

125 FERC ¶ 61,106
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. ER08-1486-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS, AS MODIFIED

(Issued October 28, 2008)

1. In this order we will accept Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its Open Access Transmission and Energy Markets Tariff (Tariff) to compensate facilities that enable a Generation Resource, that cannot be restarted without the aid of an external station power source, to be restarted during blackout conditions, subject to modification as explained below.

I. Background

2. Midwest ISO Transmission Operators are required by North American Electricity Reliability Corporation (NERC) procedures to follow detailed steps, including coordination with Midwest ISO to reliably and promptly restore power to the Midwest ISO Region in the event of a power system restoration event (i.e., a blackout). One of the key elements of the power system restoration plan is the ability of certain facilities to independently begin to produce electricity and to “restart” larger Generation Resources that cannot commence operations without the aid of external power sources (Blackstart Service). NERC procedures place the primary responsibility for providing Blackstart Service on Transmission Operators.¹

¹ NERC describes Transmission Operator in its Reliability Functional Model – Version 4 at page 36, as the following:

The Transmission Operator is responsible for the real-time operating reliability of the transmission assets under its purview, which is referred to as the Transmission
(continued)

II. Description of Filing

3. On August 29, 2008, Midwest ISO submitted for filing proposed revisions to its Tariff in order to compensate facilities that enable a Generation Resource, that cannot be restarted without the aid of an external station power source, to be started during blackout conditions (Blackstart Units).
4. According to Midwest ISO, many Transmission Operators meet their NERC Blackstart Service obligations by planning for emergencies and ensuring that their individual Control Area systems have sufficient power system restoration capability should a failure of the network as a whole occur. However, Midwest ISO notes that new entities are entering Midwest ISO's Energy Market that do not have an obligation to provide Blackstart Service and that in fact some of the new Resources are not including Blackstart Unit capability in their plans. According to Midwest ISO "this can be particularly problematic for Transmission Operators that are stand alone or independent transmission companies, who must contract for Blackstart Service to meet the applicable NERC standards."² Midwest ISO states that a financial recovery mechanism is needed to compensate entities that supply Blackstart Service because otherwise many new Generation Resources proposed for construction will have no incentive to incur potentially non-recoverable costs associated with the inclusion of Blackstart Service capabilities in their proposed units.
5. In this filing, Midwest ISO proposes, among other revisions, new Schedule 33, "Blackstart Service" and new Attachment NN "Form of Service Agreement to Provide Blackstart Service." Sections I and II of Schedule 33 provide that Transmission Operators and Midwest ISO will determine the Blackstart Service required to comply with NERC Reliability Standards and that this service will be provided for a minimum

Operator Area. The Transmission Operator has the authority to take certain actions to ensure that its Transmission Operator Area operates reliably.

The Transmission Operator and Reliability Coordinator have similar roles with respect to transmission operations, but different scopes. The Transmission Operator scope is narrower than the Reliability Coordinator, and the Transmission Operator does not necessarily "see" very far beyond its own boundaries. Therefore, the Transmission Operator can calculate System Operating Limits, but the Model does not require the Transmission Operator to calculate Interconnection Reliability Operating Limits, which requires the wider scope of the Reliability Coordinator.

² Transmittal letter at 2.

continuous three-year period.³ Sections III and IV of Schedule 33 provide that the Blackstart Unit must demonstrate minimum performance capabilities, as indicated by NERC System Restoration and Blackstart standards, and that there will be periodic testing of each Blackstart Unit in accordance with NERC System Restoration and Blackstart standards. Section V of Schedule 33 provides that the Blackstart Unit will only be compensated for Blackstart Service where the associated costs are not recovered through other rates or charges. The proposed formula for calculating the annual revenue requirement consists of three elements: (1) Fixed Blackstart Service Costs; (2) Variable Blackstart Service Costs; and (3) Training and Compliance Costs. Midwest ISO states that it will calculate rates for Blackstart Service for each Transmission Pricing Zone in the Transmission System. For zones where more than one entity provides Blackstart Service, Midwest ISO will pass through the revenue it receives directly to each Blackstart Unit Owner based on the Blackstart Unit's respective share of the relative rates within that zone, as specified in section V.

6. Each Transmission Customer will pay Midwest ISO a charge for Blackstart Service determined by multiplying the applicable rate in section V by the reserved capacity for a Point-To-Point customer or by network load for a Network Integration Transmission Service customer. Midwest ISO will distribute to each Blackstart Unit Owner a *pro rata* allocation of the amounts collected under Schedule 33 based upon the Blackstart Unit's respective share of the relative rates within the Transmission Pricing Zone (i.e., rates of the Blackstart Unit divided by the total rates of Blackstart Units in a Transmission Zone) derived under section VI.A of Schedule 33. Finally, proposed Attachment NN contains the *pro forma* service agreement for this service.

