

117 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

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| Midwest Independent Transmission System Operator, Inc. | Docket Nos. ER06-360-003 ER06-361-003 ER06-362-003 ER06-363-003 ER06-372-003 ER06-373-003 |
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| Midwest Independent Transmission System Operator, Inc. and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc. | ER06-366-003 |
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ORDER ON COMPLIANCE FILING

(Issued October 4, 2006)

1. On June 30, 2006, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO TOs)¹ submitted a compliance filing pursuant to a

¹ The Midwest ISO TOs, for purposes of this proceeding, consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; Alliant Energy Corporate Services, Inc., on behalf of Interstate Power and Light Company; American Transmission Systems, Inc., a subsidiary of FirstEnergy Corporation; Duke Energy Shared Services, Inc. for The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Union Light Heat & Power Company; City of Columbia Water and Light Department (Columbia, MO); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; E.ON US for Louisville Gas and Electric

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Commission order dated June 2, 2006.² The compliance filing relates to the schedule 23 *pro forma* service agreement of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) and six unexecuted schedule 23 service agreements. As discussed below, the Commission accepts in part and rejects in part the revised tariff sheets effective December 23, 2005, and the revised unexecuted service agreements effective April 1, 2005.

Background

2. On January 13, 2005, the Midwest ISO TOs filed proposed schedule 23 of the TEMT, which provides for the Midwest ISO TOs' recovery of Midwest ISO schedule 10 (ISO Cost Recovery Adder) and schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) costs from customers under specified grandfathered agreements that are carved out of the Midwest ISO energy markets (carved-out GFAs). Schedule 10 of the TEMT provides for the recovery of the Midwest ISO's capital and ongoing operating costs associated with running the Midwest ISO. Schedule 17 of the TEMT provides for the recovery of deferred and ongoing costs of providing energy markets service once the markets are operational. The Commission conditionally accepted schedule 23 on March 24, 2005.³ The Commission also conditionally accepted the Midwest ISO TOs' subsequent compliance filing subject to minor revisions.

3. On December 22, 2005, in Docket No. ER06-366-000, the Midwest ISO and the Midwest ISO TOs submitted for filing with the Commission several proposed revisions to schedule 23. In addition to several clarifying changes, the Midwest ISO and Midwest ISO TOs proposed a new attachment 2, "Form of Schedule 23 Service Agreement." According to the Midwest ISO and Midwest ISO TOs, this service agreement will permit the Midwest ISO to "file a [schedule 23] service agreement, either executed or

Company and Kentucky Utilities Company; Minnesota Power and its subsidiary Superior Water, Light & Power; Montana-Dakota Utilities Company; 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 Corporation; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Wabash Valley Power Association, Inc.

² *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,293 (2006) (June 2 Order).

³ *Transmission Owners of the Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,339, *order on reh'g*, 113 FERC ¶ 61,122 (2005).

unexecuted, with the Commission to allow charges to the Carved-Out GFA Customer under . . . Schedule 23.”⁴

4. Also on December 22, 2005, the Midwest ISO filed unexecuted schedule 23 service agreements to allow recovery of schedule 23 charges from customers under six carved-out GFAs. The customers under these GFAs include: Sioux Falls Municipal Light & Power Department (in Docket No. ER06-360-000); Truman Public Utilities (in Docket No. ER06-361-000); the University of North Dakota-Facilities (in Docket No. ER06-362-000); East Grand Forks Water & Light Department (in Docket No. ER06-363-000); Granite Falls Municipal Utilities (in Docket No. ER06-372-000); and East River Electric Power Cooperative, Inc. (East River) (in Docket No. ER06-373-000).

5. In an order dated February 17, 2006,⁵ the Commission conditionally accepted the proposed revisions to schedule 23, effective December 23, 2005, as requested. Similarly, the February 17 Order conditionally accepted the six unexecuted schedule 23 service agreements, effective April 1, 2005, as requested. Basin Electric Power Cooperative and East River (collectively, the Basin Cooperatives) filed a timely request for rehearing of the February 17 Order. In addition, on March 20, 2006, the Midwest ISO and Midwest ISO TOs filed tariff sheets revising the schedule 23 *pro forma* service agreement as well as updated versions of the six unexecuted service agreements to comply with the February 17 Order. The Basin Cooperatives protested the March 20 compliance filing.

