



No. 890. On October 11, 2007, Midwest ISO Transmission Owners (Midwest ISO TOs)<sup>3</sup> and Midwest Stand-Alone Transmission Companies (MSATs)<sup>4</sup> filed a CBM Set-Aside Compliance Report in Docket No. OA08-4-000.

2. In this order, we will accept Midwest ISO's filing in Docket Nos. OA08-14-000 and OA08-14-001, as modified, to be effective October 11, 2007, as in compliance with Order No. 890 below. We find the determination regarding the need for redesigned point-to-point transmission charges reflecting the CBM set-aside under Docket No. OA07-57-000 is more appropriately addressed in the compliance filing submitted by the Midwest ISO TOs and MSATs in Docket No. OA08-4-000, and therefore, we will reject Midwest ISO's CBM Set-Aside Compliance Report in Docket No. OA07-57-000. However, we also will reject Midwest ISO TOs and MSATs CBM Set-Aside Compliance Report in Docket No. OA08-4-000, as discussed below.

### **Background**

3. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission

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<sup>3</sup> For the purpose of this filing, the Midwest ISO TOs consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>4</sup> For the purposes of this filing, MSATs include American Transmission Company LLC, International Transmission Company d/b/a ITCTransmission and Michigan Electric Transmission Company, LLC (collectively, MSATs).

providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of Available Transfer Capability (ATC), open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

4. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have been approved as independent system operators (ISO) or regional transmission organizations (RTO) were directed to submit, within 210 days from publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007), section 206 compliance filings that contain the non-rate terms and conditions set forth in Order No. 890 or that demonstrate that their existing tariff provisions are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission also aligned the compliance filing deadlines for ISOs and RTOs and their transmission-owning members and required public utility transmission owners whose transmission facilities are under the control of RTOs or ISOs to make any necessary tariff filings required to comply with Order No. 890 within 210 days after the publication of Order No. 890 in the *Federal Register* (i.e., October 11, 2007).<sup>5</sup>

5. Further, in Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)<sup>6</sup> set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the Final Rule in the *Federal Register* (i.e., July 13, 2007), coinciding with the deadline for section 206 compliance filings by transmission providers that have not been approved as ISOs or RTOs containing the non-rate terms and conditions set forth in Order No. 890.<sup>7</sup> The Commission did not specifically address the deadline for such limited issue FPA section 205 rate filings by transmission providers that have been approved as ISOs or RTOs, and whose

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<sup>5</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 157, 161.

<sup>6</sup> CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider's system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

<sup>7</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

transmission facilities are under the control of an ISO or RTO. However, we intended that the deadline for such filings coincide with the deadline for the FPA section 206 compliance filings by such entities containing the non-rate terms and conditions set forth in Order No. 890 (i.e., October 11, 2007).

### **Docket Nos. OA08-14-000 and OA08-14-001**

#### **I. Compliance Filings**

6. In Docket No. OA08-14-000, Midwest ISO proposes changes to the non-rate terms and conditions of service set forth in its TEMT, incorporating the revisions adopted in the *pro forma* OATT or, where necessary, demonstrates that existing TEMT provisions are “consistent with or superior to” the modifications adopted in the *pro forma* OATT.

7. In Docket No. OA08-14-001, Midwest ISO claims that it adopts *pro forma* OATT section 2.2 revisions *in toto*.

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

8. Notice of Midwest ISO’s October 11 Compliance Filing in Docket No. OA08-14-000 was published in the *Federal Register*, 72 Fed. Reg. 60,011 (2007), with interventions and protests due on or before November 1, 2007. Consumer’s Energy Company, Exelon Corporation, Indiana Municipal Power Agency (IMPA) and Lincoln Electric System (LES), Michigan Public Power Agency, Midwest ISO TOs, and Wisconsin Electric Power Company filed timely motions to intervene. Reliant Energy, Inc. (Reliant) and Beacon Power Corporation (Beacon Power) filed timely motions to intervene and comments. MSATs filed a timely joint motion to intervene and comments. Madison Gas & Electric Company (MGE) and Wisconsin Public Power, Inc. (WPPI) filed a timely joint motion to intervene and comments. On November 6, 2007, IMPA, LES, MGE and WPPI filed joint supplemental comments. On November 16, 2007, Midwest ISO filed an answer to the comments. Beacon Power filed an answer to Midwest ISO’s answer on December 3, 2007.

9. Notice of Midwest ISO’s December 7 Amendment in Docket No. OA08-14-001 was published in the *Federal Register*, 72 Fed. Reg. 73,017 (2007), with interventions and protests due on or before December 28, 2007. Midwest ISO TOs filed a timely motion to intervene. American Municipal Power – Ohio, Inc. (AMP-Ohio)<sup>8</sup> filed a timely motion to intervene and comments.

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<sup>8</sup> On behalf of itself and its members.

### 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 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Midwest ISO and Beacon Power in Docket No. OA08-14-000 because they have provided information that assisted us in our decision-making process.

#### B. OA08-14-000: October 11 Compliance Filing

12. In Order No. 890, the Commission recognized that some of the changes adopted in Order No. 890 may not be as relevant to ISO and RTO transmission providers as they are to non-independent transmission providers. The Commission stated that revisions to the *pro forma* OATT are not intended to upset the market designs used by existing ISOs and RTOs, and that ISOs and RTOs may well have adopted practices that are already consistent or superior to the reforms adopted in Order No. 890.<sup>9</sup> We recognize that Midwest ISO's proposed deviations from the *pro forma* OATT reflect the actual market design used by Midwest ISO, and find these deviations to be consistent with or superior to the *pro forma* OATT, except as otherwise addressed below. Therefore, we will accept Midwest ISO's October 11 Compliance Filing in Docket No. OA08-14-000, as modified, to be effective October 11, 2007. We also direct Midwest ISO to file, within 30 days of the date of this order, a further compliance filing as discussed below.

##### 1. Attachment C – ATC Methodology

13. In Order No. 890, the Commission required a transmission provider to clearly identify which methodology it employs (e.g., contract path, network ATC, or network Available Flowgate Capacity (AFC)). The transmission provider also must describe in detail the specific mathematical algorithms used to calculate firm and non-firm ATC (and

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<sup>9</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 158.

AFC, if applicable) for its scheduling, operating and planning horizons.<sup>10</sup> Further, the actual mathematical algorithms must be posted on the transmission provider's web site, with the link noted in the transmission provider's Attachment C.<sup>11</sup>

**a. Filing**

14. Midwest ISO proposes to revise Attachment C of the TEMT to provide a detailed description of the specific mathematical algorithm used to calculate firm and non-firm ATC and AFC for its operating horizon, planning horizons and study horizon.<sup>12</sup> It also states that the revisions include a process flow diagram that illustrates the various steps through which AFC is calculated and a detailed explanation of how each of the AFC components is calculated for the operating, planning and study horizons.

**b. Protests**

15. MGE/WPPI state that several aspects of Midwest ISO's ATC methodology are premised on its current multiple Balancing Authority configuration even though Midwest ISO proposes to become the Balancing Authority for its entire footprint.<sup>13</sup> MGE/WPPI state that Midwest ISO does not address how the ATC methodology will be modified once Midwest ISO becomes the Balancing Authority.

16. MSATs state that Midwest ISO should clarify that it intends for the revisions proposed in Attachment C, and the implementation thereof, to be consistent with ATC/AFC calculation provisions already set forth in Appendix B of the Transmission Owners Agreement or in company-specific agreements that may be executed by Independent Transmission Companies (ITCs) pursuant to Appendix I of the Midwest ISO

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<sup>10</sup> *Id.* at *pro forma* OATT, Att. C; *see also id.* P 323.

<sup>11</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 325, 328.

<sup>12</sup> We note that on April 15, 2008, Midwest ISO filed a request for waiver of Order No. 890's requirement to convert AFC into ATC and to post converted ATC values on the OASIS. The Commission will address Midwest ISO's waiver request in a future order under Docket No. OA08-14-002.

<sup>13</sup> Midwest ISO proposed tariff revisions to transfer and consolidate Balancing Authority responsibility, so that Midwest ISO will become the NERC-certified Balancing Authority for the entire Midwest ISO Balancing Authority Area, in its ancillary services market (ASM) proposal in Docket Nos. ER07-1372-000 and ER07-1372-001. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008) (ASM Order).

Transmission Owners Agreement.<sup>14</sup> Furthermore, the MSATs state that Midwest ISO should include a general statement to that effect in Attachment C at proposed Third Revised Sheet No. 1066, as follows: “Notwithstanding any provisions set forth below, the calculation of ATC shall be accomplished by the Transmission Provider in a manner consistent with the requirements of the ISO Agreement and any agreements executed pursuant to Appendix I of the ISO Agreement.”

