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. ER06-493-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued March 16, 2006)

1. On January 17, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to section 7 and Attachment L of its Open Access Transmission and Energy Markets Tariff (TEMT or tariff) which would provide the Midwest ISO with the authority to suspend, pursuant to a notice procedure, any and all services under the TEMT to customers in default, without prior Commission approval. As discussed below, the Commission will conditionally accept the proposed tariff revisions, to become effective March 19, 2006.

Background

2. Under the currently-effective tariff language, the Midwest ISO must obtain Commission approval prior to suspending and/or terminating the services it provides to its tariff customers. The originally proposed TEMT, filed with the Commission in Docket No. ER04-691-000 on March 31, 2004, contained provisions to allow the Midwest ISO to suspend and/or terminate services to tariff customers without prior Commission approval. The Commission did not accept those provisions and directed the Midwest ISO to revise its credit and billing policies to require Commission approval prior to the suspension and/or termination of service.[1]

---

[1] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 477-78, *order on reh'g*, 109 FERC ¶ 61,157, at P 383, *order on compliance*, 109 FERC ¶ 61,285, at P 398 (2004), *order on reh'g and compliance*, 111 FERC ¶ 61,043 (2005).

January 17 Filing

3. On January 17, 2006, the Midwest ISO filed with the Commission proposed revisions to section 7 (Billing and Payment; Defaults and Remedies) and Attachment L (Credit Policy) of its TEMT (January 17 Filing). The Midwest ISO states that it made the revisions due to an urgent need to reduce unacceptably high levels of credit risk and liabilities shared by its market participants created by tariff customers' potential default. Accordingly, the Midwest ISO requests a waiver of the 60-day prior notice requirement to allow the proposed revisions to become effective January 18, 2006.

4. Through the proposed tariff revisions, the Midwest ISO seeks the authority to suspend, with notice, any and all services under the TEMT to a tariff customer in default, in circumstances when the Midwest ISO believes that the customer's continuing participation in the Energy Markets or other activities pose an unacceptable risk to other market participants. Such authority to suspend would not be subject to Commission approval. To effectuate these changes, the Midwest ISO proposes revisions to the language in section 7.14(a)(ii) to state that the Midwest ISO may:

> (ii) suspend any and all services a Tariff Customer in Default receives under its Service Agreement(s), Market Participant Agreement, other agreements and/or this Tariff (including such Tariff Customer's access to the Energy Markets and FTR Auction); provided that any such suspension is effectuated, where practicable, upon notice to the Tariff Customer and the Commission and provided further that in no event any such notice shall be given later than twenty-four (24) hours after a suspension under this provision takes effect; . . .[2]

Also in section 7, the Midwest ISO proposes to strike language referring to Midwest ISO receiving Commission approval prior to taking any such action. In Attachment L, the Midwest ISO proposes to add language stating that suspensions of service will take effect "in accordance with Section 7.14(a)(ii) of the Tariff" until the Total Potential Exposure Violation is cured.[3]

---

[2] *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Module A, Second Revised Sheet No. 184A (proposed).

[3] *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Attachment L, Second Revised Sheet No. 1234 (proposed). In general, a Total Potential (continued)

5. The Midwest ISO notes that it does not propose to revise its policies with respect to existing *termination* procedures for service agreements and Market Participant Agreements which, according to sections 7.4 and 7.8 of the TEMT, require Commission approval prior to termination.[4] According to the Midwest ISO, the requirement for Commission approval in these sections provides an additional layer of protection to tariff customers from arbitrary terminations of service agreements.

