

124 FERC ¶ 61,167
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 Nos. ER08-404-001
ER08-404-002

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued August 18, 2008)

1. The Commission issued an order on April 22, 2008 that conditionally accepted a filing by the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) under section 205 of the Federal Power Act (FPA)¹ that contained proposed revisions to its Open Access Transmission and Energy Markets Tariff (Tariff).² These revisions add a new Schedule 30 to the Tariff that, among other things, contains an emergency demand response (EDR) program that provides for compensation to demand resources during North American Electric Reliability Corporation (NERC) Energy Emergency Alert 2 (Emergency Alert 2) or Energy Emergency Alert 3 (Emergency Alert 3) events.³

2. The Commission conditioned its approval of the Midwest ISO's EDR initiative on receipt of a compliance filing addressing certain issues raised by the proposal. The Midwest ISO has made that filing, and we accept it, as discussed below. In addition, we deny two requests for rehearing of the April 22 Order.

¹ 16 U.S.C. § 824d (2000).

² *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,070 (2008) (April 22 Order).

³ The Reliability Coordinator, Midwest ISO in this instance, may declare whichever alert level is necessary and does not need to move through the alerts sequentially. See NERC Standard EOP-002-2 – “Capacity and Energy Emergencies” at 7. As a general matter, under an Energy Emergency Alert 1 all available resources are committed to firm load and non-firm energy sales have been curtailed. Load management procedures are in effect under Emergency Alert 2, such as voltage reductions, interruption of non-firm end use loads, and demand-side management. Under Emergency Alert 3 a firm load interruption is imminent or in progress. See *id.* at 7-10.

I. The EDR Proposal

3. The Commission encouraged the Midwest ISO in 2007 to clarify its procedures for deploying and compensating demand response resources during emergencies in an order that provided guidance on the Midwest ISO's ancillary services market (ASM) proposal.⁴ In response, the Midwest ISO filed its new Schedule 30. It is a companion to the provisions submitted previously as part of the Midwest ISO's long-term resource adequacy plan, which explain how demand resources that are available during emergencies can qualify to meet planning resource requirements.⁵

4. In the Resource Adequacy Order, the Commission approved the Midwest ISO's proposal to have two categories of resources: (1) Capacity Resources; and (2) Load Modifying Resources that qualify as Planning Resources used to meet the applicable planning reserve margin. Capacity Resources include generation resources and Demand Response Resources Type I and Type II, and Load Modifying Resources include behind-the-meter generation resources and demand resources that are not included in Capacity Resources. Market participants are able to designate their qualifying resources as either Capacity Resources or Load Modifying Resources, with the major distinction being that Capacity Resources have a day-ahead must-offer obligation and Load Modifying Resources do not.

5. The Midwest ISO's EDR initiative provides a way for load to participate during emergencies. It encourages parties that can provide demand response to offer it during specified emergency conditions. These parties include market participants that are able either to reduce load during emergency conditions (e.g., through existing demand response programs) or to operate back-up generation resources (also referred to as behind-the-meter generation) to the same effect. The program contains compensation provisions to encourage market participants with demand response capabilities to submit standing offers either to reduce load or to increase generation during Emergency Alert 2 or Emergency Alert 3 events. Schedule 30 also sets forth the process by which interruptible demand, behind-the-meter generation, and other demand resources can be committed and dispatched during Emergency Alert 2 or Emergency Alert 3 events. These provisions are only applicable to demand reductions made during such events.

6. Schedule 30 allows a market participant to submit EDR offers to the Midwest ISO provided that the market participant: (i) is capable of reducing load in response to a

⁴ See *Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,311, at P 70 (2007).

⁵ The Commission addressed those provisions in *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283, at P 337 (2008) (Resource Adequacy Order).

request from the Midwest ISO, or (ii) has the ability to increase output from behind-the-meter generation resources that are not normally used to produce power in response to a request from the Midwest ISO. The market participant representing a load serving entity (LSE) will be able to submit an EDR offer to reduce demand to the Midwest ISO, unless otherwise specified.

7. To be eligible to submit EDR offers, a market participant must complete an EDR registration form that describes the market participant and its associated asset. This form also requires the market participant to specify whether demand will be curtailed to a firm service level, or whether a specific level of demand reduction will be provided. The Midwest ISO requested an effective date of May 1, 2008 for the EDR tariff provisions. The Midwest ISO indicated that it will, in the future, file modifications to Schedule 30 to conform it to the Commission-accepted ASM provisions regarding Demand Response Resources Type I and Type II.

