135 FERC ¶ 61, 007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Ameren Services Company
Northern Indiana Public Service Company

v. Docket No. EL07-86-013

Midwest Independent Transmission System Operator, Inc.

Great Lakes Utilities
Indiana Municipal Power Agency
Missouri Joint Municipal Electric Utility Commission
Missouri River Energy Services
Prairie Power, Inc.
Southern Minnesota Municipal Power Agency
Wisconsin Public Power Inc.

v. Docket No. EL07-88-013

Midwest Independent Transmission System Operator, Inc.

Wabash Valley Power Association, Inc.

v. Docket No. EL07-92-013

Midwest Independent Transmission System Operator, Inc.

ORDER GRANTING CLARIFICATION,
GRANTING REHEARING IN PART,
AND DENYING REHEARING IN PART

(April 7, 2011)

1. In an order issued on August 30, 2010,[1] the Commission accepted in part and rejected in part a filing that the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) made on February 23, 2009 (Redesign Proposal), subject to a further compliance filing. In this order we grant the requests for rehearing of the Compliance Order in part and deny them in part.

I. Background

2. On April 25, 2006, the Commission issued an order in Docket No. ER04-691-065 rejecting the Midwest ISO's proposal to, among other things, remove references to virtual supply from the provisions of its Transmission and Energy Markets Tariff (tariff) related to calculating real-time Revenue Sufficiency Guarantee charges.[2] The Commission further found that because the Midwest ISO had not been including virtual supply offers in its Revenue Sufficiency Guarantee calculations, it had violated its tariff and must make appropriate refunds.[3] The Commission subsequently exercised its discretion on rehearing and held that these refunds were not required.[4]

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186 (2010) (Compliance Order).

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 48-49 (Revenue Sufficiency Guarantee Order), *order on reh'g*, 117 FERC ¶ 61,113 (2006) (First Rehearing Order), *order on reh'g*, 118 FERC ¶ 61,212 (Second Rehearing Order), *order on reh'g*, 121 FERC ¶ 61,131 (2007) (Third Rehearing Order).

[3] Revenue Sufficiency Guarantee Order, 115 FERC ¶ 61,108 at P 26.

[4] First Rehearing Order, 117 FERC ¶ 61,113 at P 92-96.

3. In August 2007, three groups of utilities filed complaints under section 206(b) of the Federal Power Act (FPA),[5] alleging that the real-time Revenue Sufficiency Guarantee charge contained in the Midwest ISO's tariff unduly discriminated among classes of market participants. The Commission found that the Complainants had shown that the rate in question may be unjust, unreasonable or unduly discriminatory, but that they had not shown that their proposed alternative rate was just and reasonable.[6] In order to develop a more complete record, the Commission established a refund effective date of August 10, 2007, and set the complaints for paper hearing and investigation to review evidence and to establish a just and reasonable Revenue Sufficiency Guarantee cost allocation methodology.[7] The Commission held the paper hearing in abeyance pending the conclusion of a then-ongoing stakeholder proceeding that was seeking to identify possible improvements to the Revenue Sufficiency Guarantee cost allocation methodology, or February 1, 2008, whichever is earlier.

4. On February 1, 2008, the Midwest ISO made an informational filing stating that it was not able to meet the February 1, 2008 deadline because the Revenue Sufficiency Guarantee Task Force was still in negotiations. The Midwest ISO proposed to file specific tariff provisions and supporting documentation on or about March 3, 2008.

5. On March 3, 2008, the Midwest ISO filed what it referred to as "indicative" tariff revisions that reflect an alternative mechanism for allocating Revenue Sufficiency Guarantee charges and costs. The Midwest ISO explained that these provisions represent a new real-time Revenue Sufficiency Guarantee cost allocation methodology that was developed based on the principles agreed upon in stakeholder discussions, but that has not yet been conformed to incorporate the Midwest ISO's new Ancillary Services Markets market design elements. The Midwest ISO asked the Commission to determine

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[5] 16 U.S.C. § 824e (2006). The Complainants are Ameren Services Company and Northern Indiana Public Service Company (Ameren/Northern Indiana); Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.; and Wabash Valley Power Association, Inc.

[6] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,205 (2007) (Order on Revenue Sufficiency Guarantee Complaints), *order on reh'g*, 125 FERC ¶ 61,162 (2008).

[7] *Id.* P 94. The Commission held the paper hearing in abeyance pending the completion of a stakeholder process. The Commission commenced the paper hearing in August 2008. *See* P 7 *infra*.

whether the language in the indicative revisions represented a just and reasonable basis for a subsequent FPA section 205[8] filing that would replace the Revenue Sufficiency Guarantee cost allocation methodology for the Ancillary Services Markets. The Midwest ISO stated that if the Commission determined that the proposed indicative tariff language is a just and reasonable basis for further developing provisions that would adapt the new Revenue Sufficiency Guarantee cost allocation methodology to the Ancillary Services Markets context, it would agree to file Ancillary Services Markets-specific tariff provisions reflecting this suggested new allocation methodology.