6. The Midwest ISO maintains that the proposed changes are consistent with the Commission's *Policy Statement on Electric Creditworthiness*.[5] The Midwest ISO notes that "[b]ecause [Independent System Operators (ISOs)] and [Regional Transmission Organizations (RTOs)] are generally not capitalized sufficiently to absorb the impact of defaults by market participants, the credit risk exposure is ultimately socialized across an ISO's or RTO's members and lies with non-defaulting participants."[6] The Midwest ISO also maintains that the proposed revisions are consistent with the suspension authority held by other RTOs and ISOs, including ISO New England Inc. (ISO-NE), the New York Independent System Operator, Inc. (NYISO), and PJM Interconnection, L.L.C. (PJM). While the Midwest ISO acknowledges that the suspension provisions of the other markets' tariffs vary, the Midwest ISO contends, in general, that these other RTOs and ISOs have the ability to suspend service to defaulting market participants without obtaining prior Commission approval. Therefore, the Midwest ISO states that its filing is intended to bring the TEMT in line with the tariffs of other markets, regarding the ability of the tariff administrator to take quick action to limit credit risks caused by ongoing defaults.

7. Moreover, the Midwest ISO notes that after the Commission issued orders affecting certain credit policies, the Midwest ISO became increasingly concerned about its inability to suspend service to customers in default quickly. The Midwest ISO states

---

Exposure Violation occurs when a market participant's Total Potential Exposure equals or exceeds its Total Credit Limit. *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Attachment L, First Revised Sheet No. 1234.

[4] *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Module A, First Revised Sheet Nos. 160-61 and First Revised Sheet No. 169, respectively.

[5] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 (2004).

[6] January 17 Filing at 5 (citing *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 17).

that market participants have a proven capacity to accumulate substantial liabilities within very short periods of time, and the current policy could cause substantial delays, thus exposing all market participants to substantial uplifts of unpaid obligations. The Midwest ISO also notes that the recent bankruptcy of a major independent power producer with substantial trading volumes in the energy markets has further increased the Midwest ISO's concerns. The Midwest ISO also notes that there were 115 occasions in the last quarter of 2005 when tariff customers committed a Total Potential Exposure Violation.[7]

8. The Midwest ISO reports that the January 17 Filing was not submitted for stakeholder approval. According to Mr. Gootee's affidavit, "[t]he proposal to grant to the Midwest ISO the right to suspend without obtaining prior FERC approval was incorporated into the initial version of the [TEMT] filed in Docket No. ER04-691-000 on March 31, 2004."[8] Mr. Gootee states that "the suspension provisions that were submitted initially were the result of an extensive stakeholder process," and therefore, there is no need for a new stakeholder process "to re-visit an issue previously discussed with stakeholders."[9] The Midwest ISO also states that because the need for these revisions is urgent, it was not in the public interest to delay the filing with a lengthy stakeholder process.

Notice and Responsive Filings

9. Notice of the filing was published in the Federal Register, 71 Fed. Reg. 4,909 (2006), with interventions and protests due on or before February 7, 2006.

10. A timely motion to intervene was filed by the Midwest Stand-Alone Transmission Companies (MSATs).[10] Wisconsin Electric Power Company (Wisconsin Electric) filed a timely motion to intervene and comments. Timely motions to intervene and protests were filed by: (1) American Municipal Power-Ohio, Inc. (AMP-Ohio); (2) Basin Electric

---

[7] *See supra* note 3.

[8] In support of the January 17 Filing, the Midwest ISO filed the affidavit of Phillip Gootee, Director of Credit and Risk Management for the Midwest ISO. January 17 Filing at Tab A, Affidavit of Phillip Gootee at P 13 (Gootee Affidavit).

[9] *Id.*

[10] For the purposes of their filing, the MSATs include: American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

Power Cooperative and East River Electric Power Cooperative, Inc. (together, the Basin Electric Cooperatives); (3) WPS Resources Corporation and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., and its subsidiary, WPS Power Development, LLC (collectively, WPS Resources); and (4) the Midwest TDUs.[11]

11. Consumers Energy Company (Consumers) filed an untimely motion to intervene. The Michigan Public Power Agency and Michigan South Central Power Agency (together, the Michigan Agencies) filed an untimely motion to intervene and protest.