7. Midwest ISO describes the extensive stakeholder negotiation process in which it engaged to ensure an adequate supply of Blackstart Service. According to Midwest ISO, it and its stakeholders agreed to simplify the compensation approach by providing the same recovery of demonstrable revenue requirements to both existing and to new Blackstart Unit Owners. The revenue requirements would be filed with the Commission for approval. To ensure that Market Participants do not pay twice for the same Blackstart Service, Blackstart Unit Owners would be required to certify that costs associated with such service are not being recovered through other rates or charges. Consistent with this restriction, Schedule 33 does not displace existing contracts or regulatory arrangements already in place regarding Blackstart Service. Midwest ISO explains that Schedule 33 is intended to supplement existing arrangements, and to provide an alternative method for

³ Such service will be automatically extended for an additional year in the absence of written notice of termination.

cost recovery that removes potential financial disincentives for the installation of new Blackstart Service capability.⁴

8. Midwest ISO requests an effective date of October 1, 2008.

III. Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 73 Fed. Reg. 53,215 (2008), with interventions and protests due on or before September 19, 2008. Duke Energy Corporation and Ameren Services Company each filed a timely motion to intervene without substantive comment. American Transmission Company, LLC (American Transmission) filed a timely motion to intervene with general comments. Consumers Energy Company (Consumers Energy); Wisconsin Electric Power Company (Wisconsin Electric); American Municipal Power-Ohio, Inc. (AMP-Ohio); and Reliant Energy, Inc., Dynegy Power Marketing, and Dynegy Midwest Generation (collectively, Reliant) each filed timely motions to intervene with comments that requested specific relief. International Transmission Company (International Transmission); Alliant Energy Corporate Services, Inc. (Alliant Energy); and The Detroit Edison Company (Detroit Edison) each filed timely motions to intervene and protests that requested specific relief.

10. On October 6, 2008, Midwest ISO filed an answer to the comments and protests. The answer and the comments or protests are discussed in detail below.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

⁴ Schedule 33 is not limited to new facilities. Unit Owners may choose to convert their existing Blackstart contracts to Schedule 33 service for example, and the benefits of Schedule 33 could as easily persuade owners of older units that might otherwise be retired to keep them in service.

B. Substantive Matters

12. We find that Midwest ISO's proposal, as modified below, is just and reasonable and not unduly discriminatory, and we will accept Schedule 33 and Attachment NN (*pro forma* service agreement), as modified below. Midwest ISO's proposal, as modified, will ensure that all eligible Blackstart Service providers are able to seek cost recovery in a clear and transparent manner. We note that Midwest ISO's proposal is the outcome of three years of effort by Midwest ISO and its stakeholders and conclude that the proposal, as modified below, improves the ability of Midwest ISO Transmission Operators to meet their Blackstart Service obligations pursuant to NERC requirements, by ensuring that entities that provide Blackstart Service are able to obtain compensation.

1. Eligibility**a. Proposal**

13. Sections I and II of proposed Schedule 33 provide that Transmission Operators and Midwest ISO will work with the applicable Regional Entity to determine the extent of Blackstart Service that is required to comply with NERC Reliability Standards. A qualifying Blackstart Unit Owner or a Transmission Operator may contract with an entity inside or outside of the Midwest ISO Region for the supply of Blackstart Service, if such Blackstart Service is consistent with the Transmission Operator's System Restoration Plan, NERC Reliability Standards, and the minimum requirements of Schedule 33. The Transmission Operators are responsible for identifying to Midwest ISO the Blackstart Units that are included in each of their individual System Restoration Plans and that are required for the reliable restoration of the Transmission System in each of the Transmission Pricing Zones. Midwest ISO proposes that the terms and agreements for service be included in Attachment NN (*pro forma* service agreement), which the Blackstart Unit Owner will be required to execute and to submit to Midwest ISO for filing with the Commission.

14. Additionally, Schedule 33 requires that Blackstart Service will be provided for a minimum continuous three-year period and that such service will be automatically extended for an additional year to maintain a rolling three-year commitment, in the absence of a written notice of termination. These provisions, and other relevant terms, will be incorporated into a Service Agreement, which the Blackstart Unit Owner will be required to execute and submit to the Midwest ISO for filing with the Commission. If a Blackstart Unit Owner does not fulfill its commitment to provide Blackstart Service, the right of that owner to receive revenues associated with that unit will be terminated.

b. Protests, Comments, and Answer

15. Alliant Energy supports the Blackstart Service proposal, subject to several clarifications and modifications. Alliant Energy, among other things, seeks clarification

that the first paragraph of proposed Schedule 33, which states in pertinent part that “Blackstart Service enables Transmission Operators to designate specific generation facilities as Blackstart Units whose location and capabilities are required to assist in re-energizing a specific portion of the Transmission System following a system-wide blackout,” means that the Transmission Operator is enabled to designate which Blackstart Units are *required* to assist in re-energizing a portion of the Transmission System.⁵

16. Alliant Energy is also concerned that section II of proposed Schedule 33 does not address whether or under what conditions the Transmission Provider may deny a Blackstart Unit Owner’s request to provide Blackstart Service.⁶

17. Midwest ISO responds that the intent of Schedule 33 is that Transmission Operators will work with generation owners in the development of their system restoration plans, to meet NERC and regional requirements, and that this process will be coordinated with the Reliability Coordinator. Midwest ISO further notes that the *pro forma* service agreement at Attachment NN is a three-party agreement that can only become effective upon consensus of the unit owner, the Transmission Operator and Midwest ISO that the service is needed by the Transmission Operator, that the unit is capable of meeting the standards, and that the unit is located where it is needed on the Transmission Operator’s transmission system. This, it maintains, will assure that the costs paid by customers under Schedule 33 do not include any “gold plating.”⁷

18. As to the proposed three-year term, Reliant argues that Midwest ISO has failed to justify holding Blackstart Service Providers to the “minimum three year period, with termination only upon one year’s written notice.”⁸ It points out that PJM relies on a two-year term and one-year notice.⁹ Reliant also argues that the two-year term and one-year notice of termination is reasonable for both the transmission operators and the Blackstart Service Providers because by standardizing the terms under which this service is provided, the filing eliminates a significant amount of lead time formerly required to secure arrangements for the service. Thus, Reliant argues, physical procurement and

⁵ See Alliant Energy’s Comments at 3.

