

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission System Operator, Inc. Docket Nos. ER02-107-001
ER02-107-002

ORDER ACCEPTING FOR FILING AMENDMENTS TO
ALTERNATIVE DISPUTE RESOLUTION PLAN

(Issued May 20, 2003)

Introduction

1. On February 12, 2002 and as supplemented on February 20, 2002, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a filing to comply with the Commission order issued on December 14, 2001.¹ In this order, the Commission accepts the proposed filing, effective December 15, 2001, as requested. This order benefits customers by clarifying provisions for resolving real-time operational disputes.

Background

2. On October 15, 2001, Midwest ISO submitted the proposed Alternative Dispute Resolution Plan (ADR Plan) in an effort to comply with the order issued in Midwest Independent Transmission System Operator, Inc.² In the September 16 Order, the Commission authorized the establishment of Midwest ISO and conditionally accepted for

¹Midwest Independent Transmission System Operator, Inc. 97 FERC ¶ 61,270 (2001) (December 14, 2001 Order).

²Midwest Independent Transmission System Operator, Inc. 84 FERC ¶ 61,231, (September 16 Order), order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC ¶ 61,372 (1998), Opinion No. 453, 97 FERC ¶ 61,033 (Opinion No. 453), order denying reh'g in part and clarifying prior order, 98 FERC ¶ 61,141 (Opinion No. 453-A) (2001), order on remand 102 FERC ¶ 61,192, reh'g pending (2003).

filing the open access transmission tariff for Midwest ISO (Midwest ISO Tariff) and the Midwest ISO Transmission Owners Agreement (Midwest ISO Agreement) and established hearing procedures. In that order, and in subsequent orders, the Commission directed the Midwest ISO participants to make various changes to Midwest ISO's Tariff and the Midwest ISO Agreement. The Commission directed Midwest ISO to:

"...create procedures to address real-time operational disputes as described by CILCO [Central Illinois Light Company]³ and to address disputes involving ATC [available transmission capacity] ATC calculations and equipment..."⁴

3. On October 15, 2001, Midwest ISO submitted supplements to Appendix D, Alternative Dispute Resolution Procedures, set forth in the Midwest ISO Agreement and in more detail in Cooperation Procedures and Protocol 14 (CPP 14). The proposed supplements provided a two-tier process for addressing disputes, one for normal disputes and one for real-time disputes.

4. The December 14 Order directed Midwest ISO to amend Appendix D to be consistent with CPP 14 and accepted the proposed ADR Plan, as modified, subject to the outcome of Docket No. RM01-12-000.⁵

5. On February 12, 2002,⁶ Midwest ISO filed revisions to the ADR Plan incorporating procedures for real time operational disputes related to system security and reliability issues. According to Midwest ISO, these revisions contain the same degree of specificity as were contained in CPP 14.

³CILCO argued that the Midwest ISO Agreement lacks procedures to provide quick resolution of disagreements about the calculation of ATC, a denial of transmission service, or refusal by Midwest ISO to allow energy to be transmitted into or out of a particular control area to avoid service interruptions. Specifically, CILCO sought ADR review, available on a 24 hour basis, so that issues could be resolved in a short time period, such as a few hours. See September 16 Order, 84 FERC ¶ 61,231 at 62,165.

⁴September 16 Order, 84 FERC ¶ 61,231 at 62,166.

⁵Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, July 31, 2002, Docket No. RM01-12-000, 67 FR 55451 (August 29, 2002); 67 FR 58751 (September 18, 2002); 67 FR 63327 (October 11, 2002).

⁶On February 20, 2002, Midwest ISO submitted a corrected copy of the revisions to correct a pagination error.

Notice of Filing and Protest

6. Notice of the compliance filing was published in the Federal Register, with comments, protests and interventions due on or before March 5, 2002. Duke Energy North America, LLC (Duke Energy) filed a timely protest. Midwest ISO filed an answer to the protest.

Discussion

Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), Duke Energy's timely intervention serves to make it a party to this proceeding. Rule 213 (a) of the Commission's Rules of Practice and Procedure⁷ prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We find good cause exists to allow Midwest ISO's answer to the protest because it provides additional information that has been useful in our decision-making process.

Analysis

Protest

8. Duke Energy asserts that the proposed revisions do not offer quick resolution to all real time operational disputes. Duke Energy argues that market participants should designate the urgency level of the dispute instead of Midwest ISO personnel. Duke Energy also objects to several of the ADR Plan timetables because they delay the ultimate resolution of any dispute.

Answer

9. Midwest ISO argues against allowing the market participants to determine the level of urgency of their disputes. It asserts that if the market participants had this power they might be motivated to designate the highest urgency level for all of their respective disputes. Midwest ISO states that it is willing to accept suggested designations of urgency levels when certain disputes are submitted by market participants. However, Midwest ISO

⁷See 18 C.F.R. § 385.213(a)(2) (2002).

argues that those suggestions cannot be the only determinants for designating the urgency level of a dispute because when these disputes are viewed with the entire Midwest ISO service area in mind, the urgency level of the dispute may not be as high as the market participant believes it to be. Midwest ISO states that it is not opposed to shortening certain deadlines in the ADR process and is willing to work with Duke Energy and other stakeholders to reach mutually agreeable time frames.

Commission Determination

10. The Commission finds Midwest ISO's proposed ADR plan to be reasonable and will accept it, effective December 15, 2001, as requested.

11. With regard to Duke Energy's concern that market participants should designate the urgency level of the dispute, Midwest ISO indicates in its answer, the system operator is better able to recognize system contingencies that may not be readily apparent to the market participants. As a result, the Regional Transmission Organization (RTO) may determine that the urgency level of the dispute may not be as high as indicated by a market participant. One of the primary responsibilities of a RTO is to maintain the reliability of the grid. As we stated in Order No. 2000,⁸ we believe that the RTO, which is not affiliated with any market participant, is in the best position to oversee and provide reliable, non-discriminatory transmission service. Consequently, Midwest ISO should designate the urgency level of a dispute. Therefore, we will accept the procedures for designating urgency levels as described in Appendix D Section VI (A).

12. We note that in response to Duke Energy's request that certain time limits and deadlines be shortened, Midwest ISO in its answer, states that it is willing to negotiate certain deadlines in the ADR process. Therefore, we encourage Midwest ISO to work with Duke Energy and other interested parties, to revise the time limits proposed in the ADR Plan. Midwest ISO may file a revised ADR Plan proposing revisions to the time limits negotiated among the parties.

The Commission orders:

⁸Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

Midwest ISO's proposed ADR Plan is hereby accepted for filing, to become effective December 15, 2001, as requested.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.