

we will begin electronic distribution of cohort default rate notifications with the fiscal year (FY) 2001 draft rates in February 2003, for schools that by then have registered for the new service, as described below.

FOR FURTHER INFORMATION CONTACT:

Kriste Jordan, Default Management, Schools Channel, Federal Student Aid, U.S. Department of Education, Union Center Plaza, 084B4, 830 First Street, Washington, DC 20002. Telephone: (202) 377-3191, FAX (202) 275-4511.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Beginning with the release of fiscal year (FY) 2001 draft cohort default rates in February 2003, we will electronically transmit draft and official cohort default rate notification packages to domestic institutions using our Student Aid Internet Gateway (SAIG). The electronic delivery of cohort default rate information to domestic institutions will replace the current process, which involves delivery of hardcopy documents. Foreign schools (*i.e.*, schools eligible to participate in the Federal Family Education Loan Program under section 102(a)(1)(C) of the Higher Education Act of 1965, as amended) are not subject to participation in this electronic process. Foreign schools will continue to receive their cohort default rate notification documents in hardcopy rather than electronically. Foreign schools' rights to appeal, make challenges and seek adjustments will continue to run from the date of receipt of the hardcopy, as they have in the past.

For each electronic distribution of default rate notifications (draft and official) to domestic institutions, we will announce on our Information for Financial Aid Professionals (IFAP) Web site (<http://www.ifap.ed.gov>) the date of the electronic transmission of cohort default rate information to the destination points designated by each domestic institution. Except as described in the following paragraph, the time periods for making appeals and challenges and seeking adjustments under 34 CFR part 668, subpart M will begin with the sixth business day after the date the default rate notification packages were transmitted to the SAIG

destination points, as noted in the IFAP announcement.

If an institution believes that a technical problem that was caused by the U.S. Department of Education (Department) resulted in the institution not being able to access its electronic cohort default rate information, it must notify us no later than five business days after the transmission date announced on IFAP. By doing so and if we agree that the problem was caused by the Department, we will extend the challenge, appeal, and adjustment deadlines and timeframes to account for a re-transmission of the information after the technical problem is resolved. Reports of technical problems must be made via e-mail and addressed to our Default Management sharepost at: fsa.schools.default.management@ed.gov.

Each institution is responsible for updating its SAIG enrollment whenever a change is needed to its cohort default rate notification package destination point. Failure of an institution to enroll in or update SAIG for the eCDR process does not constitute a valid, timely technical problem that would extend timeframes or deadlines for appeals, challenges, and adjustments.

To implement the electronic process, every domestic school must, no later than June 1, 2003, designate an SAIG destination point that will receive the institution's electronic cohort default rate (eCDR) notification packages. The designation of the eCDR destination point must be conducted through the SAIG enrollment process at: <http://www.safawebenroll.ed.gov>.

In addition, before eCDR functionality can be provided to the designated SAIG destination point each institution must submit, by June 1, 2003, a hardcopy SAIG signature page signed by the institution's Chief Executive Officer (CEO) (*e.g.*, President, Chancellor, Owner) or the person previously designated by the CEO as the institution's SAIG signature authority.

Once SAIG enrollment is completed, the institution's designee will receive electronic school cohort default rate notification packages unless the school changes the designee by submitting a revision to its SAIG enrollment.

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available free at this site. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO); toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

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Program Authority: 20 U.S.C. 1085, 1094, 1099c.

Dated: February 20, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03-38-000]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Cargill Power Markets, LLC, Complainant, v. Midwest Independent Transmission System Operator, Inc., Respondent; Order on Complaint Establishing Hearing and Settlement Procedures

February 14, 2003.

1. In this order, the Commission sets for hearing the complaint (complaint) filed on December 31, 2002 by Cargill Power Markets, LLC (Cargill) against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), regarding a request by Cargill for long-term firm transmission service. Moreover, to aid the parties in settling their dispute, we will hold the hearing in abeyance pending the outcome of settlement judge procedures.

