

submitted by the Midwest ISO in Docket Nos. ER04-1165-000 and ER04-1165-001 to establish priorities among requests to roll over transmission service under existing agreements and competing requests for new service, and to establish a methodology for processing such requests. This order benefits customers by providing certainty concerning the processing of requests to roll over existing transmission service reservations and competing requests for new transmission service reservations.

I. Background

2. On December 23, 2003, Tenaska Power Services Company (Tenaska) filed a complaint against the Midwest ISO alleging that the Midwest ISO improperly processed its request for transmission service for calendar year 2004 over the Michigan-Ontario (MI-IMO) interface by allowing later-queued new service requests to preempt earlier-queued requests to roll over existing long-term firm transmission service reservations. Tenaska also alleged that the Midwest ISO's scheduling procedures did not comport with Order No. 638.

3. On December 29, 2003, Cargill Power Markets, LLC (Cargill) filed a complaint alleging that the Midwest ISO changed its methodology for processing requests to roll over existing service through a notice that was posted on the Midwest ISO's OASIS on October 31, 2003 (October 31 Notice), with almost no notice and without a proper vetting through the stakeholder process. Cargill also alleged that the Midwest ISO's change in its treatment of rollover rights was inconsistent with its open access transmission tariff (OATT) and Business Practices as well as Commission policy and precedent.

4. In granting the two complaints in the March 8 Order, the Commission found that: (1) section 2.2 of the *pro forma* OATT does not define whether a "competing request" can be made prior to a renewal request, subsequent to a renewal request, or both; and (2) the Midwest ISO posted a notice, on October 31, 2003, indicating that competing new service requests may be submitted only *after* a rollover request is submitted. The Commission found that this approach was inconsistent with Commission policy and precedent because it allowed an existing customer to wait until the last moment before the deadline to exercise its rollover rights and thus eliminate any competing requests. The Commission concluded that since the Midwest ISO's methodology may make it impossible to ever have a competing request, such a methodology would be inconsistent with section 2.2 and its precedent. The Commission also found that the twenty-four hour period for rollover request customers to decide whether to match competing requests was unreasonable. Finally, the Commission found that the Midwest ISO's methodology was discriminatory because it required rollover customers to match subsequent new service requests, but did not require customers submitting rollover requests after new service requests to match those new service requests (all of which service was to commence or roll over on the same date).

5. In the March 8 Order, the Commission directed the Midwest ISO to reprocess the transmission queue to reconsider Tenaska's and Cargill's requests, as well as other transmission service requests that were submitted from March through December 2003, following the methodology in its Business Practices. The Commission also concluded that remedial action should not be prospective only, explaining that certain parties should not be allowed to retain transmission capacity that they should not have received in the first place. Further, in the event that the Midwest ISO found that its methodology set forth in its Business Practices was inadequate and needed to be changed, the Commission directed the Midwest ISO to vet any changes through its stakeholder process and, if necessary, file the proposed tariff language with the Commission.

6. In the Complaint Rehearing Order, the Commission denied rehearing of the March 8 Order and directed the Midwest ISO to submit a compliance filing reflecting that it had reprocessed its transmission queue for calendar-year 2004.

II. Compliance Filing

7. On August 9, 2004, as amended on August 12, 2004, the Midwest ISO submitted a compliance filing reflecting that it reprocessed its transmission queue for the Michigan-Ontario (MI-IMO) interface for the calendar year 2004 in accordance with the existing provisions of its OATT, Business Practices, and the Commission's prior orders related to these proceedings. The compliance filing provides full details of the entire reprocessing of the queue as directed by the Commission.

III. Proposed Tariff Revisions

8. On August 31, 2004, as amended on September 22, 2004, the Midwest ISO filed, in Docket Nos. ER04-1165-000 and ER04-1165-001, proposed revisions to section 2.2 and Attachment J of the Midwest ISO OATT to establish a methodology to govern the exercise of rollover rights by existing long-term firm transmission customers and the processing of requests to roll over existing transmission service reservations and requests for new transmission service. The Midwest ISO explains that the proposed revisions are in response to the Commission's invitation to propose such a methodology for its OATT to take effect on a prospective basis. The Midwest ISO requests that the Commission make the proposed revisions effective October 30, 2004, sixty days after the filing of the proposed revisions.

