

127 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER09-991-000

ORDER CONDITIONALLY ACCEPTING
REVISED EMERGENCY DEMAND RESPONSE PROCEDURES

(Issued June 12, 2009)

1. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed under section 205 of the Federal Power Act (FPA)¹ proposed revisions to Schedule 30 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to allow for day-ahead Emergency Demand Response (EDR) offers and to specify emergency communications procedures. For the reasons discussed below, we will conditionally accept Midwest ISO's proposed revisions.

I. Background and Summary of Filing

2. On December 31, 2007, Midwest ISO filed proposed revisions to its Tariff to add a new Schedule 30. The proposed Schedule 30 sets forth the process by which interruptible demand, behind-the-meter generation, and other demand resources could be committed and dispatched during North American Reliability Corporation (NERC) Energy Emergency Alert 2 (Emergency Alert 2)² or Energy Emergency Alert 3

¹ 16 U.S.C. § 824d (2006).

² Under an Energy Emergency Alert 2, load management procedures are in effect, such as voltage reductions, interruption of non-firm end-use loads, and demand-side management. See NERC Standard EOP-002-2 – “Capacity and Energy Emergencies” at 7.

(Emergency Alert 3)³ events. On April 22, 2008, the Commission issued an order conditionally accepting Midwest ISO's addition of Schedule 30.⁴ In Midwest ISO's currently effective Tariff, as conditionally accepted in the April 22 Order, market participants must submit EDR offers 30 days in advance of the next operating month and the offer must be made available for the entire month. Participants that reduce demand in response to an emergency instruction are paid the higher of the applicable real-time Locational Marginal Price (LMP)⁵ or the EDR production cost.

3. The April 22 Order also recognized Midwest ISO's commitment to develop Tariff provisions that would allow EDR resources to make offers on a day-ahead basis. While Midwest ISO noted that it did not oppose day-ahead offers for EDR resources, it did not have a system in place to support such offers. The Commission ordered Midwest ISO to submit quarterly reports providing status updates on the progress being made to accept day-ahead offers for EDR resources, as well as the progress being made to allow EDR resources to set LMPs.⁶ On August 18, 2008, the Commission issued an order denying rehearing of the April 22 Order and accepting Midwest ISO's compliance filing.⁷

4. In the present filing, Midwest ISO proposes revisions to Schedule 30 to allow day-ahead EDR offers. Midwest ISO proposes to allow EDR offers to be made no later than 1100 EST on the day prior to the next operating day (instead of 30 days in advance of the next operating month), as well as allowing resources to offer emergency demand response for a single day.

5. Midwest ISO also proposes to require EDR participants to receive instructions from Midwest ISO via an Extensible Markup Language (XML) interface. Midwest ISO states that given the time sensitive nature of dispatch decisions during Emergency Alert 2 and Alert 3 events, it is critical for Midwest ISO's Real-Time Operations staff to send and receive EDR instructions via the XML interface. It further emphasizes that this would allow EDR resources to communicate with Midwest ISO in the same fashion as all

³ Under an Emergency Alert 3, a firm load interruption is imminent or in progress. *See id.* at 10.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,070 (2008) (April 22 Order).

⁵ *See* Original Sheet No. 2251. The LMP is capped at \$3,500/MW during scarcity conditions.

⁶ *Id.* P 27, 57.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,167 (2008).

other generation resources in the Midwest ISO markets, which are required to use the same XML system for communication purposes.

6. Midwest ISO proposes an effective date that is the later of either 60 days from the date of the submittal of the filing, or 14 days after the Midwest ISO has made a filing informing the Commission that the appropriate software and technology are in place to implement day-ahead EDR offers. Midwest ISO indicates its systems will be ready by June 1, 2009.

II. Notice of the Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 74 Fed. Reg. 18,572 (2009), with interventions and protests due on or before May 5, 2009.

8. Timely motions to intervene were filed by: Wisconsin Electric Power Company (Wisconsin Electric), American Municipal Power- Ohio, Inc., Illinois Industrial Energy Consumers, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Wisconsin Industrial Energy Group, Coalition of Midwest Transmission Customers, and Consumers Energy Company. In addition, motions to intervene and protests were filed by Alcoa Inc. and Alcoa Power Generating Inc. (collectively Alcoa Group), the Coalition of Midwest Transmission Customers, the Wisconsin Industrial Energy Group, Inc., and the Illinois Industrial Energy Customers (collectively, Customer Groups).