17. MSATs also state that the definition of ‘Flowgate Rating’ requires a more specific modification. MSATs state that Flowgate Ratings are initially determined by transmission owners, but that such ratings “may be adjusted to account for expected weather during conditions under study.”<sup>15</sup> MSATs contend that it is not clear whether the intent is for rating adjustments to be made by transmission owners or if Midwest ISO may also make such adjustments and, if it does, whether the consent of the transmission owners is required. MSATs request that the proposed definition be clarified to ensure that facility ratings continue to be determined by transmission owners, or at least subject to transmission owner approval. MSATs specifically request that the following underlined text be added to the definition proposed by Midwest ISO:

Flowgate Rating: The Transmission Provider uses the ratings provided by Transmission Owners or ITCs and determined based upon the summer and winter peak ambient conditions. The ratings may be adjusted by Transmission Owners or ITCs, or by the Transmission Provider with the approval of the applicable Transmission Owner(s) or ITC(s), to account for expected weather during conditions under study.

MSATs maintain that this clarification is consistent with the Transmission Owners Agreement, which specifies that Midwest ISO is to rely on equipment ratings established by transmission owners.<sup>16</sup>

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<sup>14</sup> “Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation,” FERC Electric Tariff, First Revised Rate Schedule No. 1 (Transmission Owners Agreement).

<sup>15</sup> MSATs November 1 Protest at 4 (*citing* Midwest ISO October 11 Compliance Filing, Redlined Tariff Sheet, at Third Revised Sheet No. 1079).

<sup>16</sup> MSATs also state that, under Appendix B of the Transmission Owners Agreement, disputes regarding facility ratings are subject to dispute resolution procedures in the TEMT, provided, however, that owner ratings continue to govern until disputes are resolved. In addition, MSATs state that the *pro forma* Appendix I agreement under the

(continued...)

18. MSATs state that Midwest ISO has proposed revisions relating to the use of CBM values provided by transmission owners. MSATs contend that the language should also be revised to include CBM values provided by ITCs, as follows: “Transmission Provider’s current CBM practice is to utilize Transmission Owner or ITC provided CBM values that have been calculated under the Transmission Owner’s or ITC’s regionally approved methodology...” MSATs argue that this revision is necessary because the TEMT defines “Transmission Owner” and “ITC” separately, and because both transmission owners and ITCs retain their respective rights with respect to ATC calculation matters.<sup>17</sup>

**c. Midwest ISO Answer**

19. Midwest ISO states that the calculation of ATC and AFC in the revised Attachment C complies with the requirements of Order No. 890, and its existing agreements. Midwest ISO states that if there is a conflict between the existing Transmission Owners Agreement, or any other existing agreements, and the requirements of Order No. 890, it will support amendments to those agreements to bring them into compliance. Midwest ISO notes, however, that no specific conflicts have been cited by MSATs. For this reason, Midwest ISO opposes the suggestion that a blanket exemption for those agreements be inserted into Attachment C to resolve an alleged conflict, or one that might arise as a result of future Commission orders or revised standards formulated by NERC or NAESB.

20. Midwest ISO states no objection to MSATs’ proposal to include “ITC” in the definition of Flowgate Rating and will add “ITC” on compliance if the Commission so directs. It argues, however, that the language proposed by MSATs to be added to the Flowgate Rating definition is overbroad. According to Midwest ISO, the process of determining facility ratings has always been collaborative based upon a transmission owner’s extensive familiarity with its own facilities, and the ability of Midwest ISO to study the impact of such ratings in the larger context of a regional transmission system. Midwest ISO states that it has not invoked the dispute resolution in this area since its inception, and believes that additional assertions of authority in this definition can only lead to confusion with existing requirements for determining facility ratings.

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Transmission Owners Agreement provides similar rights to ITCs generally, and the Appendix I agreement executed by *ITCTransmission* provides similar rights to *ITCTransmission* specifically. MSATs November 1 Protest at 4.

<sup>17</sup> MSATs November 1 Protest at 5.

21. Finally, Midwest ISO states no objection to adding the requested reference to “ITC” with regard to providing values for CBM on compliance if the Commission so directs.

**d. Commission Determination**

22. We have reviewed Midwest ISO’s filing and find that Midwest ISO’s revised Attachment C does not provide the link to the Midwest ISO’s web site with the actual mathematical algorithms. Therefore, Midwest ISO’s filing fails to comply with Order No. 890. We direct Midwest ISO to file, within 30 days of the date of this order, a further compliance filing that revises its Attachment C to include the link to Midwest ISO’s web site with the actual mathematical algorithms, as required in Order No. 890.

23. In response to MGE/WPPI, we conclude that it would be premature to request that Midwest ISO address in this Attachment C filing how the ATC methodology will be modified once Midwest ISO becomes the Balancing Authority. However, we note that any change to the ATC calculation methodology and process that affects ATC values, will require that Attachment C be revised and filed with the Commission.

24. We agree with MSATs on their request to reflect the role of ITCs, in addition to Transmission Owners, in the determination of the flowgate ratings and CBM values, and direct Midwest ISO to incorporate these revisions in its tariff in its compliance filing due within 30 days of the date of this order. However, we find unnecessary the additional language proposed by MSATs, which they feel will provide consistency with ATC/AFC calculation provisions already set forth in Appendix B of the Transmission Owners Agreement or in company-specific agreements. MSATs identify no additional conflicts between those agreements and proposed Attachment C, nor do we find any.

**2. Capacity Reassignment**

25. In Order No. 890, the Commission determined that the cap on the reassignment of point-to-point service was no longer just and reasonable. The Commission eliminated that cap, concluding that its removal would eliminate an unnecessary impediment to the resale of capacity, which in turn would increase utilization of the grid and otherwise ensure that point-to-point service is just, reasonable, and not unduly discriminatory.<sup>18</sup> These changes are reflected in the *pro forma* OATT in revised sections 23.1, 23.2, 23.3 and Attachment A-1, which contains a form of service agreement for the resale, reassignment, or transfer of long-term firm point-to-point transmission service.<sup>19</sup>

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<sup>18</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 85.

<sup>19</sup> *See id.* P 808, 815-16.

**a. Filing**

26. Midwest ISO proposes tariff revisions to modify sections 23.1 and 23.3 of its TEMT in accordance with the revisions adopted in the *pro forma* OATT and also includes in its TEMT a new form of service agreement modeled on *pro forma* Attachment A-1, which is titled Attachment A-2 (Form of Service Agreement for the Resale, Reassignment or Transfer of Firm Point-To-Point Transmission Service).<sup>20</sup> In addition, Midwest ISO proposes to delete “Long-Term” from the Attachment A-2 Service Agreement in order to allow for the capacity reassignment of both Long-Term Firm Point-To-Point and Short-Term Firm Point-To-Point Transmission Service. Furthermore, Midwest ISO proposes modifications to sections 7.0 and 10.0 of the specifications with the addition of charges for Wholesale Distribution Service and Power Factor Requirements. Midwest ISO states that these modifications mirror the specification sheets currently being utilized by the Midwest ISO.

27. Midwest ISO states that the proposed Attachment A-2 is an umbrella service agreement, and is subject to the same business practices and guidelines as other *pro forma* service agreements. Midwest ISO states that the proposed Attachment A-2 and the specifications comply with capacity reassignment requirements of Order No. 890, and are superior to the provisions proposed in the *pro forma* OATT.

**b. Commission Determination**

28. We will accept the revisions to sections 23.1 and 23.3, as well as the proposed variations to Attachment A-2, as consistent with or superior to the revised provisions of the *pro forma* OATT. The addition of provisions for Wholesale Distribution Service and Power Factor Requirements reflect provisions in the transaction specification sheets for Midwest ISO’s existing *pro forma* service agreements.<sup>21</sup> However, we find that Midwest ISO has failed to revise section 23.2 in compliance with Order No. 890. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, revisions to section 23.2 to replace the term “Parties” with “Transmission Provider and the Reseller” in accordance with the changes to section 23.2 of the *pro forma* OATT adopted in Order No. 890.

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<sup>20</sup> Midwest ISO’s TEMT already contains an Attachment A-1 (Form of Service Agreement for Long-Term Firm Point-To-Point Transmission Service).

<sup>21</sup> In addition, we note that in Order No. 890-A the Commission indicated that inclusion of the words “Long-Term Firm” in both the title of the form of service agreement for capacity reassignment and the attached specifications sheet were inadvertent, and deleted these words. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 424.

