

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER06-1556-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued November 28, 2006)

1. This order addresses the September 29, 2006 filing by Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in which it proposes to amend its Open Access Transmission and Energy Markets Tariff (TEMT) by adding Attachment JJ. Attachment JJ addresses compensation for costs incurred by transmission owners for rescheduled transmission outages under Midwest ISO's direction. We accept the proposed tariff revisions, effective November 28, 2006, as requested.

I. Background

2. On January 20, 2004, in compliance with Order No. 2003¹, Midwest ISO filed Attachment X to its then effective open access tariff in Docket No. ER04-458-000. Attachment X contains Midwest ISO's Standard Large Generator Interconnection

¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *appeal docketed sub nom. National Association of Regulatory Utility Commissioners v. FERC*, Nos. 04-1148, *et al.* (D.C. Cir Apr. 29, 2004 and later).

Procedures and *pro forma* Large Generator Interconnection Agreement (LGIA). On April 26, 2004, pursuant to Order No. 2003-A, Midwest ISO filed revised tariff sheets in Docket No. ER04-458-001. That filing contained Midwest ISO's proposal, as provided for in article 9.7.1.2 of the *pro forma* LGIA, to compensate generators for costs associated with rescheduled transmission outages, through negotiation. The Commission accepted the proposed language in article 9.7.1.2 on an interim basis and directed Midwest ISO to file an amended schedule for compensating generators for outages.² Midwest ISO subsequently initiated a stakeholder process to develop a rate schedule as contemplated by the LGIA. The result was Midwest ISO's filing of Attachment BB (Compensation for Rescheduling Generator Outages) which provides for compensation to reimburse the generator owner for costs related to rescheduling transmission outages.³ The proposed Attachment JJ represents the culmination of Midwest ISO's efforts to develop a rate schedule to compensate transmission owners for the costs to reschedule planned transmission outages.

II. The Filing

3. Under the proposed Attachment JJ, Midwest ISO has the authority to reschedule planned transmission outages, consistent with Good Utility Practice and in a reasonably timely manner, in order to prevent or minimize other events that could adversely affect the reliability of the transmission system. Attachment JJ provides a Regional Transmission Organization (RTO)-wide schedule for reimbursing transmission owners for their direct costs⁴ and settlement costs incurred because of Midwest ISO's rescheduling of a previous planned transmission outage. The proposal further provides that Midwest ISO will allocate such costs among its firm point-to-point and network integration transmission customers during the time period those costs were incurred.

² *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027, at P 69, *order on rehearing*, 109 FERC ¶61,085 (2004).

³ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,172 (2005) (August 5, 2005 Order).

⁴ "Direct costs" include costs associated with demobilization/mobilization associated with a revoked planned transmission outage and costs associated with an accelerated return to service, such as overtime and specialized work practices that may be invoked to shorten a planned transmission outage that is under way, but do not include any lost profits attributable to foregone potential additional sales associated with such rescheduling.

Each transmission customer will pay its *pro rata* share of the rescheduling costs based on either its reserved capacity or its network load, as applicable.

4. Midwest ISO states that it anticipated the need for such reimbursement in its initial filing of the Midwest ISO Agreement⁵ in 1998, and the proposal fairly allocates such costs among the users of the Midwest ISO Transmission System who benefit directly from the transmission system's continued reliability. Midwest ISO asserts that compensating the transmission owners is appropriate because its request to reschedule maintenance outages stems from the need to anticipate or resolve system conditions that might otherwise result in widespread loss of load.

