

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER05-1230-001

ORDER REJECTING COMPLIANCE FILING

(Issued June 21, 2006)

1. On March 15, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT) in order to comply with the Commission's September 15, 2005 Order in this proceeding.¹ The September 15 Order extended from 65 days to 115 days the time frame for market participants to initiate disputes under Module C of the TEMT, and required the Midwest ISO to propose a sunset date for the 115-day time frame when market settlement issues were resolved such that accurate and complete settlement information was available 55 days after the Operating Day.² For the reasons stated below, we will reject the Midwest ISO's proposed sunset date.

Background

2. On July 26, 2005,³ the Commission approved typographical corrections, as well as various clarifications to the Midwest ISO TEMT in Docket No. ER05-1029-000. Among other things, the July 26 Order: (1) directed the Midwest ISO to clarify the TEMT to preserve market participants' right to initiate disputes under Module C if a resettlement should occur outside the 65-day window for initiating disputes; and (2) declined to direct the Midwest ISO to extend the time for market participants to initiate disputes that arose out of the initial phases of the energy markets.

¹ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,271 (2005) (September 15 Order).

² *Id.* at P 12.

³ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,122 (2005) (July 26 Order).

3. However, prior to the Commission issuing the July 26 Order, the Midwest ISO made an additional related filing on July 21, 2005 in Docket No. ER05-1230-000 (July 21 Filing) that further revised the dispute time frame. In the July 21 Filing, the Midwest ISO stated that discussions with its stakeholders resulted in the determination that the modified dispute initiation proposal in Docket No. ER05-1029-000, which was approved 5 days later in the July 26 Order, did not provide enough time for market participants to review their settlement statements and initiate disputes involving services under Module C of the TEMT.

4. In the July 21 Filing, the Midwest ISO also reported that stakeholders requested an extension of the 65 days then provided under the TEMT to “research facts pertaining to potential disputes because in some instances necessary facts are not available until after the currently applicable dispute initiation period.”⁴ Accordingly, the Midwest ISO proposed to extend the deadline for market participants to initiate disputes involving services under Module C of the TEMT from 65 days from the Operating Day to 115 days from the Operating Day. The Midwest ISO requested an effective date of July 22, 2005 for the extension.

5. In the September 15 Order, the Commission found that the proposed extension of the window for initiating disputes was appropriate and consistent with the July 26 Order.⁵ The September 15 Order also addressed market participants’ concerns, previously noted in the July 26 Order, regarding the time frame for the initiation of disputes.⁶ The Commission stated that when the Midwest ISO determines that market settlement issues are resolved such that accurate and complete settlement data is available 55 days after the Operating Day, the Midwest ISO should submit a compliance filing that would identify a proposed sunset date for the 115-day deadline. The Commission directed the Midwest ISO to make this filing within 90 days but on December 15, 2005, the Midwest ISO requested an extension of time until March 15, 2006 to submit its compliance filing.⁷

⁴ Midwest ISO Transmittal Letter at 1, Docket No. ER05-1230-000.

⁵ See July 26 Order at P 14.

⁶ See *Id.* at P 11 (“It appears unreasonable that a market participant is precluded from initiating a dispute if a resettlement should occur after the window of opportunity has closed.”). We also note the Midwest ISO submitted a filing to comply with the July 26 Order in Docket No. ER05-1029-001.

⁷ The Commission did not act on this request, but the Midwest ISO proceeded under the assumption that the extension was accepted.

6. In the instant filing, the Midwest ISO proposes to return to the 65-day deadline for market participants to initiate disputes involving services under Module C of the TEMT, effective May 14, 2006.

Notice of Filing and Responsive Pleadings

7. Notice of the Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 16,300 (2006), with interventions and protests due on or before April 5, 2006.

8. Protests were filed by Wisconsin Electric Power Company and Consumers Energy Company (Consumers). Motions to intervene and protest were filed by the Detroit Edison Company (Detroit Edison), the Basin Electric Power Cooperative, the WPS Companies,⁸ and Ameren Services Company, Inc (Ameren). The Midwest ISO filed an answer to the protests.