⁶ *Id.*

⁷ Midwest ISO’s Answer at 15.

⁸ Proposed Schedule 33 at section II, Original Sheet No. 1050Z.74.

⁹ See Reliant’s Protest at 11, citing PJM OATT, Schedule 6A at section 5, Original Sheet No. 238.

implementation of Blackstart Service under these standardized arrangements can be achieved within one year.¹⁰

19. Midwest ISO responds that the three-year minimum period of service was a much discussed matter that involved a lengthy process and was the end result favored by a majority of the stakeholders. It rationalized that this time period will allow a Transmission Operator to arrange for replacement service within two years of being notified that it must do so; and that one year was deemed too short a time period to ensure the ability to perform reliability analysis, modify its system restoration plan and potentially install a new unit, if that turned out to be the only viable option following termination.¹¹

c. Commission Determination

20. We find that the proposed eligibility requirements of Schedule 33 and Attachment NN are just and reasonable and will accept them subject to further compliance, as discussed below. Schedule 33 states that a unit cannot be considered a Blackstart Unit until it has been added to the Transmission Operator's System Restoration Plan and Regional Entity database as a Blackstart Unit. As Midwest ISO notes, the designation of a Blackstart Unit involves a trilateral agreement between the Midwest ISO, the Transmission Operator, and the Blackstart Unit Owner. Involvement by all three parties is essential. First, the prospective Blackstart Unit must (1) meet performance standards and outage restrictions, (2) produce evidence of successful periodic testing, and (3) meet all applicable NERC and Regional Entity System Restoration and Blackstart Reliability Standards. Additionally, NERC procedures place the primary responsibility for providing Blackstart Service on Transmission Operators. Finally, Midwest ISO also has a critical interest in this service inasmuch as it is the Transmission Provider under its Tariff. Thus engaging a generation unit to provide Blackstart Service requires the involvement of all three parties. As for the concerns of Alliant Energy regarding the language in section II,¹² we conclude that the proposed language reasonably sets forth the criteria for determining whether or not a unit will be designated as a Blackstart Unit. If a

¹⁰ See Reliant's Protest at 11.

¹¹ See Midwest ISO's Answer at 13.

¹² See proposed Original Sheet No. 1050Z.73. Among other things, section II provides that "Blackstart Units will be identified by the Transmission Operators pursuant to criteria established by NERC and the applicable Regional Entity, and in conjunction with the coordination of the Transmission Operators' System Restoration Plans by the Transmission Provider acting in its capacity as the Reliability Coordinator."

unit cannot meet the criteria set forth in section II, it will not qualify as a Blackstart Unit. However, we expect that the process for designating a Blackstart Unit will not be done in an unduly discriminatory manner, and that since the Blackstart service agreements will be filed at the Commission, parties can challenge designation of units to provide Blackstart Service at the time the service agreements are filed.

21. We also disagree with Reliant's argument that Midwest ISO has failed to justify holding Blackstart Service Providers to the "minimum three-year period, with termination only upon one years' written notice." Reliant points only to PJM's use of a two-year term and one-year notice of termination and the standardizing of terms as support for its position that one RTO may have found this appropriate is no reason why Midwest ISO should also follow this approach. Indeed, we note that under New York ISO's and ISO New England's Open Access Transmission Tariffs, they rely on a three-year term with a one-year notice of termination.¹³ Moreover, Midwest ISO reasonably explains that this amount of time may be needed to arrange for replacement service under certain circumstances. Thus, we conclude that Midwest ISO's approach is reasonable. Accordingly, we will not require any revisions to Schedule 33 with respect to this issue.

2. Performance Standards and Testing

a. Proposal

22. According to Midwest ISO, section III of proposed Schedule 33 provides that Blackstart Units must demonstrate the minimum performance capabilities for Blackstart Units, as set forth in the NERC System Restoration and Blackstart Reliability Standards and any other applicable Regional Entity standards. Moreover, such performance capabilities must remain in effect for the duration of the Blackstart Unit Owner's commitment to provide Blackstart Service.