III. Notice and Responsive Filings

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 59,768 (2006), with interventions and protests due on or before October 20, 2006. Timely motions to intervene, without substantive comment, were filed by Illinois Municipal Electric Agency; Consumers Energy Company; the WPS Companies (Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and

⁵ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Midwest ISO Agreement), Appendix E (Framework For Operational Responsibilities) (VII)(A)(4). Among other things, the Midwest ISO Agreement provides:

The Midwest ISO shall have the authority to revoke any previously-approved planned transmission maintenance outages if forced transmission outages or other circumstances compromise the integrity or reliability of the Transmission System. The Midwest ISO shall notify the Owner of the decision to revoke approval of the maintenance as soon as possible after the circumstances arise that create the need for the revocation. If an Owner incurs any additional costs associated with the deferred transmission maintenance, the Owner shall be compensated for those costs pursuant to procedures adopted by the Midwest ISO, applied on a non-discriminatory basis to all Owners, and filed with FERC.

Midwest ISO states that the instant proposal was drafted to closely track Attachment BB. Midwest ISO filed Attachment BB with the Commission in Docket No. ER04-458-007 on June 7, 2005, and the Commission accepted it on December 15, 2005. *See Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,172 and *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,264 (2005).

WPS Power Development, LLC); and Midwest ISO Transmission Owners. The Midwest Stand-Alone Transmission Companies (MSATs)⁶ filed a timely joint and several motion to intervene that supports Midwest ISO's proposal. American Municipal Power-Ohio, Inc. (AMP-Ohio) and Wisconsin Electric Power Company (Wisconsin Electric) filed timely motions to intervene with protests.

6. On November 13, 2006, Midwest ISO filed an answer to the protests of AMP-Ohio and Wisconsin Electric.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests unless otherwise ordered by the decisional authority. However, we will accept Midwest ISO's answer here because it provides information that assists us in our decision-making process.

B. Analysis

1. Relevance of Proposed Compensation Mechanism as it Relates to Other Tariff Provisions and Agreements

a. Midwest ISO's Proposal

8. The proposed Attachment JJ provides a separate mechanism to reimburse transmission owners for the specific costs that result from Midwest ISO directing that a transmission outage be rescheduled. Midwest ISO asserts that Attachment JJ is a feasible approach to the allocation of costs incurred when, in order to maintain system reliability, Midwest ISO requests or directs a Transmission Owner to reschedule planned transmission outages.

⁶ MSATs include American Transmission Company LLC, International Transmission Company d/b/a/ *ITCTransmission*, and Michigan Electric Transmission Company.

b. Intervenor Comments

9. AMP-Ohio protests the concept of reimbursement to transmission owners for scheduled outages beyond the compensation already established through the formula rate in Attachment O, under which it maintains that transmission owners are assured full recovery of all of their transmission-related costs. AMP-Ohio states that Midwest ISO has not shown that the costs incurred because of a rescheduled planned outage is any different from costs that the transmission owners would undertake themselves, if they had retained operation of those facilities, rather than Midwest ISO. AMP-Ohio avers that Midwest ISO has not demonstrated a need for a separate compensation mechanism.

10. AMP-Ohio further argues that nothing in the proposed schedule would preclude double recovery under both Attachment O and Attachment JJ. AMP-Ohio suggests that “it is possible that costs could be booked by a Transmission Owner and then rolled forward into rates in accordance with Attachment O, even though they have been (or will be) recovered under Attachment JJ.”⁷ At a minimum, AMP-Ohio states that Transmission Owners should be required to verify that no costs received from Midwest ISO under Attachment JJ have been included in the formula rates under Attachment O or that they had properly credited those revenues.

11. Wisconsin Electric asserts that while it supports the idea of compensating transmission owners for rescheduling transmission outages ordered by Midwest ISO, the proposed manner in which Midwest ISO seeks to reflect this goal is infirm in several respects and requests clarifications. According to Wisconsin Electric, Attachment JJ is unclear as to whether a generation owner can recover costs that result because a generation outage coordinated with a scheduled transmission outage must be rescheduled because Midwest ISO directs the transmission owner to reschedule pursuant to Attachment JJ. Wisconsin Electric contends that the proposed amended definition of “Rescheduling Costs” seems to suggest that generators would be entitled to compensation in this instance. Thus, Wisconsin Electric requests that the Commission direct Midwest ISO to expressly state in the body of the TEMT that generation owners would be entitled to recompense for rescheduling costs under such circumstances.

