

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-065

ORDER REQUIRING REFUNDS, AND CONDITIONALLY ACCEPTING IN PART,
AND REJECTING IN PART TARIFF SHEETS

(Issued April 25, 2006)

1. In an order dated August 6, 2004, the Commission approved the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Transmission and Energy Markets Tariff (TEMT or tariff), which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state region.¹ The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity.
2. This order requires refunds and conditionally accepts in part, and rejects in part proposed revisions to the TEMT that the Midwest ISO submitted in order to amend and clarify certain provisions of its real-time revenue sufficiency guarantee (RSG).

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043 (2005) (Compliance Order III). The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

I. Background

3. On October 27, 2005, the Midwest ISO submitted proposed revisions to the TEMT. It noted that section 40.3.3.a.ii of the TEMT requires RSG payments to generation resources that are available for dispatch in the real-time market.² The payments help to ensure that resources that are made available as a result of the Reliability Assessment Commitment (RAC) process receive compensation at least equal to their start-up offers, no-load offers, and incremental energy costs, even if the resources are not dispatched. This helps ensure that adequate supply is available to meet real-time demand.

4. The Midwest ISO proposes three tariff changes: (1) to remove references to virtual supply from the provisions related to the calculation of RSG charges in section 40.3.3 of the TEMT; (2) to clarify the allocation of RSG charges in section 40.3.3.a.ii; and (3) to make generators that do not follow dispatch instructions eligible to receive RSG payments for the lesser of the energy actually produced, or the instructed megawatts. The proposals are described in further detail below.

5. The Midwest ISO indicates that it considers some of the proposed tariff changes to be clarifications to the existing tariff, not new amendments. To the extent the Commission disagrees, the Midwest ISO requests authority to make the changes pursuant to section 205 of the Federal Power Act (FPA).³

6. The Midwest ISO also requests, if necessary, waiver of the FPA's notice requirement, so that the tariff revisions can become effective 10 days after the Midwest ISO notifies the Commission that all necessary measures are in place to support them. (The Midwest ISO anticipates that the system improvements will be available in early

² This section requires that a market participant will be charged the RSG charge when it withdraws energy, and such charge shall equal the product of the market participant's load purchased in real-time, all virtual supply in the day-ahead markets and resource uninstructed deviation quantities times the per unit RSG charge. The per unit RSG charge for a day will equal the aggregate RSG charge in that hour attributed to resources committed in the Reliability Assessment Commitment (RAC) process in the operating day divided by the sum of load withdrawn in the operating day, all virtual supply and deviations from dispatch instructions of all market participants withdrawing during the hour for that operating day. TEMT, Module C, Second Revised Sheet Nos. 577 and 578.

³ 16 U.S.C. § 824d (2000).

2006.) The Midwest ISO states that there is good cause for the waiver because: (1) the Commission's expedited consideration of the revisions will minimize market uncertainty; and (2) the Commission's resolution of the proposed changes in a unified way will reduce the costs associated with implementation.

7. On December 27, 2005, the Midwest ISO's proposed revisions were found to be deficient and additional information was required (Deficiency Letter). The Midwest ISO was directed to provide information relating to the Midwest ISO calculation and allocation of RSG charges as well as the implementation of the Midwest ISO Reliability Assessment Commitment (RAC) procedures.

8. On February 24, 2006, the Midwest ISO filed its response.

II. Notice, Interventions and Protests

9. Notice of the Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 67,471 (2005), with interventions and protests due no later than November 17, 2005. The parties listed in Appendix A filed timely motions to intervene and/or protests and comments. The Michigan Public Power Agency and the Michigan South Central Power Agency (collectively, Michigan Agencies) and Edison Mission Energy, Edison Mission Marketing & Trading and Midwest Generation EME, LLC (collectively Edison Mission) filed comments and protests out-of-time. Cinergy, DC Energy, Financial Marketers and the Midwest ISO filed answers.

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 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Due to the early stage of the proceeding and the lack of prejudice to the other parties, we will accept the Michigan Agencies', Edison Mission's, and Dominion's out-of-time protests and comments.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Cinergy, DC Energy, Financial Marketers and the Midwest ISO because they have provided information that assisted us in our decision-making process.

B. Virtual Supply Offers In The Currently Effective TEMT**1. The Midwest ISO's Position**

12. The Midwest ISO states that, under section 40.3.3.a.ii of its TEMT, a market participant's RSG charges are based on the per-unit real-time RSG charge for a given operating day, times the sum of three factors: (1) the market participant's total load purchased in the real-time energy market during the operating day; (2) the resource uninstructed deviation quantities; and (3) all virtual supply offers for the market participant in the day-ahead market. The Midwest ISO states that, since its energy markets opened, it has not considered virtual supply offers in the RSG charge calculation. It explains that virtual supply offers do not include actual energy deliveries; thus, they are not a generation resource that can be physically committed for reliability purposes in the RAC process. In addition, the Midwest ISO argues that including virtual supply in RSG calculations impedes the development of a virtual transactions market. The Midwest ISO also notes that its Business Practices Manuals and TEMT training materials state that virtual supply offers will not be included in RSG charge calculation.

13. Although the Midwest ISO recognizes that the TEMT has always provided that virtual supply offers are to be included in the calculation of RSG charges, it requests a waiver to permit the exclusion of virtual supply offers from the RSG charge without the need to make refunds. It argues that, if the Commission required it to retroactively adjust all of the RSG charges since the inception of the energy markets to include virtual supply, it would surprise the Midwest ISO's customers with a new, higher rate, and thereby constitute impermissible retroactive ratemaking. The Midwest ISO adds that the Commission may waive the filed rate doctrine in exceptional circumstances, and that such circumstances exist here because imposing RSG charges on virtual supply offers would impede the efficiency and robustness of the Midwest ISO's energy markets.

14. The Midwest ISO believes that an amendment to the TEMT to remove reference to virtual supply offers and to clarify that such transactions will not be included in calculating RSG charges should not result in any recalculations and refunds back to the commencement of the energy markets on April 1, 2005 for the following reasons: (1) parties have not relied upon the existing tariff language, but instead followed the Business Practices Manuals; (2) the Midwest ISO's Independent Market Monitor supports exemption of virtual supply offers from calculation of real-time RSG charges; and (3) approximately five percent of market participants could have significant liability resulting from the imposition of RSG charges.

2. Comments and Protests

15. Several commenters⁴ support the Midwest ISO's position that virtual supply offers not be included in the calculation of the RSG charge in the currently-effective TEMT that has been in effective since market start on April 1, 2005. These commenters assert that removing references to virtual supply from the provisions relating to the calculation of real-time RSG charges is consistent with the meaning of the TEMT.

16. Cinergy states that since the Midwest ISO has, in fact, calculated RSG charges without any consideration of virtual supply from the start of the Midwest ISO market, to change the practice now would be unfair to Cinergy and others who have relied on the status quo. Cinergy also claims it tailored its actions after it sought clarification from the Midwest ISO as early as April 6, 2005 on the proper calculation of RSG charges; Cinergy claims that the Midwest ISO confirmed that neither virtual bids nor offers had any impact on real time RSG charges.

17. In an opposing view, Madison maintains that the Business Practices Manuals should not take precedence over the tariff. Madison quotes, "The Commission has stated on numerous occasions that a company's tariff, not its manuals or handbooks, must define the rates, terms, and conditions of jurisdictional services provided by the company."⁵

18. With regards to the Midwest ISO's proposal that it not be required to make refunds back to the commencement of the energy market on April 1, 2005, several commenters disagree with the proposal and demand that refunds be made. For instance, Ameren acknowledges that some customers will experience increased charges, but other customers will receive refunds or credits. Ameren asserts that it has paid almost \$2.8 million in RSG charges through the end of October 2005 that it would not have paid if the Midwest ISO had followed its tariff in determining the RSG charge. WEPCO also notes that, while the Midwest ISO believes it impermissible to "surprise" the five percent of its customers by telling them that they now must pay an increased price for past services, the Midwest ISO ignores the fact that the other ninety-five percent are impermissibly "surprised" to be picking up the tab.

⁴ Financial Marketers, DC Energy, DTE, Consumers, Edison Mission and Cinergy.

⁵ *Quest Energy, LLC v. Detroit Edison Co.*, 106 FERC ¶ 61,227 at P 20 (2004).

19. Furthermore, Ameren, Madison and the Michigan Agencies disagree with the Midwest ISO's argument that the filed rate doctrine can be waived in this circumstance. Ameren states that market participants should be obliged to pay the charges consistent with the applicable tariff provisions and that the Commission has been willing to require the Midwest ISO to reach back much further in time to ensure that customers were charged the appropriate amounts under the applicable tariff provisions.⁶ Although the Midwest ISO recognized this standard in its filing, Ameren claims that this is not the case here so the Midwest ISO's request for a retroactive effective date is unjustified.

20. On the other hand, a number of commenters, such as Cinergy, Financial Marketers, and DC Energy, agree with the Midwest ISO and believe retroactive refunds are unjust. For example, Financial Marketers argue that if they had known that RSG costs would be imposed on their virtual trades they would have changed their bidding activity and many of their bids/offers would not have been made. Cinergy claims that imposing retroactive charges in this particular instance would run counter to the development of a competitive virtual transactions market and discourage future virtual transactions. Additionally, Cinergy provides examples of situations where the tariff was in violation, but the Commission declined to order refunds.⁷ Cinergy states that to impose refunds now would provide a windfall to the parties who would receive them. According to Cinergy, those parties could have filed a complaint claiming that the Midwest ISO was misapplying its tariff. Having failed to do so, or to otherwise alert other parties to their concerns, Cinergy claims these parties should not be heard to demand relief.

3. Answers

21. Cinergy disagrees with Madison's argument that the Commission must impose refunds. Cinergy states that when the Commission accepted the tariff for filing, it "specifically vetted and approved" the allocation of real-time RSG to virtual supply. Cinergy believes the Commission's prior order is more ambiguous than Madison suggests. The sentence Madison cites immediately follows the Commission's discussion of how day-ahead market uplift charges are allocated under section 39.2.9(f). Cinergy states that only after discussing virtual supply does the Commission go on to address real-time RSG and there is no specific language discussing the allocation of real-time RSG to virtual supply. In any event, even if the Commission's order expressly stated that real-

⁶ See *City of Holland, Mich. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,076 at P 21, 24, *order on reh'g*, 112 FERC ¶ 61,105 at P 10-11 (2005).

⁷ *New York Independent System Operator*, 110 FERC ¶ 61,244 at P 70 (2005).

time RSG charges are allocated to virtual supply, Cinergy believes this would not change the analysis. Cinergy points to a case where the D.C. Circuit held that NYISO violated the tariff's plain language.⁸ Nevertheless, given a plain violation of the governing tariff language, the Commission still declined to order refunds, as it should do in this situation, according to Cinergy.

22. DC Energy claims that Ameren and Madison's protests obscure the actual meaning of section 40.3.3.a.ii of the existing TEMT since it clearly establishes that real-time RSG charges apply only when the market participant "actually withdraws energy." The first sentence of this section governs the applicability of real-time RSG charges. The second sentence governs the calculation of these charges. According to DC Energy, if a market participant does not withdraw any energy from the Midwest ISO market, the real-time RSG charges will not apply, and the Midwest ISO would never have to reach the second sentence governing the calculation of the charges. DC Energy states that this interpretation is supported by fundamental rules of construction, by which all words in a contract or tariff must be considered and given effect. In this regard, the Commission has stated:

In construing what a tariff means, certain general principles apply. One looks first to the four corners of the entire tariff, considers the entire instrument as a whole, giving effect so far as possible to every word, clause and sentence, and attributes to the words used the meaning which is generally used, understood, and accepted.⁹

23. DC Energy claims that Ameren and Madison directly or indirectly focus only on the second sentence of section 40.3.3.a.ii. The foundation of their argument, according to DC Energy, fails because the Midwest ISO never reaches the second sentence on calculating RSG charges until it has determined whether the entire section is applicable

⁸ *New York Indep. Sys. Operator*, 91 FERC ¶ 61,218 (2000), *order denying reh'g*, 97 FERC ¶ 61,155 (2001), *order denying reh'g*, 99 FERC ¶ 61,125 (2002), *granting review in part, Consolidated Edison Co. of N. Y., Inc. v. FERC*, 347 F.3d 964, 973 (D.C. Cir. 2003), *order on remand, New York Indep. Sys. Operator*, 110 FERC ¶ 61,244 (2005) (NYISO).

⁹ *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 at 61,166 (1984) (citing *United States v. Missouri-Kan.-Tex. R.R. Co.*, 194 F.2d 777, 778 (5th Cir. 1952); *Vreeland v. F.P.C.*, 528 F.2d 1343, 1351 (5th Cir. 1976)).

under the first sentence. Ameren and Madison argue they should be entitled to refunds retroactive to April 1, 2005. However, DC Energy asserts that there is no basis to conclude that the TEMT would allow such refunds. Although arguably not as clear, DC Energy notes that the Midwest ISO reasonably makes the case that real-time RSG charges should not apply to virtual transactions at all. DC Energy fully supports the Midwest ISO's interpretation of its tariff. This interpretation is also consistent with section 40.2.3 of the TEMT (Offer Rules and Obligations for Market Participants in the Real-Time Energy Market) that provides in relevant part that "Virtual Supply Offers are not permitted in the Real-Time Energy Market."

