

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. Docket No. ER02-488-004

ORDER ON COMPLIANCE FILING

(Issued December 29, 2006)

I. Introduction

1. In this order, we conditionally accept the proposed revisions to Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Operational Protocols for Existing Generators (Operating Protocols). As discussed below, we will order Midwest ISO to make a further compliance filing.

II. Background

2. In December 2001, Midwest ISO submitted, for informational purposes, proposed Operating Protocols intended to establish for Midwest ISO and owners or operators of existing generators, the obligations necessary for reliable operation of facilities under Midwest ISO's control. In *Midwest Independent Transmission System Operator, Inc.*, 98 FERC ¶ 61,137 (2002) (February 13 Order), the Commission, among other things, directed Midwest ISO to file the proposed Operating Protocols pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000),¹ subject to the outcome of the Generic Interconnection Proceeding.² The February 13 Order also addressed comments related to Midwest

¹ 16 U.S.C. § 824d (2000).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,662 (June 16, 2005),
(continued)

ISO's obligations under the proposed section 7.2.4 of the proposed Operating Protocols. Some intervenors expressed concerns that section 7.2.4 would not provide adequate protection to generators who suffered financial harm because Midwest ISO directs generators to provide certain services without a commitment from Midwest ISO to compensate generators that are harmed financially. In the February 13 Order the Commission said, "that it is consistent with good utility practice for Midwest ISO to ensure compensation to generators for just and reasonable costs incurred from following Midwest ISO's directives."³

3. On April 15, 2002, Midwest ISO submitted proposed Operating Protocols in a rate schedule format pursuant to section 205, as directed by the February 13 Order.⁴

4. In *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,262 (2002) (September 2002 Order), the Commission conditionally accepted Midwest ISO's revised proposed Operating Protocols, effective April 16, 2002, subject to refund and further orders to be issued in the Generic Interconnection Proceedings.⁵ Midwest ISO was directed to further revise the proposed Operating

FERC Stats. & Regs. ¶31,190 (2005) (Generic Interconnection Proceeding); *see also Notice Clarifying Procedures*, 106 FERC ¶ 61,009 (2004).

³ February 13 Order at 61,403.

⁴ In addition to filing the proposed Operating Protocols in a rate schedule format, Midwest ISO defined the term "Reasonable Efforts" and explained why that term is superior to the "due diligence standard" proposed by the intervenor. Midwest ISO proposed:

"Reasonable Efforts" shall mean, with respect to any action required to be made, attempted, or taken by a Party under this Rate Schedule in the exercise of "Reasonable Efforts," such efforts as are timely and consistent with Good Utility Practices that would be undertaken for the protection of its own interests under the conditions affecting such action, including but not limited to the amount of notice of the need to take such action and the duration and type of such action.

April 15, 2002 Transmittal Letter at 2.

⁵ The September 2002 Order, among other things, accepted Midwest ISO's definition of "Reasonable Effort" and directed Midwest ISO to: (1) reconcile section 7.3.7 of its Operating Protocols with section 3 of Attachment K

(continued)

Protocols to: (1) provide adequate assurance of payment when Generators are called upon to provide mandatory redispatch services;⁶ (2) establish procedures for Generators to choose a payment option in advance of an emergency occurrence;⁷ (3) resolve compensatory issues for services that the Generators provide under the Operating Protocols;⁸ and (4) protect Generators from the monetary effects of third-party actions.⁹

5. On October 11, 2002, Midwest ISO submitted its second revised proposed Operating Protocols in order to comply with the September 2002 Order.¹⁰ In *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,262 (2002) (September 2003 Order) the Commission conditionally accepted the

(Congestion Relief) of the Midwest ISO Open Access Transmission Tariff (OATT); (2) clarify the term “Emergency Conditions”; (3) clarify the term “local” as used in section 2.8; (4) modify the last sentence in section 2.9.3 to be consistent with section 3.7 with respect to the recoverability of lost opportunity costs; and 5) revise section 1.2 to include a 60-day limitation on Midwest ISO’s authority to supercede a prior agreement in the absence of a section 206 filing or an agreement among the parties.

⁶ September 2002 Order, at P 15.

⁷ *Id.*, at P 32.

⁸ *Id.*, at P 38.

⁹ *Id.*, at P 42.

¹⁰ In its second revised proposed Operating Protocols, Midwest ISO explained that it could not revise section 7.3.7 of the Operating Protocols as directed in the September 2002 Order (reconciling section 7.3.7 with a provision in Attachment K) because in Docket No. ER02-1767-000, Midwest ISO requested permission to withdraw pending proposed revisions to Attachment K of Midwest ISO's OATT. In that filing, Midwest ISO also requested authorization to defer implementation of Attachment K until the Midwest ISO energy markets become operative. The Commission granted Midwest ISO's request in a Letter Order. See *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,174 (2002).

second set of revisions to the proposed Operating Protocols and ordered Midwest ISO to make a further compliance filing.¹¹

6. In Docket No. ER04-458-000, Midwest ISO made the compliance filings required by the Generic Interconnection Proceeding. Pursuant to its responsibility under sections 205 and 206 of the FPA, to remedy undue discrimination, the Commission required all public utilities that own, control, or operates facilities for transmitting electric energy in interstate commerce to append to their OATTs a *pro forma* Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA). Order No. 2003 directed such public utilities to file revised OATTs by January 20, 2004.¹² The Commission however permitted independent transmission providers, *e.g.*, regional transmission organizations (RTOs), the flexibility to deviate from the *pro forma* LGIP and LGIA to meet their regional needs.¹³ An independent transmission provider could either file: (a) a notice of intent to adopt the Order No. 2003 *pro forma* LGIP and LGIA; or (b) new standard interconnection procedures and

¹¹ The Commission stated that:

The withdrawal of the revisions to Attachment K of the Midwest ISO OATT and deferral of its implementation temporarily addresses our concern regarding the reconciliation of Section 7.3.7 of the Operating Protocols with Section 3 of Attachment K. However, . . . upon the effective date of the final rule in the Generic Interconnection Proceeding, the Commission directed Midwest ISO to discontinue its business practice of not compensating Interconnection Customers for Emergency Redispatch.

September 2003 Order at P 12.

The Commission directed Midwest ISO to further revise the language in section 1.2.1 to state that the Generator or another party may submit a section 206 filing to the Commission within that 60-day period. *Id.* at P 17. The Commission also accepted as consistent with the September 2002 Order additional revisions to the proposed Operating Protocols that were not contested by the parties *Id.* At P 18.

¹² See *Notice Clarifying Compliance Procedures*, *supra* note 2.