12. In addition, Wisconsin Electric believes that Midwest ISO should clarify that transmission owners will make a reasonable effort to avoid incurring unnecessary incremental costs and that transmission owners receive compensation for only incremental costs, not sunk expenses. Wisconsin Electric requests that the Commission

⁷ AMP-Ohio Protest at 5.

direct Midwest ISO to replace deleted language to that effect, which had been included in Midwest ISO's earlier draft.

c. Midwest ISO's Response

13. Midwest ISO explains that the Midwest ISO Agreement specifically gives it the authority to revoke any approved planned transmission outages that compromise the integrity or reliability of the transmission system and provides that the owner is entitled to compensation for any costs resulting from the deferred transmission maintenance pursuant to procedures approved by Midwest ISO and filed with the Commission. In addition, Midwest ISO cites to Order No. 2000, which explicitly states that, when an RTO requires a transmission owner to reschedule planned maintenance and the previously scheduled outage already approved by the RTO, "the transmission owners should be compensated for any costs created by the required rescheduling."⁸

14. Midwest ISO refutes AMP-Ohio's claims regarding the possibility of double recovery of costs as baseless. Midwest ISO responds that under the Commission's Uniform System of Accounts, transmission owners must either include the reimbursement in Account 456.1 (Revenues From Transmission of Electricity of Others) or credit the appropriate maintenance expense account. Midwest ISO further clarifies that if a customer suspects that a transmission owner has already recovered the cost in Attachment O, it then has the right to request an audit under Attachment JJ. Midwest ISO therefore denies the need for an affirmative statement by transmission owners that no double recovery has occurred.

15. In response to Wisconsin Electric's concerns, Midwest ISO clarifies that the cost recovery mechanism contained in Attachment BB would compensate the generation owner for costs it incurred in connection with a transmission outage rescheduling. Midwest ISO maintains that all remaining provisions in question are sufficiently clear and in accordance with the Midwest ISO Agreement and Order No. 2000.

⁸ *Regional Transmission Organizations, Order No. 2000*, 65 Fed. Reg. 809 (2000) FERC Stats & Regs., Regs. Preambles July 1996-December 2000, ¶ 31,089, at 31,105 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs., Regs. Preambles July 1996 – December 2000, ¶ 31,092 (2000), *aff'd*, *Public Utility District No. 1 of Snohomish Count, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

d. Commission Determination

16. Attachment JJ is very similar in nature to Attachment BB, which addressed compensation to generation owners for rescheduling planned outages of their facilities. Attachment BB, as accepted by the Commission,⁹ permitted generating resources to recover their direct costs and settlement costs incurred as the result of the rescheduling of a planned generator outage. Thus, Attachment JJ complies with provisions set forth in the Midwest ISO Agreement and is based on procedures that have been accepted by the Commission with respect to generator outages. We disagree with AMP-Ohio's argument that Attachment O established a rate under which transmission owners are assured full recovery of transmission-related costs. The cost recovery mechanisms under Attachment O and under the proposed Attachment JJ differ and do not provide the same result. Under the proposed Attachment JJ, costs are recovered from transmission customers taking firm service throughout the Midwest ISO footprint. Conversely, the Attachment O formula rate is applied through license plate or zonal pricing.

17. Moreover, we agree that existing detailed accounting rules as well as the proposed audit procedures should ensure that both the Attachment O and proposed Attachment JJ mechanisms do not allow recovery of the same costs. We also note that Attachment JJ requires sufficient documentation that describes the nature of the rescheduling costs.

18. Accordingly, based on the similarities of this mechanism to Attachment BB and the reasons cited by Midwest ISO, we find that Attachment JJ is a reasonable mechanism for recovering such costs. The clarifications requested by Wisconsin Electric are not necessary: (1) it is clear that Attachment BB already provides for recovery by generation owners in the event of rescheduled outages, and (2) the intention of the deleted language concerning compensating for necessary incremental costs can be inferred from proposed Attachment JJ,¹⁰ and reinstating the language would be redundant.

