

135 FERC ¶ 61,035
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.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER11-2908-000

ORDER CONDITIONALLY ACCEPTING
PROPOSED TARIFF REVISIONS

(Issued April 18, 2011)

1. On February 17, 2011, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), pursuant to section 205 of the Federal Power Act (FPA).¹ The proposed revisions provide for testing Generation Resources' (Resources) capability to meet Contingency Reserve Deployment Instructions within the Contingency Reserve Deployment Period for Supplemental Reserves.² As discussed below, we accept Midwest ISO's proposed Tariff revisions, subject to a compliance filing, effective April 19, 2011.

I. Background and Filing

2. In 2009, Midwest ISO experienced situations where generators and other resources offered Supplemental Reserves, but failed to provide these reserves when they were requested.³ The failures occurred when the generators and other resources either provided less than the capacity of the offered reserve or failed to inject energy within the Contingency Reserve Deployment Period of ten minutes. Midwest ISO worked with stakeholders to improve procedures for ensuring that Resources offering Supplemental

¹ 16 U.S.C. § 824d (2006).

² Capitalized terms that are used but not defined in this order have the meanings ascribed to them in the Tariff.

³ February 17, 2011, Transmittal Letter at 1.

Reserve under the Tariff are capable of providing the capacity offered within ten minutes, as required by the Tariff.⁴

3. As a result of the stakeholder discussions, Midwest ISO proposes Tariff revisions to improve procedures relating to Supplemental Reserves. The proposed changes provide for the testing of Supplemental Qualified Resources or Resources seeking such status, and for compensation for such Resources during testing. The proposed changes also provide for consequences for failing to meet contingency reserve offers.⁵ Specifically, Midwest ISO proposes parallel revisions to Sections 39.2.1B.b and 40.2.4.c, as well as revisions to Section 40.3.4.e (ii) of the Tariff to address the failure of generators or other Resources either to provide the capacity of the offered reserve or to inject energy within the Contingency Reserve Deployment Period of ten minutes. Further, the proposed revisions provide for testing of Supplemental Qualified Resources that either: (1) failed to respond to a Contingency Reserve Deployment Instruction within the Contingency Reserve Deployment Period; or (2) have not been deployed for an extended period of time. Midwest ISO also proposes to use random selection to determine when Supplemental Qualified Resources in the latter category should be tested.

4. Midwest ISO's proposed Tariff revisions provide that if testing follows a Resource's failure to respond to a Contingency Reserve Deployment Instruction within the Reserve Deployment Period, the Resource will receive the applicable locational marginal price (LMP) in the Real-Time Energy and Operating Reserve Markets for the Resource's Actual Energy Injection during the test. The amount of Supplemental Reserve that the Resource may clear in the Real-Time Energy and Operating Reserve Market will be capped at the amount of the Actual Energy Injection during the test. The cap will remain in place until the Resource achieves a higher Actual Energy Injection during a subsequent test of the Contingency Reserve Deployment or achieves a higher level of output in a subsequent test of Contingency Reserve Deployment.⁶

5. The proposed revisions also provide that if Midwest ISO initiates a test not associated with failure to respond to a Contingency Reserve Deployment Instruction within the Reserve Deployment Period, the Resource will be committed by Midwest ISO and the Resource will be eligible for the Real-Time Revenue Sufficiency Guarantee Credit during the test. If, during this testing period, the Resource fails to respond, the amount of Supplemental Reserve that the Resource may clear in the Real-Time Energy and Operating Reserve Market will be capped at the amount of the Actual Energy

⁴ February 17, 2011, Transmittal Letter at 1.

⁵ *Id.* at 3. The Tariff allows Supplemental Qualified Resources to submit offers to provide Supplemental Reserves.

⁶ *Id.* at 3.

Injection during the test until the Resource achieves a higher level of output in a subsequent test or an actual deployment.⁷

6. Further, the proposed revisions provide that the amount of Contingency Reserve available for payment to a Resource that fails to meet a Contingency Reserve Deployment Instruction within the Contingency Reserve Deployment Period is restricted to the amount actually deployed in the hour of failure and for every hour thereafter until the Resource achieves a higher level of output in a subsequent test or an actual deployment, which is no longer limited to the end of the operating day.

