

136 FERC ¶ 61,038
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. ER10-1648-001

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued July 19, 2011)

1. In this order, we grant in part and deny in part a request by Midwest Independent Transmission System Operator, Inc. (Midwest ISO) for rehearing of the letter order issued on August 31, 2010.¹

I. Background

2. On June 30, 2010 (June 30 Filing), Midwest ISO filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). The proposed revisions concern the reassignment of revenues associated with auction revenue rights (ARR) based on load shifts.

3. In the June 30 Filing, Midwest ISO stated that the Tariff requires that ARR revenues be reassigned to follow any shifts in load within each ARR zone, subject to Midwest ISO's verification of any reports and evidence of such load shifts. Consistent with the requirement that market participants report and substantiate any load shifts, Midwest ISO's Financial Transmission Rights and ARR Business Practices Manual

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,192 (2010) (August 31 Letter Order).

(BPM) specifies the load shift reporting procedure.² Midwest ISO stated that the proposed Tariff revisions are intended to address recent stakeholder concerns that Midwest ISO's BPM procedure concerning the reporting of load shifts was inconsistent with the Tariff.

4. In the June 30 Filing, Midwest ISO stated that the BPM procedure is consistent with the existing Tariff, but it proposed a Tariff revision "to provide additional clarity as to how ARR revenue reassignment will be handled when [l]oad shifts are not reported accurately."³ In particular, it proposed to add the following sentence at the end of section 43.7.2 of the Tariff: "In the absence of an accurate report on Load shifts for the prior month, the Transmission Provider shall use data from the last accurate report on Load shifts, if any, in accordance with the procedure set forth in the applicable Business Practices Manuals." (Emphasis added). Midwest ISO requested an effective date of September 1, 2010.

5. In the August 31 Letter Order, the Commission conditionally accepted Midwest ISO's proposed revisions, finding it reasonable that Midwest ISO use data from the last accurate report on load shifts to determine ARR revenues. However, the Commission found that the proposal, in the phrase "in accordance with the procedure set forth in the applicable Business Practices Manuals," was based on a procedure set forth in Midwest ISO's BPM. The Commission determined that since business practice manuals should comply with the terms of the Tariff, and not the other way around, Midwest ISO should be required to submit a compliance filing with revised Tariff sheets deleting this phrase.⁴

² Midwest ISO June 30, 2010 Transmittal Letter at 2. Midwest ISO states that the BPM's load shift reporting procedure relies on the submission of load shift data for each ARR zone by an entity designated by all market participants serving network load in the ARR zone. Under the BPM's procedure, when there is no accurate report of load shifts for the prior month, Midwest ISO shall rely on the last accurate report previously received by Midwest ISO. *Id.*

³ June 30 Filing at 3.

⁴ August 31 Letter Order, 132 FERC ¶ 61,192 at P 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 29 (2006) (citing *Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc. v. Commonwealth Edison Company*, 101 FERC ¶ 61,295 (2002), *reh'g dismissed*, 108 FERC ¶ 61,175 (2004))). As Midwest ISO correctly notes, the August 31 Letter Order's citation to the 2006 Midwest ISO order should have been to 115 FERC ¶ 61,108 at P 30.

6. On September 30, 2010, Midwest ISO filed a request for rehearing. Midwest ISO argues that Commission precedent does not require the deletion of the Tariff revision's reference to BPM procedures unless there is a direct conflict between a BPM provision and a Tariff provision, rather than a mere reference to BPM procedures. Midwest ISO argues that the August 31 Letter Order does not identify a conflict between the BPM and the Tariff. Midwest ISO also contends that the manner of identifying or using the "data from the last accurate report on Load shifts" to determine the reassignment of ARR revenues due to load shifts is eminently a procedural or operational matter more properly dealt with in the BPMs.

7. Further, Midwest ISO argues that, at a minimum, the Commission should clarify that tariffs are not precluded from cross-referencing implementing manuals. And, Midwest ISO argues that, in this instance, the Commission should identify any aspect of the BPM reference language that it finds objectionable, and require modification of such language, rather than the total elimination of the reference.

II. Commission Determination

8. We agree with Midwest ISO that the August 31 Letter Order regarding cross-references to business practice manuals could be interpreted as holding that the Tariff is *per se* precluded from cross-referencing BPMs. That was not our intent, and we will grant rehearing in part to clarify that point. However, we will deny rehearing with respect to the August 31 Letter Order's requirement that Midwest ISO include the relevant procedure in the Tariff rather than merely incorporate it by reference to the BPMs.

9. With respect to Midwest ISO's proposed Tariff revision, the procedures that govern the use of data from the last accurate report on load shifts significantly affect rates, terms and conditions of service, because the revision determines the reassignment of ARR revenues. The allocation of money between parties is the definition of a rate, and the reassignment of ARR revenues is an allocation of money.

10. The Commission's policy is well-established with respect to whether or not provisions in business practices must be filed under section 205 of the Federal Power Act⁵ and included in a tariff:

It is appropriate for Business Practice Manuals to contain implementation details, such as instructions, guidelines, examples and charts, which guide internal operations and inform market participants of how [the RTO] conducts its operations under [its Tariff]. Whether provisions included in

⁵ 16 U.S.C. § 824d (2006).

the Business Practice Manuals must be filed under section 205 of the Federal Power Act (FPA) and made part of the [RTO's Tariff] is determined through the "rule of reason," which discerns those provisions significantly affecting rates, terms and conditions of service, which therefore must be filed for Commission approval. The Commission's policy, as implemented through the rule of reason, is that only those practices that significantly affect rates, terms and conditions fall within the directive of section 205(c) of the FPA.⁶

11. Because the provision at issue significantly affects rates, terms and conditions of service, we deny rehearing of the August 31 Letter Order's determination that the procedure concerning the use of data from the last accurate report on load shifts must be set forth in the Tariff in place of the mere cross-reference to the BPMs contained in Midwest ISO's proposed revision to section 43.7.2 of the Tariff.

The Commission orders:

Midwest ISO's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ *California Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271, at P 16 (2008) (footnotes omitted). In that order, the Commission cited *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (finding that utilities must file "only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous"); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283, at P 342 (2008) (requiring testing procedures for demand resources to be established in the Tariff rather than the BPM); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 453, 657 (2004) (requiring matters concerning creditworthiness and collateral requirements, and concerning exceptions to penalty structures, to be included in the Tariff).