23. Midwest ISO states further that section IV of proposed Schedule 33 provides for the periodic testing of Blackstart Units in accordance with the NERC System Restoration and Blackstart Reliability Standards, to verify, for example, that a Blackstart Unit can be started and operated without being connected to the Transmission System. A Blackstart Unit must have a successful test on record with the Midwest ISO within the preceding thirty-six months and also must meet all applicable NERC and Regional Entity Blackstart standards and requirements set forth in Schedule 33. Section IV also requires that a Blackstart Unit Owner provide the Midwest ISO by May 1 of each year with all data

¹³ *New England Power Pool Participants Committee*, 102 FERC ¶ 61,176 (2003); *New York Independent System Operator, Inc.*, Docket No. ER06-310-000/001 (Mar. 21, 2006) (unpublished letter order).

necessary to demonstrate that it has met all applicable NERC and Regional Entity Blackstart criteria, standards and requirements. The Blackstart Unit Owner must also affirm that it will continue to meet the requirements of Schedule 33 for at least the next 12 months.

b. Protests, Comments, and Answer

24. ITC Midwest asserts that the testing requirements proposed in section IV, Schedule 33 of Midwest ISO's Tariff are vague and must be strengthened to include more specific tests for Blackstart Units because, as written, this section merely provides that the Blackstart Units shall be tested periodically in accordance with the NERC System Restoration and Blackstart Reliability Standards. According to ITC Midwest, the existing reliability standards that have been approved by the Commission do not specify how the Blackstart Units will be tested. For example, Reliability Standard EOP-005-1, System Restoration Plans, merely provides that the Transmission Operator shall demonstrate, through simulation or testing, that the Blackstart Units in its restoration plan can perform their intended functions as required. Similarly, Reliability Standard EOP-009-0, Documentation of Blackstart Generating Test Results, merely states that testing records shall include the dates of the tests, the duration of the tests and an indication of whether the tests met regional requirements.¹⁴

25. ITC Midwest points out that NERC is in the process of modifying the reliability standards related to System Restoration and Blackstart testing to provide for specific tests for Blackstart Units. According to ITC Midwest, the new Reliability Standard, EOP-005-2, System Restoration from Blackstart resources, is in draft stage, but represents a significant improvement over the current reliability standards and lists specific tests.¹⁵ ITC Midwest asks that the Commission not approve the proposed provisions of section IV of Schedule 33, but direct Midwest ISO to revise section IV to require adherence to the testing requirements contained in the draft standard EOP-005-2.

26. Alternatively, ITC Midwest asks that Transmission Operators be able to insist on specific testing requirements in their customized service agreements with Blackstart Unit Owners. In this regard, ITC Midwest points out that, although section III of Schedule 33

¹⁴ See ITC Midwest's Comments at 4.

¹⁵ For example, the Requirement R9.2 specifies a list of required tests including: the ability to energize a bus. If it is not possible to energize a bus during the test, the testing entity must affirm the unit has the capability to energize a bus such as verifying that the breaker close coil relay can be energized with the voltage and frequency monitor controls disconnected.

contains a provision that the service agreement may specify additional terms and conditions, this may not work because the Blackstart Unit Owners are not likely to agree to additional testing requirements. ITC Midwest asserts that it is unjust and unreasonable to compensate Blackstart Units without adequate testing.¹⁶

27. Regarding testing requirements for Blackstart Units, Midwest ISO¹⁷ agrees that when the NERC test standards for Blackstart Units are revised and made more rigorous, proposed Schedule 33 provides that the new revised standards will apply. Midwest ISO also states that the Commission should not grant it the discretion to create custom service agreements that could supersede the NERC and Regional Entity testing standards.

c. Commission Determination

28. We find that the terms and conditions of Schedule 33 with respect to performance standards and testing are just and reasonable. Even if the provisions of the new Reliability Standard, EOP-005-2, System Restoration from Blackstart resources, are superior to those contained in already approved System Restoration and Blackstart Reliability Standards, we cannot require Midwest ISO to change its Tariff to reference the provisions of a standard that is in draft form only. Moreover, as Midwest ISO points out, if and when the NERC test standards are revised, made more rigorous, and become effective, Schedule 33 provides that the new standards will apply.¹⁸ In the meantime, we note that the Transmission Operators are able to seek additional testing requirements in their customized service agreements with Blackstart Unit Owners under section III of

¹⁶ See ITC Midwest's Comments at 7.

¹⁷ See Midwest ISO's Answer at 16.

¹⁸ See section III of proposed Schedule 33, Performance Standards and Outage Restrictions, Original Sheet No. 1050Z.75, which, in relevant part, provides:

To be eligible for compensation under this Schedule 33, Blackstart Units must demonstrate the minimum performance capabilities for Blackstart Units in accordance with the criteria set forth in the NERC System Restoration and Blackstart Reliability Standards and any applicable Regional Entity Standards, as such standards may be revised from time to time, and must remain in effect for the duration of the Blackstart Unit Owner's commitment to provide Blackstart Service.

Schedule 33.¹⁹ If the parties are unable to agree to the performance standards and testing requirements, a Transmission Operator can request that an unexecuted service agreement be submitted to the Commission for resolution.

3. Request for a Standard Offer Rate

a. Proposal

29. Midwest ISO explains that the amount of compensation will be based on the Commission-accepted revenue requirements associated with each Blackstart Unit or on the terms of a Commission-accepted Service Agreement. The Blackstart Unit Owner possesses the unilateral right under section 205 of the Federal Power Act (FPA)²⁰ to file with the Commission to establish or to revise its annual cost-based revenue requirement for Schedule 33.