7. Further, Midwest ISO states that because Midwest ISO's system lacks the ability to automatically limit a market participant's offer in the supplemental reserve market to the capped megawatt amount, Midwest ISO will notify market participants to limit offers to the capped MW amounts. Midwest ISO states that it is expected to implement this automatic functionality when its system's functions are enhanced in 2012.⁸ In addition, Midwest ISO proposes that once finalized the appropriate details surrounding notifications and testing will be incorporated in its Business Practice Manual for Energy and Operating Reserve Markets.

8. Midwest ISO requests an effective date of April 19, 2011.

II. Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's February 17, 2011 filing was published in the *Federal Register*, 76 Fed. Reg. 10,890 (2011), with interventions and protests due on or before March 10, 2011. Timely motions to intervene were filed by Ameren Services Company, American Municipal Power, Inc., Consumers Energy Company, and Hoosier Energy Rural Electric Cooperative Inc. Detroit Edison Company (Detroit Edison), MidAmerican Energy Company (MidAmerican), and Wisconsin Electric Power Company (Wisconsin Electric) filed separate motions to intervene with comments.

10. Detroit Edison supports Midwest ISO's proposal and asserts that the incentive mechanism is appropriate and should be supported by all Generation Resources given the extensive amount of discussion amongst Midwest ISO stakeholders on this subject.⁹ In addition, as discussed below, Wisconsin Electric and MidAmerican generally agree with

⁷ Proposed Tariff Section 39.2.1B.b.

⁸ February 17, 2011, Transmittal Letter at 3.

⁹ Detroit Edison Intervention at 3-4.

Midwest ISO's filing but raise several issues that some portions of the Tariff revisions need clarity and appear to be in error.

11. On March 14, 2011, Xcel Energy Services Inc. (Xcel Energy) filed a Motion to intervene out of time.

12. On March 25, 2011, Midwest ISO filed a motion to answer and answer.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), we will grant Xcel Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

16. We will conditionally accept Midwest ISO's proposed Tariff revisions, effective April 19, 2011. Except as otherwise noted below, we find that Midwest ISO's proposed Tariff revisions are just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

1. Resource Testing

a. Comments

17. MidAmerican states that the revisions provide that Resources tested after a failure will receive "the applicable LMP in the Real-Time Energy and Operating Reserve Markets for the Actual Energy Injection of the Resource during the test." MidAmerican suggests deleting the phrase "during the test" because some Resources have minimum

run time restrictions that exceed the ten minute test period and those Resources should be compensated for the entire period in which they are operating at Midwest ISO's direction.¹⁰

18. MidAmerican also notes that under Midwest ISO's proposal, Resources undergoing tests not related to a failure will be "eligible for Real-Time Revenue Sufficiency Guarantee Credit." MidAmerican suggests that Midwest ISO intends for these Resources to receive the Revenue Sufficiency Guarantee Credit and an LMP payment, rather than only a Revenue Sufficiency Guarantee Credit. Therefore MidAmerican suggests clarification of the Tariff to include language that the Resource "shall receive the applicable LMP in the Real-Time Energy and Operating Reserve Markets for the Actual Energy Injection of the Resource."¹¹

19. MidAmerican notes that in four locations (twice in Section 39.2.1B and twice in Section 40.2.4), Midwest ISO's proposed Tariff revisions cap the amount of cleared Supplemental Reserve at "the amount of Actual Energy Injection achieved during the test." Section 1.1a of the Tariff generally defines Actual Energy Injection as a volume of energy delivered over a period of time. MidAmerican suggests that Midwest ISO intends to cap the amount of cleared Supplemental Reserve at the level being instantaneously deployed at the end of the test instead of the integrated volume delivered over the course of the test. MidAmerican suggests using the same terminology used to calculate Shortfall Amount in Tariff Section 40.3.4.e (i), which defines Actual Energy Injections as the "actual amount of Contingency Reserve deployed at the end of the Contingency Reserve Deployment Period."¹²

20. MidAmerican notes that Midwest ISO's proposed Tariff revisions provide that the caps will no longer apply if Resources achieve "a higher level of output in a subsequent test or actual deployment."¹³ MidAmerican reasons, however, that because Resources cannot bid more than the cap into the Day-Ahead Energy and Operating Reserve Market, their only available method of removing the cap is through successful performance in a subsequent test. As such, MidAmerican contends that Midwest ISO should commit to "reasonably frequent" testing.¹⁴

¹⁰ MidAmerican Intervention at 4-5.