¹³ See, *e.g.*, Order No. 2003 at P 26, 28, 32, 34, 92, 698-703 and 822-24.

agreements developed under an “independent entity variation” standard.¹⁴ For independent transmission providers filing under option (b), the Commission stated that it would solicit comments on that filing before acting, and the independent transmission provider’s existing, Commission-approved standards and procedures would continue to apply pending Commission action. After submitting its compliance filing, an independent transmission provider would continue to have the right to propose changes to its LGIP and LGIA using the “independent entity variation” standard.¹⁵

7. In Docket No. ER04-458-000, Midwest ISO proposed certain variations from the *pro forma* LGIP and LGIA based on its operating requirements and consistent with the flexibility provided to RTOs in Order No. 2003.¹⁶ In *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 (July 8 Order), *order on reh’g*, 109 FERC ¶ 61,085 (2004) (October 28 Order) the Commission accepted in part and rejected in part Midwest ISO’s proposed revisions to the *pro forma* LGIA/LGIP. The Commission found that Midwest ISO’s proposed revisions generally complied with the requirements but, the Commission rejected certain proposed revisions as being inconsistent with Order No. 2003 and Order No. 2003-A. The Commission also directed a further compliance filing regarding certain issues raised by Midwest ISO’s filings in that proceeding.¹⁷

III. Docket No. ER02-488-004 -Third Revised Proposed Operating Protocols

8. On March 22, 2004, Midwest ISO submitted the third revised proposed Operating Protocols in an attempt to comply with the September 2003 Order. In the transmittal letter, Midwest ISO states that the proposed Operating Protocols and the Order No. 2003 compliance tariff sheets would govern the activities of existing and new generators, respectively.¹⁸ To the extent, that the Commission

¹⁴ Order No. 2003 at P 827.

¹⁵ See *Notice Clarifying Compliance Procedures*, *supra* note 2.

¹⁶ January 20, 2004 Transmittal Letter at 5.

¹⁷ Midwest ISO’s compliance filing to the October 28 Order in Docket No. ER04-458-005 was accepted by Letter Order dated January 26, 2005.

¹⁸ March 22, 2004 Transmittal Letter at 6.

accepts the proposed modifications or requires additional modifications to the proposed tariff sheets in Docket No. ER04-458-000, Midwest ISO states that it will make the required additional modifications to the Operating Protocols. Thus, Midwest ISO requests an effective date coincident with the effective date of the tariff sheets submitted in Docket No. ER04-458-000, Midwest ISO's compliance filing for the Generic Interconnection Proceeding.

IV. Notice and Responsive Filings

9. Notice of Midwest ISO's compliance filing was published in the Federal Register, 69 Fed. Reg. 17138 (2004), with motions to intervene and protests due on or before April 12, 2004. Archer-Daniels Midland Company (ADM), Midwest Stand-Alone Transmission Companies (MSATs),¹⁹ and Consumers Energy Company (CECo) filed timely motions to intervene with comments. Dairyland Power filed a timely motion to intervene with a conditional protest. Wisconsin Electric Power Company (WEPCO) filed a timely motion to intervene and protest. On April 27, 2004, Midwest ISO submitted an answer to the protests.

V. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁰ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²¹ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it provided information that assisted us in our decision-making process.

¹⁹ For purposes of this proceeding, MSATs include: American Transmission Company LLC (ATCLLC), GridAmerica LLC (GridAmerica), International Transmission Company (International Transmission), and Michigan Electric Transmission Company, LLC (METC).

²⁰ 18 C.F.R. § 385.214 (2006).

²¹ 18 C.F.R. § 385.213(a) (2) (2006).

B. Substantive Matters**1. Appendix 1 - Definitions**²²**a. Midwest ISO Proposal**

12. Midwest ISO states that all of the proposed modifications to the relevant definitions conform to corresponding terms used in the LGIA. Two definitions proposed in the March 22, 2004 filing are in dispute.

13. The first disputed definition is for the term "Distribution System." Midwest ISO proposes the following:

"Distribution System" shall mean the Transmission Owner's facilities and equipment, if any, connected to the Transmission System and used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among Control Areas and other entities owning distribution facilities interconnected to the Transmission System.

14. The second disputed definition is for the term "Transmission Owner." Midwest ISO proposes the following:

"Transmission Owner" shall mean that Transmission Owner as defined in the OATT, which includes an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at which the Generation Facility interconnects or otherwise integrates the operation of the Generating Facility. Transmission Owner should be read to include any Independent Transmission Company that manages the transmission facilities of the Transmission Owner and shall include, as applicable, the owner and/or operator of distribution facilities interconnected to the Transmission System and to which the Generating Facility is

²² For purposes of this order, proposed section and/or Article language, not included in the discussion section of this order, is contained in the attached Appendix.

interconnected for the purpose of either transmitting electric energy in interstate commerce or selling electric energy at wholesale in interstate commerce pursuant to the OATT.

b. Intervenor Comments

15. MSATs and WEPCO argue that the proposed definition of “Distribution Systems” fails to account for the Distribution Systems within Midwest ISO that the transmission owners (TOs) do not own. WEPCO points out that the proposed definition does not apply to utilities within the ATCLLC footprint because ATCLLC is a stand-alone transmission company that does not own the distribution system, which is owned by WEPCO. WEPCO requests that the Commission order Midwest ISO to modify the definition of “Distribution System” to recognize the ATCLLC model.

16. MSATs also take issue with the proposed definition of “Transmission Owner”. MSATs specifically object to the portion that reads, “as applicable, the owner and/or operator of distribution facilities...” According to MSATs this language erroneously implies that distribution facilities are necessarily owned by TOs.

c. Midwest ISO Answer

17. Midwest ISO states that the definitions are consistent throughout the tariff and are not isolated solely to use in the Operating Protocols. As such, Midwest ISO suggests that this proceeding is not the proper forum in which to address the intervenors’ proposed modifications and alterations to these definitions.

d. Commission Determination

18. Midwest ISO indicates that the proposed revisions to the definitions of “Distribution System” and “Transmission Owner” amend and clarify the application of Attachment X, Large Generator Interconnection Procedures. Midwest ISO proposed the following language (underlined language indicates proposed additions and **bolded** language indicates proposed deletions);

“Distribution System” shall mean the Transmission Owner's facilities and equipment, if any, connected to the Transmission System, over which facilities transmission service or Wholesale Distribution Service under the Tariff is available at the time the Interconnection Customer has requested interconnection of a Generating Facility for the purpose of either transmitting electric energy in interstate commerce or selling electric energy at wholesale in interstate commerce and which are used to transmit

electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among Control Areas and other entities owning distribution facilities interconnected to the Transmission System.

“Transmission Owner” shall mean that Transmission Owner as defined in the Tariff, which includes an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at which the Interconnection Customer proposes to interconnect or otherwise integrate the operation of the Generating Facility. Transmission Owner should be read to include any Independent Transmission Company that manages the transmission facilities of the Transmission Owner and shall include, as applicable, the owner and/or operator of distribution facilities interconnected to the Transmission System over which facilities transmission service or Wholesale Distribution Service under the Tariff is available at the time the interconnection Customer requests Interconnection Service and to which the Interconnection Customer has requested interconnection of a Generating Facility for the purpose of either transmitting electric energy in interstate commerce or selling electric energy at wholesale in interstate commerce **pursuant to Tariff.**