24. According to DC Energy, Madison's protest incorrectly suggests that real-time RSG charges apply to virtual bidders. In particular, DC Energy asserts that Madison misconstrues certain statements in the Midwest ISO's TEMT II Order involving day-ahead RSG charges and applies them to the analysis involving real-time RSG charges. In addition, Madison incorrectly asserts that the Commission vetted and accepted the allocation of real-time RSG charges to virtual bidders. To the contrary, DC Energy states that the Commission applies real-time RSG charges to physical deviations from the day-ahead market or from dispatch instruction deviations. In addition, DC Energy believes that Madison confuses the distinction between virtual bids, which act as "virtual load," and virtual offers, which act as "virtual supply." In reality, the Commission in the Midwest ISO TEMT II Order only vetted and accepted the day-ahead (not real-time) cost allocation to virtual bidders (not virtual supply offers). According to DC Energy, the current Midwest ISO practice of not charging real-time RSG charges to virtual supply offers is consistent with a reasonable interpretation of the Midwest ISO TEMT II Order and the TEMT. Though the TEMT is clear that real-time RSG charges do not apply to market participants who do not make any actual energy withdrawals, there remains confusion on whether the RSG charges apply to the virtual transactions of market participants who do. DC Energy affirms that the confusion on this matter highlights the need to remove potentially misleading references to virtual supply offers in the RSG calculation methodology, as requested by the Midwest ISO in its filing.

25. In response to Ameren's assertion that it was surprised to discover the tariff inconsistency, the Financial Marketers state that Ameren did not read the tariff carefully since the exclusion of virtual transactions from the RSG charge allocation and the inclusion of virtual supply offers in the calculation is presented in the plain language of the tariff. The Financial Marketers claim that retroactive application of this tariff revision will not generate financial surprise for market participants. Financial Marketers declare that the Midwest ISO has not over-collected nor has it improperly allocated RSG charges since the RSG costs have been spread to those market participants who benefit from the guarantee of load. Financial Marketers also question Ameren's allegation that between April 1, 2005 and October 31, 2005, the Midwest ISO's failure to apply the tariff RSG

calculation provisions cost Ameren \$2.8 million. Ameren's arguments, as understood by Financial Marketers, appear to assume that the Midwest ISO should have shifted some of Ameren's expenses to market participants who were not withdrawing energy, that is, to virtual participants. However, that assumption is a misinterpretation of the existing tariff, according to Financial Marketers, and only serves to illustrate why the Midwest ISO's requested revision is advisable to lessen confusion and serves the twin goals of the filed rate doctrine: predictability and equity.

4. Discussion

26. Our interpretation of the currently-effective section 40.3.3.a.ii is that the RSG charge applies to virtual supply offers. While parties cite to the opening sentence of that section – which states that the charge applies to market participants that withdraw energy – as proof that the section does not apply to virtual supply offers,¹⁰ the following sentence identifies virtual supply offers as a specific component to be included in the calculation of the charge.¹¹ The Commission relied on this language as the basis for its conclusion in the TEMT II Order that the allocation of real-time charges was reasonable because the proposed billing determinants allocate the uplift costs to those entities that cause higher costs for the region.¹² The Midwest ISO did not challenge that assertion on rehearing. In fact, the Midwest ISO recognizes in its filing that virtual supply offers should bear a

¹⁰ The first sentence of section 40.3.3.a.ii states:

On any Day when a Market Participant actually withdraws any Energy the Market Participant shall be charged a Real-Time revenue sufficiency charge.

TEMT, Module C, section 40.3.3.a.ii, Second Revised Sheet No. 577.

¹¹ The next sentence of this section states that:

The Market Participant's Real-Time revenue sufficiency guarantee charge for that Hour shall equal the product of: (i) the Market Participant's total Load purchased in the Real-Time Energy Market during the Operating Day (in MWh), *all Virtual Supply for the Market Participant in the Day-Ahead Energy Market*, and Resource Uninstructed Deviation quantities (MWh), and (ii) the per unit Real-Time revenue sufficiency guarantee charge.

TEMT, Module C, section 40.3.3.a.ii, Second Revised Sheet Nos. 577-78 (emphasis added).

¹² TEMT II Order, 108 FERC ¶ 61,163 at P 587.

portion of RSG charges.¹³ Accordingly, to the extent the Midwest ISO did not charge virtual supply offers for RSG costs, it violated the terms of its tariff. For this reason, we order the Midwest ISO to recalculate the rate and make refunds to customers, with interest, to reflect the correct allocation of RSG costs.¹⁴ As a clarification, we also agree with commenters that the charge, per the terms of the TEMT, is only applied to market participants withdrawing energy in real-time.

27. We disagree with the Midwest ISO's assertion that we should not order it to adjust all the RSG calculations that it has made since the energy markets opened, because to do so would constitute retroactive ratemaking. The Midwest ISO cites the court's assertion in *Sithe New England Holdings, LLC v. FERC* that the FPA prohibits retroactive ratemaking, in the sense that the Commission may not "surprise buyers, who paid the tariffed rate for a service, by telling them that they must now pay an increased price for past services."¹⁵ The Midwest ISO's argument is wholly inapplicable to the facts at hand. As *Sithe* itself notes, the concept of retroactive ratemaking may be "confused by invocations of a companion notion – the so-called "filed rate doctrine."¹⁶ A public utility may not charge rates other than those properly filed with the Commission¹⁷ – which is what the Midwest ISO has done here.

28. We are not persuaded by the precedent cited by Cinergy. Unlike the circumstance in *NYISO* in which other portions of the tariff provided notice of an alternative interpretation,¹⁸ no other tariff provision in the TEMT can be construed to indicate that virtual offers are not included in the calculation of RSG charges. We find DC Energy's citation to section 40.2.3 to not be relevant to the issue here. The fact that virtual supply offers are not allowed in the real-time market is not relevant to whether virtual supply offers are a cause of revenue insufficiency in real-time. Also unlike *NYISO*, as discussed

¹³ October 27 Filing at 6.

¹⁴ 18 C.F.R. § 35.19a (2005).

¹⁵ 308 F.3d 71, 78 D.C. Cir.(2002) (*Sithe*).

¹⁶ *Id.* at 77.

¹⁷ *Id.* at 77, n.3 (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981); *Town of Norwood v. FERC*, 217 F.3d 24, 28 (1st Cir. 2000)).

¹⁸ *NYISO*, 110 FERC ¶ 61,244 at P 70 (2005).

further below, applying the RSG charge to virtual supply offers does not run counter to the Commission's goals of establishing an efficient market mechanism for generator dispatch.

29. We also disagree with the Financial Marketers conclusion that a refund would unjustly reward other market participants. Allocation of RSG costs to virtual transactions is required by the tariff.¹⁹ As explained above, our requirement to make refunds is based on the language of the tariff, *i.e.*, the filed rate, and therefore we are not requiring the application of a new rate retroactively. Insofar as the Midwest ISO has violated its tariff in its failure to allocate costs to virtual transactions, the Commission may exercise its discretion to impose refunds.

30. The fact that the Midwest ISO Business Practices Manuals would suggest a different result does not impact our decision. As the Commission has stated in other proceedings, business practices manuals should comply with the terms of the tariff, not the other way around.²⁰ We remind the Midwest ISO of the Commission's clear instruction in the TEMT II Order that the Business Practices Manual should not take precedence over the TEMT²¹ and also section 38.1.5 of the TEMT requires that the Business Practices Manual must conform and comply with the tariff.²²

¹⁹ Our ruling here is an adjustment to a formula rate and does not implicate other charges, and thus claims of inconsistency between charges are not relevant. *ISO New England Inc.*, 97 FERC ¶ 61,341 at 62,594 (2001).

²⁰ See *Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc. v. Commonwealth Edison Company*, 101 FERC ¶ 61,295 (2002) (finding that a Commonwealth Edison Company business practice was not consistent with or superior to its *pro forma* tariff, and directing that it be revised), *reh'g dismissed*, 108 FERC ¶ 61,175 (2004).

²¹ *TEMT II Order*, 108 FERC ¶ 61,163 at P 657.

²² Section 38.1.5 states in part: "The Business Practices Manuals shall conform and comply with this Tariff, and the NERC operating policies, guidelines and standards." TEMT, Module C, Second Revised Sheet No. 357.

C. Prospective Treatment Of Virtual Supply Offers

1. Midwest ISO Proposal

31. The Midwest ISO states that a fundamental principle used in the design of the Midwest ISO energy markets is that costs must be allocated equitably based upon consideration of the related concepts of “cost causation” and “benefits” received. That is, the Midwest ISO contends that energy markets should be designed in a way that results in parties bearing costs in proportion to the degree that: (1) their actions impose costs on the market place; and (2) they may benefit from the energy. Since the Midwest ISO is a not-for-profit organization that must remain revenue neutral, it contends that costs associated with making RSG payments to committed generation resources (*i.e.*, physical supply) must be collected from market participants. Consequently, the Midwest ISO applies RSG costs to market participants whose demand deviates from their day-ahead financial position and whose actual supply deviates from their dispatch instructions through the form of a real-time RSG distribution charge. The Midwest ISO states that this reasoning supports its position that virtual supply should not be part of the RSG charge calculation.

32. The Midwest ISO notes that currently section 40.3.3.a.ii of the TEMT requires that RSG payments be allocated to a market participant based upon three factors: (1) total load purchased in the real-time energy market during the operating day; (2) resource uninstructed deviation quantities; and (3) all virtual supply offers for the market participant in the day-ahead energy market. Consistent with the cost-causation principle, the Midwest ISO argues that RSG costs should be allocated to the first and second factors, since they relate directly to the costs associated with ensuring that adequate generation resources are available to meet load in real-time. The Midwest ISO believes that virtual supply offers do not involve actual energy deliveries and thus should not be considered as “committable” resources in the RAC process.

2. Comments and Protests

33. The Financial Marketers claim that the Midwest ISO’s proposal to exclude virtual supply from the calculation of the RSG charges is correct since the virtual traders should not bear the costs of reserving delivery resources given that virtual traders do not generate demand for such resources. They claim that virtual trading is a financial transaction that involves no physical sale or purchase of energy. Consequently, virtual participants neither benefit from the commitment of generating resources nor do they cause such costs to be incurred. Furthermore, the IMM explains that, if RSG charges reflected virtual supply, it would result in reducing the quantities and alter the offer prices of the virtual supply, which in turn would likely adversely affect the day-ahead energy market. As a result, the IMM agrees with the Midwest ISO that it is not reasonable to include virtual supply. However, the IMM admits that one drawback of the Midwest

ISO's proposal is that it might allow Load Serving Entities to utilize virtual supply to avoid appropriate RSG allocations, but this can be monitored by the IMM. Finally, Edison Mission believes that this clarification of the tariff language will better encourage participation in the virtual supply market, increase market liquidity, and improve the convergence between day-ahead and real-time markets.

34. In order to be consistent with cost causation principles, DTE asserts that real-time RSG charges should be assessed only on those transactions that cause the Midwest ISO to incur costs directly associated with committing additional generation resources to meet real-time load. Additionally, DC Energy believes that any participation fees and/or charges imposed on virtual transactions would directly decrease the incentive to participate, and would undermine the primary function of these transactions to facilitate convergence of the day-ahead and real-time energy markets.

35. DC Energy also compares the RSG charges to Reliability-Must-Run (RMR) charges in the ISO New England, Inc. (ISO-NE) energy markets. In an ISO-NE proceeding, DC Energy asserts that a clear connection was demonstrated between reduced levels of virtual bidding and high RMR charges, where the Commission concluded:

Failure to implement the changes specified in ISO-NE's filing would substantially and adversely affect the competitiveness or efficiency of ISO-NE's markets to the extent that ISO-NE's then-existing allocation methodology deterred virtual trading.²³

DC Energy insists that, just as an allocation of RMR costs would have adversely affected virtual trading in New England, the allocation of RSG costs to virtual transactions would adversely affect virtual trading in the Midwest ISO.

36. In opposition, a number of commenters believe that virtual supply should be included in the calculation of RSG charges. WEPCO explains that since the virtual supply offer must be replaced with resources in the real-time energy market, any RSG charges associated with the replacement resource should be charged to the virtual supply as is currently outlined in the TEMT. Madison concurs with the Midwest ISO's proposal to have RSG charges track cost causation, but contends that the Midwest ISO's belief that virtual supply offers should no longer be allocated RSG charges is not consistent with

²³ *ISO New England Inc.*, 110 FERC ¶ 61,250 at P 25, *reh'g denied*, 111 FERC ¶ 61,442 (2005).

previous Commission decisions.²⁴ According to Madison's understanding, RSG payments are made any time a unit is committed in the RAC process and either the committed unit's output is not purchased through the real-time market, or the real-time price of power for the hours in which the unit is committed does not meet or exceed the specified unit commitment costs. Since virtual supply offers are allowed to "serve load" in the day ahead market, but by their virtual nature cannot actually supply the load, there has to be some real-time commitment of resources to cover the virtual supply offers that were accepted in the day ahead market. Such resource commitments contribute to the need for RSG payments, and, under cost causation principles, should be included in the allocation of RSG charges.

