

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER07-885-000

ORDER ACCEPTING PROPOSED TARIFF MODIFICATIONS

(Issued July 10, 2007)

1. In this order, the Commission accepts the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT) to exempt from Real-Time Revenue Sufficiency Guarantee Charges (Real-Time RSG Charges) deviations from day-ahead schedules due to a market participant's compliance with Midwest ISO directives during a declared emergency.

Background

2. The Real-Time RSG Charge is a charge to market participants to recover amounts necessary to compensate resources committed in the Reliability Assessment Commitment process. In the Reliability Assessment Commitment process, the Midwest ISO commits units after the close of the day-ahead market in order to ensure sufficient resources will be available and on-line to reliably meet expected load and other demand requirements in the operating day. The Real-Time RSG Charge recovers amounts necessary to compensate the resources for any shortfall in recovery of their start-up, no-load and energy production costs (up to their economic minimum production level) through locational marginal prices.¹ Among other things, Real-Time RSG Charges are allocated to market participants whose real-time load, or level of imports or exports, deviates from cleared day-ahead positions.²

¹ See sections 40.2.13 and 40.3.3.b.ii of the TEMT.

² See section 40.3.3.a.ii of the TEMT.

Proposed TEMT Revisions

3. On May 11, 2007, the Midwest ISO filed proposed revisions to its TEMT. The proposed revisions would exempt from Real-Time RSG Charges, entities decreasing load, increasing behind-the-meter generation, increasing their level of imports, or decreasing their level of exports in compliance with the Midwest ISO's directives during a declared emergency.
4. The Midwest ISO states that the proposed revisions ensure that market participants are provided the proper incentives to follow Midwest ISO directives during a declared emergency, and ensure that they are not subject to Real-Time RSG Charges as a result of following Midwest ISO's directives. The Midwest ISO notes that the Commission recently accepted similar revisions to the TEMT that exempt generation resources following the Midwest ISO's manual redispatch instructions from Real-Time RSG Charges.³
5. The Midwest ISO requests waiver of the Commission's 60-day prior notice requirement (18 C.F.R. § 35.3(a)) to permit the proposed revisions to take effect June 15, 2007, in order to meet summer peak conditions.

Notice of the Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 28,484 (2007), with interventions and protests due on or before June 1, 2007. Timely motions to intervene were filed by: Ameren Services Company; DC Energy Midwest, LLC; Strategic Energy, LLC; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; and Consumers Energy Company.
7. The following parties each filed timely Motions to Intervene and Comments: Detroit Edison Company; Duke Energy Shared Services, Inc.; Dynegy Power Marketing, Inc., Dynegy Midwest Generation, Inc., and Dynegy Power Corp. (collectively, Dynegy); Integrys Energy Group, Inc., and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc.; Michigan Public Service Commission (Michigan Commission); and Wisconsin Electric Power Company (Wisconsin Electric). Wolverine Power Supply Cooperative, Inc. filed comments supporting the proposed revisions.

³ *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,325 (2006), *reh'g denied*, 119 FERC ¶ 61,176 (2007).

8. The commenting parties agree that it is inequitable to assess market participants Real-Time RSG Charges when they are following Midwest ISO directives in a declared emergency. These parties agree that assessing Real-Time RSG Charges in this circumstance creates a disincentive to comply with Midwest ISO directives. The Michigan Commission and Dynegy state that the proposed tariff language will enhance demand response in the Midwest ISO. The Michigan Commission also argues that the Midwest ISO's proposed tariff revisions will eliminate discriminatory treatment of Real Time RSG Charge allocations between generation and non-generation resources. While generally supportive of the Midwest ISO's filing, Wisconsin Electric requests additional detail and clarification.

9. On June 18, 2007, the Midwest ISO filed a motion for leave to answer and an answer to Wisconsin Electric.

Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely unopposed Motions to Intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer to Wisconsin Electric's protest because it assisted us in our decision making process.

