

required further revision of, Midwest ISO's November 8, 2005 compliance filing, in Docket Nos. ER04-458-004 and ER04-458-006, of revised OATT Attachments Y and Z, concerning revisions to Midwest ISO's emergency conditions service compensation schedule and its generator maintenance outage compensation schedule, respectively. Midwest ISO and the Commission recognized that while Attachments Y and Z were incorporated into the TEMT as Attachments AA and BB, the incorporation was a preliminary measure. Midwest ISO had committed to a stakeholder review process to determine whether the attachments needed modifications to conform to the new energy market-based operations, and then to file such modifications.³ The June 7 Filing of proposed modifications to Attachments AA and BB ensued, as did Midwest ISO's request, in Docket No. ER04-458-007, for the Commission to find that the June 7 Filing satisfies the Commission's directive, in the April 15 Order, that Midwest ISO file further revisions to Attachments Y and Z.

II. The June 7 Filing (Docket No. ER05-1085-000)

3. Midwest ISO states that it has revised Attachment AA, "Compensation and Cost Recovery for Actions During Emergency Condition,"⁴ to be consistent with other provisions in the TEMT that relate to actions that Midwest ISO can take during emergencies. The revised sections of Attachment AA contain: procedures for clearing the real-time energy market during shortage conditions; provisions pertaining to notification, offers, deliverability, payment, and allocation of charges for emergency energy; the price corrective measures that Midwest ISO may undertake to remedy an emergency; the procedures by which Midwest ISO can assign the costs of an emergency to an individual transmission customer or market participant; and incorporation of the TEMT's billing procedures.

4. Midwest ISO states that Attachment BB, "Compensation for Rescheduling Generator Outages,"⁵ establishes a Midwest ISO-wide schedule for reimbursing Generation Owners for the costs incurred as a result of rescheduling a previously planned generator maintenance outage. The revised sections of Attachment BB include: Midwest ISO's authority to require rescheduling in cases of emergency; the information that Midwest ISO will provide Generation Resources about the need to reschedule or the consequences of not rescheduling; Midwest ISO's obligations to respond to Generation

³ April 15 Order at P 47; June 7 Filing at 2.

⁴ FERC Electric Tariff, Third Revised Volume No. 1 at proposed Second Revised Sheet Nos. 1781-89.

⁵ FERC Electric Tariff, Third Revised Volume No. 1 at proposed Second Revised Sheet Nos. 1790-98.

Resources' requests concerning the rescheduling; the nature of the costs for which Generation Owners will be compensated; and the assignment and settlement of charges concerning rescheduling requests.

III. The June 14 Letter (Docket No. ER04-458-007)

5. Midwest ISO notes that the April 15 Order required Midwest ISO to make several revisions to Attachments Y and Z. Midwest ISO observes that Attachments Y and Z were substantially incorporated into the TEMT as new Attachments AA and BB as part of the transition from the old OATT to the new TEMT but that this was done as an interim step until such time as Midwest ISO could conduct a stakeholder review and examine the provisions of Attachments AA and BB to determine whether and to what extent they would need to be modified to incorporate them into the overall framework of the new energy markets created by the TEMT. Midwest ISO further states that as of April 29, 2005, Midwest ISO's OATT was permanently superseded by the TEMT.⁶

6. Midwest ISO asserts that its June 7 Filing proposed modifications to Attachments AA and BB to incorporate them into the overall framework of Midwest ISO's new energy markets, and to implement, where relevant, the tariff modifications required for Attachments Y and Z in the April 15 Order. Midwest ISO asserts that it is unaware of any pending claims for compensation under old Attachment Y or Attachment Z of the OATT and that pursuant to the terms of those attachments, the deadlines for submitting any such claims for compensation has expired.

7. Midwest ISO requests that the Commission find that by virtue of Midwest ISO's June 7 Filing, it has complied to the extent necessary, with the requirements of the April 15 Order.

IV. Notices and Responsive Pleadings

8. Notices of Midwest ISO's filings of June 7, 2005, in Docket No. ER05-1085-000, and June 14, 2005, in Docket No. ER04-458-007, were published in the *Federal Register*,⁷ with motions to intervene and protests due on or before June 28 and July 5, 2005, respectively.

⁶ Midwest ISO cites *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,049 at P 24 and *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,176 at P 23 (2005).

⁷ 70 Fed. Reg. 35,419 and 36,931 (2005).

9. In response to notice of the June 7 Filing, LG&E Energy LLC (LG&E Energy), Consumers Energy Company (Consumers Energy), Dominion Energy Marketing, Inc. and Troy Energy, LLC (collectively, Dominion), Reliant Energy, Inc., and Wisconsin Electric Power Company filed motions to intervene. LG&E Energy filed a protest while Consumers Energy and Dominion filed comments. Consumers Energy filed its comments also in Docket No. ER04-458-007. No other responses to notice of the June 14, 2005 filing were received.

