128 FERC ¶ 61,190
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. | Docket Nos. ER09-906-000, ER09-906-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 27, 2009)

1. On March 27, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act,[1] proposed revisions to the existing methodology for calculating charges under Schedule 10 (ISO Cost Recovery Adder) of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) (March 27 Filing).[2] In addition, due to the expiration on January 31, 2008 of the six-year transition period following Midwest ISO's initial commercial operation date,[3] Midwest ISO proposes to remove the \$0.15/MWh transition period cap from the Schedule 10 charge. In this order, we accept Midwest ISO's amended Schedule 10, effective June 1, 2009, as requested, and as discussed below.

I. Background

2. Under Schedule 10 of the Tariff, Midwest ISO recovers its operating and tariff administration costs that are not otherwise recovered under other schedules. Midwest ISO determines two rates – a reserve capacity rate and an energy rate – to calculate Schedule 10 charges (two rates are used because each is multiplied by a different type of

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[1] 16 U.S.C. § 824d (2006).

[2] Further, Midwest ISO filed miscellaneous revisions to Schedule 10 regarding the removal of certain provisions for unbundled regional transmission organization (RTO) service for independent transmission companies that the Commission had previously ordered Midwest ISO to address.

[3] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081, at P 3, 138 (2008).

billing determinant). The reserve capacity rate is multiplied by megawatt-hours (MWh) of reserved capacity, while the energy rate is multiplied by MWhs of energy.[4]

3. Under the existing Schedule 10 methodology, 40 percent of the billing units used to calculate the charge are currently based on MWhs of reserved capacity and 60 percent of billing units are based on MWhs of energy. This methodology was adopted as part of a settlement agreement that required Midwest ISO to analyze increases in load paying the Schedule 10 charge and determine whether the billing units can be changed to reflect a greater use of MWhs of energy.[5] Under section 2.4 of the 2003 Settlement Agreement, the methodology for determining billing units is guided by "[t]he general overriding principle that, when load grows such that the Midwest ISO can revise the billing units to include a portion of them in a MWh form without creating additional cost deferrals, then it shall do so."[6] The existing Schedule 10 provides that Midwest ISO also perform this analysis whenever a new transmission owner or a group of transmission owners joins Midwest ISO. After performing such analysis during the remainder of the transition period representing the first six years following Midwest ISO's initial commercial operation date,[7] Midwest ISO increased the percentage of billing units based on MWhs of energy from an initial level of 0 percent to the 60 percent currently used.

4. Midwest ISO states that the instant filing revises the Schedule 10 methodology to provide that 50 percent of billing units used to calculate the charge will be based on MWhs of reserved capacity and 50 percent of billing units will be based on MWhs of energy. In addition, Midwest ISO proposes to remove the $0.15/MWh transition period cap on the maximum sum of the energy rate and the reserved capacity rate to reflect the end of the six-year transition period.

5. In the March 27 Filing, Midwest ISO explains that the existing methodology and the rate cap represent certain transition compromises that have now expired and should

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[4] *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet No. 1934.

[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, Settlement Agreement, Docket Nos. ER02-111-000 & ER02-652-000 (filed April 19, 2002) (2003 Settlement Agreement). The Commission accepted the 2003 Settlement Agreement in *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,193 (2003).

[6] 2003 Settlement Agreement at section 2.4.

[7] The 2003 Settlement Agreement provided that there would not be a cap on the percentage of billing determinants that represent MWhs of energy, and that the adjustments would continue until 100 percent of the billing units reflect MWhs of energy. *Id.* at section 2.4(c).

be replaced by a permanent methodology. Midwest ISO argues that its proposal is needed to address potential cost shifts from lower load factor customers to higher load factor customers, which will occur if the existing methodology is left in place, because the existing methodology has no cap on the percentage of billing determinants representing MWhs of energy and contemplates those billing determinants eventually increasing up to 100 percent. Midwest ISO states that this would result in significant cost shifts to high load factor customers.[8] Therefore, Midwest ISO maintains that the proposed revisions address this flaw by holding the ratio at 50 percent while introducing no significant change to the existing allocation of Schedule 10 charges to market participants.[9]

6. Furthermore, Midwest ISO argues that the proposal will simplify the Schedule 10 calculations performed by Midwest ISO and improve administrative efficiency.[10] Midwest ISO notes that if the Commission adopts the proposal, it will no longer be necessary for Midwest ISO to analyze increases in load paying the Schedule 10 charges, determine whether the billing units can be changed to reflect greater use of MWhs of energy each quarter and perform this same analysis whenever any new transmission owner or group of transmission owners joins Midwest ISO. Midwest ISO requests an effective date of June 1, 2009 for the proposed revisions.[11]

