

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF DUKE ENERGY KENTUCKY,)	
INC. FOR APPROVAL TO TRANSFER)	
FUNCTIONAL CONTROL OF ITS)	
TRANSMISSION ASSETS FROM THE)	CASE NO.
MIDWEST INDEPENDENT TRANSMISSION)	2010-00203
SYSTEM OPERATOR TO THE PJM)	
INTERCONNECTION REGIONAL)	
TRANSMISSION ORGANIZATION AND)	
REQUEST FOR EXPEDITED TREATMENT)	

O R D E R

On November 22, 2010, the Midwest Independent System Transmission Operator ("Midwest ISO") filed a motion for an extension of time from Friday, November 19, 2010, until Monday, November 22, 2010, to file its post-hearing brief and a confidential supplement. The Midwest ISO states that it was unable to file its brief with the Commission by the due date of November 19, 2010, but that copies were being sent electronically on that date to all parties of record.

In response to the Midwest ISO's motion, Duke Kentucky jointly filed a memorandum in opposition to the extension of time and a motion to strike the entire brief or, in the alternative, to strike selected portions thereof. Duke Kentucky states that the entire Midwest ISO brief should be stricken because the November 19, 2010 due date was established by the Commission at the November 3, 2010 hearing, that all parties agreed to that date, and that the Midwest ISO's motion for an extension of time fails to provide any reason for non-compliance. Alternatively, Duke Kentucky states

that, if the Commission grants the extension of time and accepts the Midwest ISO's brief, certain portions of that brief should be stricken as presenting new evidence and allegations not supported by the existing record. More specifically, Duke Kentucky seeks to strike those portions of the Midwest ISO's brief that discuss the impact of Duke Kentucky's exit on the potential membership of another utility, the procedure for Duke Kentucky to negotiate a transmission path through PJM in lieu of joining PJM, and whether PJM may ultimately acquire control of Duke Kentucky's generating facilities.

The Midwest ISO then filed a response to Duke Kentucky's memorandum and motion to strike. The Midwest ISO's response states that it worked diligently to provide a comprehensive brief but was unable to make copies of its brief and deliver them for filing at the Commission by 5:00 p.m. on November 19, 2010. The response further states that the Midwest ISO's brief was delivered to the Commission after hours on the due date, that electronic copies of the brief were served on all parties on that date, that the Midwest ISO did not review any other party's brief prior to filing its own brief, and that no party will be prejudiced by the Commission's consideration of the Midwest ISO's brief. Further, the Midwest ISO denies that its brief contains any new evidence or allegations not supported by the record and asserts that there is nothing in its brief that should be stricken. The Midwest ISO also states that the Commission has the ability to determine whether the parties' arguments are supported by the record and, if it determines that they are not, the remedy is to give no weight to such arguments, rather than to strike them. Finally, the Midwest ISO claims that Duke Kentucky has not identified the specific portions of the Midwest ISO's brief which should be stricken and

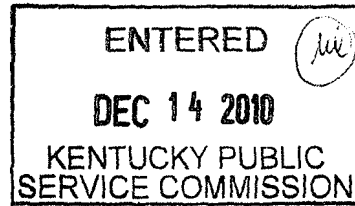
that Duke Kentucky filed its motion to strike merely to respond to some of the arguments in the Midwest ISO's brief.

Based on the motions and being otherwise sufficiently advised, the Commission finds that, under the facts presented here, the Midwest ISO's request for a one-business-day extension of time to file its brief is reasonable, will not prejudice any other party, and should be granted. The Commission further finds that the Midwest ISO's brief does contain three arguments, as described above, which were not previously addressed in the record of this case. Although Duke Kentucky's motion to strike does include a response to each of these three new issues, these issues do not appear to have been fully addressed either in discovery or at the hearing. Consequently, the Commission is unable to determine with certainty that the record has been fully developed to support a decision on each of these issues. Therefore, while we decline to strike these issues from the Midwest ISO's brief or from Duke Kentucky's response, we will give these three issues weight only as merited.

IT IS THEREFORE ORDERED that:

1. The Midwest ISO's motion for an extension of time to file its post-hearing brief is granted.
2. Duke Kentucky's motion to strike the Midwest ISO's brief in its entirety or, in the alternative, to strike three arguments in that brief, as described in the findings above, is denied, but those arguments will be given the weight merited in this case.

By the Commission



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