10. On July 13, 2005, Midwest ISO filed an answer to LG&E Energy's protest.

V. Discussion

A. Procedural Matters

11. 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 serve to make the entities that filed them parties to this proceeding.

12. 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 unless otherwise ordered by the decisional authority. We will accept Midwest ISO's July 13 answer because it has provided information that assisted us in our decision-making process.

13. We find that Midwest ISO's June 7 Filing in Docket No. ER05-1085-000 satisfies the Commission's directives in the April 15 Order only with regard to Attachments Y and Z. We accept this filing and order Midwest ISO to make a further compliance filing to Attachments AA, BB and O as discussed below.

B. Attachment AA, Compensation and Cost Recovery for Actions During Emergency Conditions

1. Section B: Compensation for Emergency Condition Services

14. Proposed section B establishes the applicable methods for calculating compensation for providing emergency services: "If the Transmission Provider [*i.e.*, Midwest ISO] requests or directs the Resource,^[8] either directly or through a Control

⁸ The TEMT defines Resource, at section 1.273, as: "Either a Generation Resource or a Demand Response Resource that can reliably adjust its electricity output and/or usage by some specified range and rate at a specific Commercial Node in response to Dispatch Instructions." TEMT at Second Revised Sheet No. 120.

Area Operator, to provide such services during an Emergency^[9] or Emergency System Conditions,^[10] the Market Participant^[11] owning the Resource^[12] shall be compensated in accordance with the provisions of sections 40.2.15 [Shortage Conditions in the Real-Time Energy Market], 40.2.17 [Emergency Energy Purchases] or 48 [Procedures for Correcting Prices] of this tariff.”¹³

15. In the transmittal letter to the June 7 Filing, Midwest ISO states that TEMT section 48 outlines the price corrective measures that Midwest ISO may take to remedy an Emergency Condition, and that if, due to the existence of the Emergency Condition, locational marginal prices (LMPs) or other prices either could not be developed or

⁹ The TEMT defines Emergency, at section 1.80, as: “(1) [A]n abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm Load, equipment damage, or tripping of system elements that could adversely affect the reliability of any electric system or the safety of persons or property; (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of Emergency procedures as defined in this Tariff.” TEMT at Second Revised Sheet No. 70.

¹⁰ The TEMT defines Emergency System Conditions, at section 1.80a, as: “(i) [S]ituations in which a systemic equipment malfunction, including telecommunications, hardware, or software failures, prevents the Transmission Provider from operating the Energy Markets in accordance with the Market Rules; or (ii) widespread electric transmission or generation equipment outages that prevent the Transmission Provider from dispatching the system in accordance with the Market Rules.” *Id.*

¹¹ The TEMT defines Market Participant, at section 1.184, as: “An entity that (i) has successfully completed the registration process with the Transmission Provider and is qualified by the Transmission Provider as a Market Participant, (ii) is financially responsible to the Transmission Provider for all of its Market Activities and obligations, and (iii) has demonstrated the capability to participate in its relevant Market Activities.” TEMT at Second Revised Sheet No. 95.

¹² The TEMT defines Resource, at section 1.273, as: “Either a Generation Resource or a Demand Response Resource that can reliably adjust its electricity output and/or usage by some specified range and rate at a specific Commercial Node in response to Dispatch Instructions.” TEMT at Second Revised Sheet No. 120.

¹³ TEMT at Second Revised Sheets Nos. 567-567A, 570-72, and 678-682.

deviate from what would have been produced absent the Emergency, it has the authority to correct the applicable LMPs or other prices, provided it follows the notice provisions of TEMT section 48.¹⁴

a. Protests

16. LG&E Energy argues first that TEMT subsection 48.1, “Limitation of Market Implementation Errors and Emergency System Conditions”¹⁵ prevents Midwest ISO from applying the price corrective measures of TEMT section 48 to Attachment AA. LG&E points out that this subsection excludes from emergency system conditions those situations where price levels are determined by efficient competition in periods of relative scarcity or relative surplus, and requires Midwest ISO, to the extent possible, to avoid interfering with these competitive price signals. LG&E Energy states that shortage conditions, to which TEMT section 48’s price corrective measures do not apply, is precisely the situation covered by Attachment AA. Therefore, LG&E Energy asks the Commission to reject Midwest ISO’s proposal to apply the price corrective measures of TEMT section 48 to Attachment AA.