37. Michigan Agencies assert that virtual supply offers may cause imbalances in the real-time market, and should therefore bear their fair share of RSG charges. Michigan Agencies further state that, although a virtual supply offer does not involve actual generation deliveries, it nevertheless affects the RAC unit commitment, which in turn, affects the RSG charge. Accordingly, such transactions should share in the burden of RSG charges.

38. Challenging the Midwest ISO assertion that virtual transactions do not cause RSG costs to be incurred, Ameren provides an example that demonstrates how virtual transactions cause RSG costs to be incurred. Ameren explains that virtual transactions function as an arbitrage mechanism for traders in day-ahead markets. According to Ameren, a trader will submit a virtual supply offer in the day-ahead market if the trader believes this offer will clear the market, and the locational marginal price to be paid in the real-time market will be less than the amount received in the day-ahead market. Once a virtual transaction is accepted in the day-ahead market, according to Ameren, additional, more expensive generation must be committed in the RAC process in order to balance physical supply and demand. Therefore, asserts Ameren, virtual transactions in the day-ahead market cause generation costs to be incurred in the real-time market, and hence they should share in the allocation of these costs. From an operational standpoint, Ameren states that virtual transactions are no different than a market participant under-bidding its load since both behaviors create the need for the Midwest ISO to commit generation within the RAC process and the potential to create inefficiencies.

²⁴ *TEMT II Order*, 108 FERC ¶ 61,163 at P 587 (2004) (allocating RSG to virtual bidders "allocate[s] the uplift cost to those entities that cause higher costs for the region.")

39. According to Ameren, it is incorrect to say that virtual transactions should not be allocated a portion of the RSG charges in order to encourage their development. Ameren uses PJM as an example to show that other RTOs have robust virtual markets yet make virtual transactions pay RSG-type charges. Moreover, not allocating RSGs to virtual transactions and allowing virtual transactions to avoid their real costs reduces liquidity and the incentives to trade in real-time markets thus harming the physical market and decreasing the overall efficiency of the Midwest ISO market. Additionally, Ameren notes one benefit of allowing virtual transactions is that it leads to price convergence between day-ahead and real-time prices. However, in the Midwest ISO energy markets the differences between day-ahead and real-time prices are not converging, and this is due, at least partially, according to Ameren, to the failure of the Midwest ISO to allocate RSG costs to those that cause them.

40. In addition, Madison states that the Midwest ISO's proposal to disregard virtual supply offers in the calculation of RSG charges would make the Midwest ISO and PJM tariffs differ on the provisions governing the allocation of RSG charges. Madison asserts that the Midwest ISO has recognized the importance of coordinating the Midwest ISO and PJM RSG practices as they move toward a common market.

3. Answers

41. With regards to its proposal to amend section 40.3.3.a.ii of the TEMT prospectively, the Midwest ISO notes that it has the support of the following entities: Cinergy, Consumers, DC Energy, DTE, Edison Mission, and Financial Marketers. Moreover, notes the Midwest ISO, the IMM's position that including virtual supply offer quantities in the calculation of RSG charges would hinder the development of a competitive virtual transactions market. According to the Midwest ISO, Ameren's example in its protest is somewhat contrived and over-simplified, which causes the outcome of the example to always favor Ameren's argument and does not reflect actual market circumstances. For instance, states the Midwest ISO, the "Effective RAC Price"²⁵ identified in Ameren's example is apparently equal to the following equation: $(\text{Min megawatts (MW)} * \text{Offer Price} + \text{Start-up} + \text{No Load}) / \text{Max MW}$. This equation is simplified claims the Midwest ISO, but accurate for the commitment of all generation resources for only a single hour. The example also assumes that the "Effective RAC Price" is the sole commitment criteria for a generation resource, and ignores required notification times necessary to commit a generation resource, as well as the Midwest

²⁵ The term "Effective RAC Price" is a term Ameren used in its protest. This is not a defined term under the TEMT.

ISO's ability to de-commit other generation resources.²⁶ Therefore, the example presented to support Ameren's assertions should be seen as results oriented and not demonstrative of a fundamental flaw in the position of the Midwest ISO.

42. Cinergy disagrees with the Ameren and Madison's examples which claim that virtual supply can cause the incurrence of RSG costs and thus should be allocated RSG charges. Cinergy believes that the main purpose of the intra-day RAC process that produces RSG uplift charges is to maintain overall system reliability, making RSG costs a consequence of maintaining reliability. According to Cinergy, Ameren's own example shows virtual supply actually decreasing LMPs. Cinergy believes that it is entirely possible that this decrease in energy costs would more than offset any increase in RSG costs. Additionally, Cinergy states that virtual supply provides substantial benefits to the market because it: (1) reduces price volatility, (2) helps convergence in real-time and day-ahead prices, and (3) allows market participants with physical load and generation to hedge risk. Virtual supply thus increases the overall efficiency of the market, benefiting all market participants, whereas allocating RSG charges to virtual supply would undercut these significant benefits. In essence, Cinergy states that by helping day-ahead and real-time price convergence, virtual supply limits the need for market participants to use their own arbitrage strategies involving physical load and supply.

43. With regards to Ameren's argument that virtual transaction participants should pay real-time RSG charges based on principles of cost causation, DC Energy claims that Ameren's only supporting argument is an illustrative example that attempts to show how a virtual offer will alter the market such that real-time RSG charges are increased. This example is flawed, according to DC Energy, due to its reliance on an erroneous RAC cost methodology, which is inconsistent with the Midwest ISO practice and the TEMT. DC Energy provides a corrected example, which supports the assertion that virtual bids and offers act exclusively in the day-ahead market and do not generally alter the real-time dispatch or RSG that ultimately occurs because RAC commitment cost minimization should more or less be in line with day-ahead market commitment cost minimization. In addition, DC Energy states that Ameren in its example chose to simply ignore the effect of virtual load bids which generally act to offset virtual supply offers, further undermining Ameren's assertion that virtual transactions cause RSG. According to DC Energy, virtual bids and offers are the only direct market tool that provide for increased market convergence and have been proven to facilitate a more converged market. As such, virtual bidding in a well-functioning market is more likely to act to reduce overall RSG charges than to act to increase them.

²⁶ The Midwest ISO states that it considers many variables in making commitment decisions in the RAC process.

44. Financial Marketers respond in its Answer to Ameren's claim that virtual transactions can cause RSG costs to be incurred by stating that Ameren provides no evidence in support except theoretical examples that present a worst-case, hypothetical scenario that simply does not play out in the real world. In fact, the Financial Marketers assert that Ameren's claims are contradicted by the actual Midwest ISO data included in Ameren's protest. Additionally, Ameren's example, which claims to show that virtual transactions act to increase RSG costs, is also inaccurate because the structure of the example and the assumptions made are fundamentally unsound since such a scenario is physically impossible. Financial Marketers cite many reasons why Ameren's protest is flawed. Accordingly, asserts Financial Marketers, Ameren's key argument that virtual supply may displace day-ahead generation and this may force the Midwest ISO to call on real-time generation does not hold up under scrutiny. Although in theory virtual supply could displace day-ahead generation, causing an RSG cost to be incurred, Financial Marketers contend that this theory is fundamentally flawed because it ignores too many facts. Furthermore, Financial Marketers claim it is almost impossible to show that virtual transactions in the Midwest ISO actually cause RSG costs to be significantly increased, but it is very evident that virtual transactions can and do act to provide all participants with many benefits.

45. Financial Marketers disagree with a claim made in the Ameren's protest that "Virtuals are no different than a market participant under-bidding its load," thereby creating a need for the Midwest ISO to commit generation. According to Financial Marketers, this statement ignores the fundamental difference between physical demands on the Midwest ISO system and purely financial transactions. Financial Marketers affirm that the Midwest ISO has correctly concluded that virtual trading is a financial transaction that places no physical demands on the Midwest ISO system and does not create a need for generation or derive any benefit from the commitment of generation. Financial Marketers state that Ameren ignores this same difference when it claims that virtual supply may cause market participants to quit initiating physical deals in real-time because they anticipate that RSG charges will be incurred. According to Financial Marketers, Ameren is ignoring the fact that the Midwest ISO system is designed to assure that bidding reflects actual demand and actual supply and that physical bids/offers are based on actual physical needs for electricity. In addition, Financial Marketers contend that Ameren's statement that "virtual volumes have resulted in an increase in the hourly Day-Ahead and Real-Time absolute price differences" is based on differences between day-ahead and real-time prices at just one of the Midwest ISO's 1,535 trading points and based on only seven months of data. Conversely, according to Financial Marketers, ISO-NE has evaluated the effect of virtual transactions over its entire system and over several years of trading and found that virtual transactions reduce the differential between day-ahead and real-time prices.

46. Financial Marketers state that Ameren argues that virtual transactions should have to pay RSG charges because in PJM where there are virtual transactions operating reserve charges are allocated to virtual participants. What Ameren fails to address, notes the Financial Marketers, is that both NYISO and ISO-NE have concluded that virtual trades should be excluded from paying either most or all RSG-type charges, and for the very reasons mentioned by the Midwest ISO. They have concluded that virtual transactions do not cause the system to incur RSG-type costs and, in fact, make the market more efficient and competitive. Financial Marketers also affirm that even in PJM there are efforts underway to reconsider charging virtual transactions for RSG-type charges.

47. Financial Marketers state that the Commission has recognized the fundamental differences between virtual and physical transaction. Additionally, contend Financial Marketers, it is not discriminatory or anti-competitive to charge different or lower rates to virtual participants than to market participants who engage in physical transactions. Financial Marketers state that participation of virtual traders in the Midwest ISO market improves the price convergence of day-ahead and real-time transactions and reduces the market price and risk for other market participants. Therefore, they conclude, it is reasonable to distinguish virtual traders from other market participants who actually withdraw energy.

4. Discussion

48. We note that, while parties (Ameren, Financial Marketers, Cinergy and DC Energy) cite to various examples of how virtual supply offers may or may not affect real-time RSG charges and the magnitude of that impact, no party makes the case that under no circumstance could virtual supply offers cause real-time RSG costs.²⁷ We also find the overall benefits analysis of virtual transactions on day-ahead and real-time markets, as raised by several parties, to be beside the point. At issue here is whether virtual supply offers are a cause of the incurrence of RSG costs, and if so, whether they should share in the allocation of the costs. As the example provided by Ameren shows, virtual supply offers can cause RAC costs to increase and therefore they impact real-time revenue sufficiency. For this reason, we agree that virtual supply can affect RSG costs and, hence, we reject the Midwest ISO's proposal to prospectively eliminate entirely virtual supply transactions from the calculation of the RSG charge.

²⁷ We disagree with the Midwest ISO's assertion in its answer that the Ameren example is entirely dependent on the specific input parameters, and not on the existence of virtual transactions. The accepted virtual supply offer in the example causes the higher cost unit to be committed.

49. We also are not persuaded that inclusion of virtual transactions is fatal to the operation of the Midwest ISO energy markets. As detailed by Ameren and Madison, the PJM energy tariff similarly applies RSG-type charges to virtual transactions, and the level of virtual transaction activity in PJM's markets is higher than in the Midwest ISO's markets. Moreover, since the Midwest ISO has not followed the TEMT to date, we have no basis to conclude at this time that the charge will be high, represent a disproportionate burden, or that the charge will have a serious impact on the willingness and ability of virtual traders to participate in the market, as was determined in the application of RMR charges to virtual trades in ISO-NE.²⁸ Statements by parties to the contrary that the charge will be high and hurt the virtual trading market are speculative.

D. Allocation of RSG Charges to Market Participants

1. The Current Tariff

50. The Midwest ISO states that, as currently written, section 40.3.3.a.ii is unclear as to precisely which market participant transactions should be subject to RSG charges, noting that the TEMT discusses "actually withdrawing any energy" but not clarifying whether it applies to exports of energy outside of the Midwest ISO region or imports into the region, both of which reasonably could be described as "withdrawals to" or "withdrawals from" neighboring regions.²⁹

2. The Midwest ISO Proposal

51. Proposed section 40.3.3.a.i states that market participants are charged the hourly ex post LMP for any withdrawals that exceed their amounts scheduled in the day-ahead schedule and internal bilateral transactions (and are credited for the withdrawals that are below their amounts scheduled in the day-ahead schedule) or whose supply deviated from their dispatch instructions and that the hourly ex post LMP is the commercial node at which the withdrawal takes place.

52. The Midwest ISO explains that section 40.3.3.a.ii of its tariff is meant to allocate RSG charges to market participants that cause costs to be incurred as a result of the commitment of generation resources during the RAC process. However, the Midwest ISO states that the RSG provisions, which are designed to encourage generation resources to participate in the RAC process and be able to be dispatched even if they are

²⁸ See *Supra* note 23.