Background

2. Cargill complains that the Midwest ISO wrongfully recalled Cargill's confirmed reservation with the Midwest ISO for 52 MW of long-term firm point-to-point transmission service (service reservation) from the Pennsylvania-New Jersey-Maryland (PJM) source Control Area to the Michigan-Ontario Independent Electricity Market Operator border (MI-IMO), for the period January 1, 2003 through January 1, 2004. Cargill states that the Midwest ISO confirmed the service reservation on November 21, 2002. Cargill further contends that on

November 27, 2002, the Midwest ISO informed Cargill that the Midwest ISO might annul the service reservation due to its re-evaluation of certain business practices. However, Cargill claims that after Cargill refused to agree to an annulment, the Midwest ISO stated that it would review the situation.

3. Cargill further alleges that on December 23, 2002, the Midwest ISO informed Cargill that the service reservation was inadvertently processed out of order and was being recalled due to the MI-IMO interface being oversubscribed by non-competing requests, based on the condition, Midwest ISO's Business Practices Manual Section 6.8.1, that competing requests must have the same source and sink Control Areas. Cargill states that the Midwest ISO claimed authority to recall the service reservation under Section 4.2.13.10 of the Open Access Same Time Information System (OASIS) Standards and Communication Protocols Document (S&CP Document).

4. Cargill contends that the Midwest ISO's recall of the service reservation violates the Midwest ISO's Open Access Transmission Tariff (OATT) and Business Practices, as well as prior Commission orders and the Commission's OASIS standards. Cargill states that the S&CP Document¹ and Commission precedent² require that the acceptable reasons for a recall of transmission capacity be clearly articulated in the Midwest ISO's OATT or in a transmission service agreement. Cargill maintains that neither the Midwest ISO's OATT nor a transmission service agreement allow the recall of confirmed long-term firm transmission capacity due to a re-evaluation of, or disputes regarding, the Midwest ISO's Business Practices.

5. Furthermore, Cargill contends that the Commission has stated that transmission providers are liable for errors, even if made in good faith or in accordance with its published procedures.³ Cargill argues that if a

¹ Cargill cites Sections 4.2.13.10 of the S&CP Document, which states, in relevant part: "There are cases in implementing provisions of the Primary Provider's Tariff that the capacity reserved by a Transmission Customer may be reduced in whole or in part. The particular reasons for these reductions are Tariff specific. * * * Cargill Complaint at 7.

² Cargill cites Duke Energy Corp., 88 FERC ¶ 61,184 (1999); Southern Company Services, Inc., 100 FERC ¶ 61,314 (2002); Public Serv. Co. of New Mexico, 85 FERC 61,240 (1998); *Public Serv. Co. of New Mexico v. Arizona Pub. Serv. Co.*, 99 FERC ¶ 61,162 (2002); and *Exelon Generation Co., LLC v. Southwest Power Pool, Inc.*, 99 FERC ¶ 61,235, *reh'g denied*, 101 FERC ¶ 61,226 (2002) (*Exelon*).

³ Cargill cites Open Access Same-Time Information System and Standards of Conduct, Order No. 889-A, 62 FR 2484 (1997), FERC Stats. and Regs. ¶ 31,049 at 30,572.

transmission provider oversubscribes a transmission system, the onus is on it to either curtail transmission service or build transmission facilities. Cargill relies upon *Exelon*,⁴ where the Commission stated:

If the transmission system becomes constrained such that the transmission provider cannot satisfy existing customers, then the obligation is on the transmission provider to either curtail service pursuant to the provisions of its OATT or to build more capacity to relieve the constraint.

6. Moreover, Cargill argues that the recall of its service reservation was prohibited, because the Midwest ISO failed to give Cargill timely notice of the action. Cargill notes that the Commission has allowed the annulment of other service reservations where the transmission customer received timely notice of the annulment.⁵ However, Cargill states that the Midwest ISO did not send Cargill notice of the recall until December 23, 2002, over one month after the service reservation was confirmed and a little more than one week before service was to commence. Moreover, Cargill alleges that the Midwest ISO erred in posting the relevant recall on its OASIS, since the relevant notice, posted on November 29, 2002 (OASIS notice), referenced 1 MW of service, while Cargill had reserved 52 MWs. Cargill states that it did not have reasonable notice of the recall, since the notice referenced a different MW of service. Cargill alleges that on December 30, 2002, after Cargill had alerted the Midwest ISO of the inadequate notice, the Midwest ISO amended the posted recall to reference the 52 MWs at issue.