12. On February 22, 2006, the Midwest ISO submitted an answer to the comment and protests. On March 9, 2006, the Basin Electric Cooperatives submitted a reply to the Midwest ISO's answer.

Discussion

A. Procedural Matters

13. 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 of AMP-Ohio, the Basin Electric Cooperatives, the Midwest TDUs, the MSATs, Wisconsin Electric, and WPS Resources serve to make them parties to this proceeding. We will grant the motions for late intervention of Consumers and the Michigan Agencies, given the early stage of this proceeding, and the absence of any undue delay, prejudice, or burden to the parties.

14. 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 or another answer unless otherwise ordered by the decisional authority. We will accept the answer of the Midwest ISO and reply of the Basin Electric Cooperatives because they have provided information that assisted us in our decision-making process.

---

[11] For the purposes of their filing, the Midwest TDUs include: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.

B. The Need for the Proposed Revisions

1. Protests

15. While at least one commenter, Wisconsin Electric, filed comments supporting the need for the suspension authority sought by the Midwest ISO, the majority of protestors challenged the Midwest ISO's filing. Certain protestors, such as AMP-Ohio and the Midwest TDUs, contend there is no reason to overturn the Commission's decisions rejecting the Midwest ISO's prior proposal for suspension authority and argue that the Midwest ISO should not be permitted to suspend service without first obtaining Commission approval. Protestors such as AMP-Ohio, the Michigan Agencies and WPS Resources, argue that the Midwest ISO has overstated the "urgent need" for the proposed tariff revisions.

16. The Michigan Agencies argue that the Midwest ISO has not demonstrated that the 115 Total Potential Exposure Violations cited pose actual default risk to either the Midwest ISO or market participants. In support thereof, the Michigan Agencies note that the Midwest ISO has not provided evidence of a single instance in which the Midwest ISO has ever had to seek suspension approval from the Commission.

17. WPS Resources states that the 115 Total Potential Exposure Violations cited by the Midwest ISO are largely the result of inconsistent timelines between its billing cycle and its credit policy, not actual customer defaults. According to WPS Resources, the Midwest ISO sends invoices each Tuesday for previously provided services, whereby payment is due the following Tuesday. However, the Midwest ISO's credit practices do not require it to recognize payment against exposures until two days after a payment is made. WPS Resources states that 80 percent of its own alleged exposure violations are "false positives," that is, cases where payment was made and the Midwest ISO had not yet recognized it, or payment was not made but was not due until later. Therefore, WPS Resources asks that the Commission direct the Midwest ISO to revise its reporting-lag process before allowing it to make the proposed revisions.

18. Protestors also argue that one customer's financial troubles cannot justify the need to make wholesale changes to the credit policy that may negatively impact broad tariff customer classes. WPS Resources maintains that the January 17 Filing was made to address the financial troubles of Calpine Corporation, which is currently in bankruptcy proceedings.

2. The Midwest ISO's Answer

19. In its answer, the Midwest ISO maintains that the proposed suspension authority is necessary to protect market participants from mutualized default risk. The Midwest ISO

maintains that its proposal is just and reasonable and notes that adequate protections already exist in the TEMT to ensure against abuses of the proposed suspension authority. The Midwest ISO explains that a customer will not be impacted by the proposed revisions unless it violates the TEMT *and* fails to cure its violations within a prescribed cure period, thereby coming into default. Under the existing provisions of the TEMT, a tariff customer is always provided at least two business days to cure its violation before a default can be declared. The Midwest ISO maintains that as long as a market participant or transmission customer continues to pay any disputed amount in escrow and invokes the TEMT's dispute resolution process, no default can be declared by the Midwest ISO and the proposed suspension authority could not be triggered.

20. The Midwest ISO asserts that WPS Resources' request that a customer satisfying creditworthiness criteria up to a certain amount be able to transact up to that amount is already provided for in the existing Credit Policy. The Midwest ISO also maintains that WPS Resources' criticism of the Midwest ISO's existing credit and billing procedures is a collateral attack on the Commission's orders approving existing Credit Policy and billing provisions. The Midwest ISO further asserts that WPS Resources' criticisms of the existing credit and billing procedures are unfounded. The Midwest ISO notes that WPS Resources has not brought to its attention any margin calls that were based upon purportedly incorrect settlement or accounting processes.