17. Second, LG&E Energy objects to Midwest ISO’s proposal to compensate the Market Participant owning the Resource in accordance with TEMT subsection 40.2.17.d,¹⁶ by paying the higher of the applicable LMP or the offer price for emergency energy purchases. LG&E Energy states that the use of the LMP would not, in practice, result in a just and reasonable rate. During an Emergency, the affected Generation Owner could have insufficient time to submit an offer. Thus, because of no bids for Emergency Energy, the compensation would revert to the LMP. This price, however, would not reflect the marginal costs needed to supply the load.

18. LG&E Energy also points to recent events where LG&E argues that generation had cleared the day-ahead market but was then ordered to run at a lower than scheduled output despite a relatively high prevailing LMP, and the Generation Owner had to buy back energy at these high real-time prices. LG&E Energy complains, similarly, that Generation Owners responding to Midwest ISO’s directives to back down generation would not be compensated because the proposal does not reimburse these costs. LG&E Energy states that where Midwest ISO is declaring an Emergency, the Generator must respond regardless of costs. Therefore, LG&E Energy argues that only compensation based on the Generator's costs is just and reasonable. LG&E Energy asks the Commission to retain the existing compensation method of section D (Billing), which

¹⁴ Transmittal at 4.

¹⁵ TEMT at Second Revised Sheet No. 678.

¹⁶ TEMT at Second Revised Sheet No. 572.

now provides that the Generation Owner will invoice Midwest ISO for services under this Attachment AA at the end of the month in which such Emergency Condition Services are rendered.¹⁷

b. Midwest ISO's Response

19. Midwest ISO says that section 48 pricing will be applied only in the context of Attachment AA to the extent that it is applicable under the terms of section 48. To the extent that section 48 does not apply to shortage conditions, Midwest ISO states that LG&E is correct that section 48 would not be triggered by an Attachment AA event involving shortage conditions. However, at worst, this means that this reference to section 48 is merely superfluous because section 48 would not be triggered by an Attachment AA event involving a shortage condition. Nevertheless, out of an abundance of caution, Midwest ISO believes it is best to include the cross-reference in order to avoid any potential inconsistencies between Attachment AA and section 48.¹⁸

20. Midwest ISO argues that the compensation proposal, to pay the higher of LMP or the Emergency Energy offer price, is not new to Attachment AA, but incorporates compensation provisions already adopted by the Commission and incorporated under section 40.2.17 of the TEMT.¹⁹

c. Commission Determination

21. We will allow Attachment AA to refer to section 48.1. Attachment AA provides for compensation of Market Participants owning Resources²⁰ that provide service during "Emergency System Conditions." According to the TEMT, therefore, Attachment AA applies to circumstances in which the Transmission Provider is unable to operate the Energy Markets in accordance with the Market Rules or widespread outages prevent

¹⁷ TEMT at First Revised Sheet No. 1787.

¹⁸ Answer at 4 and 5.

¹⁹ *Id.* at 6.

²⁰ We note that Midwest ISO uses the term "Resource" in Attachment AA. The TEMT defines Resource, at section 1.273, as: "Either a Generation Resource or a Demand Response Resource that can reliably adjust its electricity output and/or usage by some specified range and rate at a specific Commercial Node in response to Dispatch Instructions." In this vein, Midwest ISO also uses the broader phrase "Market Participant owning the Resource." In addressing Attachment AA, we will also use "Market Participants owning Resources," or MP, as necessary.

dispatch of the system in accordance with the Market Rules. Under such circumstances, section 48 pricing may be required.

22. We will also accept the compensation proposal, to pay the higher of LMP or the Emergency Energy offer price, as previously adopted by the Commission and incorporated under section 40.2.17 of the TEMT, except as discussed below.

23. We regard LG&E's general argument - that payment of the LMP price in situations encountered under Attachment AA would result in rates that are unjust and unreasonable - as speculative and unsupported. First, section 40.2.17 of the TEMT provides that the Transmission Provider will try to provide at least 60 minutes notice before Emergency Energy is required. Thus, we disagree that there would be insufficient time for the submittals of offers by affected Market Participants owning Resources or the resulting argument that the LMP price would not reflect marginal costs because there would be no bids for the Emergency Energy. Also, as noted above, where a more extreme situation occurs and the Market Rules do not work, as noted above, prices may be corrected pursuant to section 48.

24. However, LG&E raises legitimate concerns regarding how Midwest ISO will fully compensate Generation Owners whose facilities are directed to back down generation by paying of the higher of LMP or the offer price for Emergency Energy - when the prevailing LMP price has increased over that which the Generation Owner settled at in the Day Ahead market. And although the TEMT does not appear to address this situation, we note that Midwest ISO's Market Subcommittee is looking into this issue.²¹ Therefore, we will accept incorporation of the pricing described under section 40.2.17 of Midwest ISO's TEMT subject to Midwest ISO on compliance addressing LG&E's pricing issue and establishing a method to fully compensate Generation Owners in the situation LG&E describes.

