving entities stating that “we expect the NERC and NAESB process to produce a consistent and transparent process for setting aside and allocating CBM based on [load-serving entity] requests.”¹⁷

a. Midwest ISO Filing

19. Midwest ISO states that, in its earlier October 11 Compliance Filing, it explained its definition of CBM and its current CBM practice, in which it utilizes the CBM values that have been calculated and provided by the Midwest ISO Transmission Owners under the Midwest ISO Transmission Owners’ regionally-approved methodology. Midwest ISO states that it noted in its October 11 Compliance Filing that, while it intended to perform its own CBM calculations on its flowgates, the methodology that would allow

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 348.

¹⁴ *Id.*; *see also id.* P 337.

¹⁵ *Id.* at *pro forma* OATT, Att. C.

¹⁶ *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 82-90.

¹⁷ *Id.* P 83.

those calculations was not approved through its stakeholder process at the time of the October 11 Compliance Filing.¹⁸

20. Midwest ISO states that, since then, its CBM methodology was approved by the Midwest ISO Reliability Subcommittee (i.e., stakeholders' forum) in November 2007 and that it was also reviewed by the applicable Regional Reliability Organizations (i.e., Midwest Reliability Organization, Reliability First Corporation, SERC Reliability Corporation), which had no further revisions to the methodology. Accordingly, Midwest ISO states that it has revised Attachment C to its Tariff to include a detailed explanation of its new CBM practice, including an identification of the entity that performs the resource adequacy analysis for CBM determination, the methodology used to perform generation reliability assessments (e.g., probabilistic or deterministic), an explanation of whether the assessment method reflects a specific regional practice, the assumptions used in this assessment, the basis for the selection of paths on which CBM is set aside, and the databases used in its CBM calculations.

21. Midwest ISO also states that it confirms that there is no double-counting of contingency outages when performing CBM and TRM calculations by subtracting the Reserve Sharing Component of the TRM from the CBM value. Further, Midwest ISO states that the revised Attachment C to its Tariff explains its procedures for allowing the use of CBM during emergencies, including an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies, and the procedures that must be followed by the transmission owners' merchant function and other load-serving entities when they need to access CBM.

b. Protests

22. Southwestern states that section (3)(g) of Attachment C to the *pro forma* OATT requires each transmission provider to explain its procedures for allowing the use of CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). Southwestern asserts that, despite Midwest ISO including a lengthy discussion of its proposed CBM procedures,¹⁹ Midwest ISO's proposed tariff revisions do not describe how Midwest ISO will allocate CBM among load-serving entities in times of emergency. Specifically, Southwestern is

¹⁸ Midwest ISO April 15 Transmittal at 5-6 (citing October 11 Compliance Filing at 5).

¹⁹ Southwestern Protest at 4 (citing Midwest ISO April 15 Transmittal, Redlined Tariff Sheet, at Original Sheet No. 1080A).

concerned that Midwest ISO's tariff language does not specify that it will allocate CBM equally among all load-serving entities, rather than to a select few load-serving entities.

c. Midwest ISO Answer

23. Midwest ISO asserts that Southwestern's argument is in error. Midwest ISO argues that the revised Attachment C to its Tariff clearly specifies how it will allocate CBM among load-serving entities during times of emergency, emphasizing that the Tariff language provides that "[a]ny load within the Midwest ISO footprint can call upon CBM during emergency conditions when firm transmission service is not available."

24. Midwest ISO asserts that no further revisions are necessary, particularly since the Commission concluded that CBM set-aside issues should be addressed by the Midwest ISO Transmission Owners rather than Midwest ISO.²⁰

d. Commission Determination

25. We disagree with Southwestern that Order No. 890-A required Midwest ISO to explain as part of its compliance filing in this proceeding how it will allocate CBM among load-serving entities in times of emergency. Section (3)(g) of Attachment C to the *pro forma* OATT states:

The Transmission Provider shall explain its procedures for allowing the use of CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). If the Transmission Provider's practice is not to set aside transfer capability for CBM, it shall so state.

Midwest ISO's Attachment C adequately addresses this requirement. The Commission's reference in Order No. 890-A to the allocation of CBM among load-serving entities during times of emergency relates to the additional requirement placed on public utilities in Order No. 890 to develop, through the NERC and NAESB standards development process, standards governing the determination, allocation and use of CBM.²¹ On November 21, 2008, NERC submitted in Docket No. RM09-5-000 a proposed reliability standard to govern, among other things, the allocation of CBM among load-serving

²⁰ *Id.* at 5 (citing May 15 Compliance Order, 123 FERC ¶ 61,154 at P 103).

²¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 256-65; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 83.

entities in times of emergency. The Commission will address that proposal in a future order in that proceeding. We therefore find that Midwest ISO has complied with the requirements in Order Nos. 890 and 890-A and we will deny Southwestern's protest.

3. Planning Redispatch and Conditional Firm

26. In Order No. 890-A, the Commission made certain clarifying revisions to the planning redispatch provisions in sections 15.4(b), 19.1, 19.3 and 32.3 of the *pro forma* OATT.²² For instance, the Commission amended section 15.4(b) of the *pro forma* OATT to clarify that transmission providers are obligated to provide planning redispatch options only to customers requesting long-term firm point-to-point service. Further, in Order No. 890-A, the Commission amended sections 19.1 and 19.3 of the *pro forma* OATT to clarify that the planning redispatch option is available to eligible customers, not just existing transmission customers. In Order No. 890-A, the Commission also revised section 32.3 of the *pro forma* OATT to correspond to the amendments to section 19.3 of the *pro forma* OATT to provide more information for customers requesting the planning redispatch option.

27. In Order No. 890-A, the Commission also granted rehearing of the decision to require independent system operators (ISO) and regional transmission organizations (RTO) to modify planning redispatch provisions that remain in their tariffs.²³ The Commission explained that the tariffs of many RTOs and ISOs were "developed to layer energy markets and financial transmission rights on top of the existing *pro forma* OATT physical rights system."²⁴ The Commission concluded that "it is more appropriate not to disturb these developments by requiring changes to the existing planning redispatch provisions stated in sections 13.5, 15.4, 19.1 and 19.3 of the *pro forma* OATT."²⁵ As a result, in Order No. 890-A, the Commission clarified that, to the extent an RTO or ISO already had incorporated the new language into its tariff in a prior compliance filing, removal of that language is at the RTO's or ISO's discretion.²⁶ However, in Order No. 890-A, the Commission held that it will not grant an RTO or ISO a blanket exemption from the planning redispatch requirement, stating: "RTOs and ISOs that currently offer planning redispatch in addition to the redispatch offered through their energy markets

²² *Id.* P 542, 544.

²³ *Id.* P 534.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* n.209.

prior to issuance of Order No. 890 must continue to provide that service.”²⁷

a. Midwest ISO Filing

28. Midwest ISO proposes to generally incorporate the planning redispatch revisions in sections 15.4(b), 19.1, 19.3 and 32.3 of the *pro forma* OATT into sections 15.4, 19.1, 19.3 and 32.3 of its Tariff. Further, Midwest ISO states that, in its October 11 Compliance Filing, it generally incorporated the redispatch provisions set forth in Order No. 890, including the provision in section 19.3 of the *pro forma* OATT requiring System Impact Studies to include an estimate of the cost of redispatch. Here, Midwest ISO proposes to remove the language “including an estimate of the cost of redispatch” in section 19.3 of its Tariff as part of the System Impact Study procedures, as previously required in Order No. 890.²⁸ Similarly, Midwest ISO proposes not to adopt the language “including, to the extent possible, an estimate of the cost of redispatch” from section 32.3 of its Tariff, as required in Order No. 890-A. Midwest ISO states that it has been its practice to post market information, including actual costs, in the “Market Reports” section of Midwest ISO’s website so that customers may determine their own estimates.²⁹

b. Protests

29. Southwestern states that section 19.3 of the *pro forma* OATT requires System Impact Studies to identify, among other things, “conditional curtailment options (when requested by an Eligible Customer) including the number of hours per year and the System Conditions during which conditional curtailment may occur.”³⁰ Southwestern argues that Midwest ISO’s proposed Tariff does not include this provision, “thereby depriving customers an option to avoid paying redispatch costs.”³¹

30. Southwestern states that section 19.3 of the *pro forma* OATT also requires System Impact Studies to identify, among other things, “redispatch options (when requested by an Eligible Customer) including an estimate of the cost of redispatch.”³² Southwestern

²⁷ *Id.* P 535.

²⁸ *See* Midwest ISO April 15 Transmittal, Redlined Tariff Sheet, at Fourth Revised Sheet No. 269.