⁹ *Supra* n. 6.

¹⁰ The deleted language is the last sentence of section C.1 in previous drafts of the proposed Attachment JJ. That deleted sentence states: "Transmission Owners seeking cost recovery under this Attachment JJ must demonstrate that it has made a reasonable effort to avoid incurring incremental costs by *e.g.*, reallocating resources to meet the required change of schedule." Wisconsin Protest at 10.

2. Allocation of Proposed Attachment JJ Costs

a. Midwest ISO's Proposal

19. Section E of proposed Attachment JJ provides that, subject to the cost assignment provisions of section C.3 of Attachment JJ, each transmission customer taking either firm point-to-point transmission service or network integration transmission service during the relevant time period in which rescheduling costs have been incurred by the transmission owner, shall be charged, and shall pay its *pro rata* share of such rescheduling costs based on either its reserved capacity or its network load, as applicable.

b. Intervenor Comments

20. AMP-Ohio opposes Midwest ISO's proposal to allocate the costs to transmission users across the entire Midwest ISO footprint since the reliability impact is more likely to be felt in the transmission area where the rescheduling occurs rather than in distant transmission areas. AMP-Ohio states that, until Midwest ISO abandons license plate transmission rates, under which AMP-Ohio and its members tend to pay higher transmission rates for more reliable facilities it would be unfair to transfer liability for rescheduling costs from transmission users in the area where the costs are incurred to transmission users across the entire footprint. It continues that, as long as AMP-Ohio and its members are paying for a robust and reliable transmission system, without those costs being "socialized," they should not have to pay for rescheduling on less reliable systems within Midwest ISO.

21. Wisconsin Electric, on the other hand, supports the proposal to socialize these costs over the entire Midwest ISO. However, it requests two clarifications. First, Wisconsin Electric requests that Midwest ISO clarify proposed section E to state that all firm point-to-point and network integration, transmission service customers in the Midwest ISO footprint will be responsible for cost recovery. Wisconsin Electric asserts that the proposal is unclear as to whether cost recovery is limited to such customers within the service territory of the transmission owner that incurs rescheduling costs or whether all such customers within the entire Midwest ISO footprint are to shoulder the burden. Second, Wisconsin Electric also maintains that proposed section E is imprecise with respect to the period of time during which cost recovery will be required and requests that Midwest ISO replace the phrase "during the relevant time period" with "during the outage period."

c. Midwest ISO's Response

22. Midwest ISO finds implausible AMP-Ohio's suggestion that the reliability impacts and benefits of rescheduled planned outages are localized rather than system-

wide. According to Midwest ISO, Commission policy states that enhanced reliability is a system-wide benefit and that the integrated transmission grid is a cohesive network in which impacts felt on one part of the grid have a cascading effect on other parts of the grid.¹¹ Midwest ISO argues that accepting AMP-Ohio's view unreasonably departs from this policy and is manifestly unfair to local customers that would be required to absorb the costs of deferred transmission outages that support region-wide power transfers. With regard to Wisconsin Electric's concerns, Midwest ISO states that proposed Attachment JJ clearly allocates the rescheduling costs to the entire footprint, and the phrase "during the relevant time period" is consistent with that used in Attachment BB.

d. Commission Determination

23. We find that the cost allocations are fair and reasonable as well as being consistent with Commission precedent¹² and the cost allocation mechanism accepted by the Commission for Attachment BB. The proposed allocation ensures that those customers benefiting from the reliability of the transmission system also are responsible for sharing the costs that incurred in maintaining that level of reliability. We also agree that proposed Attachment JJ is sufficiently clear and that the language contained in proposed Attachment JJ describing the period during which the costs were incurred is consistent with that in Attachment BB. No further revisions are necessary.

