

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 No. ER02-488-003

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued September 10, 2003)

I. Introduction

1. In this order, we conditionally accept the proposed revisions to Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Operational Protocols for Existing Generators (Operating Protocols). In light of the discussion below, we will order Midwest ISO to make a further compliance filing that is consistent with our findings.

2. This action benefits customers because it provides further guidance that helps to ensure the reliable operation of the facilities to be operated by Midwest ISO, as contemplated in Order No. 2000.¹

II. Background

3. In Midwest Independent Transmission System Operator, Inc., 100 FERC ¶ 61,262 (2002) (September 11 Order), the Commission granted clarification, ordered an additional compliance filing, and conditionally accepted Midwest ISO's Operating Protocols, effective April 16, 2002, subject to refund and to further orders to be issued in

¹Regional Transmission Organizations, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, FERC Stats. and Regs. ¶ 31,092 (2000) (Order No. 2000 and Order No. 2000-A, respectively), aff'd, Nos. 00-1174, et al. (D.C. Cir. Dec. 11, 2001) (order dismissing petitions).

the Notice of Proposed Rulemaking in Docket No. RM02-1-000.² The September 11 Order also directed Midwest ISO to, among other things, further refine the Operating Protocols by: (1) providing adequate assurance of payment when Generators are called upon to provide mandatory redispatch services;³ (2) establishing procedures for Generators to choose a payment option in advance of an emergency occurrence;⁴ (3) resolving compensatory issues for services that the Generators provide under the Operating Protocols;⁵ and (4) providing protection to Generators against the monetary effects of third-party actions.⁶ The September 11 Order directed Midwest ISO to continue to negotiate with its stakeholders to develop certain aspects of its Operating Protocols.

A. Compliance Filing

4. On October 11, 2002, Midwest ISO submitted its compliance filing. Midwest ISO requests that the Commission waive the 60-day prior notice requirement in order to accommodate the effective date requested in the original filing (April 16, 2002).

B. Notice and Responses

5. Notice of Midwest ISO's compliance filing was published in the Federal Register, 67 Fed. Reg. 68,121 (2002), with comments, protests, and motions to intervene due on or before November 1, 2002.

6. Detroit Edison Company (Detroit Edison) filed a timely motion to intervene without substantive comment. Consumers Energy Company (CECo) filed a timely motion to intervene and protest. Midwest ISO filed an answer to CECo's protest.

²See, Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, RM02-1-000, 67 Fed. Reg. 22,249 (April 24, 2002), FERC Regs. Preambles, IV FERC ¶ 32,560 (2002) (Generator Interconnection NOPR).

³September 11 Order, 100 FERC ¶ 61,262 at P 15.

⁴Id., at P 32.

⁵Id., at P 38.

⁶Id., at P 42.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make Detroit Edison and CECo parties to this proceeding.

8. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. We accept Midwest ISO's answer to CECo's comments and protest because the answer provides additional information that has been useful in our decision-making process.

B. Operating Protocols

1. Section 3.7 (Generator Compensation for Actions During Emergency Conditions) (Formerly 7.3.7)⁷

a. September 11 Order

9. The September 11 Order directed Midwest ISO to reconcile Section 7.3.7 of its Operating Protocols with Section 3 of Attachment K (Congestion Relief) of the Midwest ISO Open Access Transmission Tariff (OATT).

b. Midwest ISO Proposal

10. In its compliance filing, Midwest ISO explains that it cannot revise Section 3.7 of the Operating Protocols as directed in the September 11 Order. On September 13, 2002, in Docket No. ER02-1767-000, Midwest ISO requested permission to withdraw pending proposed revisions to Attachment K of Midwest ISO's OATT. In that filing, Midwest ISO also requested authorization to defer implementation of Attachment K until the Midwest ISO energy markets become operative. The Commission granted Midwest ISO's request in a Letter Order. See, [Midwest Independent Transmission System Operator, Inc.](#), 101 FERC ¶ 61,174 (2002). In light of that decision, Midwest ISO

⁷In the compliance filing addressed in the September 11 Order Section 7.3.7 was renamed Section 3.7 (Generator Compensation for Actions During Emergency Conditions). Transmittal Letter at 2.

