

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Independent Transmission System Operator, L.L.C)	Docket No. ER09-1435-000
)	

COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to Rule 211 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.211 and the Notice of Filings issued by the Secretary of the Commission on July 14, 2009, setting the comment date to July 31, 2009, the Organization of MISO States (“OMS”) does hereby file these comments in response to the filing made by the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) on July 10, 2009, in the above captioned docket (“July 10 Filing”).

I. BACKGROUND AND SUMMARY OF JULY 10 FILING

On March 20, 2008, the Commission issued its *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*.¹ In the Guidance Order, the Commission established certain requirements that RTOs and ISOs must follow in a Section 205 filing seeking to recover the cost of penalties assessed against them for non-compliance with Reliability Standards and outlined the two possible methods of penalty cost recovery. Specifically, those two methods are: (1) direct assignment of penalty costs to entities that are found to be responsible for the incurrence of the violation; and

¹ *Order Providing Guidance on Recovery of Reliability Penalty Costs by Regional Transmission Organizations and Independent System Operators*, 122 FERC ¶ 61,247 (2008) (“Guidance Order”).

(2) recovery of penalty costs from all members and/or customers of the RTO or ISO when the costs cannot be directly assigned.²

Based on the Commission's direction in the Guidance Order, the July 10 Filing contains proposed tariff amendments ("Schedule 34") that would allow the Midwest ISO to seek approval for recovery of penalty costs on a case-by-case basis under FPA Section 205. First, for reliability penalties the Midwest ISO incurs due to the action or inaction of a Customer or a Market Participant, the Midwest ISO proposes to seek Commission approval under FPA Section 205 to directly assign and bill those penalty costs to the offending entity after providing the entity with the appropriate notice and opportunity to participate in the underlying root cause proceeding. Second, for penalties the Midwest ISO incurs due to its own actions or inactions, or for penalties that it cannot otherwise directly assign to another entity, the Midwest ISO proposes to seek Commission approval under FPA Section 205 to recover penalty costs from all Customers and Market Participants.

In addition to the proposed Schedule 34, the Midwest ISO is also submitting proposed revisions to Module A of the Midwest ISO tariff concerning Billing and Payment, Defaults and Remedies. Specifically, the Midwest ISO is proposing new Section 7.24 that specifies the procedure for billing and defaults of Tariff Customers and Members in the event they are issued an invoice in accordance with the terms of Schedule 34.

II. THE RECOMMENDATION OF THE OMS

The OMS has identified several shortcomings with the Midwest ISO's proposed Schedule 34. In particular, the proposed Schedule 34 fails to provide notification and a process for the customers that will be allocated costs under the sharing proposal to participate in the

² Guidance Order, at P 20

underlying NERC or regional entity proceedings where the penalty is decided. Revising Schedule 34 to incorporate a notification process and allowing affected customers to participate in the penalty decision process will greatly improve the transparency of the penalty assessment process and provide a means for the Midwest ISO customers to seek to protect their interests. Providing affected customers with this option will also improve the legitimacy of the assessment and recovery process in the eyes of the Midwest ISO's customers and members.

Schedule 34 should be further revised to exempt from the shared penalty charge members or customers that were not members or customers of the Midwest ISO at the time of the event that led to the Midwest ISO's incurrence of the penalty.

The OMS is also concerned with the aspect of proposed Schedule 34 that would effectively absolve the Midwest ISO of attempting to recover allocated penalty assessments from customers or members that were customers or members when the event leading to the penalty occurred, but which subsequently ceased to be Midwest ISO customers or members. The Midwest ISO's proposal to simply reallocate those costs to the remaining customers without making a reasonable effort to pursue payment from the departed customers is discriminatory to the remaining customers.

Furthermore, the Midwest ISO does not explain why a separate policy is needed in Schedule 34 to address cost recovery for penalty costs that were incurred on a customer's behalf by the Midwest ISO when the customer was a customer of the Midwest ISO just because such customer is no longer a Midwest ISO customer when the time comes for the Midwest ISO to try to collect. The Midwest ISO does not explain why its existing generic cost recovery policies would not apply to the circumstances involving the assessment of a penalty by a reliability organization on the Midwest ISO.