9. On May 21, 2009, Midwest ISO filed an answer to the protests. On May 29, 2009, Alcoa Group filed a reply.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept Midwest ISO's answer and Alcoa's reply because they have provided information that assisted us in our decision-making process.

B. Substantive Matters**1. Protests**

12. Alcoa Group and Customer Groups both agree that the instant filing takes significant positive steps in facilitating the ability of demand resources to participate in the EDR process by allowing resources to submit day-ahead offers, as well as allowing resources to offer emergency response for a single day. Both protesters support the significant improvements to the process and believe that the removal of these barriers will stimulate additional participation by demand resources.

13. However, protesters believe that the format by which Midwest ISO proposes to send, and by which Schedule 30 participants would be required to receive, dispatch instructions (i.e., the XML interface) is unduly burdensome and unnecessary. They both point out that other well established markets (e.g., PJM) allow demand response participants to receive dispatch notifications through electronic mail or telephone. They also note that Load Modifying Resources under Module E of the Tariff continue to rely upon telephone dispatch notification, and these resources are dispatched prior to committing resources registered under Schedule 30. Protesters also argue that if the Commission approves Midwest ISO's requirement that Schedule 30 participants receive dispatch instructions in XML format, the proposed transition period from the current process to the new process is unreasonable. Protesters request additional time to install the necessary equipment for XML communication and to train their personnel. The Customer Groups request a delay until Spring, 2010 for these purposes.

14. Finally, protesters recommend that Midwest ISO be directed to propose a compensation mechanism to recover their initial investment and ongoing costs for the new communication protocol, since there will be no compensation for an EDR event except during an Emergency Alert event that will occur one day in every ten years and the investment requirement and ongoing cost of monitoring will not be compensated in any way.

2. Answers

15. Midwest ISO emphasizes that its EDR initiative has been designed around an XML communications platform, which is currently being tested for a June 1, 2009 implementation date. Midwest ISO asserts that a change in its chosen communication platform "would require significant redesign efforts with the result being the entire EDR Day-Ahead Initiative would be delayed until an alternative communication mechanism is developed, approved, and implemented."⁸

⁸ Midwest ISO May 21, 2009 Answer at 4.

16. Midwest ISO further emphasizes the importance of XML communication during an emergency event. Midwest ISO states that the purpose of Schedule 30 and the EDR initiative is to be able to call upon and receive immediate feedback from an EDR resource during an emergency to avoid a more serious loss of load. A communication system that requires the Midwest ISO to manually call some EDR participants in an emergency, while communicating with others via the XML system, would create confusion and cause delay during critical emergency events.

17. Midwest ISO does not believe that using an XML interface will create an undue burden for EDR participants. Midwest ISO notes that approximately 90 percent of EDR participants have the system infrastructure to accommodate these procedures and have the necessary XML listener.⁹

18. Finally, with respect to PJM's procedure, Midwest ISO acknowledges that while PJM does notify EDR participants via the telephone, it does so through an "all-call message" system that Midwest ISO does not have. Midwest ISO would have to manually call each EDR participant in an emergency event, which will cause delay in a critical emergency. Moreover, Midwest ISO claims that an automated phone system is inadequate for Midwest ISO's purposes because it anticipates robust participation, with many EDR offers updated daily, and therefore it will need to be more selective in its implementation of these resources. Midwest ISO claims that the "telephone" system does not provide it with the necessary flexibility.

19. Alcoa Group replies that the Midwest ISO should not be allowed to continue to design its processes to only accommodate the needs of traditional resources and to ignore non-traditional utilities. Alcoa Group asserts that this practice guarantees that it would be only potential and new entrants that are disadvantaged by the present design. Alcoa Group contends that unless the Midwest ISO is willing to take into account at the outset the needs of non-traditional types of resources when designing process for demand response, those non-traditional types of resources will continue to be a very small portion of the participants.

