

132 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER10-1696-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 31, 2010)

1. In this order, we accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions of its Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff)¹ to address conflicting provisions in section 30.8 of Module B and the must offer provisions of Module E of the Tariff, to become effective September 1, 2010, as requested.

I. Background

2. On December 28, 2007, Midwest ISO filed with the Commission a revised Module E to incorporate its resource adequacy requirements construct into the Tariff. As part of the filing, Midwest ISO included a must offer requirement, which provided, in part, that all capacity resources must self-schedule or offer energy (and contingency reserve) into Midwest ISO markets every hour of every day. On March 26, 2008, the Commission issued an order conditionally accepting Midwest ISO's filing.²

3. Under Module E of the Tariff, Midwest ISO must calculate a planning reserve margin for each load serving entity located within Midwest ISO's transmission provider region. Owners of Midwest ISO capacity resources may convert the unforced capacity from those resources into planning resource credits, which can be traded, auctioned, or designated to meet a load serving entity's planning reserve margin requirement. The

¹ Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 (2008).

must offer requirement, currently under section 69.5 of the Tariff, requires market participants to submit self-schedules or offers for energy into the day-ahead energy market and all pre day-ahead and the first post day-ahead reliability assessment commitment for the entire installed capacity for each hour of a day where the unforced capacity of a capacity resource has been converted to planning resource credits.

II. Midwest ISO's Filing

4. On July 1, 2010, Midwest ISO submitted for filing, under section 205 of the Federal Power Act,³ a proposed amendment to Module B of its Tariff. Midwest ISO asserts that the purpose of the proposed amendment is to address a conflict between the current Tariff provisions in section 30.8 of Module B and section 69.5 of Module E. Midwest ISO states that section 30.8 of Module B restricts a network customer's use of the interface capacity to the lesser of the network customer's actual network load or the available interface capacity, and section 69.5 of Module E requires a market participant to offer into the day-ahead market a quantity of energy equal to the installed capacity that was converted into planning resource credits. Accordingly, Midwest ISO states that the quantity of energy originating from an external resource that is a capacity resource, that is required to be offered into the day-ahead energy market to meet the must offer requirement and that clears the day-ahead market, may be in excess of a network customer's actual network load and, therefore, violates the restriction in section 30.8.⁴

5. To resolve this possible conflict, Midwest ISO proposes to add a limited exception to Module B's restriction on the use of interface capacity. The proposed modification to section 30.8 of Module B eliminates the usage restriction related to the network customer's load and permits the network customer to use interface capacity to schedule a quantity of energy in excess of load to the extent such energy is scheduled to meet the network customer's must offer requirements set forth in Module E of the Tariff. This modification, Midwest ISO asserts, will assure that market participants can both meet their must offer requirements for their capacity resources and assure that adequate energy is offered into the day-ahead energy market and made available for Midwest ISO's reliability assessment commitment.⁵

³ 16 U.S.C. § 824d (2006).

⁴ Midwest ISO Filing at 2-3.

⁵ *Id.* at 3.

6. Midwest ISO acknowledges that the proposed change will constitute an amendment to the Commission's *pro forma* tariff adopted in Order No. 890.⁶ Midwest ISO maintains, however, that the limited modification proposed will not unduly restrict available interface capacity since the actual use of the interface capacity is determined by the security constrained economic commitment and dispatch algorithms and will further the goal of system reliability within Midwest ISO's footprint by eliminating the potential restriction on the ability to access capacity that is subject to a must offer requirement under section 69.5 of the Tariff. Accordingly, Midwest ISO contends that the proposal is just and reasonable and not unduly discriminatory, and is a permissible modification to the *pro forma* tariff language because the modification constitutes an improvement to the *pro forma* tariff.⁷

7. Midwest ISO requests the proposed tariff revisions be made effective September 1, 2010, which is more than 60 days after the date of filing.

III. Notice of Filing and Responsive Pleadings

8. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 Fed. Reg. 40,808 (2010), with interventions and protests due on or before July 22, 2010.

9. American Municipal Power, Inc., Consumers Energy Company, Detroit Edison Company, Exelon Corporation, MidAmerican Energy Company, and Wisconsin Electric Power Company filed timely motions to intervene. Missouri River Energy Services (Missouri River) filed a motion to intervene and protest, and Midwest ISO filed an answer to Missouri River's protest.

10. Xcel Energy Services Inc. filed an untimely motion to intervene.

11. Missouri River protests Midwest ISO's proposed amendment to Module B, arguing that the proposal fails to ameliorate the effect of the Module E must offer requirement on those Midwest ISO members that cannot satisfy the must offer requirement from external resources due to limitations imposed by other transmission providers. Rather than amending Module B of the Tariff, as Midwest ISO proposes, Missouri River maintains that the conflict between Modules B and E of the Tariff should

⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁷ Midwest ISO Filing at 3.

be addressed by amending Module E's must offer requirement to recognize the limitations placed on some Midwest ISO market participants by external transmission providers. Missouri River states that Midwest ISO incorrectly presumes that the restrictions provided for in section 30.8 of Module B are the only limitations preventing a network customer from complying with the must offer requirement in section 69.5 of Module E. It asserts that delivery of power from external resources also may be limited by network integrated transmission service agreements external to Midwest ISO. As a result, Missouri River asserts that Midwest ISO's proposed amendment would not resolve the conflict unless the external transmission providers choose to amend their tariffs as well.⁸