6. In the June 2 Order, the Commission rejected the request for rehearing of the Basin Cooperatives and accepted in part and rejected in part the Midwest ISO and Midwest ISO TOs’ March 20 compliance filing. Specifically, the Commission expressed concern that the general references to section 38.8 of the TEMT in section 4.0 and 9.0 “could be too broadly interpreted” and directed the Midwest ISO and Midwest ISO TOs to revise those sections of the *pro forma* schedule 23 service agreement, as well as the six unexecuted schedule 23 service agreements, “to incorporate only section 38.8.4 and the other TEMT provisions specifically referenced therein.”⁶

7. The Commission also found the proposed revisions to section 5.0 of the schedule 23 *pro forma* service agreement to be inconsistent with the Commission’s directions in

⁴ December 22, 2005 Filing, Docket No. ER06-366-000 at 4.

⁵ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,169 (2006) (February 17 Order).

⁶ June 2 Order, 115 FERC ¶ 61,293 at P 29.

the February 17 Order and directed the Midwest ISO and Midwest ISO TOs to revise section 5.0 to provide that:

This Service Agreement shall terminate upon termination of the Carved-Out GFA for which these Schedule 23 Charges are being assessed in accordance with any applicable Commission rules. Such termination of this Service Agreement does not absolve the Carved-Out GFA customer from payment of outstanding obligations under this Service Agreement.⁷

8. Finally, the Commission found that the proposed reference in section 7.0 of the schedule 23 *pro forma* service agreement to the general procedures applicable to Billing and Payment under section 7 of the TEMT was overbroad because not all of TEMT section 7 is applicable to carved-out customers. The Commission directed the Midwest ISO and Midwest ISO TOs to revise section 7.0 of the *pro forma* schedule 23 service agreement, as well as the six unexecuted schedule 23 service agreements, to reflect the specific provisions of TEMT section 7 that apply to carved-out GFA customers.⁸

9. On June 30, 2006, the Midwest ISO and Midwest ISO TOs submitted a compliance filing pursuant to the June 2 Order, which is the subject of this order.

Notice of Filing and Responsive Pleadings

10. Notice of the June 30 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 40,485 (2006), with protests and interventions due on or before July 21, 2006. The Basin Cooperatives filed a timely protest. On August 7, 2006, the Midwest ISO filed an answer to the protest.

Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the

⁷ *Id.* P 30.

⁸ *Id.* P 31.

decisional authority. We are not persuaded to accept the Midwest ISO's answer and will, therefore, reject it.

B. The June 30 Compliance Filing

12. The Midwest ISO and Midwest ISO TOs filed a revised schedule 23 *pro forma* service agreement and conforming changes to the six unexecuted schedule 23 service agreements to comply with the June 2 Order. First, they revised sections 4.0 and 9.0 to specifically reference section 38.8.4 of the TEMT and "other provisions specifically referenced therein." Second, they revised section 5.0 to adopt the language set forth in the June 2 Order. Third, they revised section 7.0 to specifically reference sections 7.3 and 7.11 through 7.18 of the TEMT.

1. Protest

13. In their protest, the Basin Cooperatives argue that certain of the TEMT sections referenced in section 7.0 of the schedule 23 service agreement, specifically sections 7.13(b) and 7.14(a)(1)(i) of the TEMT, internally cross reference other TEMT billing and payment sections that are not applicable to the Agreement. The Basin Cooperatives argue that this "makes section 7.0 of the Agreement internally inconsistent, confusing and potentially subject to the interpretation that TEMT sections 7.4, 7.6 and 7.8 are applicable to East River and other carved-out GFA customers."⁹ Accordingly, the Basin Cooperatives suggest that section 7.0 of the schedule 23 service agreement be revised as follows:

All payments due under this Schedule 23 – Attachment 2 shall be made pursuant to the Billing and Payment procedures specified in sections 7.3 and 7.11 through 7.18 of this Tariff except that these sections do not apply to the extent they refer to TEMT Billing and Payment provisions other than sections 7.3 and 7.11 through 7.18.¹⁰

2. Commission Determination

14. We find that the Midwest ISO and Midwest ISO TOs' proposed revisions to the schedule 23 *pro forma* service agreement and the six unexecuted schedule 23 service

⁹ The Basin Cooperatives Protest at 2.

¹⁰ *Id.* at 2-3.

agreements are generally consistent with the June 2 Order. However, we agree with the Basin Cooperatives that the Midwest ISO's proposed revisions to section 7.0 of the schedule 23 service agreement are potentially confusing and that the Basin Cooperatives' recommended changes will eliminate such confusion by clarifying the specific provisions of the TEMT applicable to carved-out GFA customers. Therefore, we require the Midwest ISO and the Midwest ISO TOs to revise section 7.0 as requested by the Basin Cooperatives.

15. Accordingly, we accept in part and reject in part the revised tariff sheets. We direct the Midwest ISO and the Midwest ISO TOs to file further revised tariff sheets consistent with this order within 30 days of the date of this order.

The Commission orders:

(A) The Midwest ISO and Midwest ISO TOs' June 30 compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The Midwest ISO and the Midwest ISO TOs are hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.