¹¹ MidAmerican Intervention at 5.

¹² MidAmerican Intervention at 6.

¹³ *Id.* at 7, citing proposed Tariff Sections 40.2.4.c and 40.3.4d.

¹⁴ *Id.* at 7-8.

21. Wisconsin Electric states that with respect to random testing, the proposed Tariff revisions lack specificity regarding the frequency of testing. It is concerned about potential undue increases in make-whole payments and the subsequent uplift costs to load, if the testing procedures are not clearly defined. It requests that the Commission direct Midwest ISO to propose more detailed Tariff language about the frequency and aggressiveness of its proposed “random testing” of Resources that have not been deployed over an extended period of time. Wisconsin Electric also asserts that Midwest ISO should balance such economic considerations with the reliability concerns underlying the proposed random testing.¹⁵

22. MidAmerican states that while Midwest ISO’s transmittal letter consistently discusses Supplemental Reserves, the proposed new language in Section 40.3.4.e (ii) appears to affect all Resources that fail to deploy Contingency Reserves, including Spinning Reserves. MidAmerican suggests that, based on the discussion in the transmittal letter, Midwest ISO intends for the revisions to Section 40.3.4.e (ii) to apply only to Resources that fail to deploy Supplemental Reserves. MidAmerican suggests that Midwest ISO revise and clarify this language if this is the case. It continues that if Midwest ISO does in fact intend to alter the caps on both Spinning and Supplemental Reserves that fail to deploy, the Commission should require Midwest ISO to submit additional Tariff language to provide for the testing of Spin Qualified Resources.¹⁶

b. Midwest ISO Answer

23. Midwest ISO responds to MidAmerican’s contention that Midwest ISO should clarify that Section 40.3.4.e (ii) revisions apply to only to Supplemental Qualified Resources that fail to provide Supplemental Reserves. Midwest ISO agrees with MidAmerican that the proposed language is intended to be applicable to Supplemental Qualified Resources that fail to provide Supplemental Reserve rather than all Resources.¹⁷

24. Midwest ISO responds to MidAmerican’s concern that Midwest ISO’s proposed Tariff revisions only compensate Resources for running “during the test” when, due to minimum run times, certain Resources must run for longer than the ten minute testing period. Midwest ISO states that although a Resource’s eligibility to receive a Real-time Revenue Sufficiency Guarantee Credit satisfies this concern, it does not oppose the

¹⁵ Wisconsin Electric Intervention at 3.

¹⁶ MidAmerican Intervention at 8.

¹⁷ Midwest ISO Answer at 5.

requested clarification if the Commission determines that such clarification is necessary.¹⁸

25. Midwest ISO responds to MidAmerican's concern that it is not feasible for a cap to be terminated through a higher deployment in a subsequent Contingency Reserve Deployment. Midwest ISO explains that it will not deploy a Supplemental Qualified Resource above its cap during a subsequent Contingency Reserve Deployment. However, Midwest ISO states that it will recognize the deployment amount of a Resource if the deployment amount exceeds the capped amount in a subsequent Contingency Reserve Deployment. Midwest ISO expects that the additional amount of Contingency Reserves provided above the cap will be incremental in nature.¹⁹

26. Midwest ISO responds to Wisconsin Electric's request for additional Tariff specificity regarding random testing frequency. Midwest ISO argues that the information and protocols provided through its Business Practices Manuals will provide sufficient detail regarding the testing process while allowing Midwest ISO the flexibility to work with its stakeholders and make adjustments where necessary to achieve better results from the testing process.²⁰

27. Midwest ISO responds to MidAmerican's contention that Midwest ISO's proposed Tariff revisions should clarify that Resources will be capped at the amount of energy deployed at the end of tests and not at the integrated volume delivered over the course of their tests. Midwest ISO agrees that the actual amount of Contingency Reserve deployed at the end of the test is the appropriate measure for the test as well as the basis for the cap. Midwest ISO also states that it is amenable to MidAmerican's proposed revisions.²¹

c. Commission Determination

28. Midwest ISO's proposed revisions to Section 40.3.4.e (ii) of the Tariff cap the amount of Contingency Reserve that a Resource may clear in the market at the amount actually deployed until the Resource achieves a higher level of output in a subsequent test or actual deployment. As MidAmerican points out in its intervention, the proposed Tariff language is not specific to Supplemental Qualified Resources that fail to provide Supplemental Reserves and could be read to apply to all Contingency Reserve Resources.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ *Id.* at 4-5.