IV. Notice, Interventions and Comments

9. Notice of the Midwest ISO's compliance filing was published in the *Federal Register*, 69 Fed. Reg. 52,249 (2004), with interventions, comments and protests due on or before August 25, 2004. Notice of the Midwest ISO's amended compliance filing was

published in the *Federal Register*, 69 Fed. Reg. 52,249 (2004), with interventions, comments and protests due on or before August 30, 2004. Timely comments were filed by PSEG Energy Resources and Trade LLC (PSEG). On September 14, 2004, the Midwest ISO filed an answer to PSEG's comments. On September 27, 2004, Cargill filed an answer to the Midwest ISO's answer and PSEG's comments.

10. Notice of the Midwest ISO's proposed tariff revisions was published in the *Federal Register*, 69 Fed. Reg. 55,424 (2004), with interventions, comments and protests due on or before September 21, 2004. Notice of the Midwest ISO's amended proposal was published in the *Federal Register*, 69 Fed. Reg. 58,898 (2004), with interventions, comments and protests due on or before October 8, 2004. Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C., American Municipal Power-Ohio, Inc., Transalta Energy Marketing (U.S.) Inc., Northern Indiana Public Service Company, WPS Resources Corporation and Consumers Energy Company filed timely motions to intervene, with no substantive comments. Archer-Daniels-Midland Company (Archer-Daniels) and PSEG filed timely interventions and comments.

V. Discussion

A. Procedural Issues

11. 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 in Docket Nos. ER04-1165-000 and ER04-1165-001.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Midwest ISO's answer to PSEG's comments or Cargill's answer to PSEG's comments and to the Midwest ISO's answer, filed in Docket No. EL04-43-002, *et al.*, and will, therefore, reject them.

B. Compliance Filing

13. In its compliance filing, the Midwest ISO details the reprocessing of the transmission queue for the MI-IMO interface for calendar-year 2004, in accordance with the Commission's prior orders in these proceedings, and reports the results of that process.

Comments

14. PSEG commends the Midwest ISO for successfully and timely reprocessing the transmission queue at the MI-IMO interface. PSEG states that its first rollover request was reprocessed as a result of the Midwest ISO's actions detailed in the compliance filing. PSEG, however, raises three issues related to the processing of its second rollover request, which was not subject to the Midwest ISO's queue reprocessing. PSEG requests that the Commission direct the Midwest ISO to clarify these issues for prospective periods and revise its OATT and Business Practices accordingly.

Commission Decision

15. PSEG's comments address issues that are outside the scope of this compliance filing since the comments go to the treatment of rollover requests outside of the queue reprocessing period.² We find that the Midwest ISO has complied with the requirements of the Commission's orders. Accordingly, we accept the Midwest ISO's compliance filing.

C. Proposed Tariff Revisions

16. The Midwest ISO proposes to revise section 2.2 and Attachment J of its OATT to clarify its procedures for processing transmission service requests and specifically for addressing competing rollover and new service requests. The proposed revisions: (1) provide that earlier-queued rollover requests do not have to compete, on contract term, against later-queued new service requests; (2) provide that earlier-queued new service requests have the opportunity to compete, on contract term, against all later-queued rollover requests of a lesser term; and (3) require that a rollover request queued after competing new service requests must match the term of all previously submitted active new service requests in order to retain existing transmission capacity. The proposed revisions specify under what circumstances rollover customers will be required to match the term of new service requests, or risk losing their rollover capacity. The proposed provisions also allow for a new service request to be conditionally accepted when an interface is fully subscribed. The Midwest ISO states that under its proposed methodology, rollover requests subject to competition on term will be processed based on the weakest queue position, i.e., the later-queued rollover request is the first to be asked to match a new competing request.