7. Finally, Cargill distinguishes its complaint from another complaint filed against the Midwest ISO by Tenaska Power Services Co.⁶ (Tenaska complaint). Cargill states that this proceeding must be resolved separately from the Tenaska complaint. Cargill contends that the Tenaska complaint involves the proper interpretation of the Midwest ISO's Business Practices and hinges on whether Section 6.8.1 of that document applies to long-term firm requests and whether competing requests must have the same points of receipt and delivery. On the other hand, Cargill alleges that it has a confirmed reservation for long-term firm transmission service that, by reference to a provision in the S&CP document, which is not provided for anywhere in

⁴ 101 FERC at 61,980.

⁵ Cargill cites *Williams Energy Marketing & Trading Co. v. Southern Company Services, Inc.*, 101 FERC ¶ 61,144 (2002) (*reh'g pending*) (*Williams Energy*); *Powerex Corp. v. Department of Energy*, 95 FERC ¶ 61,241 (2001) (*Powerex*).

⁶ Docket No. EL03-30-000.

the Midwest ISO's OATT, the Midwest ISO has attempted to recall a week before service is to commence. Cargill states that the only relationship between its complaint and the Tenaska complaint is that the Midwest ISO has oversold service to the MI-IMO interface and now seeks to resolve that situation by invoking an undefined and vague recall procedure not specified in its OATT.

Notice of the Filing and Responsive Pleadings

8. Notice of Cargill's filing was published in the **Federal Register**,⁷ with the answer, interventions, comments, and protests due on or before January 15, 2003. The Midwest ISO filed a timely answer. Tenaska Power Services Co. (Tenaska) filed a timely motion to intervene and comments, and Dynegy Power Marketing, Inc., Reliant Resources, Inc. and MidAmerican Energy Company filed timely motions to intervene. Duke Energy Trading and Marketing, L.L.C. (Duke Energy) filed an untimely motion to intervene.

9. In its answer, the Midwest ISO states that under the Midwest ISO's longstanding preemption methodology, which has been in effect since the Midwest ISO became operational (February 1, 2002), Cargill's request for service could not preempt any requests for short-term transmission service, because no short-term requests shared the same source and sink Control Areas as Cargill's requested service. The Midwest ISO contends that, at the urging of FERC Hotline Staff, it began employing an expanded preemption methodology that would not require competing requests to have the same source and sink Control Areas. The Midwest ISO states that, using the expanded preemption methodology, it approved Cargill's transmission service request on November 19, 2002. The Midwest ISO maintains that Cargill confirmed that approval on November 21, 2002.

10. On the morning of November 27, 2002, the Midwest ISO alleges that Cargill contacted the Midwest ISO and expressed concern that the expanded preemption methodology (which, the Midwest ISO contends, led to the approval of Cargill's service request) violated the Midwest ISO's preemption methodology, set forth in Section 6.8.1 of the Midwest ISO's Business Practices Manual. The Midwest ISO states that, after internal discussions, it agreed with Cargill that the expanded preemption methodology violated the Business Practices Manual.

⁷ 68 FR 1448 (2003).

11. Consequently, the Midwest ISO states that it determined that the transmission service queue at issue should be reprocessed consistent with the preemption methodology set forth in Section 6.8.1 of its Business Practices Manual. The Midwest ISO alleges that during a follow-up conversation with Cargill during the early afternoon of November 27, 2002, the Midwest ISO informed Cargill that the Midwest ISO was reprocessing the queue to ensure that requests were approved on a first-come, first-serve basis, in compliance with the source/sink Control Area limitations set forth in Section 6.8.1 of the Business Practices Manual. The Midwest ISO states that this was the first indication it provided to Cargill that Cargill's service request could be recalled.

