

119 FERC ¶ 61,196  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER07-529-000  
ER07-529-001

ORDER CONDITIONALLY ACCEPTING TARIFF SHEETS

(Issued May 25, 2007)

1. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed under section 205 of the Federal Power Act (FPA)<sup>1</sup> revisions to its Open Access Transmission and Energy Markets Tariff (TEMT or tariff) to conform its market monitoring provisions with the Commission's Policy Statement on Market Monitoring Units (MMUs).<sup>2</sup> In this order, the Commission conditionally accepts Midwest ISO's proposed tariff revisions as modified below.

**I. Background**

2. In its May 27, 2005 Policy Statement, the Commission provided guidance regarding the coordinated roles and responsibilities of the Commission and MMUs to monitor and report on wholesale markets. Among other things, the Commission clarified that the primary tasks MMUs should perform and outlined specific protocols for use by MMUs when referring potential tariff or Commission Market Behavior Rule violations to the Commission for investigation and any necessary enforcement. The current Market Behavior Rules address unit operation, communications, price-reporting and record retention.<sup>3</sup> The Commission has since issued its Anti-manipulation Rule to prohibit the

---

<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> *Policy Statement on Market Monitoring Units*, 111 FERC ¶ 61,267 (2005) (Policy Statement).

<sup>3</sup> *Conditions for Public Utility Market-Based Rate Authorization Holders*, Order No. 674, 71 Fed. Reg. 9,695 (Feb. 27, 2006), FERC Stats. & Regs. ¶ 31,208 (2006).

employment of manipulative or deceptive devices or contrivances in wholesale electricity transactions,<sup>4</sup> and has codified Market Behavior Rules 1, 3, 4 and 5 in the Commission's regulations under the FPA.<sup>5</sup>

3. In its February 9, 2007 Filing, as amended on March 29, 2007, Midwest ISO proposes to revise its TEMT to ensure that its market monitoring and mitigation provisions comply with the Policy Statement. Specifically, Midwest ISO's proposed tariff sections 52.3.b and 53.3 provide requirements and procedures for the Independent Market Monitor (IMM) to refer to the Commission any conduct that has: "(1) violated the Transmission Provider's Tariff or other FERC-approved Transmission Provider Market Rules, or (2) violated FERC Market Rules." In addition, Midwest ISO defines the term "FERC Market Rules" in section 1.98c.<sup>6</sup> Finally, Midwest ISO proposes in sections 50.1, 50.3.a.i, 50.3.a.iii and 51.1 to require the IMM to monitor and report on reliability concerns. Midwest ISO requests that the proposed revisions be effective April 10, 2007.

## **II. Notice of Filings and Responsive Pleadings**

### **A. Notice**

4. Notice of Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 8,372 (2007), with interventions and protests due on or before March 2, 2007. WPS Companies,<sup>7</sup> Midwest TDUs<sup>8</sup> and the Wisconsin Electric Power Company filed timely

---

<sup>4</sup> *Prohibition of Energy Market Manipulation*, Order No. 670, 71 Fed. Reg. 4,244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006), *reh'g denied*, 114 FERC ¶ 61,300 (2006) (Anti-manipulation Rule).

<sup>5</sup> *Order Revising Market-Based Rate Tariffs and Authorization*, 114 FERC ¶ 61,165, *reh'g denied*, 115 FERC ¶61,053 (2006).

<sup>6</sup> "FERC Market Rules" are defined as the market behavior rules and the prohibition against electricity energy market manipulation codified by the Commission in its Rules and Regulations at 18 CFR §§ 1c.2 and 35.37, respectively; and any related proscriptions or any successor rules that the Commission from time to time may issue, approve or otherwise establish.

