

127 FERC ¶ 61,227  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 5, 2009

In Reply Refer To:  
Midwest Independent Transmission  
System Operator, Inc.  
Docket No. ER09-506-000

Arthur W. Iler  
Midwest Independent Transmission System  
Operator, Inc.  
P.O. Box 4202  
Carmel, IN 46082-4202

Attention: Arthur W. Iler  
Midwest Independent Transmission System Operator, Inc.

Re: Update to Ancillary Services Market Tariff

Dear Mr. Iler:

1. On January 6, 2009, as amended April 6, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (ASM Tariff).<sup>2</sup> Midwest ISO states that certain developments necessitate this filing. First, the Commission recently accepted revisions to the ASM Tariff that had been submitted as revisions to the Open Access Transmission and Energy Market Tariff (EMT) rather than the ASM Tariff. Second, the Commission recently accepted revisions to the EMT that are also applicable to counterpart provisions of the ASM Tariff.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> FERC Electric Tariff, Fourth Revised Volume No. 1.

2. In addition to proposing to incorporate the above-mentioned revisions into the ASM Tariff, Midwest ISO identifies revisions that would also be incorporated into the ASM Tariff, upon the Commission's acceptance of associated compliance filings. Among other things, Midwest ISO states that there is a need to reflect an effective date of January 6, 2009 in the ASM Tariff for the interim Revenue Sufficiency Guarantee allocation methodology submitted by Midwest ISO on December 10, 2008 in Docket Nos. EL07-86, EL07-88 and EL07-92, to comply with the Commission's November 10 Order.<sup>3</sup>

3. Notices of Midwest ISO's January 6, 2009 filing, as amended on April 6, 2009, were published in the *Federal Register*, 74 Fed. Reg. 3587 (2009) and 74 Fed. Reg. 21,800 (2009), with interventions or protests due on or before January 27, 2009 and May 7, 2009, respectively. Timely motions to intervene were filed by Consumers Energy Company, Madison Gas and Electric Company and WPPI Energy, Wisconsin Electric Power Company, and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. DC Energy Midwest, LLC (DC Energy) filed a timely motion to intervene and protest prior to Midwest ISO filing a clarifying amendment on April 6, 2009. DC Energy requests that the Commission reject Midwest ISO's ASM Tariff revisions that would exempt certain deviations from being assessed RSG charges pursuant to section 40.3.3.a.ii of the ASM Tariff. DC Energy asserts that the RSG provisions of the ASM Tariff must be subject to the ultimate outcome of the RSG proceeding in Docket Nos. EL07-86, EL07-88 and EL07-92. Midwest ISO filed an answer to the protest by DC Energy.

4. 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 the 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. The Commission is not persuaded to accept Midwest ISO's answer and will, therefore, reject it.

5. Midwest ISO's proposed revisions to its ASM Tariff are hereby accepted, as modified, effective January 6, 2009, subject to a further compliance filing, as discussed below.

6. Midwest ISO references in its filing a number of proceedings for which it commits to make further filings revising the ASM Tariff upon the issuance of further Commission orders. One of those proceedings concerns Midwest ISO's December 10, 2008

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<sup>3</sup> January 6, 2009 Transmittal Letter at 8 and 9 citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008) (November 10 Order).

compliance filing, in Docket Nos. EL07-86, EL07-88 and EL07-92, concerning Midwest ISO's RSG interim allocation methodology. It is this proceeding to which DC Energy directs its protest. On April 6, 2009, after DC Energy had filed its protest, Midwest ISO clarified, in response to a staff deficiency letter, that "none of the tariff sheets submitted by the January 6, 2009 ASM update filing incorporates the interim RSG methodology required by the November 10 Order in Docket Nos. EL07-86, EL07-88 and EL07-92."<sup>4</sup> In light of Midwest ISO's clarification, we find that DC Energy's protest is beyond the scope of this proceeding.

7. Further, the Commission previously directed Midwest ISO to revise section 43.7.2 of the ASM Tariff by, among other things, removing the following sentence: "During the Annual [Auction Revenue Rights] Allocation period, new [Auction Revenue Rights] will be re-assigned to reflect Load shifts on a daily basis."<sup>5</sup> Midwest ISO improperly included this language in its ASM Tariff. Accordingly, Midwest ISO is directed to file in a compliance filing, submitted within 30 days of the date of this order, a revised tariff sheet removing this sentence.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>4</sup> April 6, 2009 Transmittal Letter at 3.

<sup>5</sup> See *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,091 at P 14, 15 and 20 (2008).