² We note that PSEG has raised these same issues in Docket No. ER04-1165-000, and we will address them below.

17. Additionally, the Midwest ISO proposes revisions to Attachment J of its OATT to establish a window of three business days within which a rollover customer may agree to match the term of a competing request.

Comments

18. PSEG explains that prior to the Midwest ISO's recent queue reprocessing, it had two pending requests to roll over an existing long-term firm transmission service reservation for one-year periods commencing January 1, 2004 and January 1, 2005, respectively. As a result of the reprocessing of the transmission queue required in the Complaint Rehearing Order, PSEG extended the term of its first rollover request to 1.67 years, in competition with a longer-term competing request, and was awarded the capacity for a term commencing January 1, 2004 and extending through July 31, 2005. PSEG seeks clarification of three issues relating to the effect of the Midwest ISO's proposed rollover processing procedures and requests that the Commission require the Midwest ISO to revise its OATT and Business Practices accordingly.

19. Archer-Daniels states that it does not object to the proposed tariff revisions, but argues that critical notification and implementation details are missing from the Midwest ISO's proposal. Archer-Daniels requests that the Commission direct the Midwest ISO to include these details in the Midwest ISO OATT.

Commission Decision

20. Our review indicates that the Midwest ISO's proposed revisions to its OATT, as modified below, are consistent with or superior to the Commission's *pro forma* tariff. The proposed revisions, as modified, provide clarity and certainty to the process of establishing priorities among transmission requests, in turn providing benefits to customers and avoiding situations such as the one that gave rise to the complaints filed in Docket Nos. EL04-43-000 and EL04-46-000. Therefore, the Commission will accept the proposed revisions to section 2.2 and Attachment J of the Midwest ISO OATT, as modified, to become effective October 31, 2004.³

21. In 2003, PSEG submitted a one-year rollover request for service beginning January 1, 2004. PSEG submitted its second rollover request for service commencing January 1, 2005, after the Midwest ISO awarded it service for a one-year term, as a result of the Midwest ISO's initial processing of PSEG's first rollover request. However, as a result of the Midwest ISO's reprocessing of the queue for service commencing January 1,

³ Absent waiver, this is the earliest date that the Midwest ISO's proposed revision can be made effective (after 60-days notice).

2004, PSEG was required to match a longer-term competing request in order to roll over its existing service, which it did. In this context, PSEG seeks clarification that when any transmission customer submits a rollover request for service in Period 2 and proceeds to match a longer-term request for service in Period 1, the Period 2 rollover request should begin when the extended duration of the Period 1 rollover request ends. We expect that the situation described in the clarification sought by PSEG would rarely occur in the future because customers most likely will wait for their first rollover request to be granted before submitting a second rollover request. However, for such anomalous situations where there are two pending, concurrently submitted rollover requests covering different time periods, and the service period of the first-in-time request is extended due to a competing request, we now clarify that the customer with the second rollover request must submit a new rollover request and take a new place in the queue. We conclude that adjusting the commencement date for a customer's rollover request for a subsequent term to match the expiration date of the service awarded pursuant to a previous rollover request, without requiring the customer to resubmit its second rollover request and take a new place in the queue for that request, does not reflect an appropriate balancing of interests of existing and potential new customers. If a rollover request customer must revise the commencement date of its Period 2 rollover request because it is awarded a longer-term reservation for its Period 1 rollover request, it should submit a new rollover request, just as customers modifying new service requests must submit such modifications as a new request. For these reasons, we will not adopt PSEG's proposal.