### 3. Energy and Generation Imbalances

29. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based on a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.<sup>22</sup> However, in Order No. 890, the Commission stated that “we are not proposing to redesign ISO/RTO markets in this rulemaking.”<sup>23</sup> Order No. 890 recognized that markets based on Locational Marginal Prices (LMP), such as those operated by ISOs and RTOs, “can provide an efficient and nondiscriminatory means of settling imbalances.”<sup>24</sup>

#### a. Filing

30. Midwest ISO states that its currently effective LMP-based market mechanisms are consistent with or superior to those adopted by the Commission in Order No. 890 as a means of settling imbalances. Midwest ISO states that in its energy market both energy and generator imbalances are settled on an hourly basis using real-time LMPs.<sup>25</sup> Midwest ISO states that the determination of the energy and generator imbalances is an integrated approach where both components are variables of the equation to calculate the total imbalance charge. Midwest ISO states that deviations from dispatch instructions are subject to Uninstructed Deviation penalties, which are settled based on a tolerance band of actual injections that are within plus or minus 10 percent of the hourly average dispatch instructions for that hour. Midwest ISO states that transactions within the tolerance band are settled under the rules for the settlement of the real-time energy market, without incurring any Uninstructed Deviation penalties. Midwest ISO asserts that a market participant is assessed an Uninstructed Deviation penalty when actual injections are outside the tolerance band. However, intermittent generators are not

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<sup>22</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* P 670.

<sup>25</sup> Midwest ISO uses LMP-based market mechanisms to settle imbalances in lieu of the *pro forma* Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service). Therefore, Midwest ISO does not adopt the *pro forma* Schedule 9 and certain provisions of Schedule 4.

subject to Uninstructed Deviation penalties because of the intermittent nature of the resource, except in cases of negligence or when it is found to be the fault of the market participant or generation owner.<sup>26</sup> Midwest ISO states that it proposed to modify these provisions in its ASM proposal.<sup>27</sup> Further, Midwest ISO contends that any issues related to the ASM filing that affect the imbalance settling process should be addressed in the ASM filing.<sup>28</sup>

**b. Commission Determination**

31. We find that Midwest ISO's existing mechanisms for settling energy and generator imbalances are consistent with or superior to the revised provisions of the *pro forma* OATT. The Commission adopted the following principles for pricing imbalances in Order No. 890: (1) the charges must be based on incremental cost or some multiple thereof; (2) the charges must provide an incentive for accurate scheduling, such as by increasing the percentage of the adder above (and below) incremental cost as the deviations become larger; and (3) the provisions must account for the special circumstances presented by intermittent generators and their limited ability to precisely forecast or control generation levels, such as waiving the more punitive adders associated with higher deviations.<sup>29</sup> Midwest ISO's existing provisions for pricing imbalances and assessing Uninstructed Deviation penalties are consistent with these principles.

32. In accepting Midwest ISO's existing Uninstructed Deviation penalties, the Commission indicated that it was not convinced that LMP provides sufficient incentive to follow dispatch instructions at all times. The Commission explained that although market forces provide an incentive to follow dispatch instructions most of the time, it believed that the penalty system would aid in the Midwest ISO's ability to maintain system reliability in real-time by dissuading generators from excessively deviating from their dispatch instructions.<sup>30</sup> In its October 11 Compliance Filing, Midwest ISO indicates that over the past year, Uninstructed Deviation charges have averaged approximately

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<sup>26</sup> See Midwest ISO Filing at 8 (referring to TEMT sections 40.3.3, 40.3.4 and Schedule 4).

<sup>27</sup> *Id.*

<sup>28</sup> See *supra* note 13.

<sup>29</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663.

<sup>30</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 533, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005).

\$314,000 per month compared to an average of \$2.8 billion settled in its market per month - with an impact of 0.01 percent. We find that this demonstrates the effectiveness of Midwest ISO's Uninstructed Deviation penalty mechanism in providing incentives for accurate scheduling while minimizing the costs associated with correcting imbalances. Moreover, Midwest ISO's imbalance provisions account for the special circumstances presented by intermittent generators. Generation assets that have been designated as Intermittent Resources by Midwest ISO are not subject to any Uninstructed Deviation penalties for Uninstructed Deviations caused solely by the intermittent nature or characteristics of such resources, provided that there is no fault or negligence of those entities that own or operate them.

33. As Midwest ISO indicates, it has proposed to replace its existing Uninstructed Deviation penalties with a new penalty structure to take effect June 1, 2008,<sup>31</sup> when its ASM is scheduled to commence. The Commission conditionally accepted the new penalty structure in the ASM Order.<sup>32</sup> We agree with Midwest ISO that issues related to settling imbalances raised in that proceeding are appropriately addressed in that proceeding, not here.

### **3. Operational Penalties**

34. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.<sup>33</sup> The Commission also established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period were just and reasonable, provided that the penalty rates were consistent with certain principles articulated in Order No. 890.<sup>34</sup> The Commission specified that: (1) the unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use is to be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly).

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<sup>31</sup> Subsequently, Midwest ISO changed this to September 9, 2008.

<sup>32</sup> See ASM Order, 122 FERC ¶ 61,172 at P 244-69.

<sup>33</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

<sup>34</sup> *Id.* P 846, 848.

35. Furthermore, in Order No. 890, the Commission modified section 13.4 of the *pro forma* OATT to clarify the applicability of unreserved use charges to network service customers. Section 13.4 of the *pro forma* OATT provides that the customer using the unreserved service shall be deemed to have executed a service agreement to govern that service. This means that all unreserved uses of a transmission provider's system are to be considered uses of firm point-to-point transmission service, even if a customer is taking network service or non-firm point-to-point service for the reserved portion of its service.<sup>35</sup> The Commission also modified section 30.4 of the *pro forma* OATT to specify the unreserved use of a network resource beyond its designated capacity.<sup>36</sup> Finally, the Commission modified section 3 of the *pro forma* OATT to specify the obligation for payment for ancillary services provided by the transmission provider associated with unreserved service.

36. With regard to late study penalties, the Commission determined in Order No. 890 that all transmission providers, including RTOs and ISOs, would be subject to operational penalties when they fail to meet the 60-day due diligence deadlines prescribed in sections 19.3, 19.4, 32.3 and 32.4 of the *pro forma* OATT.<sup>37</sup> The Commission also revised the penalty regime for late study penalties, as set forth in new sections 19.9 and 32.5 of the *pro forma* OATT.<sup>38</sup>

**a. Filing**

37. Midwest ISO states that TEMT sections 13.7.c and 14.5 currently comply with Order No. 890's requirements for unreserved use penalties for Firm and Non-Firm Point-To-Point Transmission Service. It states that section 13.7.c of the TEMT provides that:

In the event that a Transmission Customer's schedules (including Third-Party Sales by a Transmission Owner) exceed its firm reserved capacity at any Point of Receipt or Point of Delivery, the Transmission Customer shall pay the following penalty: two hundred percent (200%) of the Firm Point-To-Point Transmission Service charge for the entire length of the reserved period but not exceeding one month for the amount in excess of such reserved capacity at the specific

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<sup>35</sup> *Id.* P 840. *See also* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 454.

<sup>36</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 839, 1692.

<sup>37</sup> *Id.* P 1340.

<sup>38</sup> *Id.* P 1319, 1340-54.

Point of Receipt or Point of Delivery where the reserved capacity was exceeded. These penalty revenues shall reduce the Transmission Provider's costs to be recovered under Schedule 10.<sup>[39]</sup>

38. Furthermore, Midwest ISO states that its TEMT section 37.2 currently complies with the requirements of Order No. 890 with respect to network integration transmission service. Section 37.2 states, in part:

Any Load Serving Entity serving load in the Real-Time Energy Market not taking Transmission Service in accordance with this Tariff shall be charged for Network Integration Transmission Service for the month in which the load actually withdrew Energy during the Operating Day served and will enter into a Service Agreement under this Tariff with the Transmission Provider for such Transmission Service.

39. Midwest ISO proposes to amend sections 3 and 13.4 of its TEMT to adopt the revisions made in sections 3 and 13.4 of the *pro forma* OATT. It states, however, that it believes that the revised language of section 30.4 of the *pro forma* OATT is unnecessary because section 30.6 of its TEMT already addresses transmission arrangements for network resources not physically interconnected with Midwest ISO's transmission system.

40. In sections 19.3 and 32.3 of the TEMT, Midwest ISO adopts the revisions to system impact studies provided in sections 19.3 and 32.3 of the *pro forma* OATT.<sup>40</sup> Regarding late study penalties, Midwest ISO states that it opposes any operational penalties on ISOs and RTOs and has requested rehearing of the Order No. 890

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<sup>39</sup> Section 14.5, applicable to non-firm transmission service, contains similar language. Specifically, section 14.5 states, "In the event that a Transmission Customer's schedules (including Third-Party Sales by a Transmission Owner) exceed its non-firm capacity reservation, the Transmission Customer shall pay the following penalty: two hundred percent (200%) of the Non-Firm Point-To-Point Transmission Service charge for the entire length of the reserved period but not to exceed one month for the amount in excess of such capacity reservation. These penalty revenues shall reduce the Transmission Provider's costs to be recovered under Schedule 10 . . . ."

<sup>40</sup> We note that the Midwest ISO has existing tariff language in sections 19.4 and 32.4 of the TEMT that is consistent with sections 19.4 and 32.4 of the *pro forma* OATT.

determination to that effect.<sup>41</sup> Subject to the Commission's final action on rehearing, Midwest ISO includes *pro forma* OATT sections 19.9 and 32.5 as sections 19.9 and 32.5 of the TEMT.