9. In general, commenters assert that the Midwest ISO is not ready to revert to a 65-day dispute deadline. They argue that the Midwest ISO's proposed May 14, 2006 effective date is too early, given the state of the markets settlements process and the lack of accurate settlement data that is available by 55 days after the Operating Day. For example, WPS Companies observe that there are hundreds of disputes registered with the Midwest ISO and most relate to Revenue Sufficiency Guarantee (RSG) issues. For example, WPS Companies note that 83 percent of the outstanding disputes, according to the Midwest ISO, arise from RSG settlement issues. Commenters also note that the Commission did not order the Midwest ISO to propose a specific sunset date, but simply to propose one when it determines that accurate and complete settlement data is available by 55 days after the Operating Day. Furthermore, commenters assert that the Midwest ISO did not present any support for its proposal to change the dispute deadline at this point, nor did it demonstrate that any market participant has been harmed by the extended deadline.

10. Therefore, Consumers and Detroit Edison request that the Commission delay the reversion to 65 days until April 1, 2007, when the market settlements issues are resolved such that accurate and complete settlement data is available by 55 days after the Operating Day. Ameren suggests that the reversion could take place only if the deadline is 70 days after the Operating Day, because this is the absolute minimum period required for market participants to review settlement statements and submit disputes.

⁸ The WPS Companies consist of: Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., and WPS Power Development, LLC.

11. In its answer, the Midwest ISO disputes that its settlement system is not yet sufficiently accurate to allow the deadline for initial disputes to be shortened to 65 days. The Midwest ISO states that consistent with the requirements of the September 15 Order, it has determined that accurate and complete settlement data is available by 55 days after the Operating Day. The Midwest ISO asserts that the allegations regarding the inaccuracy of the settlement system are unfounded and vague. However, the Midwest ISO also states that it is amenable to Ameren's request to extend the dispute window to 70 days from the Operating Day if the Commission determines that more time is needed.

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

14. We agree with commenters that it appears that there are a significant number of settlement issues outstanding, which leads us to believe that it is reasonable to continue to allow additional time for market participants to dispute their settlement statements received 55 days from the Operating Day. While it is laudable that the Midwest ISO was able to reduce the number of open disputes from 1,793 in February to 857 in March, we note that, as of March 2006, new disputes continue to be initiated at a rate of 158 per week.⁹ That rate closely approximates the rate reported by the Midwest ISO for February 2006, when 161 disputes were initiated weekly.¹⁰

15. Moreover, we note that the Midwest ISO's answer filed on April 20, 2006 was not informed by the Commission's directives issued in the April 25 Order.¹¹ In that order, the Commission ordered refunds and rejected clarifications the Midwest ISO proposed in relation to the assessment of RSG charges. Specifically, the April 25 Order directed the Midwest ISO to assess RSG charges to virtual supply offers, recalculate rates, and make

⁹ See Midwest ISO Answer at 5.

¹⁰ *Id.*

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,108 (2006) (April 25 Order), *reh'g pending*. The Commission has permitted the Midwest ISO an extension of time to comply with this order until after the date of issuance of an order on rehearing. *Notice of Extension of Time*, Docket No. ER04-691-065 (May 17, 2006), *reh'g pending*.

refunds to customers based on recalculations from the start of the Midwest ISO's energy market on April 1, 2005, in accordance with tariff language that was effective and on file.¹² Because RSG charges represent the majority of the open disputes, as noted by the Midwest ISO and Wisconsin Electric,¹³ we believe the April 25 Order's directives may impact the dispute initiation rate, thus warranting additional time for market participants to review their settlement statements.

16. Accordingly, we reject the Midwest ISO's proposal because it does not provide adequate support for changing the dispute initiation time frame consistent with the directives of the September 15 Order¹⁴ and because there are outstanding issues related to the RSG payments. Our decision here is without prejudice to the Midwest ISO demonstrating that it has substantially reduced its settlement issues or proposing a compromise dispute resolution time frame through a subsequent filing. To this end, we direct the Midwest ISO to file informational reports every 90 days, beginning 90 days from the date of this order for the purpose of demonstrating whether the Midwest ISO: (1) has attained accurate and complete settlement statements by 55 days after the Operating Day; (2) has reduced the number of disputes outstanding; and (3) is ready to revise the 115-day dispute initiation time frame.

The Commission orders:

(A) The Midwest ISO's proposed revisions are hereby rejected, without prejudice, as discussed in the body of this order.

(B) The Midwest ISO is directed to file informational reports with the Commission every 90 days, as directed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² See April 25 Order at P 26–27.

¹³ See Protest of Wisconsin Electric at n. 6 (April 5, 2006); Midwest ISO "Market Dispute Update, March 2006", *available at* http://www.midwestmarket.org/publish/Document/735a38_109988af51a_-79e60a48324a

¹⁴ September 15 Order at P 12.