Midwest ISO clarifies that this is not what it intended and that the provision should be clarified. Accordingly, we direct Midwest ISO to file revised Tariff sheets modifying Section 40.3.4.e to limit the applicability of the proposed Tariff revisions to Supplemental Qualified Resources that fail to provide Supplemental Reserves within 30 days of this order.

29. Midwest ISO's proposed revisions to Sections 39.2.1B.b and 40.2.4.c of the Tariff compensate Resources that are tested following their failure to respond to a Contingency Reserve Deployment Instruction within the Contingency Reserve Deployment Period at the applicable LMP in the Real-Time Energy and Operating Reserve Markets for Actual Energy Injection of the Resource during the test. According to the proposed revisions to Sections 39.2.1B.b and 40.2.4.c of the Tariff, Resources that are tested for other reasons are eligible for the Real-Time Revenue Sufficiency Guarantee Credit pursuant to Section 40.3.3.b.vi. Regarding MidAmerican's suggestion that the language is actually intended to provide such Resources with both a Revenue Sufficiency Guarantee Credit and an LMP payment, we believe that Resources being tested for reasons other than failure to respond to a Contingency Reserve Deployment Instruction within the Contingency Reserve Deployment Period should receive both a Revenue Sufficiency Guarantee Credit and an LMP payment. Were such Resources to receive only the Revenue Sufficiency Guarantee Credit during testing, they might not recover their variable costs. Accordingly, we direct Midwest ISO to file revised Tariff sheets clarifying such compensation within 30 days of this order.

30. As noted by MidAmerican, certain Resources must run for longer than the ten-minute period of the test. Midwest ISO does not oppose the clarification requested by MidAmerican if the Commission determines that such clarification is necessary. We find that such clarification is needed because if Resources must operate for longer than the test duration and are only being compensated for service during the test, the proposed modifications may lead to an unjust and unreasonable result of Resources being undercompensated. We thus direct Midwest ISO to modify Sections 39.2.1B.b and 40.2.4.c of the Tariff, within 30 days of this order, to clarify that compensation of tested Resources in the Real-Time Energy and Operating Reserve Markets for the entire period that they remain on-line at Midwest ISO's direction.

31. In response to Wisconsin Electric's argument that the proposed Tariff language lacks details relating to random testing compensation, Midwest ISO states that the information and protocols regarding the testing process will be provided in Midwest ISO's Business Practice Manuals. We agree that Midwest ISO should include in the information and protocols provided by its Business Practices Manuals sufficient detail regarding the frequency and aggressiveness of the testing process. Further, we find that the details relating to the testing process which Midwest ISO will provide in the Business Practice Manuals should address MidAmerican's concern about the frequency of testing for capped Resources. As stated by Midwest ISO, including this information in the

Business Practice Manuals would allow Midwest ISO the flexibility to work with its stakeholders and make adjustments where necessary to achieve better results from the testing process. Therefore, we find that Midwest ISO's proposed Tariff revisions regarding testing frequency are just and reasonable.

32. Midwest ISO's proposed revisions to Sections 39.2.1B and 40.2.4 cap the amount of cleared Supplemental Reserve "at the amount of Actual Energy Injection achieved during the test." Midwest ISO agrees with MidAmerican that its intent is to define Actual Energy Injections as the amount being instantaneously deployed at the end of the test, consistent with the Shortfall Amount in Section 40.3.4.e (i) of the Tariff. Midwest ISO agrees and is amenable to MidAmerican's proposed revisions, which clarify that the actual amount of Contingency Reserve deployed at the end of the test is the appropriate measure for the test and establishing the cap for Supplemental Reserves. We agree with MidAmerican and Midwest ISO that the caps should be based on energy injections at the end of the test. Accordingly, we direct Midwest ISO to file revised Tariff sheets with this modification within 30 days of this order.