**b. Commission Determination**

41. The Commission finds that Midwest ISO's proposed unreserved use penalties do not conform to the requirements of Order No. 890. We direct Midwest ISO to modify its unreserved use penalty language to reflect the terms and conditions delineated in Order No. 890. Specifically, Midwest ISO's unreserved use penalty provision must indicate as follows: (1) unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use is to be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly).

42. In addition, the Commission finds that Midwest ISO's current tariff language charging a customer for unreserved use of transmission in certain instances at an unreserved use penalty rate based on the non-firm point-to-point rate is not consistent with or superior to the revised provisions of the *pro forma* OATT. Similarly, with regard to the treatment of network integration service, the Commission finds that section 37.2 of Midwest ISO's TEMT is contrary to section 13.4 of the *pro forma* OATT. As noted above, all unreserved uses of a transmission provider's system are to be considered uses of firm point-to-point transmission service, even if a customer is taking network service or non-firm point-to-point service for the reserved portion of its service. We, therefore, direct Midwest ISO to make conforming changes to sections 14.5 and 37.2 of the TEMT.

43. In addition, we direct Midwest ISO to revise section 30.4 of its TEMT with regard to the unreserved use of a network resource beyond its designated capacity in accordance with section 30.4 of the *pro forma* OATT. We are not persuaded by its assertion that the revisions to section 30.4 are unnecessary because they are already encompassed in section 30.6 of the TEMT. The intent of section 30.4 was to "clarify that network customers are subject to unreserved use penalties when they schedule delivery of off-system non-designated purchases using transmission capacity reserved for designated resources."<sup>42</sup>

44. Accordingly, we direct Midwest ISO to file, as discussed above, within 30 days of the date of this order, revised tariff sheets reflecting the requirements for unreserved use

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<sup>41</sup> See Midwest ISO March 19, 2007 Rehearing Request of Order No. 890.

<sup>42</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 839.

penalties as set forth in Order No. 890, or to otherwise make a compliance filing that removes the unreserved use penalty language from its TEMT. Although Midwest ISO reiterates its opposition to operational penalties being assessed to RTOs and ISOs and indicates that it filed a rehearing request of Order No. 890, we note that Midwest ISO's rehearing request of this issue was denied by the Commission.<sup>43</sup>

#### 4. **Distribution of Operation Penalties**

45. In Order No. 890, the Commission required transmission providers to make a compliance filing, proposing a mechanism to identify non-offending transmission customers and a method for distributing the unreserved use penalties revenue received to the identified transmission customers, as well as late study penalties to unaffiliated transmission customers.<sup>44</sup> Moreover, the transmission provider is required to make an annual filing with the Commission, which provides information regarding the penalty revenue the transmission provider has received and distributed. Transmission providers must provide: (1) a summary of penalty revenue credits by transmission customer; (2) total penalty revenues collected from affiliates; (3) total penalty revenues collected from non-affiliates; (4) a description of the costs incurred as a result of the offending behavior; and (5) a summary of the portion of the unreserved penalty revenue retained by the transmission provider.<sup>45</sup>

46. In Order No. 890-A, the Commission clarified that “each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider’s methodology for distributing revenues from late study penalties and, if applicable, unreserved use penalties.”<sup>46</sup> The Commission stated that the one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties. The Commission also explained that transmission providers should request an effective date for this distribution mechanism as of the date of the filing and may begin implementing the methodology immediately, subject to refund if altered on Commission review. Finally, the Commission clarified that it requires “all operational penalty revenues to be distributed, with no exception.”<sup>47</sup> In the case of unreserved use penalties,

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<sup>43</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 484.

<sup>44</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 859-61, 1351.

<sup>45</sup> *Id.* P 864.

<sup>46</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

<sup>47</sup> *Id.*

we require penalty revenues to be distributed to non-offending customers, and in the case of late study penalties, we require penalty revenues to be distributed to all non-affiliates of the transmission provider.<sup>48</sup>

47. In addition, under Order No. 890, a transmission provider is required to make annual filings providing a summary of penalty revenue credits by transmission customer, total penalty revenues collected from affiliates, total penalty revenues collected from non-affiliates, a description of the costs incurred as a result of the offending behavior, and a summary of the portion of the unreserved penalty revenue retained by the transmission provider.<sup>49</sup> The Commission explained in Order No. 890-A that the annual compliance report must be submitted on or before the deadline for submitting FERC Form-1, as established annually by the Commission's Office of Enforcement.<sup>50</sup>

**a. Filing**

48. Midwest ISO states that its TEMT sets forth the method for imposing certain operational penalties, which are distributed through Schedule 10<sup>51</sup> of the TEMT. Midwest ISO states that the reference to Schedule 10 for the distribution of operational penalties is found at several points throughout the TEMT, each stating that "penalty revenues in excess of actual costs shall be used to reduce Midwest ISO's costs in Schedule 10."<sup>52</sup> With regard to the distribution of unreserved use penalties, Midwest ISO notes that sections 13.7.c and 14.5 provide, in part, that "[t]hese penalty revenues shall reduce the Transmission Provider's costs to be recovered under Schedule 10." Midwest ISO also proposes to revise sections 13.6, 14.7 and 33.7<sup>53</sup> to add: "Any revenues in excess of actual costs shall be used to reduce the Transmission Provider's costs (for other than the penalized Transmission Customer) in Schedule 10. . . ."

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<sup>48</sup> *Id.* P 475.

<sup>49</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 864.

<sup>50</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

<sup>51</sup> Schedule 10 (ISO Cost Recovery Adder) of Midwest ISO's TEMT provides for recovery of Midwest ISO's costs associated with investment and expenses to run the ISO. The ISO Cost Recovery Adder is based on the budgeted expenses to be recovered that month divided by the MWh of transmission service expected to be provided under the TEMT during the same period subject to a true-up.

<sup>52</sup> *See* sections 13.7.c, 13.6, 14.5, 14.7 and 33.7 of the TEMT.

<sup>53</sup> Sections 13.6, 14.7 and 33.7 provide the penalty rate for failure to respond to curtailment instructions and the method of distributing those penalties, through Schedule 10, for Firm and Non-Firm Point-To-Point and Network Integration transmission service.

49. Midwest ISO states that Schedule 10 does not currently utilize a distribution method that separates offending and non-offending transmission customers. Midwest ISO explains that in its experience operational penalties are very rare, and that in the unusual event of such a case, it proposes to manually adjust the billing of offending customers to assure that an offending customer does not receive the benefits of the penalty flowback. Midwest ISO states that it proposes to revise the penalty revenue distribution sections of its TEMT to reflect this procedure. It further proposes to make the first required annual filing of the collection and distribution of penalty revenues with the Commission annually on the date of this filing (i.e., the first annual filing will be made October 11, 2008).

**b. Protests**

50. MGE/WPPI state that, with respect to the distribution of operational penalty revenues, Midwest ISO will continue to use operational penalty revenues to reduce its costs recovered via Schedule 10 of the TEMT and that Midwest ISO will adjust the billing for customers against whom penalties are assessed so that they do not benefit from the flowback.<sup>54</sup> MGE/WPPI argue, however, that Midwest ISO has not proposed tariff language that provides for such an adjustment.

**c. Midwest ISO Answer**

51. In addressing concerns about the distribution of operational penalties, Midwest ISO states that MGE/WPPI have failed to note the changes at sections 13.6, 14.7, and 33.7 of its TEMT inserting the parenthetical phrase that prohibits the distribution of penalty revenues to offending tariff customers. Midwest ISO states that Order No. 890 did not require a transmission provider to set forth the mathematical formula used to distribute the operational penalty revenues or calculate its costs. Furthermore, Midwest ISO states that it has agreed to annually file information about the distribution of operational penalties.

**d. Commission Determination**

52. As a general matter, we find that the distribution of unreserved use penalties and the assessment of penalties for failure to respond to curtailment instructions through the reduction of Schedule 10 charges for non-offending customers is a reasonable distribution mechanism. However, we find that while Midwest ISO briefly describes in its transmittal letter that it will manually adjust the billing of offending customers for unreserved use penalties, it does not specify how it will identify non-offending transmission customers and the method for distributing penalties revenue received to the

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<sup>54</sup> See Midwest ISO Transmittal at 13-14.

identified non-offending transmission customers. Therefore, Midwest ISO's filing does not provide sufficient detail to satisfy the requirements for a one-time compliance filing under FPA section 206 proposing its methodology for distributing revenues to non-offending customers, as discussed above. In addition, with regard to late study penalties, we find that Midwest ISO has not proposed a method to distribute these penalties.

