

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 Document<sup>1</sup> and Commission precedent<sup>2</sup> 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.<sup>3</sup> Cargill argues that if a

transmission provider oversubscribes a transmission system, the onus is on it to either curtail transmission service or build transmission facilities. Cargill relies upon *Exelon*,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> (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

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**,<sup>7</sup> 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.

<sup>1</sup> 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.

<sup>2</sup> 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*).

<sup>3</sup> 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.

<sup>4</sup> 101 FERC at 61,980.

<sup>5</sup> 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*).

<sup>6</sup> Docket No. EL03-30-000.

<sup>7</sup> 68 FR 1448 (2003).