<sup>7</sup> WPS Companies consist of Integrys Energy Group, Inc. and its subsidiaries, Wisconsin Public Service Corporation and Upper Peninsula Power Company, as well as Integrys Energy Services, Inc. and its subsidiary, WPS Power Development, LLC. In addition to being named as moving parties in WPS Companies' motion to intervene, Wisconsin Public Service Corporation, Upper Peninsula Power Company, and Integrys Energy Services, Inc. filed a separate motion to intervene.

motions to intervene. The Organization of MISO States (OMS) filed a motion to intervene out of time and protest, and the Illinois Commerce Commission filed comments (also out of time) in support of the OMS protest.

5. On March 29, 2007, Midwest ISO submitted an amended filing. Notice of Midwest ISO's amended filing was published in the *Federal Register*, 72 Fed. Reg. 17,151 (2007), with interventions and protests due on or before April 19, 2007. Midwest TDUs filed a renewed motion to intervene and protest, and Midwest ISO filed an answer.

### **B. Responsive Pleadings**

6. OMS argues that Module D of the TEMT should include a provision requiring the Commission to inform the IMM of Commission investigations that resulted from an IMM referral. While OMS recognizes the Commission's discretion over investigation confidentiality,<sup>9</sup> it argues that the Commission would help the IMM in future monitoring and referral efforts if it notified the IMM about Commission action (or inaction) once the IMM has referred a matter. OMS contends that the Commission could find ways to provide information to guide future IMM activity without mentioning individual parties. OMS also notes that the IMM would already possess the initial information involved in a Commission investigation and that the tariff already requires the IMM to maintain the confidentiality of such information.

7. Next, OMS contends that proposed section 53.3.a does not enable market participants to know when the section's referral procedures would apply. OMS argues that Midwest ISO should include cross-references to specify the sections of the TEMT that provide an explicit market power remedy that would be administered by the IMM, in lieu of a referral to the Commission, to address an objectively identifiable tariff violation. OMS adds that the Commission has acknowledged that markets work best when tariff provisions are clearly understood by market participants.<sup>10</sup>

---

<sup>8</sup> Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and Wisconsin Public Power, Inc.

<sup>9</sup> OMS Comments at 7 (citing *PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,038, *order on reh'g*, 117 FERC ¶ 61,263, at P 27 (2006) (PJM Order)).

<sup>10</sup> *Id.* at 6 (citing Policy Statement at P 5).

8. OMS also argues that the proposed definition of “FERC Market Monitoring Policy Statement Rules” in section 1.98c of Midwest ISO’s February 9, 2007 Filing may be too limited to include all of the IMM’s monitoring responsibilities.<sup>11</sup> OMS requests that Midwest ISO be directed to revise the definition to specifically reference the Commission’s Market Behavior Rules and Anti-manipulation Rule,<sup>12</sup> as codified at 18 C.F.R. §§ 1c.2 and 35.37.

9. Midwest TDUs propose replacing the term “Markets and Services” with “the market” in proposed section 53.3.b. They argue that the change would clarify that the IMM has a responsibility to report market consequences regardless of whether the market is administered by Midwest ISO.<sup>13</sup> Midwest TDUs also assert that “the market” is more consistent with adjacent tariff provisions.

10. In addition, Midwest TDUs support monitoring and reporting on the effect of reliability rules on Midwest ISO markets, but argue that the term “reliability” in sections 50.1, 50.3.a.i, 50.3.a.iii, and 51.1 does not establish an appropriate reliability regime.<sup>14</sup>

### C. Midwest ISO’s Answer

11. In response to Midwest TDUs’ comments, Midwest ISO answers that its use of the term “Markets and Services” in proposed section 53.3.b.v is consistent with the scope of the IMM’s monitoring responsibilities as outlined in section 50.2. Specifically, Midwest ISO notes that section 50.2 provides that the IMM will monitor only the “Markets and Services” except to “periodically assess” the effects of certain other markets on Midwest ISO energy markets or vice versa. Midwest ISO also agrees to remove the “reliability” references as requested by Midwest TDUs if directed to do so.

