

124 FERC ¶ 61,280  
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,      Docket No. OA08-123-000  
Inc.

ORDER ON NOTIFICATION FILING

(Issued September 24, 2008)

1. On July 30, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing (July Notification Filing) informing the Commission that, during the second quarter of 2008, it had processed more than 20 percent of the System Impact Studies and Facilities Studies (together, Transmission Studies) outside of the 60-day due diligence deadline required by sections 19.9 and 32.5 of its Open Access Transmission and Energy Markets Tariff (TEMT) and Order No. 890.<sup>1</sup> After reviewing the July Notification Filing, we conclude that Midwest ISO will not be subject to monetary operational penalties as a result of the July Notification Filing.

**Background**

2. This is Midwest ISO's second notification filing.<sup>2</sup> As the Commission explained in more detail in the order on Midwest ISO's first notification filing,<sup>3</sup> a transmission provider that processes more than 20 percent of non-affiliates' Transmission Studies

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<sup>1</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g & clarification* Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008).

<sup>2</sup> Midwest ISO submitted its first notification filing on April 30, 2008, indicating that it failed to process more than 20 percent of Transmission Studies within the 60-day timeframes in the last quarter of 2007 and the first quarter of 2008.

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,308 (2008) (June Notification Order).

outside of the 60-day due diligence deadline for two consecutive quarters must make a notification filing with the Commission. The transmission provider is subject to operational penalties for the two calendar quarters immediately following the quarter that triggered a notification filing unless the Commission finds that the extenuating circumstances described in the notification filing demonstrate that the transmission provider used due diligence in processing the relevant Transmission Studies, notwithstanding its inability to meet the 60-day target.

3. In the June Notification Order, the Commission concluded that, based on the extenuating circumstances outlined in Midwest ISO's first notification filing, Midwest ISO had used due diligence in completing the studies in the quarter that triggered the notification filing, notwithstanding those studies taking more than 60 days to complete. However, the Commission voiced concern over continuing non-compliance. Therefore, the Commission required that, if Midwest ISO's performance in the second quarter of 2008 triggered the need for Midwest ISO to make a second notification filing, Midwest ISO must also provide an update on the steps it is taking to prevent future non-compliance.<sup>4</sup>

### **July Notification Filing**

4. In the July Notification Filing, Midwest ISO notified the Commission that it had processed more than 20 percent of its Transmission Studies outside of the 60-day due diligence deadline for the second quarter of 2008, triggering the "two consecutive quarters" requirement. In the second quarter of 2008, three of the twelve System Impact Studies that Midwest ISO completed (25 percent) took more than 60 days to finish.<sup>5</sup> Midwest ISO argues that, while it has not met the 60-day completion deadline for all of its study requests in the second quarter of 2008, it has exercised due diligence and extenuating circumstances justify waiver of the operational penalties.

5. Midwest ISO describes the specific challenges that it faced for the three Transmission Studies completed beyond their 60-day deadline in the second quarter of 2008 (i.e., the quarter that triggered the July Notification Filing). Midwest ISO attributes its non-compliance usually to the actions of third parties, over which Midwest ISO has no control. Midwest ISO describes those challenges as follows:

(1) Study No. A366: Study Request for 4,450 MW interregional transfer;  
This study was for a 4,450 MW transfer from the FirstEnergy control area

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<sup>4</sup> June Notification Order, 123 FERC ¶ 61,308 at P 13-14.

<sup>5</sup> Midwest ISO states that it did not complete any Facilities Studies in the second quarter of 2008.

in Midwest ISO to the PJM Interconnection, L.L.C. (PJM) footprint. Incorporating this extremely large transfer in the power flow models used to perform the study presented a challenge for Midwest ISO as there was not enough excess generation in FirstEnergy's control area to accommodate the transfer. In addition, Midwest ISO was required to break down the study into various smaller analyses, thereby requiring several additional models and scenarios.

Considering the challenges related to the size and inter-regional nature of this study, the scope of this study request was far too great to have been completed within 60 days.

(2) Study No. A409: Study Request for a complex inter-regional transfer; This study was for a 500 MW transfer from New York Independent System Operator, Inc. (NYISO) to PJM, across Ontario and the Midwest ISO system. Initially, Midwest ISO modeled this transfer directly from NYISO to PJM. However, it later realized that, in order to study the impacts of the transfer on the Midwest ISO system, it needed to model the transfer as sourcing from Ontario (as opposed to NYISO), across the controlled (phase-shifting transformer) interface between Ontario and Midwest ISO (Michigan), and sinking in PJM. Accordingly, Midwest ISO ran the analysis using this approach, but the large size of the transfer further increased the delay caused by having to re-run the models.

Midwest ISO completed this study in 76 days. Had it not been required to re-run an analysis of such a large system, it could have completed the study within the 60-day time frame.