30. According to Midwest ISO, section V.3 of proposed Schedule 33 provides the formula for calculating a Blackstart Unit's annual Blackstart Service revenue requirement, which will represent a pass-through of the costs that a Blackstart Unit Owner incurs to provide Blackstart Service (i.e., costs that would not otherwise be incurred, but for providing Blackstart Service capabilities, including, but not limited to, costs related to compliance with applicable NERC Reliability Standards). The Blackstart Service revenue requirement will be the sum of three elements: (1) Fixed Blackstart Service Costs; (2) Variable Blackstart Service Costs; and (3) Training and Compliance Costs.

b. Protest, Comments, and Answer

31. Reliant takes issue with Midwest ISO's characterization of its proposal. According to Reliant, "Midwest ISO's proposal allows Blackstart Service providers to choose to be compensated either through: (1) the formula rate in proposed Schedule 33, or (2) another unit-specific "rate schedule consistent with Commission policy providing

¹⁹ See proposed Original Sheet No. 1050Z.76, which, in relevant part, provides:

A service agreement entered into between a Black Start Unit Operator and a Transmission Operator for Black Start Service may contain additional terms and conditions consistent with the minimum requirements of this section III.

²⁰ 16 U.S.C. § 824d (2006).

for compensation for the provision of Blackstart Service.”²¹ It argues that proposed Schedule 33 is not properly characterized as a formula rate because Schedule 33 does not include a formula with the specificity required to operate without further filings. Instead, Reliant points out that the standard tariff rate is actually a general description of the cost of service methodology that a provider may reflect in its unit-specific revenue requirement that must be separately filed with the Commission. Reliant argues that the option of developing a unit-specific revenue requirement reflecting cost components is reasonable. However, it asserts that Midwest ISO should be required to establish a standard offer service rate that can be elected by any provider. Reliant points out that other RTOs have established standard offer service rates because traditional cost of service rates may discourage non-utility service providers from offering Blackstart Services. It asserts that Midwest ISO’s failure to include such an option in the proposed Schedule 33 will act as a significant deterrent to non-utility providers that might otherwise be willing to provide Blackstart Service.²²

32. Midwest ISO responds that one of the primary arguments raised in stakeholder discussions in opposition to a standard offer rate mechanism was the inequity of establishing a “one size fits all” approach to Blackstart Unit compensation. There currently are a large number of Blackstart Units in Midwest ISO’s Region; some are quite old and significantly depreciated while others are fairly new and have not been depreciated. Although other RTOs have developed a single compensation mechanism for Blackstart Service, Midwest ISO agrees with the majority of its stakeholders that compensation methodologies should be tailored to address the needs of individual Blackstart Unit Owners, rather than requiring a standard, non-unit specific compensation methodology.

c. Commission Determination

33. We find that the compensation mechanism in Schedule 33 is just and reasonable and will not require any additional modification. Midwest ISO and its stakeholders considered alternate pricing mechanisms used by PJM and ISO-New England, but concluded that it would be inequitable to have a “one size fits all” approach to Blackstart Unit compensation under Schedule 33, based upon the diversity in age and depreciable value of prospective Blackstart Units. Instead, they proposed a compensation mechanism based on the three cost categories mentioned above. However, Schedule 33 also allows for a Blackstart Unit Owner to propose its own rate schedule for compensation of this

²¹ See Reliant’s Protest at 5 n.5 citing Tariff Filing at 5.

²² See *id.* at 7-9.

service consistent with Commission policy.²³ Midwest ISO states that the provision for the Blackstart Unit Owner to file its revenue requirement with the Commission under section 205 of the FPA was drafted to be similar to the compensation provisions permitted under Midwest ISO's Schedule 2, "Reactive Supply and Voltage Control from Generation or Other Sources Service," another capability-driven service.²⁴

34. In addition, we fail to see how the lack of a standard offer service rate is detrimental to non-utility service providers. Reliant has failed to demonstrate that proposing a revenue requirement for Blackstart Service is a deterrent to obtaining compensation. Indeed, over the last couple of years, numerous entities, including non-utility providers, have established revenue requirements with respect to reactive power through filings with the Commission. We conclude that Midwest ISO's decision to allow Blackstart Unit Owners to calculate individual revenue requirements, but not to provide a standard offer service rate, is just and reasonable.

35. Finally, the importance of Blackstart Service to RTOs, ISOs and their respective transmission systems is imperative in planning for, and addressing reliability in, an emergency power restoration situation, and we recognize that with experience, Midwest ISO and its market participants will determine whether they need to seek adjustments to compensation under Schedule 33 in the future, in order to encourage more participation.

4. Preventing Double Recovery

a. Proposal

36. Section V of proposed Schedule 33 provides that a Blackstart Unit Owner will only be compensated for Blackstart Service where the costs associated with such service are not being recovered through other rates or charges. Midwest ISO further states that Blackstart Unit Owners would be required to certify that costs associated with such service are not being recovered through other rates or charges.

b. Protests, Comments, and Answer

37. Consumers Energy argues that the proposed cost recovery scheme is too cumbersome and is potentially discriminatory because new providers and other previously uncompensated providers are eligible for revenues under Schedule 33, but other providers who are already being compensated under some other mechanism are not

²³ Schedule 33, section V, P 5.

²⁴ See Midwest ISO's Answer at 9.

eligible to switch to Schedule 33 compensation.²⁵ Consumers Energy points out that some providers recover only part of their Blackstart costs under one or more mechanisms but may be able to recover the additional costs under Schedule 33 as proposed. Such a patchwork quilt of recovery methods, Consumers Energy argues, would result in a system where Blackstart costs already being recovered in retail rates would be required to stay in retail rates, while similar costs incurred in connection with other units would be granted recovery from a broader group of customers over a larger footprint under proposed Schedule 33.