²⁹ Transmittal letter at 4.

not needed in real-time, benefit many different types of market participants. The Midwest ISO further explains that this section currently is unclear as to precisely which market participant transactions should be subject to RSG charges. It therefore proposes to clarify that four types of market participants should bear the costs of RSG payments: (1) those serving load within the Midwest ISO region; (2) those importing energy from outside the Midwest ISO region; and (3) those exporting energy outside the region; and (4) market participants that inject energy.³⁰ The Midwest ISO explains that each of these four categories of market participant transactions are responsible for causing the costs resulting from the RSG procedures and, thus, should bear a proportionate share of the real-time RSG payments made to generation resources. The proposed tariff provision states market participants would be charged an RSG charge based on the sum of the four elements identified above. The proposed tariff provision would calculate the charge for market participants based on the sum of the following: (1) their load in the real-time energy market, based on the difference between real-time metered load and load scheduled in the day-ahead market; (2) the difference in real-time and day-ahead scheduled imports; (3) the difference between real-time and day-ahead scheduled exports and; (4) the difference between real-time and day-ahead scheduled injections of energy. Differences in injected amounts are defined to be either the difference between metered quantities and dispatch instructions, or negative differences between the day-ahead schedule and real-time economic minimum dispatch or the negative difference between the real-time economic maximum dispatch amounts and day-ahead scheduled amounts.

53. Proposed section 40.3.3.a.iii would set the RSG charge for any hour equal to the aggregate real-time RSG charge in that hour attributed to resources committed in any RAC processes conducted for the operating day divided by the greater of the aggregate of the amounts set forth in proposed sections 40.3.3.a.ii.(a) through (d), i.e., load, imports, exports and injections, or the aggregate of the economic maximum dispatch amounts of all resources committed in any RAC process. In the event the RSG charge exceeds the aggregate of the RSG charges to market participants, the excess shall be funded through an assessment of debits on all market participants on a pro-rata basis, based on their load ratio share across the transmission provider region.

3. Comments and Protests

54. Constellation states that the Midwest ISO interpretation of the existing tariff language to provide for the assessment of RSG charges to imports is not credible. According to Constellation, the terms “injection” and “withdrawal” commonly refer to source and sink nodes in centralized RTO markets, and the terms have been used in the

³⁰ *Id.* at 4.

same way by the Midwest ISO. Therefore, Constellation asserts the Commission should reject the Midwest ISO claims of ambiguity about the meaning of these terms.

55. Williams Power claims that the Midwest ISO's definition of "dispatch instruction" found in the current TEMT is ambiguous and does not reflect what the Midwest ISO uses to calculate the set point. According to Williams Power, the Midwest ISO uses state estimator data to calculate an hourly set point that: (1) is not known until many market participants receive their settlement statement, (2) does not reflect what the generator was asked to produce via the dispatch instructions, (3) cannot be validated because it is derived from internal model solutions, and (4) is used to determine RSG charges which are derived by comparing set point calculations to actual metered quantities. Williams Power wants the Midwest ISO to ensure that the calculation of RSG charges reflects what the generator was actually requested to produce in real-time via the dispatch signal received and that such requested quantities, rather than set point calculations, are used to determine any differences with actual metered data.

56. Williams Power also requests that the Midwest ISO's formula for energy injections be more specific with respect to the Midwest ISO's methodology for calculating the difference between metered data and the dispatch instruction. Williams Power recommends that the Midwest ISO specify that any calculation of the differences between the metered data and dispatch instruction include the integrated average of the five-minute signals for the applicable hour. Additionally, Williams Power believes that where there are discreet commitment periods during the twenty-four hour period, each period should be treated separately.

57. With regards to the proposed allocation of RSG charges to market participants, both WEPCO and Consumers Energy question the Midwest ISO's proposal for assessing RSG charges to load in the real-time energy market where such actual load is less than that which was bid into the day-ahead market. WEPCO states that load bid into the day-ahead market has already been assessed RSG charges based on the day-ahead market and charging such load RSG charges in the real-time energy markets is in effect charging the load twice. Consumers Energy says that the problem with the Midwest ISO's proposal is that it violates the principle of cost causation, since it assigns cost responsibility to market participants that have no economic impact, *i.e.*, market participants that supply too much energy or use less load in real-time and, therefore, are not a cause of adding additional units in the RAC process.

58. While Ameren does not generally object to the four categories of transactions that would be allocated costs, if expanded to include virtual transactions, Ameren believes that such charges should not apply to deviations to the extent such deviations offset one another or do not result in a net imbalance – in other words, the charges should apply on a net basis and not a gross basis. Ameren asserts that, because the Midwest ISO

dispatches on a net basis, if the real-time load of a market participant is more than it cleared in the day-ahead market, but its imports are more than its scheduled amounts by the same amount, the system will be in balance, all other things being equal. However, under the Midwest ISO's current practice, the market participant would be charged RSG based on the deviation associated with both the load and the import, according to Ameren. This application of RSG charges is not consistent with cost causation principles. In addition, Ameren states that this process creates a disincentive to market participants to balance their loads, generation, imports, and exports and reduces the efficiency of the overall market.

59. Constellation is concerned with the impact of the RSG proposal on the market and on its potential to discourage efficient import transactions. The Midwest ISO's proposal to assess RSG charges on real-time imports is not reasonable, according to Constellation, because it fails to recognize that certain real-time imports, even though not hedged with a day-ahead schedule, may have an overall benefit to the market. These imports may reduce the need for the Midwest ISO to commit additional units in the real-time RAC process, asserts Constellation, thereby contributing to an overall reduction in RSG charges. Constellation believes that there are other means available to address the Midwest ISO's objective of providing sufficient notice to the Midwest ISO to mitigate its RSG costs, without at the same time discouraging economic imports. As a result, Constellation wants the Midwest ISO to work with stakeholders to identify alternative means for the Midwest ISO to manage RSG cost exposure associated with real-time imports.

60. Additionally, Constellation wants the Midwest ISO to clarify or modify portions of its TEMT. In section 40.3.3.a.i, Constellation claims the language is unclear because the reference to internal bilateral transactions is not clearly defined to refer to day-ahead internal bilateral transactions. In proposed section 40.3.3.2.a.ii(d)(1),³¹ Constellation contends that deviations subject to uninstructed deviation penalties and the application of RSG to the same quantities would result in duplicative penalties, does not correctly reflect the Midwest ISO's intentions, and should be clarified. In proposed section 40.3.3.a.iii, Constellation asserts that the Midwest ISO has not justified its proposal that RSG charges will be computed and imposed on an hourly basis, rather than averaged over the day. Moreover, Constellation states that the Midwest ISO has not explained the rationale for including the aggregate of the Economic Maximum Dispatch amounts of all

³¹ This proposed section would apply the RSG charge to any difference between energy output based on the metered quantity of energy versus the dispatch instruction in the real-time energy market, excluding MW designated for either regulation up or regulation down.

Resources committed in any RAC processes conducted for the Operating Day. Furthermore, argues Constellation, it appears that by definition the economic maximum dispatch of RAC units would always exceed the actual MW that need to be covered in the RAC.

61. WPS Resources claims that the Midwest ISO's proposal does not define certain critical terms. WPS Resources states that the proposed tariff language should include: (1) real-time revenue sufficiency guarantee charge, (2) real-time economic minimum dispatch amounts, and (3) real-time economic maximum dispatch amounts. WPS Resources also wants the Midwest ISO to consider whether to replace the word "excess" with the word "shortage" in the last sentence of proposed section 40.3.3.a.iii.

62. Ontario cites to an ongoing dispute in which Ontario claims the Midwest ISO incorrectly applied RSG charges to power flows into the Midwest ISO from Ontario and requested a refund. It is Ontario's belief that section 40.3.3.a.ii clearly states that market participants are charged RSG only on days that the market participant actually withdraws energy. Since Ontario was injecting energy and not withdrawing, it should not be assessed the charge. Ontario states that the Midwest ISO's denial of its dispute was incorrect, since the Midwest ISO based its decision on the Business Practices Manuals and allowed the manuals to override and supersede the Commission approved tariff. Ontario also asserts that the proposed change to allocate RSG costs to imports has contributed to a reduction in these flows to the detriment of the market. Ontario contends that even if the proposed tariff change is allowed to go into effect, the change cannot be implemented retroactively since section 205 of the FPA is clear that, in order to charge a rate, it must have been first filed with the Commission.³² Finally, Ontario recommends that the Midwest ISO put its proposals to a comprehensive stakeholder process and then implement a complete suite of changes.

4. Answers

63. In response to Constellation and Ontario's argument that imports should not be assessed RSG costs, the Midwest ISO asserts that the ability of market participants to import energy into the Midwest ISO region is considerably more flexible than the RAC process since a market participant may schedule a real-time import up to 30 minutes prior to the hour in which the schedule will flow. To accept the assertion that real-time imports should not be charged real-time RSG would require the Midwest ISO to forego the commitment of generation resources to meet forecast load and instead rely on real-time imports "showing up" 30 minutes prior to the hour. The Midwest ISO, however,

³² See *Town of Concord v. FERC*, 955 F.2d 67, 71 (D.C. Cir. 1992).

cannot be assured that these imports will in fact "show up" until the market participant actually schedules them.

64. In response to the clarifications requested by Constellation, the Midwest ISO agrees with the suggestion that the term "Internal Bilateral Transaction" be revised to "Day-Ahead Internal Bilateral Transaction." The Midwest ISO will make this revision as directed by the Commission in this proceeding. Acknowledging Constellation's assertion that the Midwest ISO did not intend for both uninstructed deviation penalties (UDP) and real-time RSG to be charged to a generation resource that does not follow dispatch instructions, the Midwest ISO clarifies that it does intend for both the UDP and RSG to be charged to a generation resource that does not follow dispatch instructions. The UDP is intended to establish appropriate incentives for generation resources to closely follow the Midwest ISO's dispatch instructions while the RSG charge attributed to a generation resource as a result of not following dispatch instructions is intended to recognize the generation resource's contribution to overall RSG costs. In response to Constellation's argument that the Midwest ISO's proposed TEMT language in section 40.3.3.a.iii will always result in the economic dispatch of RAC units exceeding the actual MW that need to be covered in the RAC process, the Midwest ISO claims that Constellation's assertion is incorrect. In fact, the economic maximum dispatch of RAC units occurs much less frequently than the aggregate of actual MW needed to be covered in the RAC process. For example, during the month of October, 2005, there were no instances in which the economic dispatch of RAC units was invoked.

65. The Midwest ISO believes that all terms identified by WPS Resources are appropriately defined under the existing TEMT and do not require additional definitions. In addition, the hourly economic maximum and hourly economic minimum are both defined as required elements of generation offers subject to dispatch instructions in the real-time energy market, according to the Midwest ISO.

5. Deficiency Letter and Response

66. In the Deficiency Letter, the Midwest ISO was directed to explain whether the RSG charge is calculated as the difference between a market participant's actual energy output and the dispatch instruction, or alternatively, the difference between the actual energy output and a set point in the state estimator. In its response, the Midwest ISO explains that the real time RSG distribution charge is calculated based on the difference between a market participant's actual energy output and the dispatch instruction sent by the Midwest ISO.

67. The Midwest ISO was also required to describe the accuracy, in terms of percent and MW, of the Midwest ISO calculation of the level of dispatch of quick start units such as gas turbine generators, since market start on April 1, 2005, in the first minute after a

dispatch order. The Deficiency Letter also instructed the Midwest ISO to provide data on the lag (in minutes) between a dispatch order and the time the dispatch model accurately reflects the dispatch order for quick starting units.

68. The Midwest ISO responded by stating that the timing and ability of the Unit Dispatch System (UDS) to recognize units and subsequently solve time impacts hourly integrated dispatch instructions and RSG production cost calculations. According to the Midwest ISO, per the current design of the Day-Ahead-Real-Time (DART) market operating systems, in order for the UDS to generate set points, a unit³³ must transition on-line, have positive injections ≥ 0.5 MW, be seen by the state estimator, and be recognized by an initializing case of the UDS that is subsequently approved. More specifically, the Midwest ISO explains that the unit on-line dispatch timeline requires the unit to physically appear on-line and must be injecting MW. The state estimator must solve with the unit having measurable injections, which typically takes between 1 and 90 seconds. According to the Midwest ISO, the UDS solution for the interval in 10 minutes' time initializes on the next 5-minute interval and sees the unit online as indicated by the state estimator observed flow ≥ 0.5 MW. The Midwest ISO claims that the UDS solution is then approved and set points are issued, and the integration of the set points requires a c-mode transition (ICCP) to currently on-line status. Additionally, the Midwest ISO notes that if the unit is not committed for the current hour and the state estimator observed MW is below economic minimum, the UDS will consider the unit output to be initial state estimator MW value when it solves for the 10 minute ahead case. The Midwest ISO asserts that all of these impacts can align to cause a unit's UDS generation set point to vary significantly from the actual output of the unit, even though the unit follows a normal start-up process. This variance, according to the Midwest ISO, has caused units to fail the "is following dispatch" determination of the real-time revenue sufficiency guarantee make whole payment production cost calculation and lose eligibility for the first hour of the Midwest ISO commitment period.

69. The Midwest ISO maintains that the UDS solution timeline can also impact a unit's RSG production cost calculation. The incremental energy portion of the production cost is calculated based on the initial megawatts of an approved 5-minute LMP case that corresponds to the first approved 5-minute UDS case that a unit appeared in. The Midwest ISO explains that this can reduce the amount of real-time revenue sufficiency guarantee production costs awarded for units that transition on-line later than 6.5 minutes prior to the start of a Midwest ISO commitment period or after the start of a Midwest ISO

³³ The Midwest ISO clarifies that "unit" is used interchangeably with the term "generation resource."

commitment period. The unit off-line dispatch timeline, according to the Midwest ISO, requires the unit to physically transition offline. The Midwest ISO state that the UDS will continue to issue set points based on state estimator observed flow (injection) that occurred up to 10 minutes prior to off-line time. The Midwest ISO declares that the state estimator continues to solve with the unit off-line having approximately 0 MW of injection. The next UDS 5- minute interval solution initializes with the unit off-line as indicated by breaker status, c- mode status, and observed flow. The Midwest ISO states that the unit is no longer in the UDS case, and the set point integration ceases.