22. PSEG also seeks clarification that in a situation where a Period 1 rollover request is extended, a transmission customer should have the option to choose between the duration of the original Period 2 rollover request and the longer-term duration of the extended Period 1 service. Thus, PSEG submits, it should be able to choose between a one-year or a 1.67-year period for its Period 2 rollover request. PSEG explains that such treatment would be equitable because it would permit the rollover customer the same rights in Period 2 that the competing new customer would have acquired had it been awarded service in Period 1, since the new customer would have been able to submit a rollover request in Period 2 for the duration of service that it requested in Period 1. For the same reasons we deny PSEG's requested clarification concerning the commencement of the term for subsequent rollover requests above, we conclude that if PSEG desires to modify the duration of a subsequent rollover request, it must submit a new rollover request. Contrary to PSEG's assertion, a new customer winning the competition in Period 1 would not have a right to choose between a shorter period and the period it was awarded when exercising its rollover right for Period 2. Also, a new customer winning the competition in Period 1 would not have a right to modify a rollover request for Period 2 without submitting a new rollover request for Period 2. PSEG has provided no justification as to why a customer with rollover service in Period 1 should be treated any differently from a new service customer in Period 1.

23. However, while we reject PSEG's proposals on a generic basis, we recognize that PSEG faces a unique situation resulting from the reprocessing of transmission queue directed in the March 8 Order and the Complaint Rehearing Order. As a result of the longer-term reservation resulting from the reprocessing, PSEG must revise the commencement of its Period 2 rollover request or have a service request that overlaps in time with its awarded service.

24. In this instance, because it appears that PSEG reasonably relied on the Midwest ISO's initial processing of its Period 1 rollover request when it submitted its Period 2 rollover request, and the commencement date of its Period 2 rollover request must be revised as a result of the reprocessing of the transmission queue, we find that the commencement date of PSEG's Period 2 rollover request should be adjusted to match the expiration date of the service awarded pursuant to the reprocessing of the Period 1 rollover request. This adjustment should be made without requiring PSEG to resubmit its Period 2 rollover request and take a new place in the queue for that request. We find that PSEG's Period 2 rollover request would, thus, have a duration commencing August 1, 2005 and extending through the remaining term of its Period 2 request, i.e., through December 31, 2005. In this unique situation, we also find that PSEG would retain rollover rights for any service awarded pursuant to its Period 2 rollover request even though such service might be for less than one year. While this may result in no competition for the disputed capacity because all other requests are later-queued new service requests, that result reasonably reflects the earlier queue position of PSEG's Period 2 rollover request and the fact that it was submitted by PSEG in reasonable reliance on Midwest ISO's initial processing of its Period 1 rollover request.

25. PSEG also seeks clarification that once a transmission customer has requested to roll over its first rollover request, and chosen the duration of the request, the customer should have the ability to nominate Financial Transmission Rights (FTRs) based on the second rollover request. This request is beyond the scope of the Midwest ISO's filing. The Midwest ISO's filing is limited to the Midwest ISO's procedures for processing transmission service requests. The nomination of FTRs is not at issue in this proceeding.

26. Archer-Daniels states that it does not object to Midwest ISO's proposal for a three-business day window to confirm a matching request but that certain crucial notification and implementing details are missing from the proposal. First, Archer-Daniels requests that the Midwest ISO's proposal be amended to identify the specific means that the Midwest ISO will use to notify a rollover customer that it must match a competing request, so that a rollover customer will know exactly where and when it will be notified about the potential matching requirement. Second, Archer-Daniels proposes that the Midwest ISO's proposal be revised to specify precisely when the three-business day window begins; Archer-Daniels proposes that the three-business day period begin on the next business day following the date that the Midwest ISO gives notice of a competing

request to the rollover customer. Finally, Archer-Daniels requests that the Midwest ISO's proposal be modified to specify a means by which the rollover customer will be notified that it is no longer subject to a requirement to match competing requests. Archer-Daniels states that the proposed modifications will provide certainty to the Midwest ISO's customers and will benefit customers. The Commission agrees with Archer-Daniels that such additional specificity would provide greater certainty to customers and avoid potential disputes in the future. Therefore, we direct the Midwest ISO to file revised tariff sheets reflecting the modifications to notice and implementation procedures discussed above.

27. We direct the Midwest ISO to file the modifications directed above within 30 days of the date of this order.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby accepted, as discussed in the body of this order.

(B) The proposed revisions to Midwest ISO's OATT are hereby accepted for filing, as modified, to become effective October 31, 2004.

(C) The Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order reflecting the modifications discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.