²⁹ *Id.* at 11.

³⁰ Southwestern Protest at 7 (citing section 19.3 of the *pro forma* OATT).

³¹ *Id.*

³² *Id.*

argues that, in Midwest ISO's proposed revisions to section 19.3 of its Tariff, Midwest ISO improperly deletes the requirement that the System Impact Studies "includ[e] an estimate of the cost of redispatch."³³

31. Southwestern states that Order No. 890-A includes protections for transmission customers when they arrange redispatch. Southwestern states that section 15.4(b) of the *pro forma* OATT provides that "[a] Transmission Provider shall not unreasonably deny self provided redispatch or redispatch arranged by the Transmission Customer from a third party resource."³⁴ According to Southwestern, in incorporating other changes to section 15.4(b) directed by the Commission in Order No. 890-A, Midwest ISO neglected to include this statement providing protection from the unreasonable denial of redispatch.

c. Midwest ISO Answer

32. Midwest ISO states that in the May 15 Compliance Order the Commission accepted its planning redispatch revisions as "consistent with or superior to the revised provisions of the *pro forma* OATT."³⁵ Midwest ISO also argues that its proposed removal of certain language requiring System Impact Studies to include an estimate of the cost of redispatch was specifically authorized by Order No. 890-A.³⁶

d. Commission Determination

33. As a general matter, we find that Midwest ISO's proposed planning redispatch provisions in sections 15.4, 19.1, 19.3 and 32.3 of its Tariff are consistent with or superior to the requirements of Order No. 890-A and the planning redispatch provisions in sections 15.4(b), 19.1, 19.3 and 32.3 of the *pro forma* OATT. In addition, consistent with the Commission's findings in Order No. 890-A, we also find that Midwest ISO's proposal not to include certain language in sections 19.3 and 32.3 of its Tariff, requiring System Impact Studies to include an estimate of the cost of redispatch, was specifically authorized by the Commission in Order No. 890-A, at the discretion of each RTO/ISO.³⁷

³³ *Id.* at 7 (citing Midwest ISO April 15 Transmittal, Redlined Tariff Sheet, at Fourth Revised Sheet No. 269).

³⁴ *Id.* at 6 (citing section 15.4(b) of the *pro forma* OATT).

³⁵ Midwest ISO Answer at 5 (citing May 15 Compliance Order, 123 FERC ¶ 61,154 at P 63).

³⁶ *Id.* (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 534, n.209).

³⁷ *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 534, n.209. *See also supra* P 27.

Accordingly, we will accept Midwest ISO's proposal to exclude the language "redispatch options (when requested by an Eligible Customer) including an estimate of the cost of redispatch," in sections 19.3 and 32.3 of its Tariff, and, therefore, we will deny Southwestern's protest.

34. We disagree with Southwestern's concern that Midwest ISO failed to include conditional curtailment options in its System Impact Studies procedures in section 19.3 of its Tariff that would allow customers to avoid paying redispatch costs. As discussed in the May 15 Compliance Order, Order No. 890 found that "it would be inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm point-to-point service because customers transacting through RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior reservation to access transmission."³⁸ The Commission accepted Midwest ISO's proposal not to adopt conditional firm service in the May 15 Compliance Order.³⁹ For the same reasons provided in that order, we will not require Midwest ISO to adopt conditional firm service here and, therefore, we will deny Southwestern's protest.

35. Finally, with regard to Southwestern's concern that Midwest ISO neglected to include the statement in section 15.4 providing protection from the unreasonable denial of redispatch, we note that the specific language that Southwestern refers to was the subject of the October 11 Compliance Filing. As Midwest ISO states in its answer, the Commission previously accepted Midwest ISO's redispatch provisions in section 15.4 of its Tariff as "consistent with or superior to" section 15.4 of the *pro forma* OATT.⁴⁰ For the same reasons provided in that order (i.e., that section 15.4 of Midwest ISO's Tariff is "consistent with or superior to" section 15.4 of the *pro forma* OATT), we will not require Midwest ISO to revise section 15.4 of its Tariff to include provisions in section 15.4(b) of the *pro forma* OATT and, therefore, we will reject Southwestern's protest.