Accordingly, this can cause a unit's UDS generation set point to vary significantly from the actual output of the unit, even though the unit follows a normal shut-down process. This variance has caused units to fail the "is following dispatch" determination of the real-time revenue sufficiency guarantee make whole payment production cost calculation and lose eligibility for the last hour of a Midwest ISO commitment period.

70. In addition, the Midwest ISO addresses current software issues of the first and last hours of a Midwest ISO-specified commitment period. In October 2005, the Midwest ISO identified an issue related to the eligibility determination for fast starting units during the first and last hours of a commitment period in which the eligibility determination for such units was being adversely impacted by the time it takes the UDS application to compute dispatch instructions for units that can ramp significantly during the 5 minute solution intervals. The Midwest ISO explains that this may have a negative impact during hours when commitment periods start or end part way through the hour. In order to alleviate the possible impact of this issue, the Midwest ISO announced that units will be granted RSG eligibility that would otherwise be seen as not following dispatch during the first and last hours of commitment periods when units are physically transitioning from an off-line to an on-line state or from an on-line to an off-line state. The Midwest ISO announced this process in October 2005 and has been addressing related issues via the settlements dispute process for all operating dates back to April 1, 2005. The software patch, according to the Midwest ISO, that was implemented in January 2006 included infrastructure to allow for an automated data repair of the calculated production costs and eligibility impacted by this process. The Midwest ISO notes that this was implemented the week of February 13, 2006 and will be retroactively effective for January 24, 2006, and later operating days. The Midwest ISO also asserts that a system change is scheduled to be implemented in April of 2006 that will automatically account for this process.

71. The Deficiency Letter also required the Midwest ISO to provide an assessment of the feasibility of achieving 100 percent accuracy in every minute and the steps, time frame and costs of achieving total accuracy with a description of software issues that foreclose 100 percent accuracy. The Midwest ISO reported that real-time dispatch requires communication between the Midwest ISO and market participants to effectuate

the dispatch, which will always require a lag between input collection, dispatch solution and implementation of the solution. The Midwest ISO affirms that it is not aware of any software or systems that would allow the instantaneous collection of data, run a dispatch algorithm, arrive at a solution and communicate this result to market participants instantaneously, let alone, achieve it with one hundred percent accuracy.

72. The Midwest ISO was requested in the Deficiency Letter to provide an assessment of the cost impact of the lag between dispatch instruction and accurate model representation since market start in terms of additional generation that was committed, and additional start-up and no-load costs for additional committed units that were not needed. The Midwest ISO asserts that it takes into account the lag between dispatch instructions and model representation in its initial commitment decision and does not subsequently commit generation resources for such lag. As such, the Midwest ISO claims that there is no cost impact caused by this issue.

6. Supplemental Comments

73. WEPCO states that the Midwest ISO needs to show how settlements tie into the time line on the illustration.³⁴ WEPCO believes that the Midwest ISO's response does not describe the accuracy in terms of percent and megawatts as requested by the Commission. In addition, WEPCO believes that the Midwest ISO should explain why it is not possible to terminate the UDS solution based on breaker status (or control mode status) if a unit has transitioned off-line. WEPCO notes that the cases the Midwest ISO provides on pages 5-7 of the response only address situations where the Commitment Period begins at the top of the hour. In many cases, WEPCO asserts that staggered or immediate RAC instructions are sent, requiring units to start up and be dispatchable in the middle of an hour, and as a result the first hour of the Commitment Period is a partial hour. According to Wisconsin Electric, these situations have their own unique set of circumstances related to RSG Charges and must be addressed.

74. Additionally, WEPCO claims that the Midwest ISO proposed software "patch" to fix on-line and off-line transition issues does not work for Combined Cycle Units. These units, according to Wisconsin Electric, have ramp up times greater than one hour, and are traditionally phasing in the Combustion Turbine (CT) portions of the unit during the last few minutes of ramp up. Therefore, WEPCO maintains that Combined Cycle Units are particularly susceptible to the "not following dispatch" determination due to the inherent delay in the UDS solution and the final phase of ramp up. WEPCO requests that the Midwest ISO be required to clearly state how this patch works for all generators and

³⁴ Midwest ISO Response at 3.

whether the issues associated with system lag continue even after the implementation of the “patch.”

75. Williams Power asserts that the Midwest ISO’s explanation of whether the RSG charge is calculated as the difference between a market participant’s actual energy output and the dispatch instruction, or alternatively, the difference between the actual energy output and a set point in the state estimator was incomplete since the Midwest ISO failed to provide sufficient detail regarding the applicability of its “dispatch instructions” on a market participant’s liability for RSG charges. Williams Power notes that section 40.3.3.a.ii of the TEMT addresses how market participants are deemed responsible for RSG charges. According to Williams Power, if a resource fails to follow the Midwest ISO’s dispatch instruction, it may be assessed RSG charges. Although this appears to establish that a generator’s actual metered quantities are evaluated when the Midwest ISO determines whether such generator followed its dispatch instruction, Williams Power affirms that the Midwest ISO’s Business Practices Manual states that it is based on the hourly state estimator data, not on actual meter data. Therefore, Williams Power claims that the charges are based on the difference between the actual energy output and the dispatch instruction, which is determined based on a state estimator set point, not actual metered volumes.

7. Discussion

76. We first discuss the currently effective tariff provisions and operations, followed by a discussion of the Midwest ISO-proposed revisions to the TEMT.

77. With respect to the Midwest ISO’s explanation that the RSG charge in the currently effective tariff should apply to imports, we do not interpret the phrase “actually withdraws Energy” to mean withdrawals from neighboring regions, and so it does not provide a basis for charging imports. As used throughout the TEMT, withdrawal refers to the demand for energy at a node or sink point. Therefore, we find no basis in the currently effective tariff for charging for imports from the start of the energy markets. We require the Midwest ISO to make refunds, with interest, to customers for amounts charged to imports from the start of the energy markets.

78. Williams Power raised several issues in its comments that imply the currently effective RSG charge is not calculated on the difference between actual output and the dispatch instruction, as both the current and proposed TEMT state. Accordingly, the Commission raised this issue in its Deficiency Letter. Our review of the Midwest ISO response leads us to conclude that the Midwest ISO is calculating the RSG charge on the difference between actual output and the dispatch instruction, for the most part, and therefore is generally following its tariff. However, we agree with Williams Power that stating that the RSG charge is calculated on the difference between actual output and the

set point is a more accurate description³⁵ and therefore the TEMT would benefit from additional language clarifying that the charge is calculated based on the difference between actual output and the dispatch instruction as well as the difference between actual output and the set point, thereby addressing the circumstance in which the generator does not meet the initial conditions required to be certified as an on-line resource. In general, the set point reflects the total dispatch activity over one hour, and therefore represents the sum of dispatch instructions over that period. We therefore do not find the tariff reference to dispatch instruction in the tariff to be ambiguous.

79. We recognize that market participants such as Williams Power may conclude they are following dispatch instructions that are not reflected by the set point in a situation in which the market participant followed all dispatch instructions over an hour but did not timely transition to on-line status or inject energy in sufficient volumes (≥ 0.5 MW) to meet the initial conditions required for on-line status. As the Midwest ISO response indicates, such initial conditions can result in differences between the actual output and the set point.³⁶ Accordingly it is possible that market participants will not know their RSG charge until they receive their settlement statement since market participants do not know if their transitions were reflected as meeting the on-line transition initial conditions.³⁷ Therefore, with respect to the Williams Power claim that the set point does not reflect what the generator was asked to produce via the dispatch instruction, we disagree since the set point is simply the aggregate of dispatch instructions over an hour, recognizing, as discussed earlier, that the set point also reflects scheduling requirements for initial on-line determinations. We also disagree with the claim of Williams Power that the set point cannot be validated. We decline to adopt the recommendation of Williams Power to base the RSG charge solely on the difference between the dispatch instruction and actual output since to do so would ignore the differences that occur during the on-line transition period in which generators must follow initial conditions requirements and is therefore an incomplete evaluation of real-time settlements.

³⁵ The Midwest ISO Business Practices Manual for Market Settlements states in relevant part that “the Midwest ISO sends a dispatch signal to each generator identifying the expected megawatt output that it is expected to be generating in the next five minutes. Over the course of the hour these dispatch signals are integrated into an hourly dispatch set point used for settlement.” Version 8, p. A-220.

³⁶ See Midwest ISO Response, p. 4, for a description of the requirements for set points to be equal to actual output for a generator during the start-up process.

³⁷ See Midwest ISO Response, pages 5 - 7 for examples of late starting generators and the impact on set points.

80. However, we agree with Williams Power that the set point does not reflect dispatch instructions when a generator transitions to off-line status. In this circumstance, the state estimator set point and UDS are not accurately tracking actual output because those models lag actual market conditions. We note the Midwest ISO currently is not assessing RSG charges in this circumstance and is developing new software programs to better track fast-ramping units.³⁸ We require the Midwest ISO to state in its revised tariff that market participants will not be assessed an RSG charge for differences caused by lags in state estimator and UDS tracking of market participant unit output that follows dispatch instructions, such as when a unit goes off-line. We require the Midwest ISO to modify its tariff, as discussed above, within 30 days of the date of this order.

81. With respect to Williams Power's recommendations to integrate the five-minute signals and to treat each period separately, we do not see any difference between the recommendation and Midwest ISO practice. The dispatch set point for settlement represents an integration of five-minute dispatch signals that are integrated into an hourly set point, and therefore appears to be identical to the Williams Power recommendation. As the Midwest ISO explained in its response, generator activity is evaluated for each commitment period and in some instances there are several commitment periods over the course of an operating day. Therefore, Midwest ISO practice appears to follow the Williams Power recommendation. Also, since Williams Power did not provide any data to support its claim that the state estimator is making infrequent calculations, we have no basis to evaluate the assertion.

82. The foregoing discussion also addresses similar issues raised by WEPCO in their supplemental comments. We expect our requirement that RSG charges not apply to situations in which the state estimator and UDS results lag actual output would also apply to the partial hour situations referenced by WEPCO. We encourage the Midwest ISO to discuss the operation of the state estimator and UDS with stakeholders, including steps it is taking to address lag issues, thereby responding to WEPCO's request for more information.

83. Turning to the proposed tariff revisions, the Midwest ISO proposes to prospectively change its allocation of RSG charges from an allocation to market participants that withdraw energy to market participants that have differences, positive or negative, in their real-time load, imports, exports and injections compared to the day-ahead schedule. The Midwest ISO states that a negative deviation in load and an increase in real-time injections, as well as increased imports or decreased exports (*i.e.*, transactions

³⁸ See Midwest ISO Response at 7.

that do not result in a withdrawal of energy in real-time) should be assessed RSG costs since they can result in an over commitment of resources that still must be paid.

84. To address the concerns raised by WEPCO and Consumers Energy, the Midwest ISO proposal is to allocate costs to transactions that either increase commitment costs or reduce the real-time market revenues available for payment to committed resources, both of which reduce revenue sufficiency. Taking the examples raised by WEPCO and Consumers Energy, while a reduction in real-time load compared to day-ahead would hold commitment costs, *i.e.*, start up and no load costs for units committed in the RAC process, constant, additional payments would be required for payment to market participants taking less load, thereby increasing real-time costs and hence reducing revenue sufficiency.³⁹ In the circumstance of resources injecting more energy in real-time, start up and no load costs of committed resources remain constant again, but the resources injecting more energy must be paid more, again increasing costs. And finally, increased imports and decreased exports also require the payment of committed units, even if they are not run in real-time, while increased payments to external generators are required for increased imports and revenues available for committed generators are reduced in the case of export decreases.⁴⁰ We find that the Midwest ISO proposal properly assigns costs to transactions that cause those costs to be incurred and, therefore, accept this aspect of the proposal. Since we have, above, rejected this proposed tariff provision because it improperly excludes virtual supply offers from the RSG charge calculation, our acceptance of the proposed allocation will be conditional upon the filing by the Midwest ISO of a new tariff proposal, per the requirements of this order.

85. However, we agree with Ameren that certain aspects of the proposed allocation appear to be imprecise. The Midwest ISO proposed allocation treats a reduction of real-time injections by a market participant and the replacement of that amount with imports as additive, and therefore subject to a higher allocation of RSG charges. The Midwest ISO provides no basis to determine that it is reasonable that a market participant that reduces real-time injections and replaces the amount with additional imports should be assigned twice as many RSG charges as a market participant that reduces an equivalent amount of real-time load. Rather, it appears that the allocation double counts the import transaction, even though both transactions should be equivalent in terms of their impact

³⁹ In this circumstance, the additional payments to market participants would be offset to some extent, but not entirely, by lower production costs.