12. On November 29, 2002, the Midwest ISO maintains that it completed its reevaluation of all incorrectly processed transmission service requests, including Cargill's request, and took immediate action to recall the service reservation. On that same day, the Midwest ISO states that it posted the OASIS notice recalling Cargill's service reservation. The Midwest ISO explains that the OASIS requires that a non-zero value be placed in the Capacity Requested and Capacity Granted fields, which required the Midwest ISO to set those fields at 1 MW in the OASIS notice. However, the Midwest ISO states that, in order to avoid confusion, it inserted in the Provider Comments field the following language: "Request Recalled for the full 52 MWs. OASIS does not support full amount to be recalled." Moreover, the Midwest ISO states that on November 29, 2002, shortly after posting the OASIS notice, the Midwest ISO left a detailed telephone message with Cargill, explaining that Cargill's 52 MW request was being recalled in its entirety. The Midwest ISO further maintains that it followed the telephone message with an email to Cargill, again explaining the recall.

13. Based upon the foregoing, the Midwest ISO contends that it properly recalled Cargill's service reservation. The Midwest ISO argues that it has inherent authority to correct errors made during administration of its OATT. The Midwest ISO contends that at the time it had approved Cargill's 52 MW request, the Midwest ISO had failed to subject Cargill's request to the source and sink Control Area preemption methodology that is specified in Section 6.8.1 of its Business Practices. As a result, the Midwest ISO contends that it accepted several long-term firm requests, including Cargill's,

which the Midwest ISO should have rejected and which instead caused the interface to be oversold. The Midwest ISO argues that, because they were processed in violation of the Midwest ISO's OATT and Business Practices, those reservations were void from the outset and subject to recall when the error was exposed.

14. Indeed, the Midwest ISO states that it had a basic duty as a regional transmission organization (RTO) to remedy the processing errors and resume compliance with its OATT and Business Practices by recalling the invalid reservations. The Midwest ISO states that, contrary to Cargill's assertion, the Commission has never required that such fundamental obligations be specified in a tariff or service agreement.

15. Likewise, the Midwest ISO argues that the S&CP Document does not require that the particular reasons for the recall of transmission capacity be set forth in its OATT, as Cargill contends. The Midwest ISO notes that section 4.2.13.10 of the S&CP Document states that "[t]he particular reasons for these reductions are Tariff specific." The Midwest ISO maintains that it recalled Cargill's service reservation in order to resume application of the preemption methodology set forth in its Business Practices Manual, which, according to the Midwest ISO, complements and enhances the understanding of its OATT provisions and principles. Therefore, the Midwest ISO states that its reason for recalling the service reservation is tariff specific within the meaning of the S&CP Document.

16. Moreover, the Midwest ISO contends that Commission precedent authorizes transmission providers such as the Midwest ISO to recall capacity granted in error.⁸ The Midwest ISO states that in *Williams Energy* the Commission denied the customer's request to reinstate a mistakenly-accepted request for service, based upon the Commission's finding that the transmission provider was authorized to correct the mistake within a reasonable period of time after discovering the error. The Midwest ISO states that, contrary to Cargill's contention, it gave Cargill timely notice of its processing error, over one month before the service reservation was to commence.

17. Finally, contrary to Cargill's assertion, the Midwest ISO argues that this proceeding relates to the Tenaska complaint. The Midwest ISO contends that Cargill's and Tenaska's complaints raise the identical issue regarding the

Midwest ISO's application of its same source and sink Control Area preemption methodology. The Midwest ISO requests that, if the Commission does not deny Cargill's complaint, the Commission hold this proceeding in abeyance pending resolution of the Tenaska complaint.

18. In its comments, Tenaska states that it appreciates Cargill's concerns and is intervening in this proceeding to protect its own interests. Tenaska notifies the Commission that it sought transmission service from the Midwest ISO before Cargill made its requests with the Midwest ISO and asserts that it is rightfully ahead of Cargill in the queue. It asks that the Midwest ISO be directed to sort out and remedy the problems with its transmission queue and properly process requests for long-term firm transmission service.

