

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-1552-002

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued May 18, 2007)

1. On January 23, 2007, as amended on January 24, 2007, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing in response to the Commission's December 22 Order,<sup>1</sup> that granted Midwest ISO's proposal to provide a real-time price volatility make-whole payment (PV MWP) to certain generation resources when real-time prices are insufficient to allow recovery of their incremental energy costs and to clarify procedures to manually redispatch and compensate certain generation resources. The December 22 Order required Midwest ISO to file a report in one year addressing issues with respect to the proposed PV MWP eligibility criteria and, as relevant here, a compliance filing in 30 days modifying the proposed revisions to Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT or tariff). In this order, we will conditionally accept Midwest ISO's compliance filing, as discussed below.

**I. Background**

2. The December 22 Order conditionally accepted Midwest ISO's proposed (1) new section 40.3.5 of the TEMT, to provide a PV MWP to certain generation resources when

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,325 (2006) (December 22 Order).

the real-time locational marginal price (LMP) is insufficient to cover their real-time incremental energy costs, and (2) new section 33.8 of the TEMT, to clarify the circumstances under which Midwest ISO can manually redispatch generation resources, equitably compensate manually redispatched generation resources, and ensure adequate cost recovery.

## **II. Notice of Filing and Responsive Pleadings**

3. Notice of Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 5040 (2007), with interventions or protests due on or before February 13, 2007. EPIC Merchant Energy, LP (EPIC) filed a timely motion to intervene and Indianapolis Power & Light Company (IPL) filed comments.

4. Midwest ISO's revisions to section 40.3.5.9 specify that the costs of the PV MWP program "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 in that same Hour." IPL requests that the Commission order further refinement of the proposed cost allocation to use a system analogous to the tariff's real-time Revenue Sufficiency Guarantee (RSG) provisions,<sup>2</sup> because the compliance filing does not reflect cost causation. While IPL agrees that the PV MWP cost allocation should not be based on Schedule 10 billing determinants, IPL argues that the proposed revisions only refine the generalized uplift mechanism to examine the amount of withdrawals occurring on the system without applying cost causation principles. IPL contends that, while both the PV MWP program and real-time RSG payments provide generalized system benefits, only RSG costs are directly assigned to the cost causers.<sup>3</sup> IPL argues that Midwest ISO has conceded that the PV MWP cost causers can be identified<sup>4</sup> and that the software to implement the PV MWP is still under development.

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<sup>2</sup> In section 1.227 of the TEMT, Midwest ISO defines RSG charges as a guarantee by the transmission provider to ensure the minimum recovery of start-up, no-load and energy offer costs for a resource committed and scheduled by the transmission provider.

<sup>3</sup> See *Midwest Independent Transmission System Operator, Inc.*, 115 ¶ 61,108 at P 84 (2006), *order on reh'g*, 117 FERC ¶ 61,113 at P 117 (2006).

<sup>4</sup> See Comments at 3, citing September 29 Filing, Affidavit of Joe Gardner at 14; December 22 Order at P 62.

### **III. Discussion**

#### **A. Procedural Matters**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), EPIC's timely unopposed motion to intervene serves to make it a party to this proceeding.

#### **B. Commission Determination**

6. We will conditionally accept Midwest ISO's proposed revisions to its TEMT to become effective ten days after Midwest ISO files with the Commission a notice that the necessary software and other systems are in place to implement the proposed filing,<sup>5</sup> as requested, and subject to a further compliance filing due within 30 days of the date of this order to address the concerns discussed below.<sup>6</sup>

7. We do not believe that IPL's arguments, that Midwest ISO should be required to use direct cost assignment similar to the allocation of real-time RSG costs, are properly within the scope of this compliance proceeding.<sup>7</sup> We find that Midwest ISO's proposed modifications to section 40.3.5.9 sufficiently specify the mechanics of the PV MWP cost

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<sup>5</sup> The Commission directed Midwest ISO to submit revised tariff sheets that reflect the actual effective date of the proposed TEMT revisions in a compliance filing due within 7 days of the date the software has been implemented. *See* December 22 Order at P 101.

<sup>6</sup> Acceptance of Midwest ISO's proposed tariff revisions is also subject to further Commission action on the report due no later than one year from the effective date of the PV MWP program. *See id.* at P 42.

<sup>7</sup> We note that the Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives. *See, e.g., AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 & n.25 (2005) (requests for changes to market-based rates rejected as outside scope of compliance filing). We also note that IPL has requested rehearing regarding the PV MWP cost allocation in Docket No. ER06-1552-001. Accordingly, we address this issue in Docket No. ER06-1552-001, and not here.

allocation and clarify that Schedule 10 billing determinants will not be applied, as directed by the December 22 Order, and we will not require further revisions at this time.

8. In our December 22 Order, we directed Midwest ISO to modify Module D of the TEMT to ensure that potential manipulation of the PV MWP is clearly covered by the Independent Market Monitor's (IMM) market monitoring and mitigation procedures. We stated that we did not believe that monitoring by the IMM alone would be sufficient to prevent gaming (and thus we accepted the eligibility criteria), and we stated that we expected the IMM to monitor for PV MWP gaming activities as a part of its market monitoring and mitigation duties.<sup>8</sup> We noted that sections 40.2.3.b.iii and iv of the TEMT require that the economic minimum and economic maximum components of a generator's offer be based upon the actual capability of the resource to operate on its offer curve and may not be used to withhold a portion of the capacity of a resource from the real-time energy market.<sup>9</sup>

9. In response, Midwest ISO proposes to include the PV MWP as part of the functions or actions monitored by the IMM in section 53.1.a. It also proposes to move language proposed in section 40.3.5.10 to section 65.3.5 providing that the IMM will seek approval from the Commission to remove PV MWP eligibility from a generation resource as a consequence of behavior to manipulate the PV MWP. It further provides that such gaming or manipulation shall be determined in accordance with the criteria in section 63 of the TEMT.