⁴⁰ We note that the PJM market assesses RSG-type charges for all deviations, positive and negative. PJM Electric Tariff, Sixth Revised Volume No. 1, Attachment K – Appendix § 1.39A.

on RSG costs, *i.e.*, they both result in the same amount of unrecovered start up and no load commitment costs. Therefore, while we generally accept the proposed allocation in principle, conditional on our approval of a filing by the Midwest ISO to modify the proposed tariff provision to include virtual transactions, we require that the Midwest ISO revise the provision to eliminate double counting of deviations in that filing.⁴¹

86. We disagree with Constellation's contention that proposed section 43.3.3.a.ii.d, that would apply an RSG charge to differences between actual energy output and the dispatch instruction, would result in duplicative penalties on amounts that are already penalized as uninstructed deviations. The RSG charge is not a penalty; rather, it is an assessment of additional resource costs not covered by revenues that provides an incentive for resources to commit during the RAC process. We note that the TEMT II Order approved the application of RSG charges for deviations from dispatch instructions, while also assessing uninstructed deviation penalties, and Constellation did not challenge that decision on rehearing.

87. Turning to Constellation's concerns regarding sections 40.3.3.a.i and 40.3.3.a.iii, we agree that the addition of "day-ahead" before internal bilateral transactions would clarify which bilateral transactions are referred to in this tariff provision, and therefore we require the Midwest ISO to file a revised tariff sheet. We also share Constellation's concern with the Midwest ISO's proposal to assess RSG charges on an hourly basis in section 40.3.3.a.iii. In the TEMT II Order, the Commission required that the charge be calculated on a daily, rather than an hourly basis, thereby keeping the charge as low as possible and avoiding problems with hourly charges such as occurred in the ISO-NE market.⁴² We note that the Midwest ISO did not challenge this finding on rehearing nor justified the use of hourly charges in this filing. Accordingly, we require the Midwest ISO to continue to assess the charge on a daily basis.⁴³ For this reason, we reject the proposed language for section 40.3.3.a.iii and require the Midwest ISO to file revised tariff sheets.

⁴¹ We find no basis to conclude that the Midwest ISO is seeking retroactive effectiveness for the application of the RSG charge to real-time metered load that is less than the Day Ahead schedule, as claimed by Wisconsin Electric, and therefore this order does not address this issue.

⁴² See *TEMT II Order*, 108 FERC ¶ 61,163 at P 589.

⁴³ We note that the Midwest ISO answer addresses Constellation's concern regarding the use of the aggregate of the economic dispatch amounts in the RAC process.

88. We agree with WPS Resources that a defined term for Real-Time Revenue Sufficiency Guarantee Charge, similar to the defined term Day-Ahead Revenue Sufficiency Guarantee Charge, would be an appropriate addition to the TEMT. We also note that economic minimum dispatch and economic maximum dispatch are capitalized in section 40.3.3.a.ii, and, therefore, should be defined terms in the tariff. The Midwest ISO should provide definitions for these terms.

89. We will not require the replacement of the term “excess” in section 40.3.3.a.iii with “shortage.” Inasmuch as the sentence describes a circumstance wherein the revenue sufficiency charge attributed to committed resources exceeds the charges to market participants, “excess” is the appropriate description of the difference.

E. Encouraging Market Participants to Follow Dispatch Instructions

1. The Midwest ISO’s Proposal

90. The Midwest ISO states that the currently effective section 40.3.3.b.ii of the TEMT provides that a generation resource that is committed in the RAC process, but not dispatched, will receive real-time RSG credits. It interprets the currently-effective provision to mean that a generation resource that does not follow the Midwest ISO’s dispatch signal is entitled only to receive the start-up offer component of the RSG payments, and not to receive production costs.⁴⁴

91. The Midwest ISO proposes to amend section 40.3.3.b.ii to clarify that generation resources will be paid the full RSG payment for the lesser of: (1) the amount of energy that the generator actually produces; or (2) the amount of energy the Midwest ISO has instructed it to produce. A generation resource that produces less than instructed will also be paid the start-up offer and production cost components of the real-time RSG credit, up to the level of generation. The Midwest ISO explains that the proposed treatment should provide an incentive for generators to stay online and to follow dispatch

⁴⁴ Section 40.3.3.b.ii states that the transmission provider will determine whether any resources committed in the RAC processes did not recover start-up and production costs through the revenues received in the real-time energy market. If start-up and production costs during the commitment period for the committed resources at their real-time output from the state estimator is greater than the value of the energy as determined by the real-time output from the state estimator multiplied by the real-time hourly ex post LMP, then the market participant’s real-time energy market credits shall be augmented by an additional RSG credit. TEMT, Module C, Second Revised Sheet Nos. 580-581.

instructions, and states that it will also discourage generation resources from producing less than dispatched.

2. Supporting Affidavit of Midwest ISO's Dr. McNamara

92. Dr. McNamara states in his affidavit supporting the Midwest ISO's filing that although section 40.2.13⁴⁵ of the TEMT addresses payment of real-time RSG payments to generation resources, it does not clearly address situations where a generation resource does not follow dispatch instructions. Currently, generation resources that fail to follow dispatch instructions within the uninstructed deviation bandwidth are eligible to receive RSG payments based only on their start-up costs. Any such resource is also subject to the UDP provisions in section 40.3.4 of the TEMT.⁴⁶ According to Dr. McNamara, the Midwest ISO believes that its existing RSG procedures should be revised to provide RSG compensation for resources that partially follow dispatch instructions, while maintaining existing disincentives so as not to reward generation resources that do not follow dispatch instructions. Under the Midwest ISO's revised proposal, Dr. McNamara affirms that resources that do not follow dispatch instructions will be eligible to receive RSG payments based on their start-up and production costs, as well as being subjected to UDP provisions.

93. Dr. McNamara also explains that the Midwest ISO does not expect to be able to implement enhancements to its software system that manages the day-ahead and real-time market until the first quarter of 2006, and, therefore, the Midwest ISO requests that the proposed amendment to section 40.3.3 be made effective ten (10) days following

⁴⁵ This section provides that the transmission provider shall ensure the minimum recovery of a market participant's start-up, no-load and energy production costs up to the economic minimum production level for resources committed by the transmission provider in the RAC processes. In the event there is a shortfall between costs, as reflected in the market participant's offer and the revenue reflected in the LMP, the transmission provider shall augment the market participant's day-ahead RSG credit as described in section 40.3.3.b.iii and funded in accordance with section 40.3.3.a.ii. TEMT, Module C, Substitute First Revised Sheet No. 565.

⁴⁶Section 40.3.4 provides procedures for settling deviations from dispatch instructions and assesses penalties for deviations for uninstructed deviations outside a tolerance band of plus or minus ten percent of the dispatch instruction, adjusted for regulation up and regulation down. TEMT, Module C, Second Revised Sheet Nos. 581-587B.

notification by the Midwest ISO to the Commission that all necessary measures have been put into place to support the proposal.

3. Comments and Protests

94. Detroit Edison asserts that the Commission should require the Midwest ISO, consistent with the terms of its existing tariff, to recalculate real-time RSG credits back to April 1, 2005 to include all production costs, even during periods of uninstructed deviation. Constellation disagrees with the Midwest ISO's apparent position that, under the existing TEMT, the Midwest ISO was authorized to reduce RSG credits in these circumstances. Constellation believes that the Midwest ISO's proposal is inconsistent with the computation of RSG credits, which reflect the net operation of generators over the entire day. Accordingly, the Midwest ISO did not disclose in its interpretation of section 40.3.3.b.ii that the Midwest ISO has been reducing RSG credits to resources for hours when they are subject to the UDP, denying those resources their production costs and paying them only the start-up offer portion or their RSG credit.⁴⁷ This section of the tariff, states Constellation, provides for a straightforward comparison of market revenues to the start-up and calculated production costs and for a credit equal to the difference. Constellation asserts that this provision does not authorize the Midwest ISO to remove from the calculation those hours during which a resource is also subject to the UDP and deny a generation resource any part of its RSG credit in such hour. Constellation claims that the Midwest ISO's reduction of RSG credits under the existing TEMT is an unlawful violation of its filed rate, and the Midwest ISO should be directed to recomputed RSG credits that were improperly calculated and make refunds to generators that were improperly denied the full amount of their RSG credits.

95. WEPCO requests that the Midwest ISO modify its dispatch system such that it can accurately dispatch all of the units. Additionally, WEPCO wants the Midwest ISO to compensate all units dispatched in its RAC process for the full RSG credit unless and until the Midwest ISO can affirmatively demonstrate the accuracy of its dispatch system for fast starting units.

96. Furthermore, WPS Resources states the Midwest ISO's process to determine whether a generation resource is entitled to receive an RSG payment inconsistently and inaccurately designates resources as RSG-eligible. WPS Resources wants the Midwest

⁴⁷ Constellation's preliminary review indicates that the Midwest ISO's failure to apply its TEMT correctly has deprived Constellation's affiliates of as much as \$466,000 in RSG credits.

ISO to investigate the reasons behind the failures to properly designate RSG eligibility and to develop the software needed to automatically and accurately designate the RSG eligibility of generating units.

97. WPS Resources contends that the Midwest ISO should retroactively correct financial settlements back to the start of Day 2 markets. WPS Resources cites the Midwest ISO's 'R155 Settlement' to verify that the Midwest ISO has an existing process for resettling to correct errors with prior application or interpretation of existing tariff provisions without having to first request Commission authority, and should use that same authority to develop a settlement back to the start of the market to correct its misinterpretation and miscalculation of RSG payments.⁴⁸

98. Constellation agrees with the Midwest ISO's intent not to reduce RSG credits for resources for hours when the resource is subject to the UDP. Constellation believes that the proposed section 40.3.3.b.iv⁴⁹ needs to be revised to say:

The provisions of this section 40.3.3.b shall apply to all Resources irrespective of the provisions of section 40.3.4, related to Uninstructed Deviation Penalties.

According to Constellation, this revision is consistent with the Midwest ISO's intent that it will not deny RSG credits to units that deviate and will address uninstructed deviations solely through section 40.3.4.

99. WEPCO and Consumers Energy disagree with the proposed language in section 40.3.3.b.iii regarding use of the state estimator in the calculation of the production costs. Consumers Energy claims that the references to the state estimator are inconsistent with the proposed revisions to sections 40.3.3.a and 40.3.3.b.ii. WEPCO can discern no rational basis for the use of the state estimator, which uses estimated values, for determining the amount of production costs a generator is entitled to, especially when the Midwest ISO's proposal makes it clear that the actual values are available. Metered data, according to Consumers Energy, is verifiable and more accurate than state estimator

⁴⁸ WPS states that in the same resettlement process, the Midwest ISO also recalculated the Revenue Neutrality Uplift charges to all Market Participants across the Midwest ISO footprint back to the start of Day 2 Markets.

⁴⁹ Proposed section 40.3.3.b.iv states that the provisions of section 40.3.4 related to the UDP shall apply to all resources irrespective of the provisions of this section 40.3.3.

information. Both WEPCO and Consumers Energy request that real-time metered values should be used in the calculations instead.

100. Williams Power states that the Midwest ISO indicates that production costs include no load and incremental energy costs. According to Williams Power, the production costs are not defined in the TEMT, but rather are referenced. Therefore, it is unclear whether such costs include no load and incremental energy costs. To eliminate any vagueness, Williams Power believes the Midwest ISO should incorporate a definition of "production costs" in the TEMT, specifying that the term include start up, no load and energy costs.

4. Answers

101. Responding to Consumers and WEPCO's issues related to the use of state estimator information, as opposed to metered data, in the calculation of production costs in proposed section 40.3.3.b of the TEMT, the Midwest ISO explains that RSG charges are calculated using three distinct values: start-up costs, no-load costs and incremental energy (the latter two components defined as "production costs"). Incremental energy is calculated every five-minutes, with each five-minute interval being summed over the hour to arrive at an hourly incremental energy amount. Such calculation provides a more accurate accounting of the incremental cost of the generation resource than that provided by a single, integrated, hourly value. The Midwest ISO states that the use of actual metered data, as suggested by the protestors, would only provide a single, integrated, hourly value. The Midwest ISO asserts that such data is acceptable for purposes of calculating start-up and no-load RSG amounts, as they are hourly values. Conversely, according to the Midwest ISO, the use of the five-minute interval data provided by the state estimator is the only way to achieve the required, more accurate accounting with respect to incremental energy costs.

102. With respect to WPS Resources' claim that the process of calculating RSG payments must be made transparent and part of the Midwest ISO settlement procedures, Cinergy affirms that the Commission should reject this invitation to broaden this proceeding since the Commission should address only the specific issues raised by the Midwest ISO's filing.

5. Deficiency Letter and Response

103. The Deficiency Letter required the Midwest ISO to provide data, from market start on April 1, 2005, showing the percent and MW of eligible generation that did not receive an RSG credit. The Midwest ISO was directed to provide an explanation why 100 percent of committed units did not receive RSG credits since market start. The Deficiency Letter also requested the Midwest ISO to provide an explanation of the

criteria used to deny eligibility for RSG credits for RAC-committed units and an assessment of the percent contribution of each criteria to the denial of RSG credits, and to include a description of software issues that impact the ability of the Midwest ISO to provide 100 percent accuracy in the assignment of RSG credits.