19. The Commission clearly stated in the February 13 Order (at P 19) and the September 2002 Order (at P 1) that because the Generic Interconnection Proceeding and Docket No. ER04-458-000 (Midwest ISO’s compliance filing to the Generic Interconnection orders) addressed many of the same issues raised by the proposed operating protocols the proposed operating protocols were subject to the outcome of the Generic Interconnection Proceeding. The Commission further clarified that making the proposed operating protocols subject to the outcome of the Generic Interconnection Proceeding ensures consistency with the disposition of Midwest ISO’s *pro forma* Interconnection and Operating Agreement. While on notice from the Commission that the operating protocols proceeding would be subject to the outcome of the Generic Interconnection Proceeding, WEPCO fully participated in Docket No. ER04-458-000 and did not object to the proposed definitions of these two terms. The MSATs also did not indicate any concerns with the proposed definitions. To ensure consistency in these proceeding, we find that WEPCO’s and MSATs’ arguments are misplaced and we will not address them. While the Commission has accepted for filing the proposed revisions quoted above in the October 28 Order, we will direct Midwest ISO, in the compliance filing ordered below, to amend the proposed definitions challenged here, as well as

any unchallenged proposed definitions, to track the language of the definitions approved in the October 28 Order.²³

2. Section 1.2.1 - Prior Agreements²⁴

a. Midwest ISO Proposal

20. In its Transmittal letter dated March 22, 2004, Midwest ISO states that it revised the original proposed section 1.2.1 pursuant to the September 2002 Order. Midwest ISO explains that the language was revised, to state explicitly that, in addition to the rights of Transmission Provider, a Generator or other entity might submit a section 206 filing to the Commission within the allowable 60-day period. March 22, 2004 Transmittal Letter at 3.

b. Intervenor Comments

21. Dairyland objects to certain language in proposed section 1.2.1, asserting that the language implies that if a Prior Agreement is not a FERC jurisdictional rate schedule, that the Operating Protocols will supersede it. Dairyland also objects to the fact that the proposed language does not address prior agreements that may involve a non-jurisdictional entity *i.e.*, a cooperative or municipal utility, such that the “Prior Agreement” is not a FERC jurisdictional rate schedule and is not subject to modification or termination pursuant to sections 205 or 206 of the FPA..

c. Midwest ISO Answer

22. Midwest ISO asserts that intervenors misinterpret the language contained in section 1.2.1. According to Midwest ISO, the language clearly states that the Operating Protocols supersede Prior Agreements only to the extent necessary for it to maintain safety and reliability of the facilities under its control. Midwest ISO adds that the Prior Agreements that are FERC jurisdictional and only can be modified pursuant to sections 205 or 206 proceedings. Finally, Midwest ISO clarifies that Prior Agreements that are not FERC jurisdictional are otherwise unaffected.

²³ The proposed definition of “Study Report” while not challenged cannot be included in the proposed Operating Protocols. *See* P 45, *infra*.

²⁴ *See* n. 22, *supra*.

d. Commission Determination

23. We agree with Midwest ISO that Prior Agreements such as those with non-jurisdictional electric cooperatives or municipal utilities are not subject to modification or termination pursuant to sections 205 or 206 of the FPA, except to the extent necessary for Midwest ISO to maintain safety and reliability of the facilities under its control.²⁵ Accordingly, we will not require any revisions to this section of the proposed Operating Protocols.

3. Section 1.2.2 - Compensation under Prior Agreements

a. Midwest ISO Proposal

24. Midwest ISO, under its Operating Protocols, proposes section 1.2.2 (Compensation Under Prior Agreement). Proposed section 1.2.2 states that the appropriate cross references to the relevant new provisions (contained in sections 2.7.3 [Compensation for Reactive Power Supply] and 3.4.3 [Compensation] of the Operating Protocols) are included in the first sentence. Language was added to make compensation for services provided under these sections of the Operating Protocols based on either, the terms of the Operating Protocols or the relevant terms of the Prior Agreement. The proposed section states "if agreed to by the parties thereto, and unless amendments to the Prior Agreements are filed with the FERC pursuant to section 205 or 206 of the Federal Power Act to conform to the compensation provisions for such services provided for in sections 2.7.3 and 3.4.3 of this Rate Schedule."²⁶ Additionally, Midwest ISO's proposed revisions for section 1.2.2, include the following in the last sentence of that section:

If compensation for services provided by generators pursuant to Sections 2.0 and 3.0 of the Rate Schedule are not provided for in an applicable tariff on file by the Generator, or in Prior Agreements, Generators shall be compensated for providing such services

²⁵ See *Regional Transmission Operators*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000, ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (February 25, 2000), FERC Statutes and Regulations, ¶ 31,092 (2000), *aff'd*, *Public Utility District No. 1 of Snomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

²⁶ March 22, 2004 Transmittal Letter at 3.

pursuant to the provisions of **this Rate Schedule** the Midwest ISO OATT.

(**Bolded** language indicates proposed deletions and underlined language indicates proposed additions).

b. Intervenor Comments

25. Dairyland asserts that section 1.2.2 contains no reference to payments by Midwest ISO to generators pursuant to section 2.8.1.2, Outage Schedules,²⁷ for the additional direct costs that the Generator incurs as a result of having to reschedule maintenance. Dairyland requests the addition of section 2.8.1.2 to the list of compensation provisions in section 1.2.2 or, in the alternative, modification to section 1.2.2 so that it does not apply to any services under sections 2.0 or 3.0 of the proposed Operating Protocols.

26. WEPCO argues that Midwest ISO does not describe any provisions to compensate Generators for services provided pursuant to sections 2.0 and 3.0 of the Rate Schedule. WEPCO argues that the Midwest ISO OATT cannot be a default tariff to provide for compensation to Generators in the event the Generators do not have a tariff on file with the Commission.

c. Midwest ISO Answer

27. Midwest ISO states that it is currently revising its tariff Schedule 2, Reactive Supply and Voltage Control from Generation Sources Service, and continues to work with its stakeholders to revise the compensation schedule for the provision of reactive power. Midwest ISO notes that Schedule 2 is currently in the final stages of review (as of April 27, 2004) as part of the Midwest ISO stakeholder process, and expects that WEPCO's concerns will be addressed in a filing to be made with the Commission in the near future.

28. Midwest ISO agrees to make Dairyland's proposed change because it recognizes the importance of referencing section 2.8.1.2 in section 1.2.2.

²⁷ Proposed section 2.8.1.2 provides: "Transmission Provider shall compensate, pursuant to applicable Transmission Provider tariff or rate schedule, Generator for any additional direct costs that the Generator incurs as a result of having to reschedule maintenance, ...or other costs above and beyond the cost the Generator would have incurred absent the Transmission Provider's request to reschedule maintenance."

d. Commission Determination

29. Subsequent to Midwest ISO's answer in the instant docket, the Commission has accepted for filing Schedule 2 of the Midwest ISO Transmission and Energy Markets Tariff (TEMT).²⁸ Additionally, Attachment AA, Compensation and Cost Recovery For Actions During Emergency Condition, and Attachment BB, Compensation for Rescheduling Generator Outages, were accepted for filing by the Commission.²⁹ The Commission's acceptance of Schedule 2 and Attachments AA and BB addresses WEPCO's concerns. With respect to Dairyland's request to add section 2.8.1.2 to section 1.2.2's list of compensation provisions, we direct Midwest ISO to revise section 1.2.2, as Midwest ISO states it would do in its answer.

