

127 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER09-872-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 19, 2009)

1. On March 20, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed tariff revisions to section 7.10(d), “Cure by Market Participants,” of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff).¹ For the reasons discussed below, we will accept the tariff revisions to be effective May 20, 2009.

I. Background

2. Tariff section 7.10, “Uplift of Uncollectible Past Due Amounts to Market Participants,” sets forth the procedures by which Midwest ISO may declare an unpaid past due amount to be an uncollectible obligation² and uplift the amount to market participants.³ Section 7.10(d) describes the steps a defaulting market participant must

¹ Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1.

² Section 1.683 of the Tariff defines an uncollectible obligation as: “Any Past Due Amount that the Transmission Provider has concluded, pursuant to Section 7.10, is not reasonably expected to be paid in full within an acceptable period of time.” *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 303.

³ *See* Tariff section 7.10. Currently, in the event that a market participant defaults and any amounts invoiced are not paid when due, Midwest ISO reduces payments to market participants owed monies for that billing period *pro rata* based on the net credit invoiced amounts owed to such market participants. As funds attributable to the past due amount are received by Midwest ISO, they are distributed *pro rata* to the market participants that did not receive the full amount of their net credit invoiced amount.

(continued)

take to cure a default that Midwest ISO deems to be an uncollectible obligation. However, section 7.10(d) is silent as to whether Midwest ISO may pursue collection of a past due amount after the amount has been deemed an uncollectible obligation or after the amount has been uplifted to market participants.

II. Midwest ISO's Filing

3. Because a default may adversely impact other market participants, Midwest ISO seeks to ensure that it has the right to continue collection of a past due amount after the amount has been declared an uncollectible obligation or after an uncollectible obligation has been uplifted to other market participants. Midwest ISO proposes to revise section 7.10(d) to provide that the declaration of a past due amount as an uncollectible obligation or the uplift of an uncollectible obligation to other market participants does not prevent Midwest ISO from subsequently pursuing collection of the past due amount if Midwest ISO deems the amount to be collectible at a later date.⁴ Midwest ISO states that this revision will not influence the existing procedures under section 7.10 for declaring a past due amount to be an uncollectible obligation. Furthermore, this revision will apply only when a past due amount later becomes collectible after having been deemed to be an uncollectible obligation under section 7.10. Midwest ISO asserts that this revision is necessary to protect affected market participants should an uncollectible obligation later be deemed collectible, and to ensure that the impact of an uplifted uncollectible obligation under section 7.10(d) is minimized where possible.

III. Notice and Responsive Filings

4. Notice of Midwest ISO's filing was published in the *Federal Register*, 74 Fed. Reg. 14,119 (2009), with interventions and protests due on or before April 10, 2009. Consumers Energy Company, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Exelon Corporation, and Wisconsin Electric Power Company filed timely motions to intervene. American Municipal Power-Ohio, Inc. and

Midwest Indep. Transmission Sys. Operator, Inc., 127 FERC ¶ 61,048, at P 25 n.16 (2009).

⁴ The proposed revision adds: "Neither the declaration of a Past Due Amount as an Uncollectible Obligation nor the uplift of the Uncollectible Obligation to the other Market Participants under this section shall operate as a release of the Past Due Amount or prevent the Transmission Provider from continuing to attempt collection of the Past Due Amount from the defaulting Market Participant." See Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 362, included in Midwest ISO's filing.

Duke Energy Corporation filed timely motions to intervene and supportive comments. Dynegy Power Marketing, Inc. (Dynegy) filed a timely motion to intervene and comments supporting Midwest ISO's filing and requesting an additional modification of the Tariff.

5. On April 27, 2009, Midwest ISO filed an answer in response to Dynegy's comments.

IV. Discussion

A. Procedural Matters

6. 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.

7. 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 provided information that assisted us in our decision-making process.

B. Comments and Answer

8. Dynegy states that due to recent Revenue Sufficiency Guarantee⁵-related defaults, it anticipates being short paid by approximately \$4 million by the end of June, assuming that it continues to pay approximately 16.2 percent of the total market short pay.⁶ Dynegy points to section 7.10's requirement that if Midwest ISO does not reasonably expect payment in full of an unpaid past due amount within an acceptable time period, it is required to declare the unpaid amounts as uncollectible.⁷ Dynegy argues that additional clarity regarding what constitutes "an acceptable time period" is necessary, and

⁵ The Revenue Sufficiency Guarantee charge recovers start-up, no-load, and incremental costs of generators that are not recovered in the locational marginal price.