104. In response to the Commission's inquiry as to why one hundred percent of Midwest ISO committed units have not received RSG credits, the Midwest ISO offers the following instances in which generation resources committed by the Midwest ISO should not receive RSG credits:

- 1) Market value is greater than production costs - If a unit is committed by the Midwest ISO and its real-time market value is greater than its calculated production cost for the Midwest ISO commitment period, the unit will not receive a real-time RSG Credit.
- 2) IMM Production Cost Mitigation - A unit may meet all the necessary criteria to receive an RSG Credit including having its production cost greater than its market value for the Midwest ISO commitment period, however, as a result of IMM production cost mitigation, the unit's production cost may be reduced, therefore reducing or eliminating the real-time RSG Make-Whole Payment Received for the unit.
- 3) Units that do not start within the specified start window (cold start + 1 hr) - Units that come on-line earlier than their start time window will not be reimbursed their start-up costs. Units that transition to "on" more than one hour before their cold startup time will lose their start-up cost eligibility. Units that fail to properly set the control mode flag may be deemed ineligible for start-up.
- 4) Units starting at the end of the hour might not receive set points until the first few intervals of the next hour. The value of the unit's hourly integrated dispatch instruction must be greater than zero to be eligible for no-load and incremental energy since the production cost calculation is based on 5-minute LMP data.
- 5) Forced Outage or Schedule Cancelled – If the Midwest ISO cancels the market participant's unit schedule before the commitment period begins, the unit is eligible to receive a prorated start-up cost, but is not eligible to receive no-load costs and incremental energy. If the Midwest ISO cancels the participant's unit schedule after the commitment period begins, the unit is eligible to receive its full start-up cost, but is still not eligible to receive no-load costs and incremental energy.
- 6) If the market participant initiates the cancelled schedule before the commitment period begins, the unit is eligible to receive neither its start-up cost nor its no-load and incremental energy costs. If the market participant initiates

the cancelled schedule after the commitment period begins, the unit is eligible to receive its start-up cost and is eligible to receive no-load costs and incremental energy for the portion of the commitment period that was not cancelled, subject to all other eligibility criteria.

If the unit has a forced outage before the start of the commitment period, the unit is not eligible to receive start-up, no-load, or incremental energy costs. However, if the unit is a forced outage after the start of the commitment period, the unit will be eligible to receive start-up, no-load and incremental energy costs if the minimum run time for the unit has been reached.

Outside the Midwest ISO commitment period - units do not receive RSG credits outside the Midwest ISO commitment period. If the unit is not on-line at the start of the commitment period or through the end of the commitment period, the no-load cost award period will be prorated. By physically transitioning within the commitment period, units experience up to a 15-minute lag in the UDS solutions and associated prorated no-load cost awards.

7) Unit must be deemed to be following dispatch - No-load and incremental energy costs are not eligible for real-time RSG make whole payment for the hours that the unit is not following dispatch. Eligibility for following dispatch is determined by applying similar tolerances as those used to determine uninstructed deviation penalties.

6. Supplemental Comments

105. WEPCO notes that in the first paragraph of the background section of the Midwest ISO data response notes that: “Generators that do not follow Dispatch Instructions will only be eligible to receive full RSG payments for the lesser of the amount of energy actually produced or the instructed megawatt.”⁵⁰ This appears to WEPCO to be a new calculation method that it has not been able to find in either the TEMT or the Business Practices Manuals. WEPCO believes that the Midwest ISO should be required to provide the details of this new methodology well before it is put into practice so that market participants will understand how they are being charged. Moreover, WEPCO requests that the Midwest ISO clarify the meaning of “instructed megawatts,” and clarify the source for this computation.

106. Dominion Companies claim that the Midwest ISO provides no support for its past denial of RSG production cost payments to generators otherwise eligible under its tariff.

⁵⁰ See Midwest ISO Response at 2.

Dominion Companies note that, instead, the Midwest ISO highlights the fact that since Day 2 markets commenced on April 1, 2005, generators were improperly denied recovery of their production costs in breach of the Midwest ISO tariff and the intent of the RSG regime. According to Dominion Companies, market participants should be restored to the same position they would have occupied had filed rates not been violated by directing the Midwest ISO to re-calculate RSG credits, retroactively to April 1, 2005, to include (i) start-up offer, (ii) no-load offer, and (iii) incremental energy costs.

107. Dominion Companies state that the currently effective section 40.3.3.b.ii of the Midwest ISO's TEMT is inconsistent with the stated intent of the RSG regime since it requires that generators committed for reliability fully recover their start-up and production costs through RSG credits, regardless of uninstructed deviations. Dominion Companies affirm that there is no limitation on production cost recovery based upon a generator's failure to follow dispatch instructions. Additionally, Dominion Companies assert that the Midwest ISO's TEMT cannot reasonably be interpreted to completely eliminate production cost recovery inherent in RSG credits for uninstructed deviations by generators. According to Dominion Companies, generators committed in the RAC process are entitled to receive full RSG credits to the extent that the revenue recovered from their energy sales are less than their costs.

108. WEPCO believes that the Midwest ISO's response to the request for data, from market start on April 1, 2005, showing the percent and MW of eligible generation that did not receive an RSG credit is unresponsive to the Commission's question. Specifically, WEPCO asserts that the data provided do not include disputed data and is provided only for September, 2005, not from market start on April 1, 2005 as requested. Wisconsin Electric's experience has shown there to be a number of inaccuracies inherent in the Midwest ISO's use of DART data for these calculations which result in a reduction in or complete loss of the RSG credit.

109. Williams Power claims that the Midwest ISO's response to why one hundred percent of committed units did not receive RSG credits since market start did not explain the inequities the state estimator approach, which is an integral part of determining whether a unit followed the Midwest ISO's dispatch, imposes on generators. Williams Power alleges that there are more reasons for the Midwest ISO's inability to credit one hundred percent of committed units with RSG revenues, including flaws in its control mode system. Accordingly, Williams Power believes that the Midwest ISO failed to acknowledge that flaws in control mode values have also led to inaccurate assessments affecting whether a generation resource is eligible for certain RSG credits. Williams Power notes that the Midwest ISO asserts that the control mode does not influence incremental energy, but Williams Power maintains that it has experienced instances in which the Midwest ISO deemed it ineligible for certain RSG credits due to erroneous control mode values, which were not set correctly.

110. Furthermore, WEPCO states it first learned in February 2006 that the Midwest ISO is using control mode as an input to the RSG calculation. WEPCO also states that it was first informed of the rule that hourly integrated dispatch instruction must be greater than zero in January. WEPCO asserts that both of these facts represent information that should have been provided prior to market start, and the Midwest ISO should revise the TEMT to clarify this practice and to make its operations consistent with the controlling tariff.

111. WEPCO also questions why a unit is not eligible for no-load and incremental energy costs if the unit is canceled after the commitment period begins given that at that point the unit has likely started and is online pursuant to the Midwest ISO's dispatch instruction. WEPCO notes that the generator will have incurred costs following the Midwest ISO's original dispatch instructions but is left with no compensation for these costs. A further flaw in this response, according to WEPCO, is that a unit with a minimum run time that started as a result of the Midwest ISO's dispatch instruction may be backed down prior to the end of the minimum run. WEPCO claims that such an outcome is inequitable and would ignore valid restrictions on the Midwest ISO's ability to run the unit. This answer, asserts WEPCO, appears to be in direct conflict with the TEMT and Business Practices Manuals, which provide for a generator coming on-line in response to the Midwest ISO's instructions to be made whole.

112. WEPCO notes that if a unit has a two hour minimum run period and after running for one hour and 55 minutes, the unit trips, the market participant should be compensated for the time the unit was online, including recovery of at least a prorated portion of the start-up cost. WEPCO asserts that the market participant should not be penalized for an inadvertent trip. To the extent that the Midwest ISO may be concerned with potential gaming opportunities, WEPCO believes the reason for the unit tripping should be supportable and could be made subject to audit by the Midwest ISO's IMM.

113. Additionally, WEPCO states that the Midwest ISO should clarify its statement that "if a late unit does not follow dispatch, the unit will have its no-load and incremental energy costs prorated."⁵¹ WEPCO asserts that this is not true for Combined Cycle Units since they have a longer start-up time. In the last phase of the start up, WEPCO explains that the resource is generally bringing in the CT portions of the unit, which causes the unit to appear to not follow dispatch because of the inherent delay in the UDS system. Therefore, WEPCO notes that these units are penalized due to their physical operating characteristics. Because of the long startup time, WEPCO asserts that they do not qualify

⁵¹ See Midwest ISO Response at 10.

for the first hour exemption and will be penalized for the lag in the Midwest ISO's system, not the generator's own actions. WEPCO points out that the Midwest ISO is determining that a unit is "not following dispatch" based on fractional state estimator data. According to WEPCO, market participants should not be determined to be not following dispatch for fractional values which are inherently only estimates. WEPCO believes that the state estimator value should be rounded just like the up and down tolerance factors to make a fair and valid determination of "not following dispatch." Further, WEPCO believes that the Midwest ISO should clarify the phrase "applying similar tolerances." The tolerance band, according to WEPCO, should be computed exactly the same as the tolerance band for uninstructed deviation tolerance, not in a "similar" way. WEPCO also requests that the Midwest ISO define "Start-up Window" and "Notification Period Start" along with the formula for its calculation.

7. Discussion

114. We first discuss currently effective tariffs and operations, followed by discussion of the Midwest ISO proposal to revise the TEMT.

115. We do not agree with the Midwest ISO's interpretation of its currently effective tariff to mean that resources that do not follow the dispatch instruction should be denied recovery of production costs. Section 43.3.3.b.ii provides that resources will receive a credit for the difference between start-up and production costs compared to revenues received in the real-time market. While the UDP provisions may adjust the net amount ultimately received by a resource not following the dispatch instruction, nothing in that provision precludes recovery, in this tariff provision, of production costs. Therefore, we require that the Midwest ISO refund those amounts incorrectly withheld from resources, with interest.

116. To respond to the issue of RSG credit eligibility and accurate dispatching of units raised by WEPCO and WPS Resources, the Commission requested the Midwest ISO to explain why generators that have been committed in the RAC process have not been receiving RSG credits. Based on our review of the Midwest ISO response and the relevant tariff provisions, we believe the Midwest ISO was justified in denying eligibility for certain types of behavior, but should pay RSG credits for other activities, as discussed below. Taking the criteria for denying eligibility for RSG credits in the order presented by the Midwest ISO in its response, we reach the following conclusions.

Market Value greater than production costs and IMM production cost mitigation: These criteria are justified and explained in the tariff, so that denial of RSG credits is justified.

Units starting earlier than specified start window: Per the terms of the currently effective section 40.3.3.b.ii, resources are eligible to recover costs in excess of revenues during the transmission provider commitment period that is defined to start when a resource is synchronized to the facilities within the transmission provider region in response to the transmission provider selecting the resource in the unit commitment process.⁵² By this definition, all generators are eligible for recovery of start-up, no-load and incremental energy costs after they have been committed in the RAC process, and there is no limitation on that eligibility. While we understand the concern of the Midwest ISO to manage start-ups to defined periods, we do not consider it reasonable to deny start-up costs to units that the Midwest ISO commits, nor is there a basis in the tariff for denying eligibility. Accordingly, we require the Midwest ISO to provide credits to generators that have been denied eligibility on this basis, from market start.

Units starting at the end of the hour: We see no basis to deny RSG credits to units starting as requested at the end of the hour. The fact that the state estimator takes additional time to generate a set point is not a justification to deny credits to units. Accordingly, we require the Midwest ISO to provide credits to generators that have been denied eligibility on this basis, from market start.

Forced outage or schedule cancelled: Per the terms of the TEMT, the transmission provider commitment period ends at the earlier of the time the resource is forced out of service or the time when the transmission provider notifies the market participant that the resource is no longer needed.⁵³ Therefore, start-up, no-load and incremental energy costs that exceed revenues incurred during this period, i.e., before the forced outage or prior to notification of a cancelled schedule, should receive RSG credits. We see no basis to deny costs incurred over this period. We note that it appears the Midwest ISO has a different interpretation of commitment period than is defined in the tariff. The Midwest ISO, in its response, refers to forced outages before the commitment period begins. Inasmuch as the commitment period begins when the unit is committed in the RAC process, a period of time prior to commitment would be before the real-time market begins. Similarly, the Midwest ISO refers to denying RSG credit eligibility to units whose schedules have been cancelled after the commitment period begins. Inasmuch as the commitment period begins with unit commitment, that interpretation would deny RSG credits to all units that have had their schedules cancelled. We also

⁵² See Midwest ISO FERC Electric Tariff, Third Revised Volume No. 1, superseding first revised sheet no. 580 and superseding first revised sheet no. 134, section 1.322.

⁵³ *Id.*

agree with WEPCO that the tariff provides no basis to deny RSG credits for market participants that initiate a cancelled schedule because a unit trips. The market participant should be compensated for actually incurred start-up, no-load and incremental energy costs. Accordingly, we require the Midwest ISO to provide credits to generators that have been denied eligibility on this basis, from market start.