38. Consumers Energy asserts that since Blackstart Unit Owners seeking recovery under Schedule 33 would already be required to file a revenue requirement for Commission approval, there is no reason why those revenue requirement filings should not also contain an explanation as to how double recovery of costs would be avoided. It also argues that allowing all Blackstart Service costs to be brought under Schedule 33 would simplify rate change proceedings. According to Consumers Energy, Midwest ISO should be directed to modify Schedule 33 to allow already-compensated Blackstart Service Providers to file for future recovery under Schedule 33.²⁶

39. Detroit Edison similarly argues that the requirement that providers of Blackstart Service that are currently compensated through other means are ineligible to seek compensation under Schedule 33 unduly discriminates against state-regulated load serving entities that may already be receiving compensation for Blackstart Service, in whole or in part, from their retail loads through retail rate mechanisms.²⁷

40. Wisconsin Electric seeks clarification of whether the prohibited duplicative recovery of costs refers to other recovery under federal jurisdiction or recovery through state retail rates.²⁸

41. Alliant Energy notes that notwithstanding Midwest ISO's intention to have Blackstart Unit Owners 'certify' that the costs of such service are not being recovered through other rates or charges, section V.1 of proposed Schedule 33 contains no provision for certification.²⁹ Therefore Alliant Energy proposes that the Tariff be revised

²⁵ See Consumers Energy's Protest at 3.

²⁶ See *id.* at 4-5.

²⁷ See Detroit Edison's Comments at 2-3.

²⁸ See Wisconsin Electric's Comments at 3.

²⁹ See Alliant Energy's Comments at 4.

to reflect the certification requirement. Alliant Energy also suggests that the phrase “not being recovered through other rates or charges” be clarified as to how this will be verified.³⁰

42. Midwest ISO clarifies that the intent of Schedule 33 is not to disqualify units that may already be recovering their costs under another mechanism from being compensated under Schedule 33, but rather to disqualify as part of a unit’s revenue requirement under Schedule 33 any Blackstart Service related costs being recovered elsewhere. To the extent that state regulators order adjustments or affected customers voluntarily enter into agreements to adjust existing rates or charges to eliminate the duplicate cost recovery, those costs can then be recovered under the Schedule 33 mechanism. Whether that adjustment is in the form of reduced retail (or wholesale) rates, a credit to customers, or some other mechanism, is immaterial. Affected customers will police the prospect of double recovery, and assure that the revenue requirement submitted to the Commission does not collect the same costs.

c. Commission Determination

43. We will not allow Midwest ISO to impose an affirmative duty on a Blackstart Unit Owner to confirm that the costs associated with such service are not being recovered through other rates or charges. Nor will we allow Midwest ISO to require Blackstart Unit Owners to certify that costs associated with such service are not being recovered through other rates or charges. As we have explained in a similar context involving reactive power, “the notion that SPP and the transmission owners have an affirmative obligation to demonstrate that they have removed generation plant investment associated with production of reactive power from retail rates, and that they are not charging retail customers for reactive power is outside the scope of this filing, and not within the Commission’s jurisdiction.”³¹ We direct Midwest ISO, in its compliance filing to be submitted within 30 days of the date of this order, to remove the language from section V of Schedule 33 that provides that a Blackstart Unit Owner will only be compensated for Blackstart Service where costs associated with such service are not being recovered through other rates or charges.³²

³⁰ *Id.*

³¹ *See, e.g., Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199, *order on reh’g*, 121 FERC ¶ 61,196 (2007).

³² *See* language in proposed Schedule 33, section V, at P 1, that states that “[a] Blackstart Unit Owner shall be compensated for Blackstart Service under this Schedule 33 if the costs associated with such service are not being recovered through other rates or charges,” and section V, at P 4, that states that “...the costs associated with such service

(continued)

5. Treatment of NERC Penalties and Related Insurance Costs

a. Proposal

44. The amount of compensation for Blackstart service will be based on the Commission-approved revenue requirements associated with each Blackstart Unit or on the terms of a Commission-approved Service Agreement. The Blackstart Unit Owner possesses the unilateral right under section 205 of the FPA to file with the Commission to establish or to revise its annual cost-based revenue requirement for Schedule 33. As to the potential for recovery of NERC penalties or related costs, the proposal is silent.

b. Protests, Comments, and Answer

45. AMP-Ohio states that it does not take issue with what is included in Midwest ISO's filing, but rather, it objects to the failure of section V of Schedule 33 to include a provision that precludes passing through the costs of NERC penalties and related insurance. According to AMP-Ohio:

The purpose of reliability requirements and the potentially steep fines associated with violations thereof is not to collect dollars but to assure reliability. Any system that allows a utility to incur fines (or insure against them) but pass on to others the costs significantly diminishes the incentives for compliance.^[33]

46. Midwest ISO addresses AMP-Ohio's concern by asserting:

[T]he ability to recover penalties or the cost of premiums insuring against penalties, is within the ratemaking jurisdiction of the Commission Such arguments are more appropriately made at the time a Blackstart Unit Owner submits its cost of service calculations to the Commission, as required by Schedule 33.^[34]

47. Midwest ISO argues that Commission determination of the penalty/insurance cost inclusion in a Blackstart Unit Owner's rates on a case-by-case basis is analogous to the

are not being recovered through other rates or charges, and the Blackstart Unit Owner is not receiving compensation under this Schedule 33 for the same service."