12. In addition, Missouri River states that resolving the conflict by amending Module B rather than Module E is problematic because it could lead to the imposition of additional costs for bidding energy into the Midwest ISO market on network customers relying on external resources that no other parties face. The additional costs would include penalties imposed by Midwest ISO for the network customer's failure to comply with the must offer requirement and the need to purchase additional capacity from within Midwest ISO due to network integration transmission service usage limitations.⁹

13. Lastly, Missouri River claims that Midwest ISO's proposal fails to meet the requirements of Order No. 890 because the proposal merely replaces one problem with several others and, therefore, fails to demonstrate that its amendment to the *pro forma* tariff constitutes an improvement, as required by Order No. 890.¹⁰ Accordingly, Missouri River requests that the Commission: (1) reject Midwest ISO's proposed amendment to Module B for further consideration and reformulation; (2) direct Midwest ISO to develop, in cooperation with the relevant stakeholders, a reformulated amendment to section 69.5 of Module E; and (3) require Midwest ISO to file the reformulated amendment with the Commission within 60 days of the Commission's order in this proceeding. If the Commission does not choose to reject the Midwest ISO proposal, Missouri River recommends that the issue be set for hearing because there are issues of material fact that cannot be resolved on the current record and would most appropriately be addressed through trial-type evidentiary hearing procedures.

14. Midwest ISO responds that while it is sympathetic to Missouri River's contract issue with the Western Area Power Administration (WAPA), it recommends that the

⁸ Missouri River Protest at 5-6.

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 7.

Commission not reject the proposed Tariff improvement simply because it does not resolve the unique contract arrangement Missouri River has with WAPA, an arrangement that is not impacted by the proposed modification.

15. Midwest ISO asserts that the proposed Tariff modification will assure that market participants are able to both meet their must offer requirements for their capacity resources and also assure that adequate energy is offered into the day-ahead energy market and made available for the Midwest ISO's reliability assessment commitment, thus, facilitating the must offer aspects of Module E and the maintenance of reliability within the Midwest ISO region. Midwest ISO notes that many other stakeholders have supported the subject Tariff improvement during stakeholder discussions. Midwest ISO further explains that the proposal does not modify the must offer requirement but merely removes a conflict in Module B of the Tariff that may inhibit compliance with the Module E must offer requirement.

16. With respect to Missouri River's claims that the proposal does not meet the requirements of Order No. 890, Midwest ISO asserts that Missouri River did not provide examples of the alleged problems that would be created by adoption of the proposed Tariff language.¹¹ Midwest ISO asserts that its proposal is entirely consistent with Order No. 890 requirements because it: (1) resolves the aforementioned conflict between sections 30.8 and 69.5 of the Tariff; and (2) does not create any new problems.

17. Midwest ISO believes that since it is not proposing modifications to section 69.5, which is not subject to this proceeding, it would be inappropriate to address Missouri River's comments in connection with the modification proposed by Midwest ISO. Midwest ISO avers that Missouri River is free to pursue any issues that it might have through Midwest ISO's stakeholder process or in another appropriate proceeding.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Xcel Energy Services Inc.'s late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

¹¹ *Id.*

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), 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. Substantive Matters

20. We accept Midwest ISO's proposed revisions to the Tariff, to become effective September 1, 2010, as requested. We consider it reasonable for Midwest ISO to modify restrictions on customer use of interfaces in its Tariff so that market participants can utilize their external resources fully at these interfaces and thereby facilitate compliance with the must offer requirements in the Midwest ISO Resource Adequacy Plan in Module E of its Tariff. Such revisions will eliminate a potential limitation on the use of external resources to meet resource adequacy requirements of the Midwest ISO region and therefore the proposal enhances long-term reliability.

21. We do not agree with Missouri River's contention that the proposal imposes cost burdens that other market participants do not bear. On its face, it is clear that the Midwest ISO proposal does not impose additional customer costs. Rather, we understand Missouri River's concern to be with the restrictions of its WAPA contract that limit its ability to comply with Midwest ISO's must offer requirements, and that it is this circumstance that could lead to additional costs for Missouri River. While we understand Missouri River's issue with its WAPA contract,¹² we do not consider Midwest ISO's proposal to have any bearing on this separate contract issue.

22. With regard to Missouri River's claim that Midwest ISO's proposal fails to meet the requirements of Order No. 890, we do not agree. Midwest ISO's proposal provides reliability benefits, as discussed, that are an improvement in the *pro forma* tariff. We do not consider the fact that Midwest ISO's proposal does not resolve Missouri River's issue to be an indication that Midwest ISO's proposal does not meet the standards of Order No. 890. Midwest ISO's proposal will facilitate compliance with resource adequacy requirements in its footprint, and thereby enhances reliability.

¹² As Missouri River explains, WAPA has no intention of amending the WAPA tariff to accommodate the Midwest ISO must offer requirement. Missouri River Protest at 6.

The Commission orders:

Midwest ISO's filing is hereby accepted to be effective September 1, 2010, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.