4. Rollover Rights

36. In Order No. 890-A, the Commission made a number of clarifications with respect to the rollover rights reform, including to section 2.2 of the *pro forma* OATT, and revised certain related rollover reform transition mechanisms.⁴¹ Regarding the timing of

³⁸ May 15 Compliance Order, 123 FERC ¶ 61,154 at P 61 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 992.)

³⁹ *Id.* P 61, 63.

⁴⁰ *Id.* P 63.

⁴¹ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 666-94.

compliance filings implementing the Order No. 890-A revised rollover policies, the Commission reiterated that the previously existing rollover provisions would remain in effect for the transmission provider until such time as the Commission accepts the transmission provider's transmission planning compliance filing:

[It] is only after a transmission provider's Attachment K [Midwest ISO's Attachment FF (Transmission Expansion Planning Protocol) to its Tariff] planning process is accepted by the Commission that the transmission provider should file the rollover reform language, and the effective date of that language should be commensurate with the date of that filing. We have revised section 2.2 of the *pro forma* OATT to make this clear.^[42]

a. Midwest ISO Filing

37. Midwest ISO states that it will adopt the revisions of *the pro forma* OATT as set forth in Order No. 890-A and file those revisions to section 2.2 of its Tariff following the acceptance of its December 7 Attachment K Filing.

b. Protests

38. Southwestern states that if the Commission approves Midwest ISO's instant filing, it should specifically condition its acceptance on Midwest ISO making the necessary revisions to incorporate the *pro forma* OATT provisions relating to rollover rights at a later date.

c. Midwest ISO Answer

39. Midwest ISO states that it is unnecessary to condition the acceptance of the instant filing on it revising its Tariff for rollover rights. Midwest ISO states that the Commission's directives with respect to the timing of the rollover filing are clear and require no further clarifications.

d. Commission Determination

40. We agree with Midwest ISO that the Commission's directives are clear as to the timing of the rollover rights filing. The Commission accepted the Midwest ISO's revised Attachment FF (Transmission Expansion Planning Protocol) on May 15, 2008.⁴³ On June 16, 2008, Midwest ISO filed revisions to section 2.2 of its Tariff to conform to the rollover rights provisions in section 2.2 of the *pro forma* OATT as required by

⁴² *Id.* P 684.

⁴³ See May 15 Planning Order, 123 FERC ¶ 61,164 (2008). *See also supra* note 3.

Order No. 890-A.⁴⁴ We, therefore, find it unnecessary to condition the acceptance of the instant filing on Midwest ISO revising the rollover rights provisions of its Tariff and deny Southwestern's protest.

5. Issues Addressed in Prior Commission Orders

41. Southwestern states that Schedule 9 (Generator Imbalance Service) of the *pro forma* OATT requires net imbalances to be settled on a monthly basis. Southwestern asserts that Midwest ISO settles imbalances on an hourly basis, but did not explain how an hourly settlement is superior to a monthly settlement. Southwestern argues that, "from a customer's point of view," monthly settlements are much more beneficial than, and superior to, hourly settlements.⁴⁵

42. In addition, Southwestern asserts that, despite the fact that Order No. 890-A required this compliance filing to address specific attributes of transmission planning procedures, Midwest ISO did not include the pertinent tariff sheets, preferring instead to merely describe the tariff sheets in its accompanying transmittal letter. Southwestern argues that Midwest ISO did not comply with Order Nos. 890 and 890-A in at least two respects. First, Southwestern states that Original Sheet No. 1834F⁴⁶ to Midwest ISO's Attachment FF (Transmission Expansion Planning Protocol) of its Tariff provides the qualifications for participants in Sub-regional Planning Meetings. Southwestern states, however, that Sub-regional Planning Meeting participation is limited only to Midwest ISO transmission owners, which is contrary to the *pro forma* OATT. Second, Southwestern states that Original Sheet No. 1835H⁴⁷ to Midwest ISO's Attachment FF (Transmission Expansion Planning Protocol) of its Tariff refers to joint agreements between Midwest ISO and other transmission providers and that all agreements provide for the formation of stakeholder planning advisory groups. Southwestern states that the Commission should ensure that transmission customers are eligible for participation in these stakeholder planning advisory groups and that, in all other respects, transmission

⁴⁴ In an order issued in Docket No. OA08-14-004 concurrently with the instant order, the Commission accepts Midwest ISO's filing as in compliance with the May 15 Compliance Order. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,108 (2009).

⁴⁵ Southwestern Protest at 5.