³³ See AMP-Ohio's Comments at 4.

³⁴ See Midwest ISO's Answer at 5.

Commission declining to adopt a blanket prohibition, or a blanket approval, regarding the appropriateness of RTOs passing through to customers the costs of NERC penalties.³⁵

48. In addition, Midwest ISO argues that AMP-Ohio's requested relief would have the opposite effect intended by Schedule 33, which is to reduce financial disincentives for the maintenance of existing, or the construction of new, Blackstart capability. According to Midwest ISO, the imposition of a blanket prohibition on this type of cost recovery on this subset of registered (generation) entities "when no such prohibition has been placed on others, would be one more reason for generation owners to forego the installation of equipment to supply this vital service."³⁶

c. Commission Determination

49. We will not grant the relief requested by AMP-Ohio. The Commission's decision to forego a blanket prohibition on, or blanket approval of, RTOs passing through to customers the costs of NERC penalties was based in part on the not-for-profit status of RTOs.³⁷ In that instance, the Commission decided to address this issue on a case-by-case basis.³⁸ At this time we will not prejudge the issues of what type of entity or under what circumstances the cost of NERC penalties or the cost of insurance covering those penalties may or may not be recovered. Those issues are best considered on a case-by-case basis by filings made before the Commission.

³⁵ See *id.* at 5 n.15 citing *Midwest Independent System Operator, Inc.*, 119 FERC ¶ 61,222 (2007); *Reliability Standard Compliance and Enforcement in Regions with Regional Transmission Organizations or Independent System Operators*, 122 FERC ¶ 61,247 (2008) (Reliability Standard Order); *PJM Interconnection, LLC*, 124 FERC ¶ 61,260 (2008) (*PJM Interconnection*).

³⁶ *Id.* at 6.

³⁷ See Reliability Standard Order, 122 FERC ¶ 61,247 at P 26 (2008).

³⁸ See *id.* P 16. See also *PJM Interconnection*, 124 FERC ¶ 61,260 at P 37; *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261, at P 754 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

6. Miscellaneous Rate Matters

a. Proposal

50. According to Midwest ISO, section V.3 of proposed Schedule 33 provides the formula for calculating a Blackstart Unit's annual Blackstart Service revenue requirement, which will represent a pass-through of the costs that a Blackstart Unit Owner incurs to provide Blackstart Service (i.e., costs that would not otherwise be incurred, but for providing Blackstart Service capabilities, including, but not limited to, costs related to compliance with applicable NERC Reliability Standards). This proposed default Blackstart Service revenue requirement is the sum of three elements: (1) Fixed Blackstart Service Costs; (2) Variable Blackstart Service Costs; and (3) Training and Compliance Costs.

b. Protests, Comments, and Answer

51. Wisconsin Electric requests that Midwest ISO be directed to modify proposed Schedule 33, Sheet No. 1050Z.80 that addresses Training and Compliance Costs.³⁹ According to Wisconsin Electric, this provision appears to limit the recovery of these costs to only those associated with the Blackstart Unit's employees. Wisconsin Electric request modification of this provision to clarify that such costs may be incurred to enable a Blackstart Unit *Owner's* employees to effectuate the Blackstart Service capabilities of the Blackstart Unit. It asserts that this revision recognizes that a Blackstart Unit Owner may rely on employees in various business units – and not just those employees physically at the power plant – to effectuate Blackstart Service.⁴⁰ In addition, Wisconsin Electric requests that Midwest ISO be directed to modify proposed section I.319b “Transmission Pricing Zone” to include allocation of revenues to generators in addition

³⁹ Sheet No. 1050Z.80 states in pertinent part:

Training and Compliance Costs: shall include those training and compliance costs that are reasonably incurred to enable a Blackstart Unit's employees to efficiently operate the Blackstart Service capabilities of the Blackstart Unit, including costs incurred to comply with NERC reliability standards applicable to Blackstart Units such as, but not limited to, Critical Infrastructure Protection standards.

⁴⁰ See Wisconsin Electric's Comments at 4.

to Transmission Owners.⁴¹ Wisconsin Electric points out that Midwest ISO allocates reactive power revenues to generators already.

52. Alliant Energy seeks clarification of section V.3 which defines “Variable Blackstart Service Costs” and points out that the definition includes the phrase “reasonable operating, maintenance and fuel costs that can be attributed to supporting Blackstart Service for a Blackstart Unit.” It seeks clarification that the term “fuel costs” refers only to the carrying costs of fuel inventory, and not an expectation of fuel usage.⁴²

53. Wisconsin Electric also identified a typographical error in Section 1.23d. It points out in the definition of “Blackstart Unit” the word “Form” should be changed to the word “from.”