4. Sections 2.2 and 2.3.3 – Coordination

a. Midwest ISO Proposal

30. Midwest ISO proposes to modify its Operating Protocols by: (1) adding to section 2.2 the term "region" after "Midwest ISO" in the first line; (2) adding the term "region" after "Midwest ISO" in lines 2 and 3 of section 2.3.3; (3) substituting the term "Transmission Provider" for "Midwest ISO" and the term "Generating Facility" for the word "Generator" in line 5 of section 2.3.3; and 4) adding the word "electrical" prior to the word "facility" in line 2 of that instruction.

²⁸ *Midwest Independent System Operator, Inc.*, 113 FERC ¶ 61,046 (2005). (The Commission originally required Midwest ISO in *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004) (October 1 Order) to revise Schedule 2 to provide compensation for reactive power service to transmission owners and independent transmission companies (ITC), as well as non-transmission owners or IPPs, *i.e.*, all generators. Further, the October 1 Order directed Midwest ISO to include language in its Schedule 2 that provides for IPPs to file cost-based revenue requirements with the Commission prior to their being compensated.)

²⁹ *Midwest Independent System Operator, Inc.*, 113 FERC ¶ 61,264 (2005) (December 15 Order).

b. Intervenor Comments

31. Dairyland protests Midwest ISO's use of the term "region" in section 2.2 and in section 2.3.3. Dairyland states that the Operating Protocols do not define the word "region" or the term "Midwest ISO region." Further Dairyland argues that it is not clear whether the "Midwest ISO region" includes the geographic region in which Midwest ISO operates. If so, Dairyland objects to applying the proposed Operating Protocols to generators interconnected to transmission systems that are not controlled or operated by Midwest ISO but are used to provide transmission service or Wholesale Distribution Service under the Midwest ISO OATT.³⁰

c. Midwest ISO Answer

32. Midwest ISO agrees with Dairyland that adding the word "region" would make sections 2.2 and 2.3.3 too vague. Midwest ISO points out that its OATT/TEMT³¹ contains a definition for "Transmission Provider Region" that would be suitable for use here.³² This change, Midwest ISO asserts, will result in consistency between the Operating Protocols and the TEMT.

d. Commission Determination

33. We agree with Midwest ISO that substituting the term "Transmission Provider Region" for the terms "region" and "Midwest ISO region" in sections 2.2 and 2.3.3 respectively, will clarify these sections of the Operating Protocols. The intervenors did not address the remaining proposed term modifications to these sections, however we find them to be acceptable. Accordingly, Midwest ISO must revise these two sections, as discussed, in the compliance filing directed below. Furthermore, we will also require that Midwest ISO include the term,

³⁰ Dairyland Protest at 3.

³¹ The Midwest ISO OATT was superceded by the TEMT pursuant to *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

³² *Midwest Independent System Operator, Inc.*, 110 FERC ¶ 61,289 (2005). The TEMT defines "Transmission Provider Region" as the transmission system, Load and Generation Resources interconnected to the Transmission System that: (i) function as a centrally coordinated system and (ii) operate, subject to the single set of Dispatch Instructions determined and issued by the Transmission Provider.

“Transmission Provider Region” as defined in the Midwest ISO TEMT, into the proposed revised Operating Protocols, under Appendix 1 – Definitions.

5. Section 2.3.4 – Generator Communications Obligations

a. Midwest ISO Proposal

34. Midwest ISO proposes to add a new section 2.3.4, adapted from corresponding language in Article 8.1 (8.2) of the LGIA that will limit the obligations imposed on existing Generators. The proposed section 2.3.4 states:

Generator shall maintain satisfactory operating communications with Transmission Provider’s Operating Authority dispatcher or representative designated by Transmission Provider. Any required maintenance of Generator provided equipment required for such communications shall be the responsibility of the Generating Facility.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction of the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

b. Intervenor Comments

35. WEPCO argues that Midwest ISO’s proposal does not adequately accommodate pre-existing agreements. Thus, WEPCO requests that the Commission direct Midwest ISO to add to the last paragraph of section 2.3.4:

“In addition to the above mentioned obligations, these communications obligations will be performed in accordance to the pre-existing Interconnection Agreement(s) between the Parties.”

36. Additionally, WEPCO notes that this section requires that corrective repairs to metering, telemetry or communications be made “as soon as reasonably feasible.” WEPCO asserts that this standard is inconsistent with its interconnection agreements because they require that such repairs be made “within a reasonable time.” WEPCO suggests that the way to reconcile its pre-existing agreements with the proposed Operating Protocols would be if the Commission directs Midwest ISO to add the phrase, “consistent with the pre-existing Interconnection Agreement between the Transmission Owner and the Generator.”

c. **Midwest ISO Answer**

37. Midwest ISO agrees to insert WEPCO's suggested language into section 2.3.4 so that communication obligations are consistent with Prior Agreements between the parties. However, Midwest ISO argues that it is not necessary to modify language to require repairs "as soon as reasonably feasible," because this proposed language reflects the standard contained in Article 8.1 (8.2) of the *pro forma* LGIA.

d. **Commission Conclusion**

38. The *pro forma* LGIA contains the "as soon as reasonably feasible," standard.³³ We find that use of this standard in the proposed Operating Protocols strikes the proper balance and places a priority on repairing defective equipment required for reliable system monitoring. Accordingly, we will accept Midwest ISO's proposed language for this standard, without modification. However, we will require that Midwest ISO revise this section, as it has agreed to do, to note that communications obligations are to be performed in a manner consistent with Prior Agreements between the parties. This enhancement will preserve WEPCO's obligations imposed by the prior interconnection agreements with other parties.

6. **Section 2.5.1 – Generating Facility Operation Above Study Limit**

a. **Midwest ISO Proposal**

39. Midwest ISO proposes to add section 2.5.1 to the Operating Protocols. The proposed language in section 2.5.1 tracks the language of Article 9.4.1 of Midwest ISO's LGIA, submitted as part of its Order 2003 compliance filing. Midwest ISO states that this section is necessary so that existing Generators will have the same obligations as new Generators with respect to Generating Facility operation above a facility's Maximum Output, established in a Study Report. Specifically, Midwest ISO proposes to assess a charge for any hour that the Generator operates the Generating Facility above the maximum safe and reliable output in megawatts. The Study Report identifies the outputs to be either the greater of \$100.00/MW or 115 percent of the price associated with the sale to any third-party purchaser of

³³ Article 8.2 of the Midwest ISO LGIA states in pertinent part: "The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible."

such excess Generating Facility output, plus any charges, penalties, or fees that may be imposed on the entity other than the Generator that are the result of the Generating Facility operating above its Maximum Output.