⁴⁶ *See* Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 1834F.

⁴⁷ *See* Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 1834H.

customers should be afforded the same opportunities as transmission owners to participate in the planning process.

43. Midwest TDUs raise concerns that Midwest ISO failed to incorporate language into section 30.4 (Designation of Network Resources) of its Tariff to ensure that network customers can continue to offer their network resources into the Midwest ISO's day-ahead energy market without first undesignating. Furthermore, Midwest TDUs state that, even if section 30.4 of Midwest ISO's Tariff were not interpreted to restrict operation of Midwest ISO-designated network resources for sales into its day-ahead market, sales into neighboring RTOs (i.e., PJM) from designated network resources would be limited without first undesignating those resources under the current construct.

Commission Determination

44. With respect to Southwestern's argument regarding the settlement of generator imbalances, we note that the Commission recognized in the May 15 Compliance Order that Order No. 890 did not require RTOs and ISOs to adopt Schedule 9 (Generator Imbalance Service) to the *pro forma* OATT, but recognized that markets based on Locational Marginal Prices could provide an efficient and nondiscriminatory means of settling imbalances.⁴⁸ The Commission described the principles for pricing imbalances adopted in Order No. 890 and concluded that Midwest ISO's existing provisions for pricing imbalances, including using hourly settlements, were consistent with those principles.⁴⁹ As this issue was already considered and decided in the May 15 Compliance Order, we will deny Southwestern's protest here.

45. In response to Southwestern's argument that Midwest ISO's Attachment FF (Transmission Expansion Planning Protocol) does not comply with Order Nos. 890 and 890-A, we note that the Commission's May 15 Planning Order accepted, subject to a further compliance filing, Midwest ISO's transmission planning process.⁵⁰ With regard to Southwestern's assertion that Sub-regional Planning Meeting participation is limited only to Midwest ISO Transmission Owners, we find that Southwestern's assertion is in error. Midwest ISO's Tariff at Attachment FF (Transmission Expansion Planning Protocol) clearly demonstrates that Midwest ISO's Sub-regional Planning Meeting participants "consist of representatives of the Transmission Owners operating within the associated Planning Sub-region that integrate their local planning processes with the regional process, and any parties interested in or impacted by [Midwest ISO's] planning

⁴⁸ May 15 Compliance Order, 123 FERC ¶ 61,154 at P 29.

⁴⁹ *Id.* P 31.

⁵⁰ *See supra* note 3.

process.”⁵¹ With respect to Southwestern’s concern that transmission customers should be afforded the same opportunities as Transmission Owners in Midwest ISO’s transmission planning process and, specifically, the inter-regional transmission planning stakeholder planning advisory groups, we note that the Commission’s May 15 Planning Order found that Midwest ISO’s transmission planning process provides an opportunity for all affected parties to participate.⁵² Therefore, we will deny Southwestern’s protest.

46. With regard to Midwest TDUs’ assertions that section 30.4 of Midwest ISO’s Tariff requires network resources to first be undesignated prior to making sales from those resources into Midwest ISO’s day-ahead energy market and into neighboring RTOs (i.e., PJM), we find that these issues were resolved by the Commission in the May 15 Compliance Order, and we reject Midwest TDUs’ assertions for the same reasons set forth there.⁵³ Similarly, the Commission addressed Midwest TDUs’ argument regarding sales into neighboring RTOs (i.e., PJM) from Midwest ISO designated network resources in the May 15 Compliance Order.⁵⁴ Rehearing regarding these issues was sought⁵⁵ and, in an order issued in Docket No. OA08-14-003 concurrently with the instant order, the Commission denies rehearing on those issues.⁵⁶ Therefore, we will deny Midwest TDUs’ protest here for the same reasons stated in that order.

The Commission orders:

(A) Midwest ISO’s compliance filing is hereby accepted, as modified, effective April 15, 2008, subject to a further compliance filing, as discussed in the body of this order.

⁵¹ See Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 1834F.

⁵² See May 15 Planning Order, 123 FERC ¶ 61,164 at P 20-35, 60-66.

⁵³ See May 15 Compliance Order, 123 FERC ¶ 61,154 at P 88-90.

⁵⁴ *Id.* P 90.

⁵⁵ See Indiana Municipal Power Agency, et al., June 16, 2008 Request for Rehearing, Docket No. OA08-14-003.

⁵⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,108 (2009).

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

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.