3. <u>Commission Determination</u>

21. The Commission explained in its *Policy Statement on Electric Creditworthiness* that "market participants must trust ISOs/RTOs to implement their credit policies in a manner created to limit, as much as possible, the risk of credit defaults."[12] The Midwest ISO's proposed filing seeks to fulfill its role as an RTO in this regard.

22. In a prior Commission order, the Midwest ISO was directed to revise section 7.14a of the TEMT to require that termination was "subject to the receipt of approval from the Commission."[13] However, the Midwest ISO was also given the option to identify an instance where the Midwest ISO could argue that it is appropriate to terminate service without prior Commission approval.[14] In its proposed filing, the Midwest ISO is

[12] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 18.

[13] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 at P 477.

[14] *Id.*

identifying an instance where immediate suspension (with notice), but not termination, is needed. The Midwest ISO distinguishes that terminations of service agreements, not suspensions, as set forth in sections 7.4 and 7.8 of the TEMT, require approval by the Commission. We agree. Suspension of service is not permanent. When more financial security is posted and exposures fall beneath the total credit limit, access to market services will be reinstated.[15] Our analysis of the instant proposal indicates that the Midwest ISO seeks to legitimately limit the risk of credit defaults in a concise manner, and administer its tariff to provide nondiscriminatory transmission service. Accordingly, we will conditionally accept the Midwest ISO's proposed revisions as modified below.

23. We note that concerns regarding previously accepted credit policy provisions, such as the manner in which potential exposures are calculated or the manner in which payments against exposures are recognized, are beyond the scope of this proceeding and therefore, will not be addressed herein.

C. The Scope of Proposed Suspension Authority

1. Protests

24. Several protestors express concern about the scope of the proposed suspension authority sought by the Midwest ISO and offer limitations to the scope of the Midwest ISO's proposal. Protestors also challenge the Midwest ISO's contention that the proposed tariff revisions are consistent with the suspension authority held by other RTOs and ISOs. These protestors recommend that the Commission impose conditions on the Midwest ISO's proposal to make it more consistent with suspension authority granted to other RTOs and ISOs.

a. Proposed Limitations to the Scope of the Suspension Authority Based on the Type of Defaults

25. AMP-Ohio argues that there is a mismatch between the suspension authority that the Midwest ISO claims it needs and the suspension authority it seeks. AMP-Ohio notes that the proposed language is not limited to financial defaults, nor is it limited to situations posing risk to others. AMP-Ohio also expresses concern that the Midwest ISO might use this authority as leverage when dealing with its members. Similarly, the Michigan Agencies argue that the Midwest ISO's proposal provides the Midwest ISO with too much power and market participants with too little customer protection.

---

[15] *See supra* note 3.

26. WPS Resources notes that the Midwest ISO's proposed suspension authority differs from that of ISO-NE in that ISO-NE may only suspend "additional services" that would exceed the credit amount. The Michigan Agencies also note that, under the ISO-NE tariff, service cannot be suspended unless the *actual* outstanding obligations equal the credit limit. The Michigan Agencies fear that the Midwest ISO's proposal could permit a suspension for *potential* exposure violations. The Michigan Agencies assert that the Midwest ISO should not be permitted to suspend service based on *potential* exposures that have not yet occurred. The Michigan Agencies note that the Midwest ISO calculates exposure violations based on three components: (1) amounts invoiced, but not paid; (2) amounts measured, but not invoiced; and (3) estimates of future activities. The Michigan Agencies argue that only exposure violations of the first category reflect a customer's ability or willingness to pay and hence, demonstrate a need for the Midwest ISO to suspend service.