40. Additionally, a definition for the term “Study Report” is included in the proposed Operating Protocols Appendix 1-Definitions, which is used in this new section 2.5.1 to recognize that existing Generating Facilities may not have been subject to the same comprehensive interconnection study process in Attachments R or X of the Midwest ISO TEMT. The definition permits the Maximum Output of the facility to be determined based on the most current operating study that establishes the safe and reliable operating limits relating to the facility, or on the requirements and protocols of Attachments R or X, as applicable. Proposed section 2.5.1 also requires notification to the Generator of the Maximum Output level prior to the imposition of any charge there under.

b. Intervenor Comments

41. WEPCO objects to this section because its existing generating units were interconnected prior to the establishment of either ATCLLC or Midwest ISO. WEPCO asserts that no ATCLLC or Midwest ISO Study Report exists. Thus WEPCO request that the Commission direct Midwest ISO to include the following modification to section 2.5.1:

“The Generating Facility must be operated in accordance with the operating limits, if any, in any applicable Study Report or the operating limits specified in the pre-existing Interconnection Agreement between the Transmission Owner and Generator establishing such limits.”³⁴

42. CECo objects to the proposed section 2.5.1, because it argues that this new section would impose significant penalties on existing Generators that exceed their Maximum Output level. CECo argues that there is no basis for including a new provision in this compliance filing, and requests the Commission reject this proposed modification as being outside the scope of a compliance filing. CECo further asserts that even if a new penalty charge is considered the Commission should reject the proposal as counter-productive.

³⁴ WEPCO Protest at 6, underlined language is the proposed revision.

c. Midwest ISO Answer

43. Midwest ISO generally agrees with WEPCO and proposes that a maximum output criteria be included in its Business Practices. Midwest ISO proposes to set the maximum output criteria by a relevant study report or other operating limit contained in Prior Agreements that ensures operation of the Generating Facility in a safe and reliable manner.

44. Midwest ISO states that the proposed penalties in section 2.5.1, for Generators that operate the Generating Facility above maximum safe and reliable output are consistent with Article 9.4.1 of its LGIA. Midwest ISO argues that, as with new generators, these penalties are necessary to ensure that existing generators consistently operate within specified limits to ensure the integrity and reliability of the transmission system. Further, Midwest ISO states that these proposed penalty measures provide a disincentive to Interconnection Customers to operate at an excessive output level and potentially compromise the overall reliability of the transmission grid.³⁵ Moreover, Midwest ISO adds that while it is flexible as to the method for defining specific output limits with regard to existing generation facilities, it must retain authority to curtail all generation facilities and to assess penalties to ensure grid reliability is not adversely affected.

d. Commission Determination

45. We will reject Midwest ISO's proposal without prejudice. We agree that Midwest ISO must have the flexibility to control the output level in order to maintain transmission grid reliability but this proposal is beyond the scope of the compliance filing. Midwest ISO may submit a revised proposal with appropriate support in a future section 205 filing. This is consistent with our finding in the July 8 Order where the Commission rejected without prejudice Midwest ISO's proposal to impose a charge on generators that operate above certain limits because the proposal was beyond the scope of a compliance filing but Midwest ISO could file the proposal in an adequately supported section 205 of FPA filing.³⁶ Accordingly, we direct Midwest ISO to delete the proposed section 2.5.1 and the "Study Report" definition in Appendix 1 – Definitions, in the compliance filing ordered below.

³⁵ Midwest ISO Answer at 9.

³⁶ July 8 Order at P 26.

7. **Sections 2.7.2, 2.7.2.1 and 2.7.3 – Reactive Power Issues**

a. **Midwest ISO Proposal**

46. Midwest ISO proposes to replace the existing language in section 2.6, Reactive Power; section 2.6.1, Reactive Power Requirements and section 2.6.2, Compensation for Reactive Power Supply of the existing Operating Protocol document with language from the following sections of the LGIA within Article 9.6, Reactive Power. Thus, Article 9.6.1 language becomes proposed section 2.7.1, Power Factor Requirements;³⁷ Article 9.6.2 language becomes proposed section 2.7.2, Voltage Schedules;³⁸ Article 9.6.2.1 language becomes proposed section 2.7.2.1, Governors and Regulators;³⁹ and Article 9.6.3 language becomes proposed section 2.7.3, Payment for Reactive Power.⁴⁰

47. Midwest ISO states that the new language, based on Article 9.6.1 of the LGIA, recognizes that existing facilities may not meet the power factor requirements imposed on new facilities, and that such facilities should not necessarily be required to modify existing equipment to meet standards that have changed since the in service date of those facilities. Consequently, proposed sections 2.7.1 and 2.7.2 state that existing Generating Facilities that do not meet the 0.95 leading/lagging power factor requirement imposed on new facilities will instead be required to operate over the range of power factors specified in any existing agreement between the Generator and the Transmission Owner. Midwest ISO points out that proposed section 2.7.3 anticipates a rate schedule filing with the Commission that addresses the issue of compensation for reactive power supply.

b. **Intervenor Comments**

48. WEPCO points out a typographical error in section 2.7.2, in lines 4 and 15. WEPCO states that “Article 2.6.1” should be changed to “Article 2.7.1 to accurately reflect the location of the Power Factor Requirements in the LGIA. Additionally, WEPCO suggests the phrase, “consistent with equipment design

³⁷ See n. 22, *supra*.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

limitations and Good Utility Practice” be added to the requirement that the Generator operate the Generating Facility to produce or absorb reactive power.

49. In section 2.7.2.1, WEPCO states that their interconnection agreements provide that the Generator will comply with the Transmission Provider’s reasonable requirements for generator controls that affect the transmission system. WEPCO adds that these requirements are subject to conditions specified in these pre-existing interconnection agreements. In view of these existing agreements and requirements, WEPCO proposes to modify the proposed sections to add the phrase “consistent with the pre-existing Interconnection Agreement between the Transmission Owner and the Generator.”

50. WEPCO argues that proposed section 2.7.3 is vague because it simply provides for compensation “pursuant to any tariff or rate schedule filed by the Transmission Provider” without specifying the rate or tariff schedule applicable during the interim period that exists between now and the Commission’s approval of the Midwest ISO’s Rate Schedule No. 2. Moreover, as with section 1.2.2, WEPCO argues that this section should provide for compensation pursuant to the provisions of a Commission approved tariff offered by a Generator, as it is the Generator, and not the Transmission Provider, performing the service.⁴¹

c. Midwest ISO Answer

51. Midwest ISO supports WEPCO’s proposal to add to section 2.7.2 the language, “consistent with equipment design limitations and Good Utility Practice”. Midwest ISO objects to WEPCO’s proposal to modify section 2.7.2.1 because the proposed language is identical to and thus consistent with the language contained in Attachment X and in Article 9.6.2.1 of the *pro forma* LGIA.

52. Midwest ISO states that the proposed section 2.7.3 tracks the language in the proposed schedule 2 compensation provisions that it will file. Accordingly, Midwest ISO asserts that Commission approval of the proposed revisions of a future filing of schedule 2 of its Tariff, will include consideration of WEPCO’s concerns.