3. Appropriate Burden of Proof When Challenging Costs

a. Midwest ISO's Proposal

24. Proposed Attachment JJ, section C.3 provides in pertinent part:

If a Transmission Owner has been directed by the Transmission Provider . . . to reschedule a Planned Transmission Outage due to an Emergency or Emergency System Condition and such rescheduling is consistent with Good Utility Practice but the Transmission Owner does not reschedule the Planned Transmission Outage, and such failure to reschedule contributes to further the previously existing Emergency or Emergency System conditions, the Transmission Owner shall be subject to an assignment of

¹¹ See, e.g., *Pacific Gas & Electric Company*, 101 FERC ¶ 61,139 at 61,583 (2002).

¹² See, e.g., Order No. 2003-A at P 590 ("all customers benefit from having a transmission system that provides reliable service . . .").

costs determined by the Transmission Provider to have been incurred as the result of such Transmission Owner's failure to comply, provided that, prior to any such assignment of costs, the Transmission Provider must receive approval from the Commission pursuant to a filing under Section 205 of the Federal Power Act to assign such costs.

25. Proposed section D.2 states in pertinent part: "a Transmission Customer may make written request to the Transmission Provider to review Transmission Owner's Rescheduling Costs assessed to the Transmission Customer when the Transmission Customer disputes the Rescheduling Costs on the invoice." Proposed section D.3 requires Midwest ISO to provide a written response to the complaining customer within 10 Business Days. If the customer is dissatisfied with the response, it may pursue the TEMT's dispute resolution process and subsequently file a complaint, pursuant to section 206 of the FPA with the Commission.

b. Intervenor Comments

26. AMP-Ohio objects to what it characterizes as Midwest ISO's failure to provide Transmission Customers with the protection of section 205 for costs incurred because a Transmission Owner refuses to reschedule a planned outage at Midwest ISO's direction as it gives to Transmission Owners that dispute these same costs. AMP-Ohio points out that proposed section C.3 is silent with respect to the Transmission Customer's right to dispute the costs, which means that Transmission Customers challenging an assignment of rescheduling costs must bear the expense and the burden of proof of a section 206 proceeding. AMP-Ohio requests that the Commission direct Midwest ISO to provide parallel treatment of charges.¹³

c. Midwest ISO's Response

27. Midwest ISO responds to AMP-Ohio's objection by pointing out that AMP-Ohio confuses the purposes of the recovery provisions, section C.3 and section D.2. Proposed section C.3 permits Midwest ISO to recover the costs that it may incur as the Transmission Provider due to a Transmission Owner's failure to reschedule a Planned Transmission Outage in accordance with the Midwest ISO's directives. Midwest ISO points out that interested parties, including the affected Transmission Owner and

¹³ AMP-Ohio Protest at 6.

customer may participate fully in that proceeding. In contrast, Midwest ISO points out that the dispute provisions contained in section D.2 apply to Transmission Customers disputing Rescheduling Costs assessed to them. Such a dispute, Midwest ISO argues, is akin to the Transmission Customer's assertion of a tariff violation. Midwest ISO points out that the FPA only permits aggrieved parties to bring complaints against public utilities pursuant to section 206, which the TEMT's dispute resolution provision permits.

d. Commission Determination

28. We agree with Midwest ISO that AMP-Ohio misconstrues the purposes of the two provisions. Proposed section C.3 addresses the situation where Midwest ISO seeks recovery under section 205 of the FPA for costs that it incurs as a Transmission Provider due to a Transmission Owner's failure to reschedule a Planned Transmission Outage in accordance with the Midwest ISO's directives. Transmission Customers are able to raise issues concerning such costs in that section 205 proceeding by submitting appropriate pleadings pursuant to the Commission's Rules of Practice and Procedure. Proposed section D.2 addresses cost recovery disputes raised by Transmission Customers that are addressed under section 206 of the FPA.

The Commission orders:

Midwest ISO's proposed tariff revisions are hereby accepted for filing, as discussed above, effective November 28, 2006, as requested.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.