

134 FERC ¶ 61,063
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 Nos. ER11-2084-000
ER11-2084-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued January 31, 2011)

1. In this order, we accept for filing Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to Module B of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) regarding the Facilities Study procedures for Transmission Service Requests (TSR), to be effective January 12, 2011, as requested, as discussed below.

I. Background

2. In Order No. 890, the Commission determined that certain changes to the *pro forma* Open Access Transmission Tariff (*pro forma* OATT) were necessary to increase the transparency and expediency of transmission service processing by transmission providers, including regional transmission organizations and independent system operators.¹ As part of that effort, the Commission added new sections 19.9 and 32.5 to the *pro forma* OATT regarding a transmission provider's due diligence to meet 60-day completion deadlines for transmission service System Impact Studies and Facilities Studies.² Those sections establish an 80 percent compliance standard. Under those

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 1353 (Order No. 890), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890-A), *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 reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

² *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1340-1354.

sections, if a transmission provider processes more than 20 percent of non-affiliates' System Impact Studies and Facilities Studies outside of the 60-day due diligence deadlines for any two consecutive quarters, it must make a notification filing with the Commission. A transmission provider may provide an explanation in its notification filing to the Commission if it believes there are extenuating circumstances that prevented it from meeting the 60-day due diligence deadlines.³

3. Once a transmission provider makes a notification filing, it may be subject to increased posting requirements as well as operational penalties if the transmission provider completes 10 percent or more of non-affiliates' System Impact Studies and Facilities Studies outside of the 60-day due diligence deadlines for each of the two quarters immediately following the quarter that triggered its notification filing and the Commission determines that no extenuating circumstances exist to excuse the transmission provider's non-compliance.⁴ The operational penalties will be assessed for each calendar quarter for which the operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered its notification filing, and will continue to be assessed each quarter until the transmission provider completes more than 90 percent of all non-affiliates' System Impact Studies and Facilities Studies within the 60-day deadline.⁵

4. Midwest ISO has made a total of four notification filings since the issuance of Order No. 890. In those notification filings, Midwest ISO identified specific challenges with certain TSR studies that prevented Midwest ISO from meeting the 60-day due

³ In Order No. 890-A, the Commission invited transmission providers to discuss any factors that they believe are relevant, including reasonable resource limitations, the accommodation of customer requests (including clustering), inter-regional and seams coordination, the scope of particular studies, or fluctuations in study volumes. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 717-727.

⁴ For each System Impact Study or Facilities Study completed during a quarter in which a penalty applies, the penalty will equal \$500 for each day beyond the 60-day deadline that the transmission provider takes to complete that study. For each System Impact Study or Facilities Study that is still pending at the end of a quarter in which a penalty applies and that has been in the study queue more than 60 days, the penalty will equal \$500 for each day that the study has been in the queue beyond 60 days. Additionally, the transmission provider must post additional performance metrics unless it demonstrates extenuating circumstances.

⁵ *See* Order No. 890-B, 123 FERC ¶ 61,299, Appendix B, § 19.9 (iii).

diligence deadlines. In each of these four proceedings,⁶ the Commission found that extenuating circumstances prevented Midwest ISO from completing certain TSR studies within the 60-day deadline and excused Midwest ISO from non-compliance and operational penalties during the covered periods.

5. In those notification filings, Midwest ISO described particular time-constraining challenges it faced for TSR studies that it completed beyond the 60-day deadline, which Midwest ISO stated often resulted from actions of third parties over which Midwest ISO has no control. Although Midwest ISO has taken measures that have improved its completion percentages for System Impact Studies (e.g., more Midwest ISO staff focusing on only System Impact Studies), the completion percentages for Facilities Studies have not improved.⁷ Because of the technical nature of the Facilities Study, Midwest ISO contracts with the applicable transmission owner to perform the Facilities Study. The Facilities Study identifies the cost and schedule to build or upgrade transmission facilities identified in the System Impact Study. As Midwest ISO does not own, construct, or maintain those transmission facilities, Midwest ISO explained that the transmission owner that owns, constructs, and maintains the transmission facilities is best suited and most uniquely qualified to perform the Facilities Study.

II. Description of Filings

6. On November 12, 2010, as amended on December 2, 2010, Midwest ISO filed proposed revisions to Module B of its Tariff. Specifically, Midwest ISO proposes revisions to sections 19.4, 19.9, 27A.7.4, 27A.7.8 and 32.5 of the Tariff to allow Midwest ISO to extend the 60-day deadline for the TSR Facilities Study to conform to the 120-day deadline for completion of the Facilities Study under section 8.5 of Midwest ISO's Generator Interconnection Procedures in Attachment X of the Tariff. Midwest ISO also proposes to add new sections 19.4.1, 27A.7.4.1, and 32.4.1 to the Tariff to reset the 120-

⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,308 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,280 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. OA10-2-000 (July 7, 2010) (unpublished letter order); *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. OA08-14-007 (July 7, 2010) (unpublished letter order).