⁴¹ WEPCO Protest at 7-8.

d. Commission Determination

53. To further clarify proposed section 2.7.2, we agree with WEPCO's proposal to add the following language, "consistent with equipment design limitations and Good Utility Practice." We expect Midwest ISO to make this modification in the compliance filing ordered below. WEPCO's argument does not persuade us to direct Midwest ISO to modify section 2.7.2.1. WEPCO has not shown that its prior agreements, as they relate to speed and voltage control regulation differ from those specified in section 2.7.2.1. Furthermore, the conservative operating standard proposed by Midwest ISO in section 2.7.2.1 is reasonable, and is consistent with the *pro forma* LGIA. Consistent with our earlier discussion concerning section 1.2.2, we agree with Midwest ISO that no change to proposed section 2.7.2 is required.⁴²

8. Sections 2.8.1.1, 2.8.1.2 and 2.8.1.3– Outage Related Issues⁴³

a. Midwest ISO Proposal

54. In its March 22, 2004 Transmittal Letter Midwest ISO states that section 2.9 of the existing Operating Protocols has been deleted and generally replaced with proposed section 2.8 (Outages and Interruptions) that tracks the corresponding provisions of Article 9.7 of the then proposed LGIA. In addition, Midwest ISO states that it deleted section 2.9.4 (Nuclear Generating Facilities) of the existing Operating Protocols because it is no longer relevant under the LGIA and it has not added a corresponding provision in its place.⁴⁴

b. Intervenor Comments

55. WEPCO objects to following wording in proposed section 2.8.1.1: "Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to notify one another ..." WEPCO also objects to the last line of the definition of Reasonable Efforts that states in relevant part "efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests." WEPCO asserts that this section establishes a new standard for assessing the

⁴² See P 27 *supra*.

⁴³ See n. 22 *supra*.

⁴⁴ March 22, 2004 Transmittal Letter at 5.

commercial affects and financial implications of a particular outage, because it would also be required to evaluate the impact of the outage on Midwest ISO. WEPCO submits the standard is unreasonable unduly burdensome and should be clarified or removed. It recommends replacing the phrase “Reasonable Efforts” with “consistent with Good Utility Practice.” WEPCO protests the last sentence of the first paragraph in section 2.8.1.2, which states, “Generators will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Generator has modified its schedule of maintenance activities.” According to WEPCO, this restriction on compensation is unacceptable. Moreover, it is unreasonable and not practical to prohibit compensation in the event the outage schedules change twelve months prior to the outage. WEPCO requests that the Commission direct Midwest ISO to replace the twelve-month restriction with a more reasonable period, such as one or two months. WEPCO adds that a one or two month period is consistent with operational realities within Midwest ISO. WEPCO also seeks clarification of section 2.8.1.2 as to the minimum time requirement for Transmission Providers to post scheduled outages of transmission facilities on OASIS. WEPCO points out that the time requirement for Generators is a rolling 24-month period.

56. CECo protests section 2.8.1.2’s apparent limitation of compensation to “direct costs.” CECo relies on the September 2002 Order at P 46 statement that, “We agree with intervenors’ assertions that lost opportunity costs must be included in the reasonable costs of rescheduling outages ... for those lost opportunity costs that are identifiable.”⁴⁵ CECo questions the appropriateness of deleting language in a compliance filing that tracks specific Commission directions given earlier in the same docket. CECo observes that the newly proposed language calls for compensating for “additional direct costs.” In view of this, CECo seeks clarification whether “direct costs” includes everything in the language approved in the September 2002 Order, *i.e.*, whether “reasonable costs” includes identifiable lost opportunity costs. CECo asserts that the instant compliance filing cannot restrict the scope of recoverable costs any further than the September 2002 Order did.

57. Regarding section 2.8.1.3, WEPCO objects to the standard of “Reasonable Efforts” for the prompt restoration of such facility(ies) to a normal operating condition. WEPCO states that the use of the term here raises a similar concern as was disputed in section 2.8.1, in that the “Reasonable Effort” standard includes the additional duty to protect Midwest ISO’s interests. WEPCO suggests use of the Good Utility Practice standard instead.

⁴⁵ September 2002 Order at P 46.

c. Midwest ISO Answer

58. Midwest ISO states that the term “Reasonable Efforts” includes the standard “consistent with Good Utility Practice.” Midwest ISO also points out that the sections 2.8.1.1; 2.8.1.2 and 2.8.1.3 are modeled after the LGIA Articles 9.7.1.1 and 9.7.1.3. Midwest ISO states that the only substantive difference between the LGIA and section 2.8.1.1 is the inclusion of a notice requirement in addition to the scheduling notice obligation to address the circumstance where a party removes a facility from service. However, Midwest ISO states that this additional notice requirement does not alter the standard for “Reasonable Efforts” as it applies to the notice or consequences of facilities outages.

59. Midwest ISO asserts that the language in section 2.8.1.2 is consistent with the language approved in the Generic Interconnection Proceeding for LGIA Article 9.7.1.2. Accordingly, Midwest ISO argues that no changes to section 2.8.1.2 are required. In response to CEC’s concern as to whether the recovery of “direct costs” includes “lost opportunity costs,” Midwest ISO answers that the Commission agreed in the September 2002 Order that “Generators only receive compensation for those lost opportunity costs that are identifiable.” Midwest ISO maintains that “lost opportunity costs,” to the extent they are identifiable, are to be included as direct costs associated with rescheduling. Moreover, Midwest ISO insists that it has the authority and discretion to determine which costs to compensate in a particular circumstance.

d. Commission Determination

60. We will not require any revisions to sections 2.8.1.1 and 2.8.1.3 of the proposed Operating Protocols. The Commission has accepted the contested language in these sections in the *pro forma* LGIA and in the July 8 Order. The “Good Utility Practice” standard is already in the definition of “Reasonable Effort” used in these sections.

61. As to the issue of whether “lost opportunity costs” can be recovered as “direct costs” we accept Midwest ISO’s clarification that these costs are included to the extent that they are identifiable. We disagree with Midwest ISO’s assertion that it has the authority and discretion to determine which costs to compensate. While we are not ordering any modifications to this section, we note that if a dispute should arise in the future regarding recoverability of these types of costs, then the party can exercise its right to file a complaint pursuant to section 206 of the FPA with the Commission.

9. **Sections 2.8.2 (Interruption of Service) and 2.8.3 (Under and Over Frequency Conditions)**

a. **Midwest ISO Proposal**

62. Midwest ISO proposes to delete section 2.9 of the existing Operating Protocols and to replace it with the corresponding provisions of Article 9.7⁴⁶ of the LGIA, which then becomes new proposed section 2.8.2 of the Operating Protocols. Section 2.9.4 (Nuclear Generating Facilities) of the existing Operating Protocols was deleted, as it was not relevant under the LGIA. Pursuant to proposed section 2.8.2, the Transmission Provider may require the Generator to reduce or interrupt deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. In addition, it requires the Transmission Provider to schedule the reduction or interruption to coincide with the scheduled outage of the Generating Facility or during periods of low demand.

63. Proposed section 2.8.3 describes the Transmission System response in the event of an under-frequency system disturbance. The Applicable Reliability Council mandates the use of under-frequency and over-frequency relay set points for the Generating Facility, implemented by the Generator to ensure ride through⁴⁷ capability of the Transmission System. This section also requires the Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, to be studied and coordinated with the Transmission Provider in accordance with Good Utility Practice.

b. **Intervenor Comments**

64. WEPCO objects to section 2.8.2 because it provides that, if required by Good Utility Practice, the Transmission Provider may interrupt deliveries "if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain

⁴⁶ See n. 22 *supra*.