---

<sup>11</sup> Midwest ISO replaced the term “FERC Market Monitoring Policy Statement Rules” with “FERC Market Rules” in its amended filing.

<sup>12</sup> *Id.* at 5 (citing *Prohibition of Energy Market Manipulation*, Order No. 670, 71 Fed. Reg. 4,244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006), *reh’g denied*, 114 FERC ¶ 61,300 (2006) (Anti-manipulation Rule)).

<sup>13</sup> Midwest TDUs Comments at 7 (citing Policy Statement at P 7, Protocol 4(e) of Appendix A).

<sup>14</sup> *Id.* at 8 (citing *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg. 16,416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007)).

### **III. Discussion**

#### **A. Procedural Matters**

12. 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. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Accordingly, we will accept the late interventions of OMS and the Illinois Commerce Commission.

13. 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 decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

#### **B. Commission Determination**

14. We find that Midwest ISO's proposed tariff sheets, as modified below, are just and reasonable and consistent with the Policy Statement.<sup>15</sup> Accordingly, we will conditionally accept the tariff sheets proposed in Midwest ISO's February 9, 2007 Filing, as amended on March 29, 2007, to become effective April 10, 2007. We direct Midwest ISO to make a compliance filing within 30 days of the date of this order.

15. First, Midwest ISO must revise section 50.1 to state that the IMM will monitor and report on "the adequacy and effectiveness of any proposed or actual tariff provision, market rule, procedure, or action that affects the competitiveness or economic efficiency of the Markets and Services." In Midwest ISO's proposal, section 50.1 does not explicitly require the IMM to monitor and report on both proposed and actual market rules and tariff provisions. The Policy Statement, however, requires the IMM to evaluate

---

<sup>15</sup> The Commission is currently reviewing its policies on market monitors and, on April 5, 2007, held a technical conference on the subject in Docket No. AD07-8-000. *See* Review of Market Monitoring Policies, 72 Fed. Reg. 12,173 (March 15, 2007). This generic review will provide the Commission with an opportunity to explore in more depth issues regarding the roles and responsibilities of the Commission and MMUs in monitoring and reporting on wholesale markets, including some of the issues raised in response to Midwest ISO's filing in this proceeding.

“existing or proposed market rules and tariff provisions.”<sup>16</sup> This means the IMM must identify flaws with current market rules and tariff provisions as well as provide assistance in the development of proposed rule changes.<sup>17</sup>

16. Next, proposed section 52.3.b appears to be inconsistent with proposed section 53.3.a. Proposed section 52.3.b requires the IMM to make a referral to the Commission if the IMM detects a “potential violation of the Transmission Provider’s Market Rules or FERC Market Rules.” But a related proposed section 53.3.a states that the IMM should also refer violations of the Midwest ISO tariff to the Commission. To clarify the circumstances that require an IMM referral,<sup>18</sup> we will direct Midwest ISO to revise proposed section 52.3.b to require the IMM to notify the Commission of “a potential violation of the Transmission Provider’s Tariff, other FERC-approved Transmission Provider Market Rules, or the FERC Market Rules.”<sup>19</sup>

17. We will not require that the Commission inform the IMM of the status of referrals, as OMS requests. Commission investigations are non-public unless the Commission directs or authorizes public disclosure.<sup>20</sup> The confidentiality of Commission investigations fosters cooperation and protects persons involved in investigations.<sup>21</sup> Accordingly, we will not require a tariff provision that obligates the Commission to disclose confidential information.

18. In addition, we will not direct Midwest ISO to cross-reference to specific tariff sections in proposed section 53.3.a. Proposed section 53.3.a is consistent with the Commission’s finding that a referral to the Commission and a Commission investigation are unnecessary where the tariff provides an explicit remedy for violations.<sup>22</sup> In the PJM

---

<sup>16</sup> Policy Statement at P 3.

<sup>17</sup> *Id.* at P 4.

<sup>18</sup> *Id.* at P 6.