In an effort to address these shortcomings, the OMS recommends the following revisions in ~~strikeout~~/underline to Sections 1 and 3 of the Midwest ISO's proposed Schedule 34.

1. General

Additionally, this Schedule provides for the participation of Tariff Customers and/or Members in the penalty assessment process with the Transmission Provider ~~if the Tariff Customers and/or Members are alleged to have been involved in the event causing the potential penalty.~~

...

3. Spreading of Costs Where Violation Cannot Be Directly Assigned

When penalties have been assessed to the Transmission Provider that cannot be directly assigned to a Tariff Customer or Member, the Transmission Provider may recover such penalties by providing notice to all Tariff Customers and Members that they may potentially be responsible for penalty costs assessed to the Transmission Provider that cannot be directly assigned under Section 2 of this Schedule. The Transmission Provider shall notify any potentially affected Tariff Customer(s) or Member(s) of a potential penalty as soon as possible after notifications by a Regional Entity or NERC of the commencement of procedures under the CMEP. In addition, the Transmission Provider shall invite the affected Tariff Customer(s) or Member(s) to fully participate in all discussions and/or proceedings under the CMEP.

...

Once there is a final order by FERC regarding the Transmission Provider's ability to recover monetary penalty amounts, the Transmission Provider shall include such amounts in the next appropriate invoice utilizing the FERC-approved methodology for the allocation of the monetary penalty among all Tariff Customers and Members that were Customers or Members at the time of the event that led to the Transmission Provider's incurrence of the penalty. Whenever practicable, the Transmission Provider shall recover such penalty amounts in the invoices issued in the month following the month in which the Transmission Provider receives a FERC order accepting the Transmission Provider's methodology for the allocation of the penalty charge. The Transmission Provider may recover penalty charges over several months if, in its discretion, the Transmission Provider determines such method of recovery to be a prudent course of action. ~~In the event that one or more entities who otherwise would have been apportioned a share of the penalty are no longer Tariff Customers or Members, the Transmission Provider shall adjust the remaining Tariff Customers' and Members' shares of the penalty costs, on a proportional basis, if necessary to fully recover the penalty amount authorized by the FERC.~~

Finally, the OMS wishes to make clear that, by submitting Comments to the Commission in this docket, state commissions are making no pre-judgment regarding the recovery in retail rates of penalty assessments made by the Midwest ISO under Schedule 34 to state jurisdictional regulated load serving entities.³

III. CONCLUSION

For the above-mentioned reasons, the OMS recommends that the Commission direct the Midwest ISO to modify its proposed Schedule 34 to incorporate the edits detailed above.

The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in these comments. The following members generally support these comments.

Indiana Utility Regulatory Commission
Iowa Utilities Board
Michigan Public Service Commission
Minnesota Public Utilities Commission
Missouri Public Service Commission
Montana Public Service Commission
North Dakota Public Service Commission
Ohio Public Utilities Commission
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission

The Illinois Commerce Commission, the Kentucky Public Service Commission and the Wisconsin Public Service Commission abstained from the vote on this pleading.

³ The IURC concurs with the intention of our colleagues. However, the IURC is concerned that the OMS not seek to impose a requirement that cannot be legally satisfied by the Midwest ISO. That is, the Midwest ISO may not know that a market participant is under investigation by the NERC. Even in those instances where the Midwest ISO is aware that a market participant is under investigation, the Midwest ISO may not be permitted to notify that market participant (or any other entity) due to confidentiality requirements.

The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counselor and the Minnesota Office of Energy Security, as associate members of the OMS, participated in these comments and generally support these comments.

Respectfully Submitted,
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Dated: July 31, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Des Moines, Iowa, this 31st day of July, 2009.

William H. Smith, Jr.
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