53. Accordingly, we find that Midwest ISO has not fully complied with the requirements of Order No. 890, and therefore, its TEMT is not consistent with or superior to the revised provisions of the *pro forma* OATT. Thus, prior to the first distribution of its operational penalties, Midwest ISO must submit a one-time compliance filing under FPA section 206 setting forth its methodology for distributing revenues from late study penalties and providing the additional information required above for unreserved use penalties. With regard to MGE/WPPI's concerns, we note that Order Nos. 890 and 890-A do not require that Midwest ISO's penalty revenue distribution methodology be stated in its TEMT.<sup>55</sup>

## 5. Other Ancillary Services

54. In Order No. 890, the Commission modified Schedules 2-6 and 9 of the *pro forma* OATT to indicate that Reactive Supply and Voltage Control, Regulation and Frequency Response, Energy Imbalance, Spinning Reserves, Supplemental Reserves and Generator Imbalance Services, respectively, may be provided by generating units as well as other non-generating resources such as demand resources, where appropriate. The Commission noted that some ISOs and RTOs already allow demand response resources to participate in certain ancillary services markets, while participation of such resources in other ancillary services markets is being studied.<sup>56</sup>

### a. Filing

55. Midwest ISO states that it has fully integrated demand response resources in its ASM proposal and has specifically established criteria for the participation of such resources in providing Regulation and Frequency Response Service (Schedule 3), Spinning Reserves Service (Schedule 5), and Supplemental Reserves Service (Schedule

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<sup>55</sup> *Cf. Florida Power & Light Co.*, 122 FERC ¶ 61,079, at P 25 (2007) (noting that Order Nos. 890 and 890-A do not require that the methodology pertaining to the annual informational filings be included in a transmission provider's OATT).

<sup>56</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 888.

6).<sup>57</sup> Midwest ISO states that demand response resources may also procure imbalance service through participation in its day-ahead and real-time energy markets consistent with TEMT Schedule 4.<sup>58</sup> Midwest ISO states that Reactive Supply and Voltage Control Service (Schedule 2) is not included in the ASM design and does not currently provide that Reactive Supply and Voltage Control Service may be made available from non-generating sources. As a result, Midwest ISO proposes revisions to TEMT Schedule 2 to conform to the requirements of Order No. 890.<sup>59</sup> It contends that its treatment of demand response resources with respect to ancillary services, as set forth in its TEMT, its ASM proposal, and the revisions to TEMT Schedule 2 proposed herein, is consistent with or superior to the requirements of the *pro forma* OATT.

**b. Protest**

56. Beacon Power states that Order No. 890 modified Schedule 3 of the *pro forma* OATT to allow for the use of non-generating resources and/or generating resources to provide Regulation and Frequency Response Service. Beacon Power argues, however, that when Midwest ISO filed its Order No. 890 compliance filing, which includes a resubmission of its ASM proposal, it failed to provide for the participation of some non-generating resources in Regulation and Frequency Response Service.<sup>60</sup> Beacon Power states that it, as a means to participate in the electric regulation market, has developed an innovative flywheel technology (i.e., a non-generation energy storage resource) designed to store excess power from and/or deliver stored power to the grid within four seconds of receiving a control signal for up to a 15-minute duration in any one direction.<sup>61</sup> Beacon Power states that Midwest ISO has proposed in the ASM proceeding a regulating reserve

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<sup>57</sup> Midwest ISO states that the demand response resources proposed in ASM proposal include: behind-the-meter generation, controllable load, and load reduction programs sponsored by load-serving entities.

<sup>58</sup> We note that Midwest ISO inaccurately characterizes demand response resources as being able to procure imbalance service. We clarify that demand response resources may supply imbalance service through participation in day-ahead and real-time energy markets consistent with TEMT Schedule 4.

<sup>59</sup> Midwest ISO notes that the revisions made to Schedule 2 in the instant filing are notwithstanding the proposed revisions to Midwest ISO's treatment of reactive supply and voltage control currently before the Commission in Docket No. ER08-15-000.

<sup>60</sup> Beacon also filed a protest in the ASM proceeding on December 4, 2007. *See* ASM Order, 122 FERC ¶ 61,172.

<sup>61</sup> Beacon Power Protest at 5.

sustainability requirement of sixty minutes (i.e., a 60-minute up-regulation duration requirement) to accommodate design and operational restrictions. Beacon Power argues that, as designed, a 60-minute up-regulation duration requirement prevents a regulation-only service provider, like Beacon Power, to compete with those suppliers capable of adhering to the 60-minute up-regulation requirement.<sup>62</sup>

**c. Midwest ISO Answer**

57. Midwest ISO states that Beacon Power's comments are misplaced and should be rejected. It states that Beacon Power failed to identify any specific Order No. 890 or *pro forma* tariff requirement with which Midwest ISO has failed to comply. Instead, Midwest ISO argues, Beacon Power's criticism is directed at Midwest ISO's ASM proposal, and that is the proceeding in which Beacon Power's concerns should be raised.

**d. Commission Determination**

58. We find that Midwest ISO's revisions to Schedule 2 of the TEMT are consistent with or superior to the requirements of Order No. 890 and Schedule 2 for reactive supply and voltage control in the *pro forma* OATT. We will, however, direct Midwest ISO to file, within 30 days of the date of this order, revisions to section 3.2 of its TEMT to reflect that Reactive Supply and Voltage Control can come from "Other Sources," as required in section 3.2 of the *pro forma* OATT. Furthermore, we find that Schedules 3, 5, and 6 do not reflect the reforms of the *pro forma* OATT Schedules 3, 5, and 6 to allow these ancillary services to be provided by other non-generation resources capable of providing the service. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, revisions to Schedule 3, 5, and 6 of the TEMT to conform to Schedules 3, 5, and 6 of the *pro forma* OATT prior to their being replaced by Midwest ISO's ASM.

59. Issues concerning participation of demand response resources and new technologies in Midwest ISO's ASM proposal are more appropriately raised in that proceeding, where they are being addressed.<sup>63</sup> There, the ASM Order directed Midwest ISO to "evaluate, through stakeholder discussions, adjustments to operating requirements and ASM procedures that will remove barriers to comparable treatment of [demand response resources] and new technologies in the regulating reserve markets and to provide a report on its efforts to incorporate these resources into its markets[.]"<sup>64</sup>

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<sup>62</sup> *Id.* at 7.

<sup>63</sup> *See* ASM Order, 122 FERC ¶ 61,172 at P 326-65.

<sup>64</sup> *Id.* P 365.

60. In addition, by order dated March 31, 2008, the Commission accepted a new Schedule 2-A to Midwest ISO's TEMT, which allows transmission owners in each zone to choose to compensate qualified generators only for reactive supply and voltage control produced outside of a deadband of .95 leading to .95 lagging or the deadband as otherwise specified in a generator's interconnection agreement.<sup>65</sup> Schedule 2-A, as proposed and accepted in that proceeding, does not reflect the reforms to Schedule 2 of the *pro forma* OATT adopted in Order No. 890. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, revisions to Schedule 2-A of the TEMT to conform to Schedule 2 of the *pro forma* OATT.

## 6. Planning Redispatch and Conditional Firm

61. In Order No. 890, the Commission found that it would be inappropriate to require RTOs and ISOs with real-time energy markets to adopt the provisions for conditional firm point-to-point service because customers transacting through RTOs and ISOs are able to buy through transmission congestion in the RTOs' real-time energy markets and need no prior reservation to access transmission.<sup>66</sup> Thus, the Commission found no need to reform existing RTO and ISO procedures to satisfy concerns underlying the adoption of the conditional firm option. However, the Commission directed RTOs and ISOs that already provide planning redispatch pursuant to section 13.5 of the *pro forma* OATT to modify the relevant provisions of their tariffs consistent with the directives of Order No. 890.<sup>67</sup> The Commission did not require RTOs and ISOs to amend their tariffs if the Commission had previously found that their tariffs were just and reasonable without the inclusion of *pro forma* OATT section 13.5 planning redispatch provisions.<sup>68</sup>

### a. Filing

62. Midwest ISO states that it is an RTO with real-time energy markets and, therefore, it is not adopting the conditional firm component to long-term point-to-point service as contemplated in Order No. 890. Midwest ISO also states that it currently provides planning redispatch pursuant to section 13.5 of the TEMT and, therefore, it incorporates the redispatch revisions adopted in sections 13.5, 15.4 and 19.1 of the *pro forma* OATT

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<sup>65</sup> See *Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305 (2008).

<sup>66</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 992.

<sup>67</sup> *Id.* P 993.

<sup>68</sup> *Id.*

into the corresponding sections of the TEMT. Midwest ISO proposes additional language to clarify and tie the revised section 13.5 to the market operations section of its TEMT, as follows:

Compensation to the Transmission Provider shall be made in accord with the market operation of Module C of this Tariff. Point-To-Point Transmission Service that is requested and that requires this redispatch shall be ineligible for any FTR or ARR allocation until the transmission facility additions have been made and funded by the Eligible Customer, such that redispatch is no longer required.