2. Section C: Emergency Redispatch Cost Recovery

25. Proposed section C²² provides for Midwest ISO to assign all costs of an Emergency or Emergency System Conditions to individual Transmission Customers or Market Participants owning Resources when circumstances conclusively demonstrate that their actions or inactions, in violation of a Midwest ISO directive and Good Utility

²¹ See Minutes of MISO Market Issues Conference Call (June 9, 2005), at http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-7ce50a48324a/_pdf?action=download&_property=Attachment (discussing manual redispatch procedures).

²² TEMT at proposed Second Revised Sheet No. 1786.

Practices, proximately caused the Emergency. Such direct assessment of costs would require Commission approval, obtained pursuant to a Midwest ISO filing under section 205 of the Federal Power Act (FPA).²³ To the extent that costs are directly assigned, the cost allocation of TEMT section 40.2.17(e) would not apply.²⁴

a. Protests

26. Because of the potential magnitude of these costs, Consumers Energy asks that, before Midwest ISO may assign them, Midwest ISO must first demonstrate that it was reasonably foreseen that an Emergency could result from the entity's failure to carry out Midwest ISO's directive. In support, Consumers Energy asserts that the April 15 Order used the limitation, "faced with a documented reasonable *expectation of an Emergency*,"²⁵ Consumers Energy cites also Midwest ISO's own proposed limitation of authority, in section B of Attachment BB, so that Midwest ISO may require generator outages to be rescheduled, consistent with Good Utility Practice only when it "foresees a documented reasonable expectation of an Emergency or Emergency Conditions."²⁶ Consumers Energy recommends that section C of Attachment AA be revised to track the protective language of Attachment BB, so that direct assignment of these potentially massive costs is allowed only when an entity has violated a Midwest ISO directive that is consistent with Good Utility Practice and was based on a documented reasonable expectation of an emergency.

b. Commission Determination

27. As discussed further below, we require that the Transmission Provider reinstate the reporting requirements under section E of Attachment AA that will allow Market Participants owning Resources to verify that requests for service by Midwest ISO were consistent with the purposes set forth in Attachment AA. Under this requirement, Midwest ISO must be able to document the need for its requests for service. As a result,

²³ 16 U.S.C. § 824e (2000)

²⁴ This section provides for recovery of charges for Emergency Energy Purchases through the LMP market. TEMT at Second Revised Sheet No. 678.

²⁵ April 15 Order at P 22. The quotation's context is the Commission's statement that Midwest ISO would have mandatory authority, under the TEMT, to reschedule generation outages, consistent with Good Utility Practice, when faced with a documented reasonable expectation of an emergency.

²⁶ See *infra* P 34.

Midwest ISO must ensure that requests for service under Attachment AA occur only when based on a documented reasonable expectation of an emergency.

28. The reporting requirements under section E of Attachment AA provide a sufficient safeguard against the improper assignment of emergency redispach costs, and we are not convinced that Consumers Energy's proposal is necessary.

3. Section E: Information

29. Midwest ISO proposes to eliminate Attachment AA, section E.²⁷ The existing section requires Generators to provide sufficient information so that Midwest ISO can verify their invoices for emergency situation services under Attachment AA, and for Midwest ISO similarly to provide Generators with sufficient information and written documentation so that they can verify that Midwest ISO's request for services under the attachment was consistent with the attachment's purpose. The section provides also that if Midwest ISO orders the provision of service due to Emergency Service Conditions, the control area operator will confirm that the redispach was at Midwest ISO's direction. Lastly, the section provides for Midwest ISO, in accordance with its Standards of Conduct, to keep confidential the information that a Generator has marked Confidential.

a. Protests

30. LG&E Energy objects that Midwest ISO has offered no reason for deleting Section E. LG&E Energy states that this section permits after-the-fact verification of the basis for Midwest ISO's declaration of emergency situations, and whether emergency directives had, in fact, been issued, and that without the section, Midwest ISO is not obliged to confirm that an emergency situation existed. The section ensures transparency and confidence in the marketplace, and assures Market Participants that Midwest ISO is not interfering with the market outcome except during declared emergency situations. LG&E Energy asks the Commission to reject the proposed deletion of section E.

b. Midwest ISO's Response

31. Midwest ISO states that section E of Attachment AA was removed because it was either no longer necessary or otherwise covered by other areas of the TEMT. Language dealing with documentation of generation costs, says Midwest ISO, are now covered by provisions found elsewhere in the tariff and cross-referenced in Attachment AA (sections 40.2.15, 40.2.17 and 48 of the TEMT).