27. The Michigan Agencies and the Midwest TDUs argue that there are also exceptions to the suspension authority set forth in the ISO-NE tariff. In ISO-NE's tariff, when a default occurs solely due to credit downgrades ISO-NE provides a 10-business day window for market participants, who exceed their credit limit solely due to a credit downgrade, to cure the default.

28. Some protestors offer additional revisions to the Midwest ISO's proposal, which they maintain will limit financial risk to the market while preserving the rights of tariff customers. For example, the Midwest TDUs argue that defaults less than $1 million should require Commission approval before suspension of service.

b. <u>Proposed Limitations to the Scope of the Suspension Authority Based on the Type of Market Participant</u>

29. Protestors also express concern about the impact of a suspension of service on end-use customers. The Midwest TDUs question that if a load serving entity's (LSE's) service is suspended, whether its end-use customers would lose electric service. The Midwest TDUs argue that the Midwest ISO should not be able to suspend service without Commission authority if it would cause a disruption in service to the LSE's customers. The Midwest TDUs assert that denial of the Midwest ISO's request for suspension authority would be consistent with recent Congressional directives under FPA section 217, which supports an LSE's ability to fulfill its native load service obligation.[16]

---

[16] Midwest TDUs Protest at 8 (referencing Energy Policy Act of 2005, Pub. L. No. 109-58, § 1233, 119 Stat. 594, 957-60 (2005) (to be codified at 16 U.S.C. § 824q)).

30. While Wisconsin Electric supports the Midwest ISO's proposal for the most part, Wisconsin Electric believes that in order to protect end-use consumers, the TEMT should include language, such as that included in the PJM tariff, wherein the automatic suspension provisions are not applied to LSEs in non-retail choice states or to suppliers of last resort in retail choice states. Wisconsin Electric believes the Midwest ISO's proposal should be conditioned on a clarification that suspension of service to these categories of LSEs can occur only after notice and approval by the Commission.

31. Several protestors note that the ISO-NE tariff requires Commission approval prior to the suspension of service to municipal market participants, although it allows a non-municipal market participant's service to be suspended without Commission approval. The Midwest TDUs assert that, at a minimum, the Midwest ISO should be prohibited from suspending service without Commission approval to "public power" market participants. The Midwest TDUs note that public power participants have a reputation for financial stability and, therefore, assert that public power should receive suspension provisions commensurate with its lower risk. The Michigan Agencies also assert that the Midwest ISO should be required to get Commission approval prior to suspending municipal customers. The Michigan Agencies note that it is the "agency" most likely to be the registered "Market Participant" responsible for arranging power supply and transmission for several members, however its credit may be rated poorer than its member municipalities respectively. The Michigan Agencies also assert that the credit ratings are not reflective of the strength of its members because municipal systems have revenue streams, rate-setting ability, hard assets, and state law restrictions on the types of investments they can make.

2. <u>The Midwest ISO's Answer</u>

32. In its answer, the Midwest ISO maintains that that many of the modifications proposed in the protests should be rejected. For example, the Midwest ISO maintains that the Midwest TDUs' request for suspensions to be limited to defaults over $1 million is arbitrary and difficult to administer.

33. The Midwest ISO does, however, agree to certain revisions to its proposed suspension authority. In response to AMP-Ohio's concerns about the breadth of the proposal, the Midwest ISO indicates it is willing to clarify that its proposed suspension authority is limited solely to "financial" defaults, that is, those arising under sections 7.13(a) and 7.13(b) of the TEMT and/or the Midwest ISO's Credit Policy. The Midwest ISO notes that it reserves its right to request, at a later time, broadened suspension authority if necessary.

34. The Midwest ISO also agrees to certain revisions to its proposal in response to concerns raised regarding the impact of the proposed suspension authority on a defaulting LSE's end-use customers. The Midwest ISO states that although an exemption for all LSEs would reduce the protection afforded to market participants, it is willing to adopt the clarification proposed by Wisconsin Electric. Accordingly, the Midwest ISO agrees that suspensions of service to LSEs in states with no retail choice and to suppliers of last resort in retail access states would require prior FERC approval.