10. We find that the placement of statements about monitoring of PV MWPs in Module D of the tariff and the revision to section 53.1.a are appropriate.<sup>10</sup> However, while Midwest ISO proposes that the IMM will use "the criteria in Section 63" to determine whether manipulation or gaming of the PV MWP has occurred, we note that the PV MWP is not specifically mentioned in that section. We will direct Midwest ISO, in consultation with the IMM, to clarify which portions of section 63, and by reference sections 64 and 65, will apply to the PV MWP so as to describe the IMM's method for

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<sup>8</sup> December 22 Order at P 43.

<sup>9</sup> *Id.* at P 43 n. 17.

<sup>10</sup> However, we note that proposed section 53.1.a (as filed in the amended compliance filing) includes the phrase "including, but not limited to, Offers resulting in any Revenue Sufficiency Guarantee payments, Price Volatility Make-Whole Payments, and other similar payments" twice. Midwest ISO is directed to remove the proposed second repetition of this phrase.

detecting manipulation and gaming of the PV MWP that may warrant mitigation and to indicate whether PV MWP manipulation may be subject to any other sanctions given in section 65.

11. Midwest ISO defines “Incremental Energy Cost” in proposed section 1.141a as the “area under a Generation Resource’s offered incremental Energy cost curve, consisting of (MW, \$/MW) pairs, between an upper and lower bound.” Because the proposed definition applies to offers made in both the day-ahead and real-time markets, we will direct Midwest ISO to clarify that the PV MWP is applicable only to “real-time” incremental energy costs in sections 33.8.2 and 40.3.5.1. Additionally, we will require Midwest ISO to consistently refer to the defined term “Incremental Energy Cost” in sections 1.248a, 1.248b, 33.8.2, 40.3.5.1, 40.3.5.4.b.i.1 and 40.3.5.5.b.i.1.

12. In the December 22 Order, the Commission required Midwest ISO to replace in proposed sections 40.3.5.4 and 40.3.5.5 the term “Ramp Rate Up/Ramp Rate Down,” as defined in section 1.251, with the terms “Regulation Up/Regulation Down,” as defined in sections 1.264 and 1.265,<sup>11</sup> after Midwest ISO agreed with commenters that this change was appropriate.<sup>12</sup> In its compliance filing, Midwest ISO proposes to instead use the term “Ramp Rate” and explains that the PV MWP eligibility criteria will check a unit’s ramp rate and not its regulation. We believe that it is indeed correct for Midwest ISO’s PV MWP eligibility criteria to examine ramp rate rather than regulation. However, we note that the term “Ramp Rate” is not defined in the tariff (although Ramp Rate Up/Ramp Rate Down is), and we direct Midwest ISO to define the term “Ramp Rate” in its tariff.

13. Midwest ISO proposes to define “Lost Opportunity Cost” as the “LMP revenues that were not realized relative to a theoretical future operating point” in section 1.176a. However, we are unsure that the phrase “theoretical future operating point” in this definition sufficiently conveys the meaning or possible determination of PV MWP lost opportunity costs in section 40.3.5.1. We will require Midwest ISO to specify in section 40.3.5.1 the manner in which there may be lost opportunity costs associated with the PV MWP, such as if lost opportunity costs could have been incurred if dispatch instructions, and a generation resource’s corresponding output, had been determined using the ex post LMP.

14. We will require Midwest ISO to modify the definition of real-time dynamic dispatchable units in proposed section 1.253a to conform to the December 22 Order’s

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<sup>11</sup> *Id.* at P 92, 99.

<sup>12</sup> *Id.* at P 96.

requirement that “Midwest ISO refer to stated tariff definitions for the terms economic maximum and economic minimum (such as the defined Hourly Economic Maximum Level or Hourly Economic Minimum Level).”<sup>13</sup>

15. While Midwest ISO indicates that it has modified Sheet No. 330B to replace “Instructions” with “instructions,” Midwest ISO did not include Sheet No. 330B as part of its proposed revisions. Midwest ISO is directed to provide revised Sheet No. 330B incorporating this change.<sup>14</sup>

**C. Other Compliance Issues**

16. Proposed “Substitute Original Sheet No. 85A” is not compliant with 18 CFR § 35.9(b)(2) (2006), and should instead have been labeled “First Revised Sheet No. 85A,” because it supercedes a sheet filed in another proceeding. “Superseding Original Sheet No. 587F Substitute Original Sheet No. 587F” is also not compliant and should instead have been labeled “Substitute Original Sheet No. 587F Superseding Original Sheet No. 587F.”

17. The December 22 Order required Midwest ISO to ensure that the tariff sheets are correctly paginated.<sup>15</sup> However, the proposed tariff sheets include Sheet Nos. 587J and 587L, but do not include a sheet numbered “587K.” We will direct Midwest ISO to sequentially number the proposed tariff sheets.

The Commission orders:

Midwest ISO’s compliance filing is hereby conditionally accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Deputy Secretary.

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<sup>13</sup> *Id.* at P 104.

<sup>14</sup> *Id.* at P 97, 101.

<sup>15</sup> *Id.* at P 101.