32. Midwest ISO asserts that with respect to documentation and verification of an Emergency, section 38.2.5.h.iv of the TEMT already requires Midwest ISO "to be

²⁷ TEMT at First Revised Sheet Nos. 1788-89.

responsible for documenting all Generator Planned Outage schedules, all schedule changes, and all studies and service performed with respect to Generator Planned Outages.”

c. Commission Determination

33. We disagree that the reporting requirements proposed for deletion are all included elsewhere in the TEMT or are otherwise unnecessary. Section 38.2.5.h.iv pertains only to Generator Outage Schedules and not to other actions taken to provide service during an Emergency or Emergency System Conditions. Sections 40.2.15 and 40.2.17 of the TEMT provide for notices or warnings of an impending emergency, but do not require Midwest ISO to provide information subsequent to Market Participant owning Resources providing service during an Emergency or Emergency System Conditions in order for the MPs to verify that the request for services under Attachment AA was consistent with Attachment AA’s purposes. Section 48 as previously described applies to a more systemic or widespread problem – and thus does not substitute for the general reporting requirement currently included in section E of Attachment AA. Finally, Midwest ISO has not demonstrated that this reporting requirement is no longer needed. We will require that Midwest ISO reinstate section E of Attachment AA.

C. Attachment BB: Compensation for Rescheduling Generator Outages

1. Section B: Actions to Maintain Transmission System Reliability

34. As revised, Attachment BB, section B²⁸ would now permit Midwest ISO to require a Generation Resource to reschedule a previously scheduled generator outage, consistent with Good Utility Practice, when Midwest ISO foresees a documented reasonable expectation of an Emergency or Emergency System Conditions. It maintains Midwest ISO’s ability to request interruption or expedited conclusion of an outage, consistent with Good Utility Practice, to prevent or resolve an emergency situation, but adds the necessity for documented reasonable expectation. Under revised section B Midwest ISO will provide a Generation Resource with all non-confidential information reasonably available to Midwest ISO that relates to the need for any request to reschedule a planned outage, as well as the reasonably foreseeable operational consequences of not rescheduling. The revised section would also require Midwest ISO to provide the Generation Resource with alternative dates for the rescheduled outage prior to requesting that an outage be rescheduled. It would permit the Generation Resource at least 24 hours to evaluate the information provided and to respond to the rescheduling request, except in case of emergency conditions. If a Generation Resource requests that an outage be

²⁸ TEMT at proposed Second Revised Sheet Nos. 1791-92.

rescheduled, Midwest ISO would have a reasonable period of time to respond whether the request is acceptable.

a. Protests

35. LG&E Energy asks the Commission to revise proposed section B so that Midwest ISO must also provide Generation Resources with the financial consequences, in addition to the operational consequences, of not voluntarily rescheduling a planned generator outage at Midwest ISO's request. Further, LG&E Energy asks the Commission to revise section B to require Midwest ISO to accept or reject a Generation Resource's request for rescheduling within 24 hours indicating whether the request is acceptable, and state whether charges under Attachment BB would apply. LG&E asks the Commission to require Midwest ISO to provide an estimate of all applicable charges under Attachment BB within 48 hours of receiving a Generator's written request so that the Generator may evaluate the consequences of voluntarily rescheduling a planned outage. LG&E explains that these additions will mean that a Generation Resource has the necessary operational and financial estimates to properly evaluate the consequences of voluntarily rescheduling a planned outage.

36. Consumers Energy criticizes, as contrary to the April 15 Order and highly impractical, the proposed revision that permits a Generation Resource only 24 hours (except in an emergency situation) to respond to a Midwest ISO rescheduling request. Consumers Energy cites the Commission's reluctance to find feasible a generic timeline for requesting that an outage be rescheduled and for response to such request.²⁹ Consumers Energy adds that a 24-hour limit ignores the necessary coordination with various contractors and comments that to reschedule a major outage at a large plant takes one to two weeks.

b. Midwest ISO's Response

37. Adding the words "and financial" as requested by LG&E to section B of Attachment BB, asserts Midwest ISO, would not be practical because the Midwest ISO has no way of knowing ahead of time what the financial consequences would be of a Generation Resource's decision not to voluntarily reschedule an outage in response to a Midwest ISO request. Such financial consequences would be based on a number of factors that would be known only after real-time operations had concluded.