⁷ Midwest ISO explained in Docket No. OA08-14-007 that it completed 95 percent of the System Impact Studies within the 60-day due diligence deadlines. However, Midwest ISO explained that Facilities Studies are often subject to Requests for Proposals and re-studies. Midwest ISO completed none of the Facilities Studies in this particular triggering quarter. See *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. OA08-14-007 (July 7, 2010) (unpublished letter order).

day clock if any study assumptions change during a TSR Facilities Study. Finally, Midwest ISO proposes revisions to section 27A.7.8 of the Tariff to change the 270-day Facilities Study completion deadline to 120 days.⁸

7. Midwest ISO explains that Facilities Studies require significantly more attention, are notably more complex and require more time to complete than System Impact Studies. In addition, Midwest ISO explains that it performs most System Impact Studies internally. Thus, the amount of time spent on administrative matters is minimal and the standard 60-day deadline for completion of a System Impact Study is appropriate. However, Midwest ISO states that the majority of Facilities Studies cannot be completed within the current 60-day timeframe given the added complexity over System Impact Studies and the coordination that is required between various transmission owners for substation, transmission, distribution, protection, and component engineering issues. Moreover, Midwest ISO explains that where a Facilities Study identifies a constraint on a neighboring transmission owner's system, Midwest ISO must coordinate with multiple transmission owners to complete the Facilities Study. In addition, Midwest ISO states that it must rely on the same transmission owner resources that are already being utilized to perform generator interconnection Facilities Studies, which far outnumber TSR Facilities Studies.⁹

8. Midwest ISO states that in order to have a Facilities Study performed by the transmission owner of the affected transmission system (or an independent consultant), it must first issue a Request for Proposal to obtain an approximate cost estimate for performing the study. Further, when retaining a transmission owner (or independent consultant) in a consulting capacity to perform a Facilities Study, Midwest ISO and the transmission owner (or independent consultant) must prepare, review, and execute a consulting agreement to govern the performance of and compensation for the study. In addition, Midwest ISO explains that it must also prepare and issue a purchase order to

⁸ On September 21, 2009, in Docket No. ER09-1727-000, Midwest ISO submitted a filing to, among other things, revise its Tariff to adopt a TSR study completion deadline of 270 days for certain high-voltage direct current transmission facilities (HVDC Filing). On November 24, 2009, the Commission issued an order on the HVDC Filing directing Midwest ISO to, among other things, remove the new 270-day deadline for System Impact Studies from section 27A.7.3, or justify why the additional time is appropriate. In reviewing section 27A.7.8 for the instant filing, Midwest ISO states that the 270-day deadline had not been removed for Facilities Studies. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,172 (2009).

⁹ Midwest ISO November 12, 2010 Filing at 2.

compensate the transmission owner (or independent consultant) for the Facilities Study. Midwest ISO contends that each of these additional administrative tasks imposes delay and, therefore, it is reasonable to permit a longer time period for completing a Facilities Study.¹⁰

9. With regard to adding new sections to the Tariff to allow an additional 120 days for re-study when any assumption in the Facilities Study is altered, resulting in a material change to the results of the Facilities Study, Midwest ISO states that it must reevaluate the scope of the study and, in effect, begin the Facilities Study process over again. Midwest ISO argues that it is reasonable that it be permitted to reset the deadline when it is forced to conduct a Facilities Re-Study because there is no substantive difference between a Facilities Study and a Facilities Re-Study with regard to the time required for completion.¹¹

10. On December 2, 2010, Midwest ISO amended the November 12, 2010 filing to correct minor typographical errors and inconsistencies in the proposed Tariff revisions.

11. Midwest ISO requests that the Commission make the proposed Tariff revisions effective on January 12, 2011.

III. Notice and Responsive Filings

12. Notice of the November 12, 2010 filing, in Docket No. ER11-2084-000, was published in the *Federal Register*, 75 Fed. Reg. 71,109 (2010), with interventions and protests due on or before December 3, 2010. Wisconsin Electric Power Company, Ameren Services Company, and American Municipal Power, Inc. filed timely motions to intervene. Consumers Energy Company filed a motion to intervene out-of-time. Midwest ISO Transmission Owners¹² filed a timely motion to intervene and comments.

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; American Transmission Systems, Inc.; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican

In their comments, Midwest ISO Transmission Owners note that they generally support the filing.

13. Notice of the December 2, 2010 filing, in Docket No. ER11-2084-001, was published in the *Federal Register*, 76 Fed. Reg. 3619 (2011), with interventions and protests due on or before January 20, 2011. Duke Energy Corporation filed a timely motion to intervene.

IV. Discussion

A. Procedural Issues

14. 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), we will grant Consumers Energy Company'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.

B. Commission Determination

15. We accept Midwest ISO's proposed revisions to Module B of the Tariff as just and reasonable, to be effective January 12, 2011, as requested. As discussed in the filing, Midwest ISO is faced with certain time constraining challenges in completing TSR Facilities Studies within the current 60-day due diligence deadline that necessitates allowing Midwest ISO to revise its Tariff to extend this deadline to 120 days. Midwest ISO has indicated that Facilities Studies are typically performed by the transmission owner (or outside independent consultant), which adds additional administrative tasks to the Facilities Study timeline and often imposes delay. We also agree that it is reasonable to permit Midwest ISO to reset the deadline when it must conduct a Facilities Re-Study. Finally, we note that the Commission has approved longer time periods for completion of

Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

facilities studies than the 60-day completion deadline included in the *pro forma* OATT for both PJM Interconnection, L.L.C. and New York Independent System Operator, Inc.¹³

The Commission orders:

(A) Midwest ISO's proposed revisions to Module B of the Tariff are hereby accepted for filing, to be effective on January 12, 2011, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ Section 207 of PJM Interconnection, L.L.C.'s Open Access Transmission Tariff allows 180 days for completion of facilities studies and another 60 days for re-study. *See* PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Vol. No. 1, First Revised Sheet Nos. 224S-224T. Section 3.7.4 of New York Independent System Operator, Inc.'s Open Access Transmission Tariff allows 120 days for completion of facilities studies, although it does not include a provision for re-studies. *See* New York Independent System Operator, Inc., NYISO OATT, § 3.7, 0.0.0.