3. <u>Commission Determination</u>

35. As discussed above, we believe that the Midwest ISO must be granted latitude to limit the risk of credit defaults. The proposed revisions, with the modifications discussed herein, achieve that goal. Accordingly, we reject many of protestors' proposed changes to the Midwest ISO proposal. However, we will require two modifications to the Midwest ISO's proposal to ensure the scope of the suspension authority granted herein does not place an undue burden on market participants.

36. First, because the risk of uncollectible obligations is a financial one and not an administrative one, we find that the proposed suspension authority should be limited to financial defaults. We agree with the Midwest ISO's suggested revision to limit its suspension authority to defaults arising under sections 7.13(a) and 7.13(b), and direct it to revise the tariff accordingly. We also note that the Midwest ISO has acknowledged that, even with this limitation on its suspension authority, it would still be able to address its most significant concerns about mutualized risk.[17]

37. Second, we agree with protestors' concerns about the possible effects of a suspension of service on an LSE's end-use customers. We believe that protestors' concerns are adequately addressed by the revisions the Midwest ISO proposed in its Answer. Therefore, we direct the Midwest ISO to revise section 7 and Attachment L of the tariff to state that any suspensions of service for LSEs in states without retail choice and to suppliers/providers of last resort in states with retail choice requires prior Commission approval.

[17] *See* Midwest ISO Answer at 14.

D. The Proposed Notice Procedure

1. Protests

38. Several protestors, including the Basin Electric Cooperatives, the Michigan Agencies, the Midwest TDUs, and WPS Resources, maintain that if the Commission accepts the Midwest ISO's proposed revisions, it should require prior notification to customers before a suspension of service. The Basin Electric Cooperatives ask that the Commission require the Midwest ISO to give three days notice before a proposed suspension. The Basin Electric Cooperatives explain that this will allow the affected customer to correct its default and will not markedly increase the financial exposure of the market. The Michigan Agencies assert that the Midwest ISO should be required to give notice of at least five business days prior to the suspension of service. The Midwest TDUs suggest an advanced notice period of at least six business days to ensure the appropriate balance between ceasing credit extensions to defaulting customers and ensuring that suspensions are appropriate.

39. Protestors assert that a notice procedure that may occur after-the-fact cannot undo the harm caused by cutting service to an LSE that serves residential load. The Basin Electric Cooperatives and WPS Resources contend that they are not comforted by the Midwest ISO's statement that it cannot terminate service agreements, only suspend them, without Commission approval. These entities argue that a suspension of service denies the LSE's customers any benefits of the agreement without actually terminating the agreement. The Michigan Agencies also express concern that an after-the-fact challenge to the Midwest ISO's assertion of its suspension authority is insufficient to protect LSEs who provide service to retail customers. The Michigan Agencies note that after-the-fact notice provides no opportunity to cure and no opportunity to avoid a suspension that may be based on erroneous information. The Michigan Agencies further note that seeking after-the-fact relief from the Commission could cause significant delays to a tariff customer's full reinstatement of market services.

40. The Basin Electric Cooperatives, the Michigan Agencies, and WPS Resources argue that the Midwest ISO's proposal is inconsistent with the notice provisions set forth in the PJM and NYISO Open Access Transmission Tariffs (OATTs). As described by protestors, the tariff language for those entities requires notice *before* termination of service. The Michigan Agencies note, in particular, that in section 7.3 of PJM's OATT (rather than the Operating Agreement cited by the Midwest ISO in the January 17 Filing) PJM cannot suspend service without first giving sixty days notice after a default.