⁴⁷ The term "ride through" is defined within proposed section 2.8.3 as follows: the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under frequency and over-frequency conditions, in accordance with Good Utility Practice.

the transmission system.” WEPCO states that its interconnection agreements contain a different contingency, which is as follows; “if continued operation of the facility creates an Emergency or Network Security condition.” WEPCO urges the addition of this wording to accommodate the prior agreements. WEPCO requests that section 2.8.2.3 modified to provide that the Transmission Provider must notify the Control Area Operator of unscheduled outages, in addition to the Generator, as currently required by the proposed Operating Protocols. WEPCO maintains that this modification conforms to the provision to the pre-existing interconnection agreements.

65. WEPCO objects to the inclusion of the over-frequency provisions in section 2.8.3. According to WEPCO, there is no industry standard definition of “over-frequency” protection. Thus, WEPCO requests that the Commission direct Midwest ISO to delete any reference to “over-frequency” protection. In the alternative, WEPCO requests that any reference to “over-frequency” protection be consistent with the pre-existing interconnection agreements between the Transmission Owner and the Generator.

c. Midwest ISO Answer

66. Midwest ISO asserts that proposed sections 2.8.2 and 2.8.3 of the Operating Protocols reflect the language approved in the *pro forma* LGIA/LGIP and the language accepted in its Generic Interconnection Proceeding compliance filing of Articles 9.7.2 and 9.7.3, respectively. With respect to section 2.8.2, Midwest ISO states that it is not aware, nor has WEPCO identified any difference in the application of the terms proposed by WEPCO and its proposed terms for the Operating Protocols. Therefore, it argues against further modification of proposed section 2.8.2. Midwest ISO states that the proposed section 2.8.3 provides for implementation of “over-frequency” setpoints as required by the applicable reliability council, and that the Generating Facility response to frequency deviations is studied and coordinated with the Transmission Provider in accordance with Good Utility Practice. Further, Midwest ISO states that these provisions do not imply a pre-existing industry standard, however they do imply that prior to implementation there will be studies and coordination of protection practices. Moreover, Midwest ISO states that even if there are no present standards, the subject provision allows for future implementation of “over-frequency” protection programs as system studies identify the need for coordinated action. To ensure consistency with the LGIA, Midwest ISO objects to any modification to section 2.8.3.

d. Commission Determination

67. We agree with Midwest ISO that the language proposed in the Operating Protocols, derived from Midwest ISO's Generic Interconnection Proceeding compliance filing is reasonable. We also find that even though no standard on "over-frequency" protection exists, we consider it reasonable to require that the Generator conduct studies to determine the Generating Facility response to frequency deviations, which include "over-frequency" conditions.⁴⁸ Accordingly, we will accept sections 2.8.2 and 2.8.3 as proposed.

10. Section 3.4.1 General - Transmission Provider and Transmission Owner Authority⁴⁹

a. Midwest ISO Proposal

68. Midwest ISO's proposes to modify existing language in section 3.4.1 and add language from Article 13.5.1 of the LGIA, where it stipulates the authority and type of direction the Transmission Provider will provide to the Generators and Generating Facilities in mitigating the effects that an Emergency Condition can have on the Transmission System.

b. Intervenor Comments

69. ADM objects to proposed section 3.4.1 that provides that the Transmission Provider or Transmission Owner may require a Generating Facility to shutdown, start-up, increase or decrease real or reactive power output of the Generating Facility during an Emergency Condition. ADM states that it is the owner of cogeneration facilities, the output of which is primarily for onsite industrial, electrical and thermal purposes. ADM posits that these provisions are unworkable for cogenerators because a cogeneration unit may not be able to react quickly to these types of requirements, even in an emergency, due to ongoing thermal processes and the need to produce electricity to maintain steam output for heating and process use.

70. Moreover, ADM asserts that the consequences of sudden shut-down, startup, increase or decrease of the real power output of a cogeneration facility could include the sudden shut-down of industrial manufacturing load which could

⁴⁸ Order No. 2003 at P 566.

⁴⁹ See n. 22 *supra*.

damage the industrial process and even raise safety issues for plant personnel. Similarly, the increase or decrease in reactive power from a cogeneration facility may or may not be technically feasible.

71. ADM requests that the Commission exempt cogeneration facilities from the requirements of section 3.4.1 of the proposed Operating Protocols. In the alternative, ADM requests the Commission require Midwest ISO to initiate a stakeholder process to address these issues, to avoid the serious impact on industrial production that would result from the implementation of this provision as proposed.

c. Midwest ISO Answer

72. Midwest ISO acknowledges the concerns of ADM in regards to the impact of certain emergency measures on its cogeneration facilities however concurrently Midwest ISO states that it must unconditionally retain the right to address any generation facility that it reasonably believes may be able to assist in the relief of any Emergency Condition. Further, Midwest ISO states that by the terms of the Operating Protocols, it must institute “Reasonable Efforts” to address potential emergency or reliability conditions. Consistent with this standard and the terms of the Operating Protocols, Midwest ISO confirms that it will institute reasonable measures with respect to any cogeneration facility prior to ordering such facilities to alter its operation.

73. Midwest ISO reiterates its commitment to addressing emergency and reliability issues in the most efficient and least harmful way possible. Midwest ISO adds that ultimately measures taken to address emergency or reliability conditions shall not result in damage to the system. Lastly, Midwest ISO states that any entity may continue to operate facilities normally isolated/disconnected from the grid if the danger to its facilities resulting from directions from Midwest ISO during an Emergency Condition outweigh the normal benefits of parallel operation or are otherwise unacceptable to that entity.

d. Commission Determination

74. We agree with Midwest ISO’s approach that when it comes to Emergency Conditions and reliability in particular, that allowances or exceptions cannot be made for individual Generation Facilities, at the risk of placing the entire system in jeopardy of becoming severely degraded even to the point of failure. As Midwest ISO suggests, the facility can elect to have an auxiliary source of power designed to sustain those industrial processes deemed essential for the plant and for safety of plant personnel, in the event that the normal facility is re-directed in an Emergency Condition by the Transmission Provider. Furthermore, to provide

for restrictions and exceptions for one type of Generating Facility over another type of Generating Facility in an Emergency Condition where the system is at risk of failure may be construed as being unduly discriminatory or preferential and not in the public's interest under section 205 of the FPA. Accordingly, we will not require any revisions to the proposed Operating Protocols based on ADM's concerns.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby conditionally accepted for filing, suspended for a nominal period, to become effective July 8, 2004, subject to refund.