38. Midwest ISO responds that a requirement to respond to a generator's request to reschedule an outage within 24 hours and to provide, within 48 hours, the applicable

²⁹ April 15 Order at P 26.

charges under Attachment BB associated with any rescheduling is not feasible. Midwest ISO states that it cannot respond to such requests within LG&E's suggested timeframes.

c. Commission Determination

39. Regarding the suggestions that Midwest ISO: (1) supply Generation Resources with the financial information on the consequences of not rescheduling, (2) within 24 hours of receiving a request to reschedule, state whether Attachment BB charges would apply; and, (3) within 48 hours of receiving a request to reschedule, provide an estimate of all applicable charges under Attachment BB, we believe these suggestions are impractical. First, if a Generation Resource were to refuse a Midwest ISO directive to reschedule an outage where an Emergency or Emergency System Conditions requires such rescheduling, potential direct costs may apply and would likely be unknown. We also believe that in the case of a request by Midwest ISO, there may be a number of factors to consider in providing such information that would not be apparent until after real-time operations have concluded.

40. LG&E suggests that Midwest ISO be required to accept or reject within 24 hours a Generation Resource's request to reschedule an outage instead of the proposed language whereby Midwest ISO would have a "reasonable" period of time to respond to the request. We note that existing EMT language at section 38.2.5(h) does not include a time limit for Midwest ISO to respond to a generator's request for rescheduling. As we have stated previously, we are unconvinced that a generic timeline to respond to a request for rescheduling is feasible.³⁰

41. Midwest ISO proposes language that the Generation Resource be permitted at least 24 hours (except in the case of an Emergency) to evaluate the information provided by Transmission Provider and respond to a rescheduling request. Existing EMT language does not address the amount of time that a Generation Resource would be allowed to consider a non-emergency request for rescheduling a generator maintenance outage by Midwest ISO. We remain unconvinced that a generic timeline to respond to a request for rescheduling is practical and reject the proposed language that affords a specific amount of time for Generation Resources to consider such requests. However, to the extent that Midwest ISO can grant a Generation Resource additional time to respond to Midwest ISO's request for rescheduling, we encourage Midwest ISO to do so.

2. Subsection C.1: Compensation -- Direct Costs

42. Existing language in Attachment BB provides that the Transmission Provider will compensate the Generation Owner for any direct and verifiable costs that such

³⁰ See *Id.* at P 26.

Generation Owner incurs as a result of the Transmission Provider's rescheduling of a planned outage under Attachment BB. It also states that a Generation Owner shall not be compensated for any opportunity costs associated with such rescheduling, except to the extent that such costs also are direct and verifiable, as determined by the Transmission Provider. Existing tariff language also disallows compensation if the Transmission Provider determines that the rescheduling of a planned outage is required as a result of the planned outage of any facility that is owned, controlled or operated by the same entity or entities owning, controlling or operating the Generation Resource being requested to reschedule.

43. Proposed subsection C.1³¹ excludes from compensation any opportunity costs associated with rescheduling by removing the phrase "except to the extent that such costs also are direct and verifiable, as determined by the Transmission Provider." The proposed subsection also excludes compensation to a Generation Owner if a rescheduled planned outage is required because of a planned outage or a "forced outage" of any other Generation Resource owned, controlled, or operated by the same entity as the facility being requested to reschedule.

a. Protests

44. Dominion criticizes Midwest ISO as failing to justify why it proposes to disallow compensation for direct and verifiable opportunity costs, and asks the Commission to reject the proposed disallowance. Dominion states that, although section B provides for Midwest ISO to provide Generation Resources with alternate dates to reschedule a planned outage, these dates may not account for expected energy prices. The alternate dates may therefore result in lost opportunities in the energy market. Dominion continues that, typically, planned outages are scheduled during shoulder months that often support relatively lower energy prices, and thus it is likely that the generation owner will lose some opportunity costs because of rescheduling.

45. Consumers Energy criticizes as without justification Midwest ISO's proposal to disqualify a Generation Resource from compensation if the rescheduled outage is required because of a forced outage at another plant owned by the same entity. Consumers Energy states that a forced outage is not a voluntary act that can be planned or prevented. It asks the Commission to reject this proposed revision as unduly discriminatory among Generation Resources.

³¹ TEMT at proposed Revised Sheet Nos. 1792A-93.

b. Commission Determination

46. Regarding the request to be compensated for opportunity costs, we are unconvinced of the likelihood of the Transmission Provider rescheduling a generator maintenance outage from a shoulder month where prices are relatively cheap to a month where prices are higher. Moreover, we note that the proposed language incorporates effective language under the EMT at section 38.2.5 (h)(iii).