6. On August 21, 2008, the Commission issued an order commencing a paper hearing.[9] The Commission noted that under section 206(b) of the FPA, Complainants and not the Midwest ISO carry the burden of proof and therefore must demonstrate, on the basis of substantial evidence, both that the rate in effect is unjust and unreasonable and that their proposed alternative rate is just and reasonable.[10]

7. On November 10, 2008, the Commission issued an order in which it found that the Midwest ISO's indicative tariff sheets provided a just and reasonable basis for future Revenue Sufficiency Guarantee cost allocations.[11] The Commission recognized that the Midwest ISO could not implement the indicative rate before the start of the Ancillary Services Markets and that further adjustments would be necessary to conform the indicative allocation to the Ancillary Services Markets. The Commission therefore allowed the Midwest ISO to file its indicative allocation when it had a complete and final proposal. The Midwest ISO responded by making a compliance filing on February 23, 2009, which it designated the Redesign Proposal.

8. In the Compliance Order, the Commission accepted the Redesign Proposal in part and rejected it in part, subject to a further compliance filing. In relevant part, the Compliance Order found that the Midwest ISO had not specified that the Constraint Contribution Factor, which measures the impact on a transmission constraint of an incremental actual energy injection or actual energy withdrawal of one megawatt, only applies above a cut-off level. The Commission found that the Constraint Contribution

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[8] 16 U.S.C. § 824d (2006).

[9] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,173 (2008), *reh'g denied*, 131 FERC ¶ 61,214 (2010).

[10] *Id.* P 9.

[11] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008) (Order on Paper Hearing), *order on reh'g*, 127 FERC ¶ 61,121 (2009), *reh'g pending*.

Factor directly affects rates and required that the Midwest ISO propose tariff language that specifies cut-off levels, as well as an explanation of how it determines the Constraint Contribution Factor.[12]

9. The Compliance Order also found that the proposed formulation of virtual offers and virtual bids incorrectly treated virtual bids as positive factors and virtual offers as negative factors in the calculation of the constraint management charge. The Commission required the Midwest ISO to revise this provision to treat virtual offers as a positive factor and virtual bids as a negative factor so that it would be consistent with the indicative allocation and cost causation.[13] Finally, the Compliance Order required the Midwest ISO to add the phrase "excluding Resources committed in any [Reliability Assessment Commitment] processes conducted for the Operating Day" to the section of the Revenue Sufficiency Guarantee charge pertaining to hourly economic maximum limit deviations, and to remove it from the section pertaining to Demand Response Resources – Type I.[14] This change, the Commission said, would reflect the Midwest ISO's apparent intent to exclude both increases and decreases of Reliability Assessment Commitment-committed resources from the constraint management charge.

10. The Midwest TDUs[15] and the Midwest ISO submitted timely requests for rehearing of the Compliance Order.

II. Discussion

A. Rehearing Requests

11. Midwest TDUs assert that the Compliance Order focuses on the need to include the cut-off value for the Constraint Contribution Factor in the tariff and the need for more detail and explanation, and it fails to raise the more fundamental question of whether any such cut-off level would be unjust and unreasonable *per se*. Midwest TDUs request that the Commission clarify that all issues related to the cut-off remain open to be resolved

[12] Compliance Order, 132 FERC ¶ 61,186 at P 101.

[13] *Id.* P 66.

[14] *Id.* P 117.

[15] The Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and WPPI Energy.

upon review and consideration of both the Midwest ISO cut-off proposal and the comments that parties file in response.

12. Alternatively, Midwest TDUs request rehearing if the Commission intended to accept the concept of a cut-off in the Compliance Order. They contend that there is no basis in the record for a Commission finding that the cut-off level for the Constraint Contribution Factor would be just and reasonable. Midwest TDUs consider the Commission's reasoning for rejecting proposed exemptions from the Revenue Sufficiency Guarantee charge – i.e., that the merits of the exemptions had not been litigated[16] – to apply also to the cut-off level for the Constraint Contribution Factor.

13. Midwest TDUs argue that the cut-off level is a departure from the terms of the indicative allocation, which did not include a cut-off value for Generation Shift Factors.[17] They assert that the Midwest ISO should propose and support a cut-off level in an FPA section 205 filing.

14. The Midwest ISO objects to the Commission's requirement that it correct its proposed formulation of virtual offers and bids to be consistent with the indicative cost allocation and cost causation. The Midwest ISO explains that the formulation in the Redesign Proposal is correct because virtual offers should be regarded as negative factors, reflecting a capacity decrease, and virtual bids should be deemed to be a positive factor that reflects a capacity increase. The Midwest ISO considers this treatment to be analogous to the treatment of the difference between the economic minimum limit and the day-ahead schedule as a positive difference for capacity increases and a negative difference for capacity decreases. For these reasons, Midwest ISO argues that the proposed language is correct in treating virtual bids as a positive factor and virtual offers as a negative factor.