**b. Commission Determination**

63. We will accept Midwest ISO's revisions to sections 13.5, 15.4, and 19.1 of the TEMT as they are consistent with or superior to the revised provisions of the *pro forma* OATT. We will also accept the proposed language in section 13.5 that ties these provisions to the market operations section of the TEMT. We find that the revisions to section 27, Compensation for New Facilities and Redispatch Costs, conform to the changes in section 27 of the *pro forma* OATT. We do note, however, one non-substantive change to section 19.1; the phrase "or conditional curtailment" should be omitted since conditional firm service is not being adopted by Midwest ISO. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, revisions to section 19.1 to omit the phrase "or conditional curtailment."

**7. Clustering**

64. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.<sup>69</sup>

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<sup>69</sup> *Id.* P 1370-71.

**a. Filing**

65. Midwest ISO proposes to amend Attachment J of the TEMT to provide as follows:

The Transmission Provider will consider studying transmission service requests in a cluster if: (i) the customers involved request the cluster and the Transmission Provider can reasonably accommodate such a request; or (ii) otherwise appropriate to optimize the Transmission Provider's processing of the transmission service requests.

Midwest ISO states that, in general, it will consider studying transmission requests in a cluster where: (1) multiple requests are queued within a relatively short time frame, from the same customer, along the same or very similar paths – in which case, Midwest ISO will apply all other TEMT and Business Practices Manual rules in the determination of available transmission capacity, and will grant service based on optimizing the requests against the available capacity, in conjunction with discussions with the customer to determine whether clustering is appropriate; or (2) there are multiple requests from different customers along the same or very similar paths and previous studies have indicated that no service can be granted without upgrading the transmission system – in which case, Midwest ISO will focus on determining what upgrades are required to meet the desired service for all parties, and costs are split *pro rata*.<sup>70</sup>

**b. Protests**

66. MGE/WPPI state that, regarding clustering system impact studies, it is not clear whether the Midwest ISO is proposing that study costs be split *pro rata* or whether facilities costs would be split *pro rata* and, if so, which facility costs would be so split (i.e., there is no distinction between Direct Assignment facilities and Network Upgrades).

**c. Midwest ISO Answer**

67. Midwest ISO states that the reference to *pro rata* split of costs regarding clustering refers to study costs. Midwest ISO maintains that the allocation of costs associated with facility expansions is the subject of detailed provisions of the Midwest ISO TEMT and associated Commission orders. Midwest ISO states that it is not proposing to change these established requirements.

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<sup>70</sup> See Midwest ISO Transmittal at 18.

**d. Commission Determination**

68. We find that Midwest ISO's proposed clustering provisions, with the modification ordered below, are consistent with or superior to the revised provisions of the *pro forma* OATT. While Midwest ISO in its answer has clarified how the cost of the clustered studies are to be allocated, it has not included such provisions in its proposed tariff revisions. We will direct Midwest ISO to file, within 30 days of the date of this order, proposed tariff revisions that address these deficiencies.

**8. Simultaneous Submission Window**

69. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a "no earlier than" time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously. Although the Commission left it to the transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also required each transmission provider that is required, or elects, to deem all requests submitted within a specified period as having been submitted simultaneously to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.<sup>71</sup>

**a. Filing**

70. Midwest ISO proposes to amend the rules for requesting and scheduling firm transmission service in Attachment J of the TEMT to provide as follows:

All comparable requests received during the first five (5) minutes following the above-specified times shall be deemed to have been received simultaneously.

71. Midwest ISO also states that it is not modifying its transmission request and scheduling deadlines of Attachment J because these deadlines reflect coordination with PJM Interconnection LLC (PJM) under the Joint and Common Market Initiative. Midwest ISO contends that the Commission has found these timeframes to be "consistent with or superior to" the *pro forma* OATT.<sup>72</sup>

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<sup>71</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1418-22.

<sup>72</sup> Midwest ISO Transmittal at 19 & n.95 (*citing Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,033, at P 13 (2007)); *see also Midwest Indep.*

**b. Commission Determination**

72. We find that Midwest ISO's filing is incomplete and, therefore, not consistent with or superior to the revised provisions of the *pro forma* OATT. In sections 1.39, 13.2 and 14.2 of the TEMT, Midwest ISO adopts the revisions to the *pro forma* OATT, which grants priority to pre-confirmed requests and the tie breaker requirement for price, time and date.<sup>73</sup> Although we note that Attachment J includes "no earlier than" time limits for firm transmission service requests, we find that Midwest ISO has failed to specify how it will allocate transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, a further compliance filing specifying how it will allocate transmission capacity if sufficient capacity is not available to meet all requests submitted within the simultaneous submission window.

**9. Designation of Network Resources**

73. In Order No. 890, the Commission adopted a number of revisions with regard to the designation of network resources.<sup>74</sup> The Commission continued to require network customers and the transmission provider's merchant function to undesignate network resources or portions thereof in order to make certain firm, third-party sales from those resources. The Commission directed transmission providers to develop OASIS functionality and, working through NAESB, business practice standards describing the procedural requirements for submitting both temporary and indefinite terminations of network resources, to allow network customers to provide all required information for such terminations. Further, the Commission specifically directed transmission providers, working through NAESB, to develop business standards describing the procedures for submitting and processing requests for concomitant evaluations of transmission requests and temporary terminations.<sup>75</sup> These requirements of Order No. 890 are set forth in revised sections 29.2,<sup>76</sup> 30.2<sup>77</sup> and 30.3<sup>78</sup> of the *pro forma* OATT.

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*Transmission Sys. Operator, Inc.*, Docket No. ER06-1554-000 (October 24, 2006) (unpublished letter order).

<sup>73</sup> Midwest ISO Transmittal at 18-19.

<sup>74</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1432-1591.

<sup>75</sup> *Id.* P 1539-43.

<sup>76</sup> *Id.* P 1452-61, 1474-84.

<sup>77</sup> *Id.* P 1475-77.

**a. Filing**

74. Midwest ISO incorporates these *pro forma* OATT revisions verbatim into sections 29.2, 30.2 and 30.3 of its TEMT.

**b. Protest**

75. Reliant states that one important objective of Order No. 890 was to clarify that generation designated as a network resource not be double-counted (i.e., relied upon as a network resource by the owner of the facility while also used to support a firm sale to a third party). Reliant contends that it is unclear from Midwest ISO's compliance filing what procedures Midwest ISO will employ to ensure that there is no double counting of internal resources. Reliant states that Midwest ISO does not operate separate capacity markets or other mechanisms that provide for the orderly tracking of capacity entitlements used to support resource adequacy obligations as do other regional transmission organizations. Reliant argues that, absent these mechanisms, it does not appear that Midwest ISO can determine that network resources are not being double-counted, particularly when a customer relies on a purchase identifying a Midwest ISO hub as the source and does not link that purchase to a specific internal generator. Reliant states that the Commission should require Midwest ISO to have procedures in place that ensure no double-counting of internal resources.

**c. Midwest ISO Answer**

76. Midwest ISO states that it has complied fully with the requirements of Order No. 890, which did not impose any additional requirement to develop specific mechanisms by which transmission providers should police the internal resources designated by market participants under the TEMT. Midwest ISO states that its TEMT requires written applications for service, and imposes clear obligations on the tariff customers with regard to designation of network resources. Further, it contends that Reliant's comments are premature, and the issues raised by Reliant may be addressed, at least in part, in the NAESB standards yet to be developed.

**d. Commission Determination**

77. We find that Midwest ISO's verbatim incorporation of revisions to the *pro forma* OATT into sections 29.2, 30.2 and 30.3 of its TEMT is consistent with or superior to the requirements of Order No. 890. In addressing an argument nearly identical to Reliant's concern about double-counting, the Commission stated in Order No. 890-A, "[t]he proper mechanism for addressing system reliability is through the reliability standards, and not

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<sup>78</sup> *Id.* P 1539-43, 1549, 1557.

through restrictions on eligibility for network resource status. The requirements for eligibility for network resource status are intended to provide the proper incentives to network customers designating network resources, and not to replace or replicate reliability requirements.”<sup>79</sup>

78. We agree with Midwest ISO that Order No. 890 did not promulgate any additional requirements by which transmission providers should oversee the internal resources designated by market participants. Furthermore, we find that it is not the responsibility of the transmission provider to verify the information that the customer provides, other than verifying the firmness of third-party transmission reservations. Section 29.2 makes clear the delineation of responsibilities between a customer and a transmission provider. Order No. 890-A states that it is the network customers’ responsibility to “ensure that the resource has not been committed for sale to non-designated third party load or is otherwise unable to be called upon to meet the network customer’s network load on a non-interruptible basis.”<sup>80</sup>

## 10. Creditworthiness

79. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider’s credit requirements.<sup>81</sup>

### a. Filing

80. Midwest ISO states that Attachment L of the TEMT contains a stake-holder developed credit policy that has been reviewed and approved by the Commission in multiple Commission orders. Midwest ISO contends that the existing credit policy is “consistent with or superior to” the creditworthiness requirements of Order No. 890. Midwest ISO states that no further revisions to Attachment L have been made in this filing.