47. Regarding the criticism of Midwest ISO's proposal to disqualify a Generation Resource from compensation if the rescheduled outage is required because of a forced outage at another plant owned by the same entity, we agree that "forced outages" are involuntary and arise from unforeseen equipment failure or emergency maintenance requirements. We believe that the situation described – Entity A's first unit is unexpectedly unavailable to generate (i.e., a "forced outage"), leading to Entity A's second unit, unexpectedly being required to generate - would be unusual. However, Midwest ISO does not explain what purpose is served by not reimbursing Entity A for the costs born by rescheduling the second unit. We will reject Midwest ISO's change without prejudice to the Midwest ISO adequately supporting this change.³²

3. Subsection C.2: Compensation -- Settlement of Charges

48. Midwest ISO increases from 30 to 60 the number of days for the Generation Owner whose Generation Resource's outage was rescheduled to submit a request for compensation to Midwest ISO. After Midwest ISO verifies the information and allocates the rescheduling costs, in accordance with Attachment BB, subsection E, "Cost Recovery,"³³ Midwest ISO bills the pertinent Transmission Customers in its next billing cycle. Midwest ISO reduces the number of days for payment by Transmission Customers from 15 days to 7 days pursuant to section 7.1 of the TEMT. Within 30 days after billing the Transmission Customer, the Transmission Provider then remits all monies received to the Generation Owner.

a. Protests

49. Consumers Energy supports the reduction of time for the Transmission Customer's payments from 15 days to 7 days. However, Consumers Energy criticizes

³² If Midwest ISO is concerned regarding the possibility of gaming, Midwest ISO should explain the specific harm Midwest ISO anticipates from the unexpected loss of a generator and the unexpected availability of generator and how the suggestion not to compensate specifically addresses this harm.

³³ TEMT at proposed Second Revised Sheet No. 1799.

Midwest ISO for leaving unchanged the 30-day period after customer billings that Midwest ISO has to pass the payments on to the Generation Resource and asserts that this gives Midwest ISO eight more days (a total of 23 days) to process payments. Consumers Energy argues that Midwest does not explain why it needs 23 days to pay the Generation Resource. This disparity, says Consumers Energy, carries through to the payments by Generation Resources for having over-collected their costs. The Generation Resource will have only 7 days to refund its overpayment, while Midwest ISO will have 23 days to make appropriate re-distributions. Consumers Energy asks the Commission to revise this proposed subsection so that Midwest ISO will be required to make its payments to Generation Resources within 14 days of billing Transmission Customers. The result will be that all entities, Midwest ISO, Generation Resources, and Transmission Customers, will have 7 days to make payments pursuant to Attachment BB.

b. Commission Determination

50. Midwest ISO references section 7.1 of the TEMT when requiring payment within 7 days by the Transmission Customers to the Transmission Provider of billed rescheduling costs. Yet Midwest ISO does not similarly reference the TEMT when referring to its own responsibilities to remit monies received from Transmission Customers to the Generation Owner whose Generator Resource's outage was rescheduled. We will accept the revised language as it relates to the Transmission Customer's responsibilities, but require that Midwest ISO make certain revisions to the language addressing its own responsibilities.

51. We believe that time - possibly in the order of fifteen days³⁴ - may be necessary for the Transmission Provider to validate the Generation Owner's request for compensation, to allocate costs to the appropriate Transmission Customers, and to assign charges in the next billing cycle. However, after completion of that work, the Transmission Provider should then follow the timetable(s) established in the currently effective TEMT for remittance of those monies. Therefore, we require Midwest ISO to revise subsection C.2 to clarify that the Transmission Provider is subject to the applicable sections of the TEMT. Midwest ISO must also clearly state and support the amount of time it proposes to allot itself before it bills Transmission Customers.

³⁴ We note that the existing Attachment BB provides that the Transmission Provider will notify the Generator within fifteen (15) Calendar Days if documentation submitted by the Generator is insufficient or incomplete.

3. Subsection C.3: Compensation -- Emergency Conditions Costs and Direct Assignment of Costs

52. Subsection C.3³⁵ excludes compensation under Attachment BB for a Generation Resource's costs of redispatched generation during an Emergency or Emergency System Conditions, including redispatch that occurred because a Generation Resource voluntarily rescheduled a planned outage, because those costs are covered under Attachment AA. Attachment AA compensation is in addition to any compensation covered under Attachment BB.