Units not following dispatch instructions: As discussed earlier in this order, currently effective section 40.3.3.b does not condition RSG credit eligibility on following dispatch instructions. Similarly, with respect to Williams Power's supplemental comments, we see no basis in the currently effective tariff to deny RSG credits because the control mode indicates the unit is not following the dispatch instruction. Accordingly, we require the Midwest ISO to provide credits to generators that have been denied eligibility on this basis, from market start.

117. We qualify the foregoing by noting that resources should not receive RSG credits for costs they do not incur. Units that are committed but never start should not be eligible for recovery of start-up, no-load or incremental energy costs. Likewise, units that never run should not recover incremental energy costs.

118. We will not require the Midwest ISO to file additional data from market start. The information provided by the Midwest ISO makes clear the reasons they have denied eligibility, and therefore serves our purposes.

119. With regard to the proposed section 40.3.3.b, we accept the tariff revisions with modification as explained below, to be effective ten days after notification from the Midwest ISO that its systems are functional. We recognize the uninstructed deviation penalty provisions that are intended to penalize all market participants violating dispatch instruction would have no applicability to generators with costs above revenues, thereby limiting the effectiveness of the provision. The uninstructed deviation penalties require that market participants not following dispatch instructions only receive a portion of the LMP price in their revenues. However, if these market participants were resources committed to the real-time market, they would receive RSG credits for costs above revenues and could thereby avoid any impact from the uninstructed deviation penalty. Hence, it is reasonable to restrict RSG eligibility to production costs that result from the dispatch instruction or state estimator.

120. While we accept the Midwest ISO's proposal to revise section 40.3.3.b.ii, we will not require that this provision be applied back to market start, as recommended by WPS Resources. The TEMT II Order determined that the original provision was just and

reasonable,⁵⁴ and WPS Resources did not challenge that finding on rehearing. We note that the Midwest ISO responded in its answer to the concern raised by WEPCO and Consumers Energy that it is incongruous to measure output as metered energy in section 43.3.3.b.ii and then measure output as the quantity determined by the State Estimator in section 43.3.3.b.iii. We understand the Midwest ISO answer to mean that start-up and no-load costs will be based on metered data and incremental energy costs will be based on state estimator information. We find the Midwest ISO's explanation, that the state estimator information is more accurate with respect to incremental energy costs, to be responsive and acceptable. We agree with WEPCO that tolerance bands for the restriction on RSG credit eligibility would afford the same treatment to resources with costs above revenues as is provided to other market participants paying the uninstructed deviation penalty. We require the Midwest ISO to file a revised tariff sheet within 30 days of the date of this order.

121. We decline to modify section 40.3.3.b.iv, as proposed by Constellation. The proposed Midwest ISO provision does not deny RSG credits to units that deviate, and therefore addresses the concern raised by Constellation.

122. We agree with Williams Power that a defined term for production costs would clarify the costs eligible for guaranteed recovery, as defined in Dr. McNamara's affidavit, and therefore we require the Midwest ISO to add this term to the TEMT.

F. Applicability of RSG Charges To Carved-Out Grandfathered Agreements

1. Comments and Protests

123. The Michigan Agencies assert that they are unable to schedule in the day-ahead market because of the Midwest ISO's required use of the physical scheduling system for carved-out grandfathered agreements (GFA). Therefore, the Michigan Agencies schedules zero (0) MW in the day-ahead market for their block purchase seller's choice agreement and then purchases up to 30 MW in real-time, all of which is assessed an RSG charge as a variance in load. The Michigan Agencies recommend that the Midwest ISO modify its procedures to permit them to inform the Midwest ISO on a day-ahead basis that they intend to withdraw the 30 MW under their sellers choice agreement either using a proxy source or require sellers, rather than customers, to schedule in the day-ahead market.

⁵⁴ *TEMT II Order*, 108 FERC ¶ 61,163 at P 586-91.

124. In the Deficiency Letter, the Midwest ISO was asked to provide an explanation of the options for Michigan Agencies to schedule their seller's choice grandfathered contract amounts to avoid RSG charges, and the feasibility of modifying its procedures to allow for proxy sources and to allow sellers, rather than purchasers, to schedule in the day-ahead market.

125. The Midwest ISO response stated that carved-out GFA treatment for load served within the Midwest ISO, such as that being served by Michigan Agencies, is associated with physical use of the transmission system to transfer electrical energy to load from either (1) generation within the Midwest ISO region or (2) an external source delivered to the Midwest ISO interface with the external source region. The Midwest ISO asserts that "Seller's choice" contracts, wherein the seller may select on a daily basis the source of the physical power, could be eligible for carved-out GFA treatment so long as they satisfy certain scheduling requirements. Such contracts, according to the Midwest ISO, may pose an issue for the carved-out GFA responsible entity if the seller is unable or unwilling to identify the source in a timeframe that allows the GFA responsible entity to comply with carved-out GFA day-ahead scheduling requirements. Assuming the scheduling timeline issue can be resolved, the Midwest ISO maintains that to be eligible for carved-out GFA treatment, the schedule must be for physical delivery from a verifiable physical source. Furthermore, the Midwest ISO explains that a financial bilateral schedule which is not supported by a physical injection of generation or an import, in contrast, represents a financial rather than a physical schedule and would not qualify for Carved-out GFA treatment.

126. To ensure that RSG charges are not assessed to its power pool arrangements that pre-date the Day-Two Midwest ISO energy market, the Michigan Agencies also recommend that section 40.3.3.a.ii be revised to allow for the measuring of differences in day-ahead and real-time load at a combination of commercial nodes where the market participant uses more than a single commercial node within a transmission pricing zone to implement a pre-existing power pool arrangement. The Michigan Agencies contend that by splitting the pool into two commercial price nodes, the Midwest ISO's system does not recognize that power from one of the two nodes is used to supply the cities located in the second of the two commercial nodes. The result, according to the Michigan Agencies, is that they are penalized for substantial negative variance at one node while simultaneously being penalized for a substantial positive variance for the remainder of the pool.

127. In its answer, the Midwest ISO states the Michigan Agencies describe certain modeling that are outside the scope and substance of the filing and should not be addressed in this proceeding. In any event, the Midwest ISO affirms that it has had numerous discussions with the Michigan Agencies regarding the issues raised in their

protest, and the Midwest ISO has offered solutions that are consistent with the rules of the TEMT and related business practices.

128. The Midwest ISO was required in the Deficiency Letter to provide an explanation as to whether other entities are similarly situated to the Michigan Agencies with respect to commercial price node designations. The Midwest ISO's response stated that other entities are similarly situated with respect to ownership of generation that is co-located with load. Market participants, according to the Midwest ISO, may elect to treat such generation as "behind-the-meter," meaning that the generation is not represented in the market as generation output, but as a reduction to co-located load. To the extent such generation exceeds the co-located load, the Midwest ISO explains that such generation appears and is settled as "negative load." The Midwest ISO affirms that the decision by a market participant to treat generation as load does have consequences in terms of offer flexibility.

129. Furthermore, the Midwest ISO claims that all market participants, including the Michigan Agencies, have the flexibility to determine the most appropriate method of treating generation co-located with load for purposes of market participation. In addition to the treatment previously described, the Midwest ISO states that market participants may elect to represent the generation and load separately. In this case, the Midwest ISO notes that the generation co-located with the load would be represented in the market and would participate as a generation resource including the ability to offer such generation in to the day-ahead and real time energy markets. According to the Midwest ISO, each alternative has different consequences in terms of offer flexibility and settlement treatment and may be selected by each market participant based upon their evaluation of alternatives and their desired means of participating in the energy markets operated by the Midwest ISO.

130. Minnesota Power protests the proposed tariff changes since they do not address RSG charges associated with the modeling of GFAs, which is an issue that Minnesota Power maintains it has repeatedly presented to the Midwest ISO since the beginning of the Day Two markets. Currently, Minnesota Power claims it is being assessed RSG charges that are the result of a GFA to which Minnesota Power is not a party. According to Minnesota Power, the Midwest ISO has not included any process through which RSG charges associated with GFAs will be allocated or remedied for the future.

131. In its answer, the Midwest ISO states its filing does not propose to modify the charges allocated to carved-out GFAs in the specific proposed amendments to the TEMT. Cinergy disagrees with Minnesota Power's protest claiming that carved-out GFAs should be exempt from RSG charges. Cinergy asserts that RSG charges are created when the Midwest ISO commits units in the RAC process to preserve regional reliability. According to Cinergy, this increased reliability benefits all physical load in the region,

including GFA parties. Therefore, claims Cinergy, market participants with GFAs should pay RSG costs. With respect to Minnesota Power claims generally that the Midwest ISO “fails to address other ongoing problems with the RSG procedures,” Cinergy affirms that the Commission should reject this invitation to broaden this proceeding since the Commission should address only the specific issues raised by the Midwest ISO’s filing.

132. In supplemental comments, Minnesota Power claims the Midwest ISO does not make clear that market participants are unable to schedule for anticipated “negative load” in the day-ahead markets, thereby preventing proper scheduling where GFAs are involved. Minnesota Power asserts the Midwest ISO business practices do not allow market participants to appropriately schedule in the day-ahead market for a known real-time injection from a load node, thus subjecting a market participant to RSG charges that cannot be mitigated or prevented.

133. Hoosier raises the issue that the Midwest ISO attempts to treat the carved-out GFAs as though they were part of the energy markets. The Midwest ISO, argues Hoosier, is proposing to do precisely what the Commission has prohibited, by charging carved-out GFAs based upon deviations between real-time load and load scheduled in the day-ahead market, regardless of the content of the underlying GFAs. Hoosier requests that the Commission require the Midwest ISO to specify that RSG charges may not be assessed against GFAs.

134. Cinergy disagrees with Hoosier’s protest claiming that carved-out GFAs should be exempt from RSG charges. Cinergy asserts that RSG charges are created when the Midwest ISO commits units in the RAC process to preserve regional reliability. According to Cinergy, this increased reliability benefits all physical load in the region, including GFA parties. Therefore, claims Cinergy, market participants with GFAs should pay RSG costs. Hoosier acknowledges that GFA parties must pay schedule 17 charges, but fails to recognize that GFA parties should pay RSG charges for the same reason, according to Cinergy. Cinergy states that, just as carved-out GFAs are assessed costs under schedule 17, so too should they bear the cost of RSG charges.

2. Discussion

135. Parties to carved-out GFAs are not subject to RSG charges, as the Commission has clarified in another proceeding;⁵⁵ the Midwest ISO may not charge parties to carved-out GFAs for any deviation from their day-ahead schedules, as long as injections and

⁵⁵ See *Southern Illinois Power Cooperative v Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,234 at P5 (2006).

withdrawals are balanced in real-time. Also, any costs associated with schedule changes post day-ahead when the carved-out GFAs allow for such changes cannot be charged to the carved-out GFAs through uplift, per prior Commission precedent.⁵⁶ While the Michigan Agencies propose revised designations of commercial nodes as a solution to avoid RSG charges, there is no need to implement those changes since none of the Michigan Agencies' transactions are subject to RSG charges.⁵⁷ Since only parties to carved-out GFAs have raised this issue, and we have not received comments from any other market participants requesting aggregated nodes or negative injections from load nodes, we consider this a problem specific to a few market participants – who no longer have RSG settlement cost liability – and therefore a problem that does not require a system-wide solution applicable to all market participants.

136. Therefore, we direct the Midwest ISO to refund any RSG charges assessed on the Michigan Agencies, Minnesota Power, and Hoosier Energy.

The Commission orders:

(A) The Midwest ISO is hereby required to refund to customers the amounts due, with interest, as specified in the body of the order, from the start of the energy markets on April 1, 2005.

(B) We conditionally accept in part, accept in part and reject in part proposed tariff revisions filed by the Midwest ISO, as detailed in the body of this order, and the Midwest ISO is, hereby, directed to submit a compliance filing, per the requirements specified in the body of the order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁵⁶ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,042 at P 372-73 (2005) (GFA Rehearing Order), *order on reh'g*, 112 FERC ¶ 61,311 (2005).

⁵⁷ We note that all Michigan Agencies contracts, as identified in Attachment P of the Midwest ISO TEMT, are carved-out GFAs.

Appendix A

Motions to Intervene

Cargill Power Markets, LLC
Xcel Energy Services, Inc.

Comments and Protests

Ameren – Ameren Services Company *

Cinergy – Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company,
PSI Energy, Inc., and The Union, Light, Heat and Power Company

Constellation – Constellation Energy Commodities Group, Inc.

Consumers – Consumers Energy Company

DC Energy – DC Energy Midwest, LLC *

Detroit Edison – The Detroit Edison Company

Dominion Companies – Dominion Energy Kewanunee, Inc., Dominion Energy
Marketing, Inc. and Troy Energy LLC*

DTE – DTE Energy Trading, Inc. *

Financial Marketers – SESCO Enterprises LLC, EPIC Merchant Energy, LP and Black
Oak Energy, LLC *

Hoosier – Hoosier Energy Rural Electric Cooperative, Inc.

IMM – Potomac Economics, Ltd. *

Madison – Madison Gas & Electric Company *

Minnesota Power – Minnesota Power

Ontario – Ontario Power Generation Inc. *

WEPCO – Wisconsin Electric Power Company

Williams Power – Williams Power Company, Inc. *

WPS Resources – WPS Resources Corporation, Wisconsin Public Service Corporation
and Upper Peninsula Power Company

* – Filing includes a motion to intervene.