B. Analysis

1. Wisconsin Electric's Comments

11. Wisconsin Electric requests clarification as to how the exempted deviations will be measured and confirmed. Wisconsin Electric questions, for example, how the Midwest ISO will determine what a market participant's load would have been after it responds to a directive to reduce non-firm load. Wisconsin Electric requests that the Midwest ISO be required to clarify this process and indicate whether the Business Practice Manual (BPM) will be updated to delineate these procedures. Wisconsin Electric also argues that the scope of the requested exemption appears overly narrow. Wisconsin Electric states that the Midwest ISO rarely declares emergencies and that the proposed exemption will have little value unless it applies equally to both directives and instructions issued by the Midwest ISO. Wisconsin Electric further requests that the Midwest ISO be required to clarify how "out-of-market dispatch" is to be addressed.

2. Midwest ISO's Answer

12. The Midwest ISO states that, in general, the quantity of load reduction in response to its directives shall be measured based on the difference between the market participant's cleared day-ahead and real-time schedules during each hour covered by the emergency directives. The Midwest ISO clarifies that when a specific load is running behind its day-ahead schedule at the time a directive is issued, the Midwest ISO shall deem the deviation covered by the exemption to the extent that it occurs or continues in the hour for which the Midwest ISO directed a load reduction, regardless of whether the amount of the deviation remains the same, increases or decreases after issuance of the directive.

13. The Midwest ISO also states that the details of the measurement process, and other procedural aspects of the proposal's implementation, shall be included in the relevant Midwest ISO BPM. The Midwest ISO also explains that the proposed tariff revisions are designed specifically to address only limited circumstances in which exemption from Real-Time RSG Charges would be provided: declared emergencies, including Energy Emergency Alert Levels 2 and 3 conditions, and declared local emergency conditions. The Midwest ISO notes that it continues to work with its stakeholders towards the development and implementation of a comprehensive emergency demand response program prior to implementation of the comprehensive demand response provisions incorporated in its proposed Ancillary Service Markets, and states that the instant filing represents an incremental measure. Finally, the Midwest ISO states that Wisconsin Electric neither defines nor illustrates its concept of "out-of-market dispatch" and does not identify any specific concerns in that regard.

3. Commission Determination

14. We will accept the proposed tariff revisions without modification. The proposed revisions will provide market participants proper incentives to follow the Midwest ISO's directives and will result in a fair and equitable allocation of Real-Time RSG Charges.

15. We find that the Midwest ISO has sufficiently clarified that the exempted deviation amounts will be based on differences between the market participant's cleared day-ahead and real-time schedules resulting from its compliance with the Midwest ISO's directives. The proposed tariff language is sufficiently clear in this regard.

16. We also find that Wisconsin Electric has not substantiated the other concerns expressed in its comments. We agree with the Midwest ISO that it is appropriate to limit the scope of the exemption to declared emergencies, including Alert Levels 2 and 3 conditions, and declared local emergency conditions. Entities responding to Midwest ISO directives in these circumstances contribute to resolution of the emergency condition. Therefore, these entities should be exempted from Real-Time RSG Charges.

Wisconsin Electric does not identify any additional Midwest ISO directives or instructions compliance with which could lead to a market participant unreasonably incurring Real-Time RSG Charges. We note that the TEMT already excludes from Real-Time RSG Charges assessments, deviations from day-ahead schedules due to compliance with the Midwest ISO's manual redispatch instructions or dispatch instructions in the real-time energy market.⁴

17. We find good cause exists to grant the Midwest ISO's request that the Commission waive its 60-day notice requirement under the Commission's regulations and make the proposed tariff revisions effective as of June 15, 2007, to meet peak summer conditions.⁵

The Commission orders:

The tariff revisions are hereby accepted, to be effective June 15, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴ See sections 33.8.2.c and 40.3.3.a.ii of the TEMT.

⁵ *Central Hudson Gas and Electric Company, et al.*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992); and *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).