(B) Midwest ISO is hereby ordered to file, within 15 days of the date of this order, the revised Operating Protocols, consistent with the discussion herein.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Proposed section 1.2.1 Operating Instructions

The Midwest ISO Transmission Provider recognizes that there may be existing agreements between Generators and the owners of the transmission facilities to which they are connected, and that these agreements may contain operating and other provisions that may not be identical to the **Midwest ISO Transmission Provider** operating protocols established in this Rate Schedule and other business practices established by the **Midwest ISO Transmission Provider**. These Prior Agreements, to the extent they are FERC jurisdictional rate schedules, shall remain in effect unless modified or terminated by the parties thereto pursuant to Section 205 or 206 of the Federal Power Act. These Operating Protocols shall be deemed to supersede such Prior Agreements only when, and as, necessary for the **Midwest ISO Transmission Provider** to maintain the safety and reliability of the facilities under its control. In such situations, as the potential need to amend Prior Agreements is identified by the **Midwest ISO Transmission Provider** and/or parties to the Prior Agreements, the **Midwest ISO Transmission Provider** will make such decisions to supersede Prior Agreements on a case-by-case basis with full input from the parties to such Prior Agreements. In addition, in carrying out its responsibilities as Reliability Authority, the **Midwest ISO Transmission Provider** may provide operating instructions to Generators **and to Transmission Owners** that must be **adhered to. The Midwest ISO Transmission Provider** will coordinate the delivery of operating instructions to Generators with the applicable Operating Authorities, and Generators will be coordinated as provided for in Section 2.3 of this Rate Schedule. In the event the **Midwest ISO Transmission Provider** must exercise its authority to temporarily supersede a Prior Agreement in order to avoid an imminent threat to the reliability of the Transmission System, the **Midwest ISO Transmission Provider**'s authority will terminate within sixty (60) days of such superseding event, unless an agreement is reached between the Generator and the **Midwest ISO Transmission Provider** or a Section 206 filing pursuant to the Federal Power Act is submitted to the FERC by the **Midwest ISO Transmission Provider**. In the event the **Midwest ISO Transmission Provider**, Generator, or any other entity submits a Section 206 filing within the sixty (60)-day period, the **Midwest ISO Transmission Provider** maintains the right to unilaterally supersede the Prior Agreement until an order is issued by the FERC with respect to the **Midwest ISO's**

Transmission Provider's, Generator's, or any other entity's Section 206 filing.

(**Bolded** language indicates proposed deletions and underlined language indicates proposed additions).

Proposed section 2.7.1 reads:

Generator shall be capable of maintaining a composite power delivery at continuous rated power output at the Point of Interconnection at all power factors either (1) over 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis, and provided that the Generating Facility design and operational limits permit such operation, including warranty requirements and environmental permits or (2) over the range of power factors specified in any existing agreement between the generator and the Transmission Owner. The Generating Facility shall be capable of continuous dynamic operation throughout the power factor design range as measured at the Point of Interconnection. Such operation shall account for the net affect of all energy production devices on the Generator's side of the Point of Interconnection.

Proposed section 2.7.2 reads:

Once the Generator has synchronized the Generating Facility with the Transmission System, Transmission Provider shall require Generator to operate the Generating Facility to produce or absorb reactive power within the design limitations of the Generating Facility set forth in Article 2.6.1(should be 2.7.1), Power Factor Requirements, to maintain the output voltage or power factor at the Point of Interconnection as specified by the Transmission Provider. Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission or Distribution System as applicable. Generator shall operate the Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Generating Facility set forth in Article 2.6.1[2.7.1] (Power Factor Requirements). If Generator is unable to maintain the specified voltage or power factor, it shall promptly notify Transmission Provider's system operator, or its designated representative.

Proposed section 2.7.2.1 reads:

Whenever the Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Generator shall operate the Generating Facility with its speed governors and voltage regulators in automatic operation. If the Generating Facility's speed governors and voltage regulators are not capable of such automatic operation the generator shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Generating Facility's generating unit(s) and steady state stability limits. Generator shall not cause its Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any electrical generating device comprising the Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

Proposed section 2.7.3 reads:

Payments for Reactive Power shall be pursuant to any tariff or rate schedule filed by Transmission Provider and approved by the FERC.

Proposed section 2.8.1.1 Outage Authority and Coordination reads:

Generator and Transmission Owner may each, in accordance with Good Utility Practice, in coordination with the other Party and Transmission Provider remove from service any of its respective Interconnection Facilities that may affect the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to notify one another and schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Parties of such removal.

Proposed section 2.8.1.2 Outage Schedules reads:

The Transmission Provider shall post scheduled outages of transmission facilities on OASIS. Generator shall submit its planned maintenance schedules for the Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period in accordance with the Transmission Provider's procedures. Generator shall update its planned maintenance schedules as necessary. Transmission Provider may request Generator to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate, pursuant to applicable Transmission Provider tariff or rate schedule, Generator for any additional direct costs that the Generator incurs because of having to reschedule maintenance, including additional overtime, breaking of maintenance contracts or other costs beyond the cost the Generator would have incurred absent the Transmission Provider's request to reschedule maintenance. Generator will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance; the Generator had modified its schedule of maintenance activities.

Costs shall be determined by negotiation between the Transmission Provider and Generator prior to implementation of the voluntary change in outage schedules, or if such request is made by or on behalf of a Transmission Customer requesting firm service, costs and recovery of costs shall be determined through a bilateral agreement between the Transmission Customer and the Generator. Voluntary changes to outage schedules under this Article 2.8.1.2 are separate from actions and compensation required under Article 3 and for which costs are recovered in accordance with Transmission Provider's applicable tariff or rate schedule.

Proposed section 2.8.1.3 Outage Restoration reads:

If an outage on either the Generator's or Transmission Owner's Interconnection Facilities or System Protection Facilities adversely affects a Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Parties, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice to the other Parties explaining the nature of the outage.

Proposed Article 9.7 reads:

9.7.1.1 Outage Authority and Coordination Interconnection

Customer and Transmission Owner may each in accordance with Good Utility Practice in coordination with the other Party and Transmission Provider remove from service any of its respective Interconnection Facilities, System Protection Facilities, Network Upgrades, System Protection Facilities or Distribution Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to notify one another and schedule such removal on a date and time mutually acceptable to the Parties. In all circumstances, any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Parties of such removal.

9.7.1.2 Outage Schedules

The Transmission Provider shall post scheduled outages of transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period in accordance with the Transmission Provider's procedures. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate, pursuant to applicable Transmission Provider tariff or rate schedule, interconnection Customer for any additional direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Interconnection Customer would have incurred absent the Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance; the Interconnection Customer had modified its schedule of maintenance activities. Costs shall be determined by negotiation between the Transmission Provider and Generating Facility Operator prior to implementation of the voluntary change in outage schedules, or if such request is made by or on behalf of a Transmission Customer requesting firm service, costs and recovery of costs

shall be determined through a bilateral agreement between the Transmission Customer and the Generating Facility Operator. Voluntary changes to outage schedules under this Article 9.7.1.2 are separate from actions and compensation required under Article 13 Emergencies and for which costs are recovered in accordance with Transmission Provider's applicable tariff or rate schedule.

9.7.1.3 Outage Restoration.

If an outage on either the Interconnection Customer's or Transmission Owner's Interconnection Facilities, Network Upgrades, System Protection Facilities or Distribution Upgrades adversely affects a Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Parties, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice to the other Parties explaining the nature of the outage.

9.7.2 Interruption of Service

If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System.

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, nondiscriminatory basis with respect to all Generating Facilities directly connected to the Transmission or Distribution System, as applicable;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer, Transmission Owner and the Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Generating Facility, Interconnection Facilities, and the Transmission or Distribution System, as applicable to their normal operating state, consistent with system conditions and Good Utility Practice.

Proposed section 3.4.1 reads in pertinent part:

“Transmission Provider or Transmission Owner may, on the basis of technical considerations, require the Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Generator to shut-down, start-up, increase or decrease the real or reactive power output of the Generating Facility;”