54. American Transmission generally supports Midwest ISO’s development of proposed Schedule 33, and notes, without elaboration, that adoption of this proposed rate schedule is “only one of several steps that appear necessary to assure that there will be adequate Blackstart Service available in the event of a system emergency. . . .”⁴³

55. Midwest ISO responds that it agrees that the definition of Blackstart Training Costs needs to be clarified with regards to a Blackstart Unit Owner’s employees to indicate that the Blackstart training costs referred to are a Blackstart Unit Owner’s employees and agrees to make this clarification in an appropriate compliance filing. Midwest ISO also asserts that it did not intend to limit the allocation of Blackstart Service revenues to Transmission Owners only. It states that it will modify the language in a compliance filing to the Commission by deleting the phrase “to Transmission Owners” to clarify that other parties may receive revenues as well.⁴⁴ Midwest ISO also agrees to correct the typographical error pointed out by Wisconsin Electric (“Form” to “from”).

56. Finally, Midwest ISO states that the phrase “fuel costs,” as proposed in Schedule 33, is intended to represent the cost of maintaining sufficient fuel inventory to conduct

⁴¹ See section 1.319 of the Midwest ISO Tariff. Transmission Owner is defined, in relevant part, as follows: “Each member of the ISO whose transmission facilities (in whole or in part) make up the Transmission Provider Transmission System.”

⁴² See *id.* at 4-5. Alliant Energy argues that fuel usage costs are more appropriately included in the offer prices for energy and ancillary services market products.

⁴³ See American Transmission’s Motion to Intervene at 4.

⁴⁴ See Midwest ISO’s Answer at 17.

periodic testing of Blackstart Unit capability, and to supply Blackstart Service when requested. It further states that there is no separate energy charge for this service during system restoration and that payments for energy injected into the system in this situation will be determined under other emergency provisions of the Tariff.

c. Commission Determination

57. We agree with Wisconsin Electric that clarification is needed to indicate that the Blackstart training costs referred to are a Blackstart Unit Owner's employees. We also agree with it that clarification is needed to indicate that allocation of Blackstart Service revenues, as referenced in the definition of Transmission Pricing Zone in the proposal, should not be limited to Transmission Owners only. We direct Midwest ISO to file revised tariff sheets to provide these clarifications in a compliance filing to be submitted within 30 days of this order.

58. With respect to Alliant Energy's concern that the reference to "fuel costs" in the proposal is too broad and needs clarification, we find Midwest ISO's response reasonable and direct Midwest ISO, in the compliance filing to be submitted within 30 days of the date of this order, to replace "fuel costs" with "costs to maintain sufficient fuel inventory." In addition, we direct Midwest ISO, in its compliance filing to be submitted within 30 days of the date of this order, to correct the typographical error in section 1.23d. Finally, we note that Transmission Operator is not defined in proposed Schedule 33, nor is it defined in Midwest ISO's Tariff, and direct Midwest ISO, in a compliance filing to be submitted within 30 days of the date of this order, to define this term either in Schedule 33 or in its Tariff.

7. Effective date

a. Proposal

59. Midwest ISO requests an effective date of October 1, 2008.

b. Protests, Comments, and Answer

60. Wisconsin Electric objects to the proposed implementation date of October 1, 2008. According to Wisconsin Electric, discussions in Midwest ISO's Market Subcommittee meetings suggested an implementation date of one year after the filing. Wisconsin Electric asserts that it is unrealistic to expect Blackstart Unit Owners to assemble the necessary data, develop tariff language, file rate schedules, and receive

Commission approval by that date. Consequently, Wisconsin Electric proposes an implementation date of June 1, 2009 as a reasonable, workable compromise.⁴⁵

61. Midwest ISO responds that Blackstart Unit Owners have until May 1 of each year to provide Midwest ISO with a revenue requirement, which will need to be accepted by the Commission, and then this revenue requirement will be implemented, effective the following June 1. Therefore, Midwest ISO agrees with Wisconsin Electric that compensation under Schedule 33 will not commence until June 1, 2009; however, it still requests an effective date for Tariff sheets of October 1, 2008. Midwest ISO asserts that its intent is not for all Blackstart Unit Owners to meet all requirements by October 1, but to establish an earlier effective date to facilitate efforts of those Blackstart Unit Owners that have already begun to prepare revenue requirement filings for the Commission.⁴⁶

c. Commission Determination

62. We will deny Midwest ISO's request for an effective date of October 1, 2008. Midwest ISO failed to request waiver of the Commission's 60-day prior notice requirement and failed to provide any justification for an earlier effective date. In its answer, Midwest ISO acknowledges that compensation under Schedule 33 will not commence until June 1, 2009, but continues to request an effective date for its proposed Tariff sheets of October 1, 2008, arguing simply that this date will facilitate efforts of those Blackstart Unit Owners that have already begun to prepare revenue requirement filings for the Commission. Because Midwest ISO did not request waiver of our prior notice requirement and did not provide any explanation of why an effective date of October 29, 2008 (after 60 days notice) would not also provide those entities sufficient time to prepare revenue requirement filings, we reject its request for an effective date of October 1, 2008. Instead, we will accept the proposed Tariff sheets, as modified above, to be effective October 29, 2008, which is after 60 days notice, subject to a compliance filing to be submitted within 30 days from the date of this order.

The Commission orders:

(A) The proposed revisions to Midwest ISO's Tariff, as modified, are hereby accepted for filing, effective October 29, 2008, subject to the compliance filing ordered below.

⁴⁵ See Wisconsin Electric's Comments at 3.

⁴⁶ See Midwest ISO's Answer at 18.

(B) Midwest ISO is directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.