Cargill's Response to the Midwest ISO's Answer

19. On January 24, 2003, Cargill filed a response disputing the facts set forth in the Midwest ISO's answer. Cargill states that, contrary to the Midwest ISO's contention, the Midwest ISO confirmed Cargill's service request using the source-sink methodology set forth in the Midwest ISO's Business Practices. To that end, Cargill proffers evidence of an OASIS posting and a phone conversation between a Midwest ISO employee and a Cargill employee, which according to Cargill reveal that the Midwest ISO relied upon its Business Practices in confirming Cargill's service reservation.

20. In addition, Cargill contends that the OASIS notice was not properly posted as a recall, but instead was posted as a new transmission service request created by the Midwest ISO, with the Midwest ISO listed as the customer for a fictional transaction for 1 MW of service. Further, Cargill states that less than three minutes after the Midwest ISO posted the language referring to the 52 MW service reservation, it removed that language from the OASIS notice. Cargill contends that the remaining language did not expressly refer to Cargill's service reservation. Moreover, Cargill contends that it has no evidence of receiving a voicemail or email from the Midwest ISO, regarding the recall.

21. Contrary to the assertions Tenaska sets forth in its comments, Cargill states that its confirmed service reservation should be acknowledged as having priority over Tenaska's unconfirmed requests in the Midwest ISO transmission queue. Cargill contends that Tenaska requested transmission service from AEP (source) to the MI-

⁸The Midwest ISO cites *Williams Energy* and *Powerex*.

IMO interface (sink) on September 25, 2002, while Cargill had confirmed service from PJM (source) to the IMO (sink) on November 21, 2002. Therefore, Cargill states that under the Midwest ISO's source-sink methodology, Tenaska's and Cargill's reservations do not compete.

Discussion

Procedural Matters

22. Pursuant to Rule 214 of the Commission's regulations, 18 CFR § 385.214 (2002), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. In addition, we will grant Duke Energy's untimely intervention, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. While Rule 213(a)(2) of the Commission's regulations, 18 CFR 385.213(a)(2) (2002), allows replies to answers only at the discretion of the decisional authority, we will allow Cargill's reply to the Midwest ISO's answer, as it has aided us in understanding the matters at issue in this proceeding.

Analysis

23. We find that the parties have raised material issues of fact upon which Cargill's complaint is based. More specifically, the parties dispute the circumstances under which Cargill's service reservation was accepted and recalled, and when Cargill received notice of the recall. Accordingly, pursuant to section 206 of the Federal Power Act⁹ (FPA), we will set Cargill's complaint for hearing.

24. That being said, we strongly encourage the parties to settle this complaint. Accordingly, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ The Chief Judge shall appoint a settlement judge in this proceeding within 15 days of the date of issuance of this order. The settlement judge shall report to the Chief Judge and the Commission within 45 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

25. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the

FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy of providing maximum protection to customers,¹¹ we will set the refund effective date as of the date 60 days after the date of the filing of Cargill's complaint, or March 2, 2003.

26. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission in advance of the refund effective date. Here, given that the refund effective date for the complaint is March 2, 2003, the Commission cannot follow its normal procedure.

27. Although we do not have the benefit of the presiding judge's report, based on our review of record, we expect that, assuming this case does not settle, the presiding judge should be able to render a decision within four months of the commencement of hearing procedures. After the presiding judge renders an initial decision, assuming the case does not settle, we estimate that we will be able to issue our decision within approximately two months of the filing of briefs on and opposing exceptions.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held in Docket No. EL03-38-000, concerning the issues raised in Cargill's complaint against the Midwest ISO, as discussed in the body of this order. Also as discussed in the body of this order, we will hold the

hearing in abeyance pending further Commission action and the settlement judge negotiations, as discussed in Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(C) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If the settlement procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act is March 2, 2003.

(F) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in EL03-38-000 in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03-4337 Filed 2-24-03; 8:45 am]

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⁹ 16 U.S.C. 824e (2002).

¹⁰ 18 CFR 385.603 (2002).

¹¹ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,319 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).