⁶ Dynegy states that it owns approximately 4,700 MW of net generation capacity within the Midwest ISO footprint. Dynegy April 10, 2009 Comments at 3.

⁷ Section 7.10 states: "At such time as the Transmission Provider concludes that the Transmission Provider does not reasonably expect payment in full of an unpaid Past Due Amount within an acceptable time period, then the Transmission Provider shall declare such unpaid Past Due Amount to be an Uncollectible Obligation." *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 355.

objects that Midwest ISO's filing does not provide an estimated timeline for the declaration of current unpaid past due amounts as uncollectible obligations. In light of the recent Revenue Sufficiency Guarantee-related defaults, Dynegy requests that the Commission direct Midwest ISO: (1) to develop a schedule for the declaration of unpaid past due amounts as uncollectible obligations, so that all market participants can be fully apprised of the timing and magnitude of the short pays and the eventual market-wide uplift; and (2) to file the schedule within 30 days of the date of the Commission's order.

9. In response, Midwest ISO argues that Dynegy's request is beyond the scope of this proceeding. Midwest ISO's filing concerns additional remedies after an obligation has already been declared uncollectible, whereas Dynegy's request for a schedule for the declaration of obligations as uncollectible pertains to the time period before Midwest ISO makes such a declaration.

10. Midwest ISO emphasizes that there is no uniform time period within which it must declare overdue obligations uncollectible. Instead, section 7.10 provides Midwest ISO with reasonable discretion to assess each individual default separately, and to determine, on a case-to-case basis, the "acceptable time period" and the other factors that should be considered, before the default is deemed to be uncollectible. Regarding the Revenue Sufficiency Guarantee-related defaults, Midwest ISO states that it generally plans to declare those overdue obligations uncollectible 180 days after each default. However, this 180-day timeline should not be regarded as a one-size-fits-all period for declarations of uncollectibility in all contexts.

C. Determination

11. We find that Midwest ISO's proposed revision of section 7.10(d), to clarify that the declaration of a past due amount as an uncollectible obligation or the uplift of an uncollectible obligation to other market participants does not prevent Midwest ISO from subsequently pursuing collection of a past due amount if Midwest ISO deems it to be collectible at a later date, is just and reasonable. We agree with Midwest ISO that Dynegy's request that the Commission direct Midwest ISO to make a compliance filing delineating a timeline for declaring defaults to be uncollectible is beyond the scope of this proceeding. This proceeding addresses Midwest ISO's proposed treatment of a past due amount after an obligation has been declared uncollectible, whereas Dynegy's request relates to Revenue Sufficiency Guarantee defaults and refers to the time period before Midwest ISO declares an obligation uncollectible.

12. We understand Dynegy's concern with the recent Revenue Sufficiency Guarantee defaults and its desire for a timeline. We note Midwest ISO's clarification that currently, under the particular circumstances of the Revenue Sufficiency Guarantee-related defaults, it generally plans to declare those overdue obligations uncollectible 180 days after each default. Additionally, Midwest ISO intends to send an informational letter regarding the

180-day period for declaring Revenue Sufficiency Guarantee-related defaults uncollectible to all market participants.⁸

The Commission orders:

Midwest ISO's filing is hereby accepted, to be effective May 20, 2009.⁹

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ See Midwest ISO April 27, 2009 Answer at 4 n.4.

⁹ Although Midwest ISO requests a May 19, 2009 effective date, absent waiver, May 20, 2009 is the earliest date that the proposed rate changes can be made effective (*i.e.*, after 60 days' notice or on the 61st day after filing). See *ISO New England Inc.*, 123 FERC ¶ 61,300, at P 13 n.4 (2008) (citing *Utah Power & Light Co.*, 30 FERC ¶ 61,015, at 61,024 n.9 (1985)). See also *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993). The effective date of Midwest ISO's proposed tariff sheets submitted in this docket under the Fourth Revised Volume No. 1 of the Tariff will be changed to May 20, 2009. Thus, further compliance is not required.