3. Commission Determination

20. We will accept Midwest ISO's proposed revisions to Schedule 30, which will allow demand resources to submit offers up until 1100 EST on the day prior to the next operating day, to be effective 14 days after Midwest ISO files with the Commission a notice that the necessary software and other systems are in place to implement day-ahead offers, as requested. These revisions will address the concerns of many commenters that

⁹ Midwest ISO Answer at 4-5.

the 30-day offer requirement is inflexible and would discourage participation by demand resources.¹⁰

21. We will also accept Midwest ISO's proposal to require EDR participants to receive instructions from Midwest ISO via the XML interface. When reliability is the primary concern, as it is for emergency planning, Midwest ISO must be assured that multiple demand response offers can be received quickly, and that its dispatch instructions are received and acted upon by EDR participants within the required time. As Midwest ISO indicates, dispatch decisions are particularly time sensitive during an Emergency Alert 2 or Alert 3 event, and therefore the requirement that participants communicate via the use of XML during this critical period is reasonable.

22. Midwest ISO's role as the balancing authority, under NERC standards, is to make clear decisions and to take whatever actions are needed to ensure the reliability of its respective area.¹¹ Midwest ISO has flexibility as to how to meet these reliability requirements. In particular, as the Midwest ISO explains, the PJM Interconnection (PJM) "all-call" telephone communication would not be appropriate for the EDR program, which is based on individual offers and responses by the Midwest ISO to those offers. Thus, even if another balancing authority (e.g., PJM) uses a different methodology or system to notify demand response participants in an emergency, we are not persuaded to overrule Midwest ISO's judgment on the operating procedures it considers necessary to manage its system during an emergency.

23. Nor do we find that the use of an XML interface for EDR purposes will create an undue burden on EDR participants. As Midwest ISO notes, approximately 90 percent of EDR participants, as well as 90 percent of all asset owning participants, have the system infrastructure to accommodate the XML interface and have the necessary XML listener.¹² The use of XML is required for energy and ancillary market communications in Midwest ISO and is the industry standard communication protocol for utilities, and therefore the XML requirement for EDRs will help to ensure comparable communications for all market participants.

¹⁰ April 22 Order, 123 FERC ¶ 61,070 at P 46.

¹¹ See NERC Standard EOP-002-2 – "Capacity and Energy Emergencies" at 1. Midwest ISO is the NERC-certified Balancing Authority for the entire Midwest ISO Balancing Authority Area. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008).

¹² Midwest ISO Answer at 4-5.

24. We do not consider the fact that Load Modifying Resources¹³ can communicate telephonically to be relevant to EDRs. Load Modifying Resources have a minimum notification requirement of 12 hours, providing sufficient time for operating personnel to communicate. In contrast, EDRs must perform as soon as an Emergency Alert 2 or Alert 3 is declared, placing a high premium on instantaneous communications to all resources.

25. In regards to Alcoa Group's concerns regarding the lack of a compensation mechanism, we consider Midwest ISO's provisions that guarantee cost recovery for EDRs to be appropriate compensation. While those market participants that choose to offer their resources as EDRs will be required to undertake investments and the training of relevant personnel, Midwest ISO's Tariff provides that those EDR participants chosen by Midwest ISO to reduce demand during emergencies will be paid the higher of the applicable real-time LMP or the EDR production cost. Therefore, these EDR participants are guaranteed recovery of these costs. We recognize that if an EDR participant is not chosen because its offers are not economic, its costs, including investment and training, may not be recovered. In recognition of this potential circumstance, EDR participants must make their own economic evaluation of whether EDR participation is in their economic interest, or if other options during emergencies are more economic.

26. Finally, with regard to implementation of the XML interface, we recognize that EDR participants may need additional time to acquire the necessary hardware and software and to train personnel in XML dispatch procedures. EDR participants cannot practically be expected to accomplish these upgrades and training by the effective date approved in this order. Accordingly, we will require Midwest ISO to develop alternative procedures and a transition program that provides EDR participants with a reasonable amount of time to obtain the necessary equipment and train personnel. We direct Midwest ISO to submit this information in a compliance filing due within 30 days the date of this order.

The Commission orders:

(A) Midwest ISO's proposed revisions are hereby conditionally accepted, to become effective fourteen (14) days after Midwest ISO files with the Commission a notice that the necessary software and other systems are in place to implement the proposed day-ahead EDR offers, as requested.

¹³ Load Modifying Resources are demand resources or behind-the-meter generation resources that are eligible to meet market participants' resource plan requirements, as specified in Module E of the Midwest ISO Tariff.

(B) Midwest ISO is hereby directed to submit 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.