8. The Commission's acceptance of the Midwest ISO's Schedule 30 was conditioned on the Midwest ISO making a compliance filing addressing issues related to EDR offer flexibility, measurement and verification, clarification of EDR offer requirements, and clarification of tolerance band specifications, penalties, and the relationship between Schedule 30 and other Midwest ISO initiatives.

9. The Midwest ISO made a compliance filing addressing these issues on May 22, 2008. The Midwest ISO also made a quarterly status report filing on July 21, 2008.

10. The Commission received two requests for rehearing of its order conditionally accepting the Midwest ISO's Schedule 30 to the Tariff.

II. Notice and Responsive Filings

11. Notice of the Midwest ISO's compliance filing was published in the *Federal Register*, 73 Fed. Reg. 32,320 (2008), with comments due on or before June 12, 2008. None were received.

12. The Coalition of Midwest Transmission Customers (Midwest Customers) and Detroit Edison Company (Detroit Edison) filed timely requests for rehearing of the Commission's order conditionally approving the Midwest ISO's Schedule 30 to the Tariff.

III. Discussion

A. Rehearing Requests

13. Midwest Customers request rehearing of the Commission's decision to accept the statement that the Midwest ISO made in its answer to protests affirming that participation in the EDR initiative is voluntary. Midwest Customers state that the Midwest ISO did

not address testimony that it had previously submitted that Midwest Customers maintain conflicts with the Midwest ISO's affirmation that participation is voluntary. Midwest Customers also assert that the Commission compounded its error by directing the Midwest ISO to confirm the voluntary interpretation in its compliance filing. Midwest Customers request that the Commission grant rehearing and direct the Midwest ISO to make participation under Schedule 30 strictly voluntary, in lieu of the interpretation offered in the Midwest ISO's compliance filing.

14. Detroit Edison requests rehearing if the Commission does not clarify that entities may choose to make demand resources available under Schedule 30 and to use those same resources to meet their resource adequacy requirements under Module E. The Commission should clarify or grant rehearing on whether an entity may decline to offer its demand resources under Schedule 30 and rely on those resources to meet its resource adequacy requirements under Module E. Finally, Detroit Edison maintains that the Commission should have required the Midwest ISO to explain the relationship between Load Modifying Resources under Module E and demand resources under Schedule 30, including how the Midwest ISO will prioritize and distinguish between resources under Schedule 30 and Module E. The Commission should have required the Midwest ISO to explain why "commercial" demand resource products should not be interrupted before existing "reliability"-driven demand products, particularly those developed under existing retail tariffs.

B. Commission Determination

15. We deny Midwest Customers' rehearing request regarding the voluntary nature of the EDR initiative. We do not agree that the voluntary nature of the EDR initiative was unclear or that the Commission improperly directed the Midwest ISO to confirm the Commission's interpretation that the program is voluntary. The Commission stated throughout the April 22 Order that the EDR initiative is voluntary.⁶

16. Moreover, we see no error in relying on an answer from the Midwest ISO that was submitted after the testimony in question. The Midwest ISO's answer clarified the testimony in response to comments by the Michigan Public Power Agency.⁷ The Midwest ISO answered those comments directly and adequately. Midwest Customers have failed to explain how that testimony could call into question the Midwest ISO's subsequent answer or the Commission's own findings in its orders addressing resource adequacy and emergency demand response.

⁶ April 22 Order at P 25, 42, 87, 103, and 112.

⁷ See January 22, 2008, Motion to Intervene and Protest, Michigan Public Power Agency at pgs. 4 – 5.

17. Since we disagree that there was an error on this point, we also disagree with Midwest Customers that the Commission “compounded” any error when it directed the Midwest ISO to confirm the accuracy of (i) the Commission’s interpretation that the obligation of Load Modifying Resources to be EDRs as well means that Load Modifying Resources must follow the operating rules for EDRs and be compensated according to Schedule 30, and (ii) the Commission’s interpretation that these requirements are separate from the resource adequacy requirements of load modifying resources, as specified in Module E.⁸ We note that Schedule 30 does not contain a must offer requirement for EDR participants. It simply states that in order to be compensated, an EDR participant must submit an offer.

18. We also will deny the rehearing request of Detroit Edison. We do not agree that the Commission failed to address the interaction between Schedule 30 and Module E in response to Detroit Edison’s comments.⁹ We likewise do not agree that the Midwest ISO requires direction on which demand resources it will curtail during emergency operations governed under Schedule 30. Any broader discussion that inquires into practices developed under existing retail tariffs, which Detroit Edison maintains is necessary, is beyond the scope of this proceeding.

