

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. ER05-1029-000

ORDER CONDITIONALLY ACCEPTING TARIFF FILING

(Issued July 26, 2005)

1. In an order dated August 6, 2004, the Commission approved the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Transmission and Energy Markets Tariff (TEMT), which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state region.¹ The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity. In this order, we will conditionally accept the Midwest ISO's proposal to correct typographical errors within the TEMT and to make minor revisions that clarify particular provisions.

A. The Midwest ISO's Filing

2. The Midwest ISO filed a proposal on May 27, 2005, to make typographical and clarifying improvements to the TEMT. The Midwest ISO requests an effective date of July 26, 2005 for the revised tariff sheets.

3. Most of the Midwest ISO's revisions reflect minor clarifying edits, corrections of typographical errors, and general updates, such as a table of contents listing for the new Schedule 25, which is titled "Cross Border Allocation Tariff Provisions." However, in a

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005). The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. In turn, the TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

few instances, the Midwest ISO states that it revised the tariff to better reflect actual market practices, based on its Business Practices Manuals. The first example is Second Revised Sheet No. 208, which the Midwest ISO stated that it revised to be consistent with the Business Practices Manual² regarding disputes for market services.³ The second example is Attachment J, where the Midwest ISO stated that it removed the term “Operating Hour” and replaced it with the term “schedule” to better reflect what is currently set forth in the Business Practices Manual regarding scheduling.⁴

B. Notice, Interventions and Comments

4. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 33,468 (2005), with interventions and protests due on or before June 17, 2005. Wisconsin Electric Power Company filed a motion to intervene. Consumers Energy Company (Consumers) filed a motion to intervene and protest to the proposed revisions to Third Revised Sheet No. 208, section 12.1, which is entitled “Internal Dispute Resolution Procedures.”

5. Consumers argue that the revisions to section 12.1 unnecessarily and unfairly limit market participants’ ability to initiate disputes involving services under Module C of the tariff. Consumers is primarily concerned that, in cases of resettlements or non-standard settlements, disputes could not be timely initiated. Consumers’ notes that the Midwest ISO proposes to limit the opportunity to initiate a dispute to within 65 days of the relevant operating day.⁵ In addition, the Midwest ISO proposes that items presented on

² See Midwest ISO Business Practices Manual for Markets Settlements, Manual No. 5, Version 7, at 5-1 (June 8, 2005), *available at* http://www.midwestmarket.org/publish/Document/20f443_ffd16ced4b_-7e670a3207d2?rev=8.

³ See Midwest ISO transmittal letter at 3.

⁴ See *Id.* at 4. See also Midwest ISO Business Practices Manual for Scheduling, Manual No. 7, Version 5 at 16-1, (April 5, 2005), *available at* http://www.midwestmarket.org/publish/Document/10b1ff_101f945f78e_-76490a48324a?rev=6.

⁵ 65 day window = statement 55 days after Operating Day + 10 days to dispute. See Midwest ISO Business Practices Manual for Markets Settlements, Manual No. 5, Version 7, at 5-2 (June 8, 2005), *available at* http://www.midwestmarket.org/publish/Document/20f443_ffd16ced4b_-7e670a3207d2?rev=8.

day 105 that differ from the corresponding statement on day 55 must be disputed within 10 days of day 105, or 115 days from the original operating day. According to Consumers, this timeline would preclude market participants from initiating disputes related to a resettlement or a non-standard settlement presented to a market participant 120 days from the operating day.

6. Consumers asserts that, if the Midwest ISO does not relinquish its right to present resettlements and non-standard settlements, market participants should be afforded a reasonable amount of time to initiate a dispute related to those settlements that do not occur on a shorter, more normal timeline. Consumers presents a scenario in which, if the window for the initiation of disputes is limited to within 65 days after the operating day, as the Midwest ISO proposes, market participants could have as few as four business days to initiate a dispute.⁶ Consumers believes this time frame is unreasonable, and instead argues that a more reasonable time frame in which to initiate disputes is within 10 *business* days of the date of the settlement or resettlement statement(s).

7. Consumers' states that it understands the Midwest ISO may extend the dispute window, if needed, to 115 days from the Operating Day during the initial start-up period, April 1, 2005 through May 31, 2005. However, Consumers argues that the Midwest ISO should extend the initial start-up period for disputes to six months following start-up, *i.e.*, until September 30, 2005. Consumers also believes a reasonable extension of time for the initiation of disputes during the initial six-month period is within 50 business days from the date of settlement, resettlement or non-standard settlement.

8. In addition, Consumers states that it appears that by relying on the Markets Dispute section of the Business Practices Manual for Market Settlements instead of the Energy Markets Billing Dispute Resolution Manual, the Midwest ISO has precluded the use of alternative dispute resolution (ADR) to resolve disputes involving Module C services.