(3) Study No. A397: Study Request for Constraint on non-Midwest ISO, non-jurisdictional, transmission system; This transfer caused a constraint on the transmission system of a non-Midwest ISO, non-jurisdictional entity. Midwest ISO attempted to work with the entity to model the entity's upgrades and any associated incremental use of the facility from its transmission service queue. However, the entity had not finalized the exact transmission improvements needed to relieve the overloads, and thus Midwest ISO could not utilize them in this study.

The lack of certainty regarding required transmission improvements prevented Midwest ISO from ensuring a timely completion of the study and a reasonable and useful answer for the customer.

6. Midwest ISO states that it has continued its steep trajectory towards compliance, meeting the 60-day due diligence deadline for 75 percent of the Transmission Studies in the second quarter of 2008. Furthermore, its continued improvement in the efficiency and completion percentages of its Transmission Studies demonstrates its concerted efforts to prevent non-compliance and justifies waiver of any operational penalties.

7. In compliance with the Commission's directive in the June Notification Order to include an update on the steps Midwest ISO is taking to prevent future non-compliance, Midwest ISO states that it has reorganized its human resources to develop a group of full-time employees with a singular and concentrated focus on long-term Transmission Service Requests. For example, Midwest ISO states that one manager oversees both transmission and interconnection study processes, with separate engineers specializing in Transmission Studies. Midwest ISO states that in instances of work-level imbalances those engineers can be shared. As a result, it asserts, efficiency has improved, despite the fact that this restructuring occurred nearly two-thirds of the way through the second quarter of 2008. Further, Midwest ISO states that it has received no complaints from its customers related to Transmission Studies. Midwest ISO asserts that it is on track to complete all Transmission Studies within the 60-day due diligence deadline in forthcoming quarters.

### **Notice and Responsive Filings**

8. Notice of Midwest ISO's July Notification Filing was published in the *Federal Register*, 73 Fed. Reg. 46,619 (2008), with interventions and protests due on or before August 20, 2008. Timely motions to intervene were filed by: American Municipal Power – Ohio (AMP-Ohio); Consumers Energy Company; Duke Energy Corporation; and Exelon Corporation. AMP-Ohio also filed comments.

### **Discussion**

#### **Procedural Issues**

9. 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.

#### **AMP-Ohio's Comments**

10. AMP-Ohio states that Midwest ISO should not be assessed penalties because of the difficulties it faced. AMP-Ohio asserts that Study No. A409 should not be included in the calculation to determine compliance with the 60-day due diligence deadline since this study involved a transaction that NYISO sought to ban in its filing with the Commission in Docket No. ER08-1281-000. AMP-Ohio also requests that the Commission direct Midwest ISO to reject similar study requests in the future, unless

NYISO notifies Midwest ISO that operational Ontario-Michigan phase angle regulators legitimize this transmission path.

### **Commission Determination**

11. Upon review of the extenuating circumstances Midwest ISO advanced in its July Notification Filing, we agree that Midwest ISO has used due diligence in completing the Transmission Studies in the quarter that triggered the July Notification Filing, notwithstanding the fact that those studies were not completed within the 60-day due diligence deadline. For instance, Midwest ISO describes certain extenuating circumstances related to study size, interregional study nature, negotiations with non-jurisdictional entities and/or other transmission providers, and technical challenges as circumstances preventing it from completing Transmission Studies within the 60-day due diligence deadline during that quarter. In addition, Midwest ISO states that delays usually resulted from actions of third parties over which it has no control.

12. The detail provided by Midwest ISO in describing the extenuating circumstances for each of the Transmission Studies on a study-by-study basis is persuasive. In addition, Midwest ISO continues to take proactive measures to help prevent future Transmission Studies from being completed in more than 60 days (e.g, realignment of staff with a singular and concentrated focus on long-term Transmission Service Requests and modifications to its study processes). In light of these considerations, we conclude that the extenuating circumstances described by Midwest ISO excuse its non-compliance with the 60-day due diligence deadline during the period covered by the July Notification Filing. Therefore, the submission of the July Notification Filing will not trigger the application of operational penalties.

13. We nonetheless remain concerned regarding Midwest ISO's future compliance with the 60-day due diligence deadline. Consistent with the requirement in the June Notification Order, should Midwest ISO process more than 20 percent of the Transmission Studies outside of the 60-day due diligence deadline for the third quarter of 2008, Midwest ISO must make another notification filing.<sup>6</sup> Such notification filing must also include an update on the steps it is taking to prevent future non-compliance.

14. We will deny as outside the scope of this proceeding (i.e., whether Midwest ISO exercised due diligence in completing Transmission Studies) AMP-Ohio's request that Midwest ISO be directed to reject certain requests for Transmission Studies in the future.

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<sup>6</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1319.

The Commission orders:

(A) Midwest ISO's non-compliance during the period covered by the July Notification Filing is hereby excused, and Midwest ISO will not be subject to operational penalties as a result of such non-compliance.

(B) Should Midwest ISO process more than 20 percent of the Transmission Studies outside the 60-day due diligence deadline for the third quarter of 2008, Midwest ISO is hereby directed to make another notification filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.