2. The Midwest ISO's Answer

41. The Midwest ISO maintains that the existing tariff language regarding defaults, which requires written notice of violation and a minimum cure period of two business days, provides sufficient notice to tariff customers. The Midwest ISO argues that the proposed after-the-fact notice exception is fully justified and there is no reason for protesters to believe the process would be abused by the Midwest ISO. Nonetheless, the Midwest ISO states it is willing to strengthen the notice procedure by requiring one business day advanced notice in all circumstances prior to exercising its suspension authority. The Midwest ISO argues that this notification, when considered along side the two-day cure period already required by the TEMT, would be consistent with the three days' notice requested by the Basin Electric Cooperatives.

3. The Basin Electric Cooperatives' Reply

42. In their reply, the Basin Electric Cooperatives reiterate their request for the Commission to require at least three business days advance notice prior to suspension, arguing that more than one business day is needed to respond to and remedy the circumstances leading to a potential suspension. The Basin Electric Cooperatives argue that declaring a default and suspending service should be treated separately for purposes of the provision of notice to customers. The Basin Electric Cooperatives ask that the Commission require at least three days advance notice prior to suspension in addition to the existing requirements for the two-day cure period prior to default.

43. The Basin Electric Cooperatives also argue that the Midwest ISO's clarification that termination and suspension of service are distinguishable should be explicitly included in the TEMT. The Basin Electric Cooperatives maintain that the TEMT does not include language that "suspension is a temporary measure that can be lifted by [the Midwest ISO] or the Commission" or "a suspended customer is not required to follow the Tariff application process prior to reinstatement."[18]

---

[18] Basin Electric Cooperatives Reply at 4.

4. <u>Commission Determination</u>

44. The Commission has previously accepted the notice provisions in other RTO/ISO regions (albeit slightly different notice provisions). For example, in NYISO's tariff,[19] after the cure period, the NYISO has the right to suspend and/or terminate the Service Agreement upon notice to the Commission. Similarly, in ISO-NE's tariff,[20] when a non-municipal market participants' obligations equal its extended credit, and upon notice to appropriate regulatory authorities, ISO-NE may suspend service.[21] Thus, we find it appropriate that the Midwest ISO also provide similar notice with regard to suspension. To ensure that a suspension is warranted, it is appropriate to give as much advanced notice as practicable prior to suspension. Therefore, we will accept the Midwest ISO's suggested revision that in no event will any less than one business day advanced notice be given after the two business day cure period, as stated in its Answer, and direct it to revise the tariff accordingly.

45. Similarly, we note that the proposed language in section 7.14(a)(ii) requires the Midwest ISO to give notice to the Commission of any suspension taken pursuant to that provision. We clarify that this notice will not result in Commission action or approval. The notice provided to the Commission pursuant to section 7.14(a)(ii) should be in the form of an informational filing.

---

[19] *See* NYISO Market Administration and Control Area Services Tariff, FERC Electric Tariff, Original Volume No. 2, Third Revised Sheet No. 193.

[20] *See* ISO-NE Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, General Terms and Conditions, Original Sheet No. 66.

[21] As noted by the Michigan Agencies, there is a 60-day notice provision in section 7.3 of the PJM OATT. However, that provision applies to the termination of service agreements of Transmission Customers. *See* PJM Open Access Transmission Tariff, FERC Electric Tariff, Sixth Revised Volume No. 1, Third Revised Sheet Nos. 50-51. The corresponding provision for transmission customers in the Midwest ISO's tariff is section 7.4, where the Midwest ISO has not proposed revisions, and would still require Commission approval prior to termination, which is in effect, at least 60 days notice to the affected tariff customer, while the Commission addresses the Midwest ISO's filing to terminate. *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Module A, First Revised Sheet No. 160.