9. Therefore, Consumers requests that the Commission require the Midwest ISO to revise section 12.1 to state that all disputes involving services under Module C must be initiated within 10 business days from the date of settlement or resettlement statements and shall be governed by the Markets Disputes section of the Business Practices Manual for Market Settlements. Consumers also requests that the Commission direct the

⁶ Consumers bases the four-business-day assumption on a situation in which day 55, Christmas and New Year's Day all fall on a Friday.

Midwest ISO to explicitly state in section 12.1 that ADR may be used to resolve disputes involving Module C and describe the specific methods of ADR that may be used, as well as their timeframes, consistent with the Billing Dispute Resolution Manual.

C. Discussion

1. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

2. Substantive Matters

11. We agree with Consumers' concerns regarding market participants' ability to dispute settlements. 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 note that, under the pre-existing section 12.1,⁷ the pre-existing method was to require that disputes be initiated within 10 days of the date of settlement, and not to relate the deadline to the operating day. Therefore, we direct the Midwest ISO to revise Tariff Sheet No. 208 to state that, should a resettlement occur beyond the prescribed timelines, market participants retain the right to dispute Module C services and may do so within 10 days of the date of the resettlement statement or invoice. We direct the Midwest ISO to file this revision within 30 days of the issuance of this order.

12. We will not, however, require the Midwest ISO to change the period for initiating a settlement dispute from 10 calendar days to 10 business days, as Consumers requests. As detailed in the Midwest ISO's Business Practices Manual for Market Settlements, in order to initiate a dispute, a party need only complete an online form using information that it should have readily available.⁸ This is not an onerous requirement. Although it is possible that a market participant may have only four business days to initiate such a dispute in limited circumstances, as Consumers describes, it does not appear unjust or unreasonable to require that the market participant adhere to this schedule.

⁷ See Module A, section 12.1, Second Revised Sheet No. 208.

⁸ See Midwest ISO Business Practices Manual for Market Settlements, Manual No. 5, Version 7, at 5-6 through 5-8 (June 8, 2005), *available at* http://www.midwestmarket.org/publish/Document/20f443_ffd16ced4b_-7e670a3207d2?rev=8.

13. Although the Commission encourages the use of ADR,⁹ where appropriate, we do not agree with Consumers that the Midwest ISO's tariff revisions unreasonably restrict a market participant's ability to use ADR to settle disputes. The revisions require only that the affected market participant attempt to informally resolve Module C-related disputes with the Midwest ISO before they seek to use ADR. According to the Midwest ISO's Business Practices Manual for Market Settlements, market participants that cannot satisfactorily resolve disputes with the Midwest ISO may use ADR to challenge a decision.¹⁰ We find this is a reasonable solution because direct discussions between the Midwest ISO and the affected Market Participants are likely to be the most efficient method of resolution and should be exhausted before seeking resolution through other methods. We also do not believe that it is necessary to require the Midwest ISO to explicitly incorporate its ADR provisions in section 12.1 of the tariff. Section 12.1 is dedicated to internal resolution of disputes, *i.e.*, between the Midwest ISO and the affected market participant. Its reference to the appropriate Business Practices Manual is sufficient to indicate to market participants where they can find further information on further dispute resolution processes.¹¹

14. We also decline to direct the Midwest ISO to extend the initial dispute window from May 31, 2005 until September, 2005. Nothing precludes the Midwest ISO from exercising discretion to provide additional time uniformly to all market participants to resolve disputes that arise during the initial phase of the energy markets, when policies and procedures are being used for the first time.

⁹ "The Commission prefers and strongly encourages parties to resolve disputes on their own, or with the help of a mediator, and, thus, eliminate the need to bring disputes before the Commission." *California Power Exchange Corporation*, 88 FERC ¶ 61,112 at 61,266 (1999), *order on reh'g*, 88 FERC ¶ 61,138 (1999); *Pacific Gas & Electric Corporation*, 81 FERC ¶ 61,122 at 61,554 (1997).

¹⁰ See Midwest ISO, Business Practices Manual for Market Settlements, Manual No. 5, Version 7, section 5.2.8 at 5-11, (last updated on June 8, 2005), *available at* http://www.midwestmarket.org/publish/Document/20f443_ffd16ced4b_-7e670a3207d2?rev=8.

¹¹ The Business Practices Manual provides a definition of "dispute" and outlines the process for submitting a dispute to the Midwest ISO, including applicable deadlines. It also describes how the Midwest ISO will prioritize and review disputes, and specifies a process that market participants may use if they do not reach a satisfactory resolution with the Midwest ISO. *Id.* at 5-1 though 5-11.

15. Therefore, we will conditionally accept the Midwest ISO's revised tariff sheets for filing, effective July 26, 2005. We note that, in one instance, the Midwest ISO submitted an edit that is not grammatically correct. We direct the Midwest ISO to refile Revised Tariff Sheet No. 208, within 30 days of the issuance of this order, with the words "days of" deleted from the third full sentence.

The Commission orders:

(A) The Midwest ISO's filing is hereby conditionally accepted, subject to the conditions noted in the body of this order, to become effective July 26, 2005.

(B) The Midwest ISO is hereby ordered to file the revisions described in the body of this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.