II. <u>Notice of the Filing and Responsive Pleadings</u>

7. Notice of the March 27 Filing was published in the *Federal Register*, 74 FR 15961 (2009), with interventions and comments due no later than April 17, 2009. On April 17, 2009, Alliant Energy Corporate Services, Inc.; Wisconsin Electric Power Company; Consumers Energy Company; American Municipal Power – Ohio, Inc; Exelon Corporation; International Transmission Company; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; and DC Energy Midwest, LLC filed

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[8] March 27 Filing at 3; *see also*, Biggers Test. at 6 (illustrating that billing determinants of 100 percent energy would create cost shifts to high load factor customers).

[9] March 27 Filing at 3; *see also*, Biggers Test. at 6-7 (comparing existing 60/40 allocation to the proposed 50 percent allocation). In this example, with customer load factors ranging from 67.21 percent to 87.47 percent, customers will be allocated between approximately 1.7 percent more to 0.6 percent less Schedule 10 charges under Midwest ISO's proposal compared to what would have been allocated under the existing 60/40 allocation.

[10] Biggers Test. at 5.

[11] March 27 Filing at 4.

timely motions to intervene. Detroit Edison Company (Detroit Edison) filed a motion to intervene and protest. Midwest ISO Transmission Owners filed a motion to intervene and comments.[12] On May 4, 2009, Midwest ISO filed a motion for leave to answer and answer.

8. On May 21, 2009, a deficiency letter was issued requesting that Midwest ISO (1) provide a detailed explanation of the costs to be recovered pursuant to Schedule 10, (2) explain how Midwest ISO will calculate the ISO Cost Recovery Adder each month, (3) describe how the deferred costs will be apportioned under the Tariff, and (4) confirm that on First Revised Sheet No. 1920 the words "Transmission Owners and to Appendix I entities whose filings have been approved by the Commission" were inadvertently deleted from the March 27 Filing.

9. On June 11, 2009, Midwest ISO filed a motion requesting additional time to respond to the deficiency letter to coordinate its response with another request regarding Schedules 16 and 17 in Docket No. ER09-807-000. On June 12, 2009, the Commission granted the request.

10. On June 29, 2009, Midwest ISO submitted a response supplementing its March 27 Filing with additional information concerning the costs recovered in Schedule 10 (June 29 Filing). Notice of the June 29 Filing was published in the *Federal Register*, 74 FR 32907 (2009), with interventions and comments due no later than July 20, 2009. No comments were filed.

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[12] The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

A. Protests and Comments

11. Midwest ISO Transmission Owners support Midwest ISO's March 27 Filing. Midwest ISO Transmission Owners note that the existing methodology does not have a cap on the percentage of billing determinants or costs that can be allocated to energy, which results in significant levels of costs being unfairly shifted from lower load factor to higher load factor customers. By contrast, they state that Midwest ISO's proposal will protect higher load factor customers against this cost shift. In addition, they maintain that this change will not have a significant impact on the existing Schedule 10 charges and also would provide greater certainty to customers regarding how the Schedule 10 charges are derived.[13]

12. Detroit Edison argues that the proposal should be rejected.[14] Detroit Edison notes that when the ISO Cost Recovery Adder (including the rate cap) was initially proposed at the time Midwest ISO filed its original Tariff, the Commission set it for an evidentiary hearing.[15] Detroit Edison notes that the Initial Decision resulting from that hearing found in relevant part:

> "…the proposed Cost Adder is unjust and unreasonable because the Midwest ISO doesn't propose any charge related to cost support to be implemented in the Cost Adder after the transition period. The cap does not seem to apply after the transition period, and it is unclear what charges will apply after the transition period. In order for the Cost Adder to be just and reasonable after the transition period, a rate cap must be implemented for that time. If a rate cap is not included in the post-transition period time, then a formulaic rate setting forth the specific components of the Cost Adder to be charged to transmission customers should be required. Either of these measures would provide the necessary specificity for current and future Midwest ISO transmission customers."[16]

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[13] Midwest ISO Transmission Owners April 17 Comments at 4.

[14] Detroit Edison April 17 Protest at 2.

[15] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at P 62,167 (1998).

[16] *Midwest Indep. Transmission Sys. Operator, Inc.*, 89 FERC ¶ 63,008, at 65,045 (1999) (Initial Decision).