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<sup>79</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 835.

<sup>80</sup> *Id.* P 921.

<sup>81</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

**b. Commission Determination**

81. We find that Midwest ISO's existing creditworthiness provisions of Attachment L are consistent with or superior to the *pro forma* OATT. We note that the Commission has previously, in numerous Commission orders, accepted modifications and amendments to Midwest ISO's credit policy.<sup>82</sup>

**11. Definition of Non-Firm Sales**

82. In Order No. 890, the Commission changed section 30.4's description of permissible sales from a network resource from an undefined term, "non-firm sales," to the newly defined term, "Non-Firm Sales." Section 1.29 now defines Non-Firm Sales as "[a]n energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller."<sup>83</sup>

**a. Filing**

83. Midwest ISO states that it has incorporated into the TEMT a number of miscellaneous changes, primarily of a definitional or editorial nature, that the Commission made to the *pro forma* OATT, including the new definition of Non-Firm Sales, in section 1.29 of the *pro forma* OATT.

**b. Protests**

84. MGE/WPPI, IMPA, and LES state that Midwest ISO incorporates the new definition of Non-Firm Sales without modification. MGE/WPPI, IMPA, and LES contend that the new definition will have adverse, unintended consequences on Midwest ISO's market and on ongoing efforts to improve the inter-RTO seams. MGE/WPPI, IMPA, and LES note that, in revising the description of permissible sales from a network resource in section 30.4 of the *pro forma* tariff, the Commission in Order No. 890 explained that it:

[G]enerally adopts the NOPR proposal to continue to require network customers and the transmission provider's merchant function to undesignate network resources or portions thereof in order to make *certain firm, third-party sales* from those resources. In particular, network customers and the transmission

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<sup>82</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 at P 429.

<sup>83</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, section 1.29; see also *id.* P 1688.

provider's merchant function may only enter into a third-party power sale from a designated network resource if the third-party power purchase agreement allows the seller to interrupt power sales to the third party in order to serve the designated network load. Such interruption must be permitted *without penalty*, to avoid imposing financial incentives that compete with the network resource's obligation to serve its network load.<sup>84</sup>

However, MGE/WPPI, IMPA, and LES argue, the definition of Non-Firm Sales in new *pro forma* OATT section 1.29 replaces "penalty" with "liability," but the definition does not clearly address whether "liability" means financial or other consequences less burdensome than a "penalty" in the event the seller exercises its right, for any or no reason, to interrupt the sale.

85. MGE/WPPI, IMPA, and LES assert that, assuming that "the obligations associated with a sale into a day-ahead RTO market constitute a "liability" disqualifying the sale from being considered a Non-Firm Sale that can be made from a network resource without undesignation, application of Order [No.] 890's Non-Firm Sales definition to limit sales from Midwest ISO's designated network resources could be destructive of RTO markets."<sup>85</sup> MGE/WPPI, IMPA, and LES state that requirements to constantly undesignate and redesignate Midwest ISO-designated network resources in order to sell them into Midwest ISO's day-ahead market pursuant to Midwest ISO's "must offer" requirement would be senseless and administratively costly. MGE/WPPI, IMPA, and LES argue that, even assuming that Midwest ISO's adoption of the Non-Firm Sale definition and parallel changes to TEMT section 30.4 were not interpreted to restrict operation of Midwest ISO's designated network resources for sales into Midwest ISO's day-ahead market, these provisions would limit sales into neighboring RTOs. MGE/WPPI, IMPA, and LES maintain that without clarification to exclude such an interpretation, the definition of Non-Firm Sales could create new barriers to precisely the type of cross-border sales the Commission is trying to encourage.

86. MGE/WPPI, IMPA, and LES state that the Commission and Midwest ISO should clarify that the "without liability" language covers transactions that permit interruption for any or no reason, but may entail some financial consequences for interruption (e.g., payment of real-time LMPs, Revenue Sufficiency Guarantee charges or similar payments), although no added "penalty" for interruption. MGE/WPPI, IMPA, and LES contend that this clarification would be consistent with the language used to describe the

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<sup>84</sup> MGE/WPPI, IMPA, and LES Supplemental Comments at 2, *quoting* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1539 (emphasis added).

<sup>85</sup> MGE/WPPI, IMPA, and LES Supplemental Comments at 5.

undesignation requirement in Order No. 890 and would allow sales from Midwest ISO designated network resources into the Midwest ISO and PJM markets, thus avoiding unnecessary paperwork, confusion and risk that would otherwise be entailed if such sales fell outside the definition and triggered undesignation requirements. Furthermore, MGE/WPPI, IMPA, and LES state that such clarification, if applied to non-RTO tariffs, would also avoid discouraging sales into organized markets (such as Midwest ISO) that would enhance their reliability, robustness and liquidity.

**c. Midwest ISO Answer**

87. Midwest ISO states that the issues raised by MGE/WPPI, IMPA, and LES have been raised in requests for rehearing of Order No. 890.<sup>86</sup> Midwest ISO states that the specific concern about the designation and undesignation process for designated network resources is the subject of that proceeding and thus should be addressed by the Commission itself, rather than by Midwest ISO, in that proceeding on a generic basis. Midwest ISO declines the invitation to clarify the meaning of the Commission's use of "without liability" in its new definition of Non-Firm Sales. However, Midwest ISO states that, if directed by the Commission, it is not opposed to adding language to section 30.4 of the TEMT to parallel PJM's tariff, clarifying that designated network resources are allowed to make net energy sales into the Midwest ISO energy markets.<sup>87</sup>

**d. Commission Determination**

88. In Order No. 890-A, the Commission addressed concerns raised by TAPS and others regarding the potential effect of the definition of Non-Firm Sales on RTO/ISO markets. The Commission found that it was unnecessary to amend the *pro forma* OATT to accommodate the particular market operations of each RTO and ISO. It noted that RTOs and ISOs have adopted many variations from the *pro forma* OATT to facilitate development of their markets, with some entirely eliminating the designation and undesignation requirements for network resources. Therefore, it stated, tailoring the rules governing the designation of network resources to each RTO/ISO market could be appropriate. It noted that Midwest ISO has adopted the *pro forma* definition of Non-Firm Sales in its compliance filing in response to Order No. 890 and that certain members of TAPS have argued in response that adoption of that definition is inconsistent with the operation of the Midwest ISO market. The Commission stated that it will address those

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<sup>86</sup> Transmission Access Policy Study Group (TAPS) November 5, 2007 Post-Technical Conference Comments, Motion for Clarification or Reconsideration, and Response to E.ON's Motion, Docket Nos. RM05-25 and RM05-17.

<sup>87</sup> PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Vol. No. 1, First Revised Sheet No. 85

arguments on review of the Midwest ISO compliance filing. It also noted that in the interim, under Order No. 890, Midwest ISO retains significant discretion in how to implement the undesignation requirements for network resources. Therefore, the Commission declined to impose any particular requirements there regarding the designation and undesignation of network resources selling in an RTO/ISO market, as it is more appropriate to leave development of those requirements to each transmission provider, in coordination with its stakeholders as relevant.<sup>88</sup>

89. We agree with MGE/WPPI, IMPA, and LES that it is appropriate to revise section 30.4 of the TEMT in light of the obligation of Midwest ISO network resources to submit offers in the day-ahead market and Reliability Assessment Commitment process. Undesignation of network resources within Midwest ISO is not necessary to account for effects on ATC because the day-ahead and real-time markets are centrally dispatched without regard to physical transmission rights. Accordingly, we direct Midwest ISO to file, within 30 days of the date of this order, a further compliance filing reflecting revisions to section 30.4 of the TEMT to parallel section 30.4 of the PJM tariff to allow for net energy sales into the Midwest ISO energy markets from designated network resources.

90. However, we are not persuaded that any further revisions to Midwest ISO's tariff are required to address these commenters' broader concerns about sales into the RTO markets from neighboring systems. There is no obligation for resources located in control areas external to Midwest ISO to offer their energy into Midwest ISO's markets. Undesignating a network resource is not unduly burdensome, consisting only of electronically submitting several items of information that are intended to assist the host transmission provider in calculating ATC. While these commenters focus on the potential benefit of allowing increased offers into the Midwest ISO market, they do not address the policy goals supporting the undesignation requirement imposed in the *pro forma* OATT, namely the promotion of reliability, the prevention of undue discrimination, promotion of comparable treatment of customers, and increasing the accuracy of ATC calculations.<sup>89</sup>

### **C. Docket No. OA08-14-001: Rollover Reform**

91. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice

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<sup>88</sup> The Commission recognizes that TAPS' has raised this issue on rehearing of Order No. 890-A. *See* TAPS January 28, 2008 Rehearing Request of Order No. 890-A at 16-34. MGE/WPPI, IMPA, and LES are members of TAPS.