53. As proposed, revised subsection C.3 states that if Midwest ISO has notified a Generation Resource that an Emergency or Emergency System Conditions requires that the Generation Resource's planned outage be rescheduled, and such rescheduling is consistent with Good Utility Practice, but the Generation Resource does not reschedule the planned outage and such failure to reschedule contributes to the emergency situation, then the Generation Resource shall be subject to the direct cost assignment provisions set forth in Attachment AA, section C. Lastly, where one Generation Resource must reschedule its planned outage because of a second Generation Resource's fault, negligence, or other action or inaction inconsistent with Good Utility Practice, the second Generation Resource shall be subject to direct assignment of the first Generation Resource's rescheduling costs, provided that Midwest ISO receives Commission approval of the direct assignment costs, pursuant to a filing under section 205 of the FPA.

a. Protests

54. Consumers Energy states that Midwest ISO blurs the line between requests and directives, which results in confusion over the liability provisions and makes them too broad and too easy to impose. Consumers Energy refers to the April 15 Order, where protestors objected to Midwest ISO's inclusion of language in Attachment Z (now, Attachment BB) that put a Generation Owner on notice of potential liability, under Attachment Y (now, Attachment AA), should anticipated emergency conditions develop as a result of the Generation Owner's failure to reschedule a maintenance outage as requested by Midwest ISO.³⁶ Consumers Energy cites the Commission's directive in that

³⁵ TEMT at proposed Second Revised Sheet No. 1796.

³⁶ April 15 Order at P 20.

order, which required that the objected-to language be removed because it was inconsistent with the voluntary response afforded the Generation Owner.³⁷

55. Consumers Energy objects to Midwest ISO's proposal in Attachment BB, subsection C.3, to directly assign costs to a Generation Resource that it has *notified* of the need to reschedule a planned outage consistent with Good Utility Practice. However, in the preceding section, section B of Attachment BB, Midwest ISO distinguishes between *requiring* a Generation Resource to reschedule and *requesting* it to do so. Consumers Energy states that paragraph 2 of subsection C.3 needs to track the same terminology as used previously in section B so that it is clear which situations in section B are subject to direct assignment.

56. Consumers Energy continues that paragraph 2 of subsection C.3, which discusses direct assignment of costs when the Generation Resource fails to reschedule its planned outage, and this failure contributes to the emergency situation, should be reworded to indicate clearly that costs of rescheduling may be directly assigned only where Midwest ISO *required* rescheduling, which it may do only if it has foreseen a documented reasonable expectation of an emergency or emergency system conditions. Moreover, says Consumers Energy, to conform with the April 15 Order, this paragraph should state, consistent with Attachment AA, section C, and Attachment BB, subsection C.3, at paragraph 3, that Midwest ISO must obtain Commission approval in an FPA section 205 proceeding before it can directly assign these costs.

57. Consumers Energy criticizes the proposed revisions of subsection C.3 for not explicitly exempting from direct assignment of costs those situations in which rescheduling a planned outage would result in a violation of law. Consumers Energy gives the example of the unlawfulness of operating a boiler without a valid inspection certificate. It explains that the need to keep a boiler's certificate current is one factor determining when outages are scheduled. Consumers Energy recommends that subsection C.3 acknowledge the need to reschedule an outage before expiration of a generating unit's boiler inspection certificate as a valid excuse for refusing to reschedule. It states that this could be done either explicitly or by clarifying that complying with legal requirements is part of Good Utility Practice.

³⁷ *Id.* at P 22. The Commission noted there that, to maintain system reliability, Midwest ISO has authority under the TEMT to reschedule generation outages consistent with Good Utility Practice when faced with a documented reasonable expectation of an Emergency. *Id.*

b. Commission Determination

58. We agree that the language in section C.3 is confusing and should track the distinction created by Midwest ISO in section B between “requesting” and “directing” the rescheduling of a generator maintenance outage. Therefore, we direct Midwest ISO to replace the text “If a Generation Resource has been notified by Transmission Provider under section B that an Emergency or Emergency System Conditions requires” with language indicating that Midwest ISO has directed the Generation Resource to reschedule. We further agree that the second paragraph of section C.3 should also state that Midwest ISO must obtain the requisite Commission approval in an FPA section 205 proceeding before directly assigning these costs. Subject to these changes being made, we accept the direct assignment language in this section.

59. Also, the responsibility to schedule generation outages sufficiently in advance of events such as those described by Consumers Energy belongs to the Generation Resource. To the extent that the Generation Resource must take into account expiring boiler certificates when scheduling its maintenance outages, we encourage that Generation Resource to do so.

D. Other Matters Pertaining to Compliance with the April 15 Order

60. Consumers Energy notes that Midwest ISO has yet to provide a redlined version of revisions that Midwest ISO made to Attachment O in order to comply with early orders in this proceeding and that the April 15 Order required such redlined version. Consumers Energy further notes inconsistent use of definitions and cites.

61. We direct Midwest ISO to provide the redlined version of Attachment O required by the April 15 Order and make any corrections addressed by Consumers Energy that will make Attachments AA and BB conform with defined terms and cites in the TEMT effective as of the date of Midwest ISO’s next filing.

The Commission orders:

Midwest ISO’s June 7 Filing is hereby conditionally accepted, subject to Midwest ISO submitting a compliance filing within 30 days of the date of this order, as described in the body of this order.

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.