<sup>19</sup> We note that proposed sections 52.3.b and 53.3.a refer to the “Office of Markets, Tariffs and Rates.” Midwest ISO should instead refer to the “Office of Energy Markets and Reliability.”

<sup>20</sup> 18 C.F.R. § 1b.9 (2006).

<sup>21</sup> PJM Order at P 27.

<sup>22</sup> Policy Statement at P 6.

Order, the Commission addressed this issue and did not require the use of such cross-references,<sup>23</sup> and we note that OMS has not identified any tariff provisions that provide an explicit remedy here. Thus, we conclude that the proposed revisions to section 53.3.a are just and reasonable.

19. Midwest ISO's proposed definition of "FERC Market Rules" in its March 29, 2007 amendments addresses OMS's request that Midwest ISO clarify its definition of "FERC Market Monitoring Policy Statement Rules" in section 1.98c of the February 9, 2007 Filing. We will not require further clarification of section 1.98c, because the proposed definition of "FERC Market Rules" includes the Commission's Market Behavior Rules and Anti-manipulation Rules, as OMS requests, as well as any related successor rules issued by the Commission.

20. Midwest ISO's proposed use of the term "Markets and Services" in section 53.3.b.v does not create new limitations on the scope of the IMM's monitoring responsibilities, as Midwest TDUs argue. Section 50.2 already provides that the IMM will monitor the "Markets and Services." The IMM will also "periodically assess" the effects of bilateral energy or capacity markets or private transmission rights on Midwest ISO energy markets and vice versa. We do not consider a referral to the Commission to be a periodic assessment that warrants the expansion of the IMM's monitoring responsibilities. Furthermore, we disagree that the Policy Statement expands the entire monitoring and reporting obligation of the IMM beyond Midwest ISO-administered products, as Midwest TDUs argue. The Policy Statement indicates that the IMM should monitor electricity markets within the Midwest ISO region in order to generate certain regular reports,<sup>24</sup> and we find that the expansion in section 50.2 of the IMM's monitoring responsibilities beyond the "Markets and Services" to prepare periodic assessments is consistent with such regular reports. Thus, we conclude that Midwest ISO's use of the term "Markets and Services" in proposed section 53.3.b.v is just and reasonable.

21. Regarding the inclusion of references to "reliability,"<sup>25</sup> the Policy Statement does not require the expansion of the IMM's monitoring and reporting requirements to include reliability concerns. Thus the proposed references are not required by the Policy Statement and have not otherwise been supported. Midwest ISO has agreed to remove the "reliability" references if directed, and we direct them to do so.

---

<sup>23</sup> PJM Order at P 41.

<sup>24</sup> Policy Statement at P 7.

<sup>25</sup> See §§ 50.1, 50.3.a.i, 50.3.a.iii and 51.1.

22. As a final matter, the proposed substitute Sheet Nos. 7, 75, 701, 710, 711, 712, 716A, 716B, and 738 indicate that they supersede revised sheets that have not been accepted by the Commission.<sup>26</sup> The proposed substitute sheets should instead indicate that they supersede sheets from their respective prior proceedings, in accordance with 18 C.F.R. § 35.9(b)(2) (2006). Proposed Sheet No. 716A.02 reads “Substitute Original Sheet No. 716A.02 Substitute Original Sheet No. 716A.02,” but the second “Substitute” should instead read “Superseding.”<sup>27</sup>

The Commission orders:

(A) Midwest ISO’s February 9, 2007 Filing, as amended, is hereby conditionally accepted, to become effective April 10, 2007, as requested.

(B) Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of issuance of this order modifying its proposed tariff revisions as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>26</sup> We note that the revised sheets proposed in the February 9, 2007 Filing are not accepted here, because they were replaced by the tariff sheets proposed in the March 29, 2007 Filing.

<sup>27</sup> We note that the bottom of proposed Sheet No. 716A.01 contains an extra semi-colon.