<sup>89</sup> *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1576.

period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.<sup>90</sup>

**a. Filing**

92. In its December 7 Amendment, Midwest ISO states that it adopts *pro forma* OATT section 2.2 revisions *in toto* and requests that the proposed revisions be made effective as of the date that its Attachment FF is accepted and made effective.

**b. Protest**

93. AMP-Ohio states that the proposed language of revised section 2.2 is confusing with regard to when transmission customers with existing transmission agreements would become subject to the one-year notice requirement. AMP-Ohio contends that Midwest ISO's intention is to impose the one-year notice requirement only after the existing transmission agreement has rolled over and become subject to a new five-year term. AMP-Ohio states that it could be argued that the revised section 2.2 would require a transmission customer with an existing contract expiring on, for example, June 1, 2008, to give notice by June 1, 2007. AMP-Ohio argues that, in this scenario, the transmission customer would lose its right of first refusal before it had an opportunity to exercise the right. AMP-Ohio requests that the Commission clarify that the 60-day notice requirement remains applicable until the contract has rolled over and become subject to the new five-year contract term and the one-year notice requirement.

**c. Commission Determination**

94. Midwest ISO has included the rollover reforms adopted in Order No. 890 in section 2.2 of its revised tariff sheets, with a requested effective date as of the date that Midwest ISO's proposed Attachment K (renamed Attachment FF) is accepted and made effective. The Commission clarified in Order No. 890-A that it is only after a transmission provider's Attachment K planning process is accepted by the Commission that the transmission provider should file the rollover reform language, and the effective date of that language should be commensurate with the date of that filing. Therefore, we direct Midwest ISO to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. Midwest ISO should re-file the rollover

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<sup>90</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

reform language established in Order No. 890 within 30 days of the Commission's acceptance of its Attachment K, requesting an effective date commensurate with the date of that filing.

95. In response to AMP-Ohio's protest, we clarify that the 60-day notice requirement remains applicable until the existing contract has rolled over and at that time would become subject to the new five-year contract term and the one-year notice requirement.<sup>91</sup>

### **Docket Nos. OA07-57-000 and OA08-4-000**

#### **I. CBM Set-Aside Compliance Filings**

96. On July 13, 2007, in Docket No. OA07-57-000, the Midwest ISO filed a compliance report that addresses Order No. 890 requirements regarding CBM set-aside and certain OASIS posting and auditing informational requirements under sections 37.6 and 37.7 of the Commission's regulations. On October 11, 2007, in Docket No. OA08-4-000, the Midwest ISO TOs and MSATs filed a compliance report addressing Order No. 890 requirements for point-to-point rates relating to set-asides for CBM.

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

97. Notice of Midwest ISO's CBM Set-Aside and OASIS Compliance Report in Docket No. OA07-57-000 was published in the *Federal Register*, 72 Fed. Reg. 41,727 (2007), with interventions and protests due on or before August 3, 2007. The Integrys Energy Group, Inc.<sup>92</sup> filed a timely motion to intervene.

98. Notice of Midwest ISO TOs and MSATs' CBM Set-Aside Compliance Report in Docket No. OA08-4-000 was published in the *Federal Register*, 72 Fed. Reg. 59,282 (2007), with interventions and protests due on or before November 1, 2007. Consumers Energy Company, Madison Gas & Electric Company, Wisconsin Public Power Inc. and Wisconsin Electric Power Company filed timely motions to intervene.

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<sup>91</sup> See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 693.

<sup>92</sup> The Integrys Energy Group includes subsidiaries Wisconsin Public Service Corp., Upper Peninsula Power Company and Integrys Energy Services, Inc. (collectively, the Integrys Energy Group).

### **III. Discussion**

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

99. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which they intervened.

#### **B. Substantive Matters**

100. Order No. 890 required transmission providers to submit redesigned transmission charges that reflect the CBM set-aside through a limited issue FPA section 205 rate filing.<sup>93</sup>

##### **a. Filings**

101. In Docket No. OA07-57-000,<sup>94</sup> Midwest ISO states that, while it is the transmission provider for its footprint, compliance with Order No. 890's requirements to adjust rates to reflect CBM set-aside is more appropriately a matter to be addressed by Midwest ISO TOs because Midwest ISO TOs possess the full and exclusive right to submit filings with regard to transmission rate design under the Midwest ISO Transmission Owners Agreement. However, Midwest ISO adds that its energy markets and congestion management mechanisms are based on locational marginal pricing and it does not believe that there is any rate disparity in Midwest ISO because network and point-to-point transmission service are treated equally with regard to CBM.

102. In Docket No. OA08-4-000, Midwest ISO TOs and MSATs address Order No. 890's requirements for point-to-point rates relating to CBM set-asides. They state that within Midwest ISO, CBM is used for load-serving entities that have no other option but to shed firm load, but that, given the design of the structure of Midwest ISO's energy markets, this rarely occurs. Furthermore, Midwest ISO TOs and MSATs state that any load-serving entities within Midwest ISO, whether served by network service or point-to-point service, have equal access to CBM. From a rate perspective, a network customer using the CBM set-aside will not pay additional charges. A point-to-point customer will pay the non-firm rate for the hours in which it utilizes the CBM set-aside. They assert that there is nothing improper with this approach as network customers pay for service

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<sup>93</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

<sup>94</sup> In addition, Midwest ISO states that it is currently in compliance with the directives in Order No. 890 and Part 37 of the Commission's regulations concerning new OASIS requirements.

for their entire loads while point-to-point customers pay based on set reservations and not on their entire loads. Further, they state that a customer can choose the service that it wants to serve its loads. Therefore, Midwest ISO TOs and MSATs do not here propose any changes to point-to-point transmission service rates relating to CBM set-asides.

**b. Commission Determination**

103. Midwest ISO's compliance filing in Docket No. OA07-57-000 seeks to defer Order No. 890's requirement that transmission providers file redesigned transmission charges reflecting CBM set-aside to Midwest ISO TOs. In this instance, we agree with Midwest ISO that CBM set-aside is more appropriately addressed by Midwest ISO TOs because Midwest ISO TOs possess the right to submit filings with regard to such transmission rate design under the Midwest ISO Transmission Owners Agreement. Therefore, we will reject Midwest ISO's CBM set-aside filing in Docket No. OA07-57-000 and we will address the sufficiency of the CBM set-aside compliance report submitted by Midwest ISO TOs and MSATs' under Docket No. OA08-4-000.

104. In Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the CBM set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM.<sup>95</sup> We conclude that Midwest ISO TOs and MSATs' submittal in Docket No. OA08-4-000 does not comply with Order No. 890 and, accordingly, we will reject it.

105. In Order No. 890, the Commission determined that it is appropriate for load-serving entities to set aside transfer capability in the form of CBM in order to maintain their generation reliability requirements and required that transmission providers submit redesigned transmission charges that ensure that point-to-point transmission rates do not include the cost of CBM capacity through a limited section 205 rate filing.<sup>96</sup> Midwest ISO TOs and MSATs have responded arguing that because loads served with point-to-point service under Midwest ISO's TEMT have the same access to CBM set-asides as loads served with network service, no rate adjustments are necessary. We disagree. While loads within Midwest ISO may have equal access to CBM set-asides, whether they use point-to-point or network service for delivery to their loads, transmission customers using point-to-point service for purposes other than delivery to load within Midwest ISO (i.e., customers transmitting power through or out of Midwest ISO, or taking partial-path point-to-point service to deliver to a trading point within Midwest ISO) do not have access to CBM set-asides and should not pay rates that include the cost of CBM set-asides. Accordingly, we will direct Midwest ISO TOs and MSATs to submit through a

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<sup>95</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

<sup>96</sup> *Id.* P 256, 257, 263.

limited issue FPA section 205 rate filing, redesigned point-to-point transmission charges for transactions that reflect the CBM set-aside within 90 days of the date of this order.<sup>97</sup>

The Commission orders:

(A) Midwest ISO's compliance filings in Docket Nos. OA08-14-000 and OA08-14-001 are hereby accepted, as modified, effective October 11, 2007, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order under Docket Nos. OA08-14-000 and OA08-14-001.

(C) Midwest ISO's CBM Set-Aside and OASIS Compliance Report in Docket No. OA07-57-000 is hereby rejected, as discussed in the body of this order.

(D) Midwest ISO TOs and MSATs' CBM Set-Aside Compliance Report in Docket No. OA08-4-000 is hereby rejected, as discussed in the body of this order.

(E) Midwest ISO TOs and MSATs are hereby directed to submit redesigned transmission charges reflecting the CBM set-aside, within 90 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>97</sup> We note that Midwest ISO TOs and MSATs use formula rates to calculate rates for transmission service under the TEMT. To the extent that their proposal results in reallocation of costs associated with CBM set-asides to customers using point-to-point or network service for delivery to load within Midwest ISO, the costs should be apportioned among such customers in proportion to the benefits each customer receives from the CBM set-aside.