15. The Midwest ISO also faults the Compliance Order for directing it to remove the clause "excluding Resources committed in any [Reliability Assessment Commitment] process conducted for the Operating Day," from the provision pertaining to Demand Response Resources – Type I. The Midwest ISO asserts that this requirement "would lead to a result contrary to the Commission's intent to clarify that [Reliability Assessment Commitment]-committed resources are excluded from the calculation of hourly economic

[16] Compliance Order, 132 FERC ¶ 61,186 at P 40.

[17] Generation Shift Factors are defined as ratios equal to the incremental increase or decrease in flow on a flowgate divided by an incremental increase or decrease in a Generation Resource's output. Midwest ISO Electric Tariff Fifth Revised, Volume No. 1, Section 1.268.

maximum limit deviations."[18] The Midwest ISO explains that the purpose of this clause is to avoid charging a Demand Response Resource – Type I for Revenue Sufficiency Guarantee charges in hours when it is committed in a Reliability Assessment Commitment process conducted during the operating day. Midwest ISO also contends that it would be unduly discriminatory to grant Revenue Sufficiency Guarantee charge exemptions to other kinds of resources while denying such exemptions to Demand Response Resources – Type I.

B. Commission Determination

16. We grant Midwest TDUs' request for clarification that all issues related to the cut-off remain open for resolution in the Commission's consideration of the cut-off proposal. The Midwest TDUs pointed out the cut-off to the Commission in their protest to Midwest ISO's original filing, saying that they understood that there would be such a cut-off,[19] but the Compliance Order acknowledged that there was no proposal;[20] therefore, the Commission could not have made a reasoned decision on this point. The Commission found only that it was not just and reasonable to leave this matter to the Business Practices Manuals, as the Midwest ISO's answer stated that the Midwest ISO planned to do.[21] The Commission has not yet, therefore, considered the merits of the cut-off.

17. In a concurrent order on the Midwest ISO' compliance filing, which proposes a Constraint Contribution Factor of two percent, the Commission rejects the proposed cut-off level as unsupported, without prejudice to the Midwest ISO submitting a new proposal that justifies the use of a cut-off value, and that supports a specific cut-off value.[22] The Commission, therefore, has yet to determine if a cut-off level is just and reasonable.

18. With respect to virtual transactions, the provision of the Redesign Proposal at issue states that the Real-Time Revenue Sufficiency Guarantee constraint management charge for deviations occurring prior to the notification deadline shall be based on,

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[18] Midwest ISO Sept. 29, 2010 Request for Rehearing at 4.

[19] Midwest TDUs March 16, 2009 Protest at 6.

[20] Compliance Order, 132 FERC ¶ 61,186 at P 101.

[21] *Id.*

[22] *Ameren Services Company Northern Indiana Public Service Company*, 135 FERC ¶ 61,008.

among other items, any virtual transaction resulting from a cleared virtual bid or the negative of any virtual transaction resulting from a cleared virtual supply offer. The requests for rehearing do not persuade us that the Compliance Order erroneously found that this formulation is inconsistent with the indicative allocation, which based the constraint management charge on positive virtual offers and negative virtual bids. Under the indicative allocation, entities that offer virtual supply are assigned costs because if they offer supply that is accepted in the day-ahead market, the virtual offer has to be replaced by a physical offer in real-time; the Midwest ISO's new theory regarding capacity decreases/increases is not consistent with the indicative allocation. The record of this proceeding shows that virtual offers can cause Revenue Sufficiency Guarantee costs and virtual bids can reduce these costs.[23] Accordingly, we continue to view treating virtual offers as positive impacts on the constraint management charge and virtual bids as negative impacts as consistent with cost causation principles.

19. We grant rehearing on the exclusion of resources committed in the Reliability Assessment Commitment process from the Revenue Sufficiency Guarantee charge calculation. The Commission's ruling on this issue in the Compliance Order was intended to ensure that, consistent with the indicative allocation, the exclusion applied to all resources. Accordingly, Demand Response Resources – Type I that are committed in Reliability Assessment Commitment processes also should be excluded from the calculation of the Revenue Sufficiency Guarantee charge. Therefore, we agree with Midwest ISO that the phrase "excluding Resources committed in any [Reliability Assessment Commitment] processes conducted for the Operating Day" should be retained in section 40.3.3.a.ii(8). We direct Midwest ISO to submit these tariff revisions in a compliance filing due within 30 days of the date of this order.

The Commission orders:

(A) The requests for rehearing are granted, in part, and denied, in part, as discussed in the body of this order.

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[23] Order on Paper Hearing, 125 FERC ¶ 61,161 at P 105. *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121 at P 106, 109, 112.

(B) The 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.