13. Detroit Edison further notes that the Commission affirmed the Initial Decision, and ordered that "[p]rior to the end of the transition period, the Midwest ISO/Midwest ISO Participants shall make a section 205 filing with the Commission detailing and supporting a post-transition period ISO Cost Adder and detailing how deferred costs from the transition period will be apportioned among all customers under the Midwest ISO tariff following the end of the transition period."[17]

14. Detroit Edison states that the March 27 Filing fails to adequately detail and support the proposed post-transition period Schedule 10 because, as proposed by Midwest ISO, Schedule 10 provides no specificity at all with respect to the cost components.[18] Finally, Detroit Edison states that while the $0.15/MWh cap is in place, Midwest ISO's transmission customers have some certainty with respect to the magnitude of the annual rates to be recovered under Schedule 10. Detroit Edison argues that under the March 27 Filing, however, transmission customers have no way of knowing what costs are being recovered through Schedule 10, much less whether those costs have been prudently incurred by Midwest ISO.[19] Detroit Edison contends that Midwest ISO must either retain the cap or propose a specific formula rate to be incorporated in Schedule 10 describing with specificity the cost components to be recovered.[20]

B. Midwest ISO Answer and Subsequent Response to Deficiency Letter

15. In its answer, Midwest ISO states that it believes the proposed changes are just and reasonable because they replace certain transition compromises that have expired, effectively address flaws in the existing methodology that had resulted in unfair cost shifting, and increase administrative efficiency.[21]

16. In the June 29 Filing, Midwest ISO amended the March 27 Filing to provide a detailed formula and explanation of the costs to be recovered under Schedule 10, as requested by the Commission. Specifically, Midwest ISO proposes to add a new

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[17] *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,033, at Ordering Para. (B) (2001), *order on reh'g*, 98 FERC ¶ 61,141 (2002), *order on remand*, 102 FERC ¶ 61,192 (2003), *order on reh'g and clarif.*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

[18] Detroit Edison April 17 Protest at 3.

[19] *Id.*

[20] *Id.*

[21] Midwest ISO May 4 Answer at 5.

Section III, which includes a revised, more detailed, version of the formula used to calculate the monthly charges.[22] Midwest ISO's proposed revisions replace the Targeted Monthly Recovery Amount in the monthly charge formula with values that represent Midwest ISO's total monthly costs. Midwest ISO explains that this revision provides specificity regarding the costs to be recovered before the amounts collected pursuant to Schedules 10-A, 10-B and 10-C are excluded as required by Sections II.D and II.E of Schedule 10.[23] Certain variables (i.e., variables A.1 through A.9) describe in detail the expenses to be recovered.[24]

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[22] *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet Nos. 1923-1944.

[23] *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet No. 1929.

[24] The variables A.1 through A.9, T and S are also defined in the Tariff. *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet Nos. 1935, 1935A, 1935B, 1935C, 1935D. As described in the tariff sheets, certain operation and maintenance (O&M) and administrative and general (A&G) expenses are used in calculating variables A.1 and A.2. Variables A.3 and A.4 are calculated using depreciation expenses that are either directly assigned to Schedule 10 (i.e., A.3) or not directly assigned to Schedule 1, 10, 16 or 17 accounts (i.e., A.4). The depreciation expenses related to both variables A.3 and A.4 are recorded in FERC Account 403. The depreciation rates used for calculating depreciation expenses for certain variables (i.e., variables A.3 and A.4) are a function of when the asset is placed into service and are consistent with the rates used in Schedules 16 and 17 of the Tariff, as accepted by the Commission in Midwest ISO's Docket No. ER09-807-000. *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Substitute First Revised Sheet No. 1938A. Variables A.5 and A.6 allow Midwest ISO to recover interest on long-term debt that is either directly assigned to Schedule 10 (i.e., A.5) or not directly assigned to Schedule 1, 10, 16 or 17 (i.e., A.6). Such interest is recorded in various FERC accounts. Variable A.7 includes regulatory debits, and variable A.8 includes regulatory credits, both of which are directly assigned to Schedule 10. Variable A.9 will include revenue or expense items, if any, reported on FERC Form No. 3Q or FERC Form No. 1 that are not included in variables A.1 through A.9 for Schedule 10, 16 or Schedule 17. The revised formula also provides a monthly true-up (variable T) for any difference between the prior month's actual Schedule 10 costs and actual Schedule 10 revenue. Variable S of the revised formula includes the recovered monthly settlement credit adopted in the 2003 Settlement Agreement which was previously deferred and is now recoverable over a five-year period beginning February 1, 2008. 2003 Settlement Agreement at section 2.1.

