

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER06-810-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued May 26, 2006)

1. In this order, we accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to Article Two and Appendices A (Standards of Conduct) and F (Bylaws) of the "Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation" (TO Agreement), effective May 30, 2006, as requested.

I. Background

2. On September 16, 1998, the Commission approved the establishment of Midwest ISO,¹ finding that its Appendix A met Independent System Operator (ISO) Principle No. 2: "An ISO and its employees should have no financial interest in the economic performance of any power market participant. An ISO should adopt and enforce strict conflict of interest standards."² In that order, the Commission also found that employee participation in mutual funds would not violate ISO Principle No. 2 where (1) the employee has no control over the mutual fund's buying and selling of the securities of ISO members or users and (2) the mutual fund does not target any particular segment of the electric utility industry.³

¹ *Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998), *order on reh'g*, 85 FERC ¶ 61,372 (1998).

² *Id.* at 62,151-53.

³ *Id.* at 62,153, n.111.

3. Subsequently, in *Midwest Independent Transmission System Operator, Inc., et al.*,⁴ the Commission found that employee participation in defined benefits pension plans of Midwest ISO members, users, or affiliates would not compromise the independence of directors, officers, or other employees and, accordingly, would meet the standard of ISO Principle No. 2 (as long as such plans do not involve the ownership of the company's securities).

II. Midwest ISO's Proposed Revisions

4. On March 31, 2006, Midwest ISO filed proposed revisions to amend Article Two and Appendices A and F to expand the non-discretionary investment options for its directors, officers, and employees by adding blind trusts to the list of approved investment vehicles for such directors, officers, and employees. Midwest ISO describes a blind trust as "a legally binding arrangement in which a fiduciary third party has full management discretion over the assets of the trust, and the trust beneficiary has no knowledge of the holdings or assets of the trust."⁵ Midwest ISO claims that allowing the use of blind trusts will allow for more choice of director and officer candidates, in that prospective directors or officers would not be forced to choose between accepting a position with Midwest ISO and divesting their securities, or keeping their securities and declining a job offer. According to Midwest ISO, by utilizing a blind trust, Midwest ISO will have more options without compromising the independence required by the Commission's order approving the formation of Midwest ISO.

5. Midwest ISO notes that a blind trust comports with ISO Principle No. 2 because it removes the beneficiary's discretion over the disposition of the account, by interposing an independent trustee who is given sole right to manage the composition of the trust. Furthermore, Midwest ISO affirms that a blind trust allows even less discretion than a mutual fund in that, in a blind trust, the owner remains unaware of the contents of the trust, whereas, in a mutual fund, the owner can know the securities held by the fund.

6. In addition, Midwest ISO proposes modifications, as a result of changes in pagination, to reflect the same footer information with respect to the Issuing Officer in Appendix F, and to correct typographical errors.

⁴ 85 FERC ¶ 61,250 (1998).

⁵ Midwest ISO's Transmittal Letter at 2.

III. Notice, Interventions and Comments

7. Notice of the Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 19,720 (2006), with motions to intervene and protests due no later than April 21, 2006. WPS Companies⁶ filed a timely motion to intervene. The Midwest ISO Transmission Owners⁷ filed a timely motion to intervene and comments that conditionally support Midwest ISO's proposal.

⁶ WPS Companies include Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC.

⁷ The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Company LLC*; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services, Inc. f/k/a Cinergy Services, Inc. for The Cincinnati Gas & Electric Co. d/b/a Duke Energy Ohio, Inc., PSI Energy, Inc. d/b/a Duke Energy Indiana, Inc., and The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.; E.ON U.S. LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission*; Michigan Electric Transmission Company, LLC*; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Minnesota Municipal Power Agency; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

The Midwest Stand-Alone Transmission Companies are denoted with an asterisk (*).

8. The Midwest ISO Transmission Owners note that Midwest ISO submitted the proposed amendments without seeking or obtaining the unanimous consent of the Midwest ISO Transmission Owners, as required by the TO Agreement. The Midwest ISO Transmission Owners state that the TO Agreement permits changes to the “qualifications” required of Directors,⁸ but before February 1, 2007 such changes can be made only with the unanimous vote of the Midwest ISO Transmission Owners.

9. Nevertheless, the Midwest ISO Transmission Owners affirm that they are not opposed to Midwest ISO’s proposal. After Midwest ISO submitted the filing, the Midwest ISO Transmission Owners held a meeting on April 18, 2006, where they *sua sponte* voted unanimously to endorse these amendments.⁹ The Midwest ISO Transmission Owners remain concerned, however, with Midwest ISO’s decision to act without authority in filing the amendments without first seeking unanimous consent from the Midwest ISO Transmission Owners.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission’s Determination

11. We will accept Midwest ISO’s proposed revisions, which allow blind trusts where a fiduciary third party will fully manage discretion over the assets in the trust, while the trust beneficiary will have no knowledge of the holdings or assets in the trust.¹⁰ We

⁸ According to the TO Agreement, the “Qualifications” section includes a statement that “a Director shall have no material business relationship or other affiliation with any Member or User or an affiliate of a Member or User.” FERC Electric Tariff, First Revised Rate Schedule No. 1 of the Midwest ISO Transmission Owners Agreement.

⁹ While the Midwest ISO Transmission Owners voted after the filing was submitted, the Midwest ISO Transmission Owners state they do not waive for future amendments the requirements and procedures in the TO Agreement to obtain consent from the owners prior to filing amendments.

¹⁰ Midwest ISO’s Transmittal Letter at 2. *Accord, e.g., Gardener v. Duryee*, 70 P.3d 168, 170 (Wash. Ct. App. 2003).

agree with Midwest ISO that allowing for blind trusts will expand the pool of potential directors, officers, and employees without resulting in a conflict of interest and thus without violating ISO Principal No. 2.

12. The Commission agrees that Midwest ISO did not follow the procedures set forth in the TO Agreement because a unanimous vote of the owners was needed in order to change the “qualifications” for directors and this vote was not obtained prior to filing. The Midwest ISO Transmission Owners, however, subsequently unanimously voted to endorse the proposed revisions. While this subsequent vote effectively cured Midwest ISO’s failure to obtain prior approval, we caution Midwest ISO to abide by the terms of the TO Agreement.

The Commission orders:

The proposed tariff revisions filed by Midwest ISO are hereby accepted to become effective on May 30, 2006, as requested.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.