46. Regarding the Basin Electric Cooperatives' concern with the clarity of the TEMT, we find the tariff language sufficiently clear in requiring that once additional financial security is posted, suspended market participants are to be reinstated.[22]

E. The Need for Stakeholder Review and Waiver of Prior Notice Requirements

1. Protests

47. Several protestors, including WPS Resources, the Michigan Agencies, and the Midwest TDUs, dispute the Midwest ISO's contention that the proposed tariff revisions do not have to be reviewed by stakeholders prior to filing because the proposal was included as part of the Midwest ISO's original TEMT filing. These entities note that the market has changed substantially in the last two years, and stakeholders' views have changed accordingly. WPS Resources specifically notes that the Midwest ISO should have submitted its proposal for stakeholder review because it is the stakeholders that are financially at risk, not the Midwest ISO. Protesters also argue that the Midwest ISO's stated need for the proposed tariff revisions do not justify a waiver from the Commission's 60-day notice requirement.

2. The Midwest ISO's Answer

48. The Midwest ISO reiterates its belief that because the proposed suspension authority was previously subject to the stakeholder review, it was unnecessary to initiate a stakeholder process on this issue. The Midwest ISO argues that the Commission's rejection of the Midwest ISO's prior proposal is irrelevant to stakeholder consent. The Midwest ISO also argues that action taken by the Commission in the past two years, including the *Policy Statement on Electric Creditworthiness*, supports the Midwest ISO's proposal. The Midwest ISO reiterates the need for prompt action on this issue, and indicates that the stakeholder process may result in unnecessary delay. Finally, the Midwest ISO maintains that stakeholder review is unnecessary because its answer has adequately addressed all concerns by protestors.

---

[22] *See* Midwest ISO TEMT, FERC Electric Tariff, Third Revised Volume No. 1, Attachment L, Second Revised Sheet No. 1234 (proposed) ("A Participant that fails to cure a Total Potential Exposure Violation within the required cure period shall be suspended, in accordance with section 7.14(a)(ii) of the Tariff, … *unless and until* Participant's Total Potential Exposure Violation is cured.") (emphasis added).

3. <u>Commission Determination</u>

49. While the Commission prefers that revisions to the Midwest ISO's credit practices are vetted through the stakeholder process,[23] we note that the Commission's *Policy Statement on Electric Creditworthiness* did not require it in every case.[24] In the instant proceeding, the Midwest ISO has explained that there is an urgent need for the proposed tariff revisions to minimize the credit risk that is shared by the collective market participants, and not itself.[25] We are convinced that the purpose of the Midwest ISO's filing was predicated by a sincere concern to quickly address mutualized default risk and it was not practicable to vet such proposed revisions through the stakeholder process.

50. The Midwest ISO has not shown good cause to justify granting waiver of our prior notice requirement.[26] Nor has the Midwest ISO shown extraordinary circumstance to justify its failure to timely file.[27] The Midwest ISO argues that "[m]aking this submittal effective as of the proposed date is consistent with the Commission's Creditworthiness Policy and will ensure that the Midwest ISO can promptly act to minimize its Market Participants' mutualized default risk."[28] We are not convinced the Midwest ISO is able

---

[23] *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,285, at P 356 (2004), *order on reh'g*, 111 FERC ¶ 61,053, *reh'g denied*, 111 FERC ¶ 61,053 (2005) ("[T]he Commission values the stakeholder process to determine regional creditworthiness requirements. Because credit is a collective market mechanism, in that all market participants share in the extension of credit and therefore share in the losses, significant weight should be given to the outcome of the stakeholder process.") (internal citation omitted).

[24] *Policy Statement on Electric Creditworthiness*, 109 FERC ¶ 61,186 at P 32 ("[T]he Commission encourages, *to the extent practicable*, each ISO/RTO to improve its credit practices through its stakeholder processes …") (emphasis added).

[25] *Id.* at P 17-18.

[26] 18 C.F.R. § 35.3(a) (2005).

[27] *Central Hudson Gas & Electric Company*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

[28] January 17 Filing at 9.

to reduce mutualized default risk for exposures that have occurred since the time of filing. We will thus make the proposed revisions, as modified herein, effective on March 19, 2006.

<u>The Commission orders</u>:

(A) The Midwest ISO's proposed tariff revisions are hereby conditionally accepted for filing as modified, effective March 19, 2006, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.