proposes here to continue its current business practice where Generators receive no compensation under the Midwest ISO OATT for Emergency Redispatch. However, Midwest ISO states that it will work with its stakeholders on compensation issues relating to Emergency Redispatch.⁸

c. Parties' Arguments

11. No party filed comments on this proposal.

d. Commission Determination

12. The withdrawal of the revisions to Attachment K of the Midwest ISO OATT and deferral of its implementation temporarily addresses our concern regarding the reconciliation of Section 7.3.7 of the Operating Protocols with Section 3 of Attachment K. However, on July 24, 2003, the Commission issued a Final Rule in Docket No. RM02-1-000, Order No. 2003⁹ requiring the Transmission Provider or RTO/ISO to compensate the Interconnection Customer for real and reactive power or other emergency condition services that the Interconnection Customer provides to support the transmission system during an emergency situation.¹⁰ Furthermore, in the Final Rule, the Commission stated that if there is no rate schedule in place for payment, the transmission provider must develop a rate schedule and pay as if the rate schedule was in effect at the time the service was provided. Therefore, upon the effective date of the Final Rule we direct Midwest ISO to discontinue its business practice of not compensating Interconnection Customers for Emergency Redispatch to comply with the Final Rule's directive. Meanwhile, we direct Midwest ISO to continue to work with its stakeholders to resolve the issue relating to compensation for Emergency Redispatch service.

⁸Transmittal Letter at 3.

⁹Standardization of Generator Interconnection Agreements and Procedures, 104 FERC ¶ 61,103 (2003). (Final Rule)

¹⁰See Standard Large Generator Interconnection Agreement, Article 11.6.1 at 59.

2. Section 1.2 (Prior Agreements) and Midwest ISO's Authority to Supersede Prior Agreements

a. September 11 Order

13. In the September 11 Order, the Commission directed Midwest ISO to revise Section 1.2 to include a 60-day limitation on its authority to supersede a prior agreement in the absence of a Section 206¹¹ filing or an agreement among the parties. The Commission also agreed that a Section 206 filing within the 60-day period will stay the running of such period, and Midwest ISO's right to supersede prior agreements unilaterally will continue until an order on the Section 206 filing is issued.

b. Midwest ISO Proposal

14. Midwest ISO proposes to revise Section 1.2.1 by adding the following language:

In the event the Midwest ISO must exercise its authority to temporarily supersede a Prior Agreement in order to avoid an imminent threat to the reliability of the Transmission System, the Midwest ISO's authority will terminate within sixty (60) days of such superseding event, unless an agreement is reached between the Generator and the Midwest ISO or a Section 206 filing pursuant to the Federal Power Act is submitted to the FERC by the Midwest ISO. In the event the Midwest ISO submits a Section 206 filing within the sixty (60)-day period, the Midwest ISO maintains the right to unilaterally supersede the Prior Agreement until an order is issued by the FERC with respect to the Midwest ISO's Section 206 filing.

c. Parties' Arguments

15. CECo objects to the proposed changes to Section 1.2.1. It asserts that Midwest ISO should not be allowed to supersede a Prior Agreement indefinitely by giving Midwest ISO the sole authority to submit a Section 206 filing pursuant to Section 1.2.1, as proposed. Specifically, CECo argues that if the proposed revision is accepted, Midwest ISO could wait until the end of the 60-day period to make a Section 206 filing, and thus prolong its ability to supersede a Prior Agreement. CECo points out that if the Commission finds, in the Section 206 proceeding, that Midwest ISO's authority to

¹¹Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

supersede the Prior Agreement should be terminated, then Midwest ISO will have superseded the Prior Agreement with no showing of just cause for significantly longer than the 60-days originally provided for in the pro forma OATT.

16. CECo argues that the Generators or Third Parties should also be allowed to make a Section 206 filing within that 60-day period. According to CECo, this would allow a Generator or Third Party who believed that Midwest ISO was unjustly exercising its authority to temporarily supersede a Prior Agreement the opportunity to obtain a Commission order sooner thereby mitigating possible harm. CECo requests that the Commission direct Midwest ISO to further revise Section 1.2.1 to also permit a Generator or a Third Party to make a Section 206 filing with the Commission within the 60-day period.

d. Commission Determination

17. The September 11 Order did not grant Midwest ISO sole authority to submit a Section 206 filing. In its answer, Midwest ISO points out that nothing in Section 1.2.1 prohibits the Generators from making their own Section 206 filing or intervening in any Section 206 filing that Midwest ISO initiates. If CECo believes that it may be harmed by Midwest ISO filing to supersede Prior Agreements pursuant to these Operating Protocols, it or any other party can make a Section 206 filing to support such a position. However, to avoid the possibility of misinterpretation of Section 1.2.1, we direct Midwest ISO to further revise the language in Section 1.2.1 to state that the Generator or another party may submit a Section 206 filing to the Commission within that 60-day period.

3. Additional Proposed Revisions

18. Midwest ISO also submitted additional revisions to its Operating Protocols, as required by the September 11 Order. No party filed comments on these proposed revisions. Our examination indicates that each of these proposed revisions complies with the September 11 Order.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby conditionally accepted for filing, suspended for a nominal period, to become effective April 16, 2002, subject to refund.

(B) Midwest ISO is hereby ordered to file, within 15 days of the date of this order, the revised Operating Protocols, consistent with the discussion herein.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.