19. We will, however, clarify aspects of the relationship between Schedule 30 and Module E. We note that some aspects of the procedures governing the use of Load Modifying Resources in emergencies have been clarified by the Midwest ISO in the Module E proceeding and are still pending in that proceeding.¹⁰ We clarify that an entity may choose not to offer its demand resources under Schedule 30 and not jeopardize its right to use those same resources under the Module E resource adequacy requirements. Further, we clarify that entities may have their demand resources participate in Schedule 30 and rely on those same resources under Module E. But we note that entities that choose to participate in both Module E as Load Modifying Resources and Schedule 30 as EDRs are subject to the requirements of both, including the notification and offer provisions of Module E.

⁸ See April 22 Order at P 103.

⁹ See Resource Adequacy Order, 122 FERC ¶ 61,283 at note 221. “We consider the Midwest ISO answer on the relationship between the provisions proposed in Docket No. ER08-404 and this proceeding to be responsive to Detroit Edison’s concerns.”

¹⁰ See May 27, 2008, compliance filing of the Midwest ISO, ER08-394-002 at p. 16, section H of the transmittal letter.

C. Compliance Filing

20. In its compliance filing, the Midwest ISO submits revised tariff sheets to provide additional offer flexibility to allow EDR participants to specify the firm service level to which they will curtail demand and their expected peak load. If an EDR participant does not want to specify the firm service level to which it will curtail demand, it has the option of specifying its targeted load reduction. The Midwest ISO also submitted revised tariff sheets to clarify that it did not intend to exclude historical behind-the-meter generation from EDR offers as long as there is a net demand reduction.

21. The Midwest ISO also clarifies its requirement that EDR participants must submit meter data within 53 days to receive compensation when a demand reduction is not directly metered by the Midwest ISO. It states that this conforms with its existing settlement procedures, which specify that statements be sent 55 days after the operating day. The two days between day 53 and 55 give the Midwest ISO time to incorporate the meter data. We consider this a reasonable timeframe for submission of meter data by those participants who are not metered by the Midwest ISO directly.

22. With respect to the tolerance band specifications, the Midwest ISO has clarified that the tolerance band is a straightforward 95 percent of the demand reduction dispatch instruction. The Midwest ISO has revised the penalty provisions to clarify that any penalty is based on the greater of the amount beyond the tolerance band or zero.

23. The Midwest ISO's compliance filing provides substantial additional clarification and improvement to Schedule 30, and it is consistent with the Commission's prior directives. We note that no comments and/or protests were received concerning the compliance filing. We therefore accept the compliance filing.

24. In addition, the Midwest ISO filed a quarterly status report on July 21, 2008 that addresses the steps the Midwest ISO has taken so that EDRs may set the locational marginal price (LMP).¹¹ The Midwest ISO states that the effort to allow EDRs to set the LMP is part of a larger effort to incorporate all resources that cannot move incrementally into the security-constrained economic dispatch algorithm. The Midwest ISO states that it has conducted research, that it is working to identify potential algorithms that can resolve the pricing issues, and that it expects to test possible approaches in the coming year.

25. However, the Midwest ISO's July 21, 2008 quarterly status report did not address the Commission's directive in the April 22, 2008 Order to report on progress being made

¹¹ See April 22 Order at P 27.

to accept day-ahead EDR offers.¹² We therefore direct the Midwest ISO to include in its next quarterly status report an update of its progress on accepting day-ahead offers along with its report on the status of its efforts to allow EDR resources to set the LMP.

The Commission orders:

(A) The requests of Midwest Customers and Detroit Edison for rehearing are hereby denied, as discussed in the body of this order.

(B) The Midwest ISO's revised tariff sheets submitted with its compliance filing are hereby accepted for filing, effective May 1, 2008, as discussed in the body of this order.

(C) The Midwest ISO is hereby directed to submit a revised quarterly status report in its subsequent quarterly report to be filed 90 days from July 21, 2008, as discussed in the body of this order.

By the Commission. Commissioner Wellinghoff concurring in part and dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² *Id.* P 57.

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WELLINGHOFF, Commissioner, concurring in part and dissenting in part:

I dissented in part from the April 22 Order¹ in this proceeding because I believe that certain features of the Midwest ISO's Schedule 30 related to emergency demand resources have not been justified and will make the program less effective, and possibly ineffective, in attracting additional participation by demand resources during emergencies.

Although I generally supported approval of new Schedule 30, consistent with my prior statement noted above, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,070 (2008) (April 22 Order).