2. Proposed Tariff Language Errors

a. Comments

33. Wisconsin Electric contends that Midwest ISO may have inserted proposed language in the wrong Tariff section. It observes that in Section 39.2.1B (b), concerning operating reserve requirements for Spin Qualified Resources in the Day-Ahead and Operating Reserve Market, Midwest ISO proposes new language at the end of subsection (b) referring not to Spin Qualified Resources, but to the testing and compensation of Supplemental Qualified Resources. Wisconsin Electric asserts that this language should instead be included in subsection (c) pertaining to Supplemental Qualified Reserves. According to Wisconsin Electric, the change would result in parallel provisions for Spin Qualified Resources in the Real-Time Energy and Operating Reserve Market as proposed Section 40.2.4(b).²²

34. MidAmerican similarly asserts that portions of the proposed Tariff revisions are unclear or appear to be in error. MidAmerican notes that Midwest ISO's proposal includes revisions that are generally parallel to sections of the Tariff for day-ahead and hour-ahead (Sections 39.2.1B.b and 40.2.4.c, respectively). MidAmerican contends that since Midwest ISO intends to "provide for the testing of *Supplemental* Qualified Resources," it is not clear why Midwest ISO revised Section 39.2.1B.b (which addresses Spin Qualified Resources) instead of revising Section 39.2.1B.c. MidAmerican suggests that the proposed changes in Section 39.2.1B.b were intended for Section 39.2.1B.c.²³

²² Wisconsin Electric Intervention at 3-4.

35. MidAmerican also notes that the language proposed in Section 39.2.1B (the day-ahead portion of the Tariff) includes a number of references to the real-time market. MidAmerican found certain references reasonable, such as for Resources operating under test conditions at the request of Midwest ISO to be paid real-time prices, because Midwest ISO will presumably not announce the test in advance. Therefore, the test would not be reflected in the day-ahead market. However, MidAmerican notes that certain language with references to the real-time market appear in error. MidAmerican notes that the language proposed in Section 39.2.1B provides in two different locations that “The amount of Supplemental Reserve the Resource may clear in the Real-Time Energy and Operating Reserve Market shall be capped.” MidAmerican suggests that these two references to the “*Real-Time* Energy and Operating Reserve Market” should instead be to the *Day-Ahead* Energy and Operating Reserve Market, since Section 39.2.1B is dedicated to day-ahead issues. MidAmerican notes that similar references to the real-time market are proposed for Section 40.2.4.c, but it states that these references are appropriate, since Section 40 of the Tariff concerns operation of the real-time markets.²⁴

b. Midwest ISO Answer

36. Midwest ISO agrees with Wisconsin Electric’s and MidAmerican’s concern that the proposed revisions to Section 39.2.1B.b were inadvertently included in the section related to Spin Qualified Resources. Midwest ISO concludes that the language should be in Section 39.2.1B.c of the Tariff and commits to correcting this error in a compliance filing.²⁵

37. Midwest ISO responds to MidAmerican’s concern that certain proposed revisions to Section 39.2.1B referencing the Real-Time Energy and Operating Reserve Market should actually be made to the Day-Ahead Market because that Tariff Section pertains to the Day Ahead Energy and Operating Reserve Market. Midwest ISO agrees that the proposed language in Section 39.2.1B should reference the Day-Ahead Energy and Operating Reserve Market where appropriate and commits to correcting this error in a compliance filing.²⁶

c. Commission Determination

38. Midwest ISO has proposed parallel modifications to Sections 39.2.1B.b and 40.2.4.c of the Tariff. Midwest ISO agrees with the commenters that the proposed

²³ MidAmerican Intervention at 4.

²⁴ *Id.* at 5-6.

²⁵ Midwest ISO Answer at 3-4.

²⁶ *Id.* at 4.

language in Tariff Section 39.2.1B.b was misplaced and should be in Section 39.2.1B.c. Accordingly, we direct Midwest ISO to file revised Tariff sheets that correct this error within 30 days of this order.

39. Midwest ISO's proposed revisions to Section 39.2.1B.b that caps the amount of Supplemental Reserve may clear in the Real-Time Energy and Operating Reserve Market when a Resource that has failed to respond to a Contingency Reserve Deployment Instruction, either during a test or in an actual deployment, despite the fact that Section 39.2.1B.b pertains to the Day-Ahead Market. In its answer, Midwest ISO agrees that the proposed language in Section 39.2.1B should reference the Day-Ahead Energy and Operating Reserve Market where appropriate and commits to correct this error in a compliance filing. Accordingly, we direct Midwest ISO to file revised Tariff sheets that correct this error within 30 days of this order.

The Commission orders:

(A) Midwest ISO's proposed Tariff changes are hereby conditionally accepted for filing, effective April 19, 2011, subject to a compliance filing, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.