17. In addition, Midwest ISO proposes to delete language concerning the recovery of deferred costs from the transition period from Section II.B of Schedule 10 because these deferred costs have already been collected during the transition period.

III. Discussion

A. Procedural Issues

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), 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.

B. Schedule 10 – ISO Cost Recovery Adder

20. We agree with Detroit Edison's comment that Midwest ISO must make a section 205 filing detailing and supporting a post-transition period ISO Cost Recovery Adder.[25] In response to the Commission's request for additional information about Schedule 10, Midwest ISO provides a detailed version of the formula used to calculate the monthly charges to support the proposed post-transition period Schedule 10 ISO Cost Recovery Adder.[26] Specifically, replacing the Targeted Monthly Recovery Amount in the energy rate and capacity rate equations and defining specific variables (e.g., variables A. 1 through A.9, T and S, which are described above) transparently sets forth the types of costs that will be recovered under Schedule 10. These variables include O&M, A&G, taxes other than income and depreciation expenses and the related definitions specify the various FERC accounts used to establish the formula inputs that will enable parties to verify the inputs using the FERC Form No. 1. Therefore, we find that the proposed Schedule 10 complies with the Commission's earlier directive, and is just and reasonable.

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[25] *Midwest Indep. Transmission Sys. Operator, Inc.*, 97 FERC ¶ 61,033 at Ordering Para. B (2001).

[26] As part of its tariff revisions in the June 29 Filing, Midwest ISO provided the depreciation rates used for calculating depreciation expenses for variables A.3 and A.4. Midwest ISO states that these depreciation rates are consistent with the rates it proposes to use in Schedules 16 and 17 of the Tariff in an application pending before the Commission in another proceeding. The Commission has since accepted the proposed Schedule 16 and 17 depreciation rates. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-807-000 (Aug. 11, 2009) (unpublished letter order).

21. In addition, as Midwest ISO explains, the instant filing revises the Schedule 10 methodology to provide that 50 percent of the billing units used to calculate the charge will be based on MWhs of reserved capacity and 50 percent of billing units will be based on MWhs of energy. The Commission finds that the proposed methodology for calculating the charges under Schedule 10 of the Tariff is just and reasonable because it introduces no significant change to the existing allocation of Schedule 10 charges to market participants.[27] In addition, it will eliminate potential cost shifts to high load factor customers that could occur under the existing methodology since it has no cap on the percentage of billing determinants representing MWhs of energy and contemplates those billing determinants increasing up to 100 percent. Finally, the revised Schedule 10 simplifies the calculations performed by Midwest ISO and improves administrative efficiency.

22. With respect to the transition cap, Detroit Edison argues that Midwest ISO must either retain the $0.15/MWh transition cap, or propose a specific formula rate to be incorporated in Schedule 10 describing with specificity the cost components to be recovered so that transmission customers have some certainty with respect to the magnitude of the annual rates to be recovered under Schedule 10.[28] The Commission finds that the revised Schedule 10 provides an adequately detailed and supported formula rate for the ISO Cost Recovery Adder that specifically identifies what charges will apply for transmission customers and how the costs will be allocated. Therefore, the Commission accepts the removal of the $0.15/MWh transition period cap on the maximum sum of the energy rate and the reserved capacity rate.

C. <u>Miscellaneous Revisions to Schedule 10</u>

23. The Commission accepts Midwest ISO's miscellaneous revisions to Schedule 10. In *Translink Development Co.,* the Commission directed Midwest ISO to remove certain provisions related to unbundled RTO services for independent transmission companies.[29] Midwest ISO subsequently submitted a compliance filing effectuating this directive, which was accepted by the Commission.[30] Following the Commission's acceptance of the removal of these provisions from the Tariff, Midwest ISO inadvertently included

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[27] Biggers Test. at 6 & 7 (Table II comparing existing to proposed methodologies).

[28] Detroit Edison April 17 Protest at 4.

[29] *Translink Dev. Co.*, 109 FERC ¶ 61,374, at P 13 (2004). Midwest ISO subsequently submitted a compliance filing effectuating this directive. Midwest Indep. Transmission Sys. Operator, Inc., Compliance Filing, Docket No. ER03-86-008 (filed Jan. 28, 2005) (corrected Feb. 4, 2005).

[30] *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER03-86-008 (May 3, 2005) (unpublished letter order).

them in a subsequent version of the Tariff. We again accept the removal of these provisions.

The Commission orders:

We accept the proposed revisions to Schedule 10 - ISO Cost Recovery Adder, as discussed in the body of this order, effective June 1, 2009.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.