

121 FERC ¶ 61,132  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System  
Operator, Inc.

Docket No. ER04-691-085

ORDER ON COMPLIANCE FILING

(Issued November 5, 2007)

1. On April 17, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) made a filing to comply with the Commission's March 15, 2007 order<sup>1</sup> acting on the Midwest ISO's proposal to allocate real-time sufficiency guarantee (RSG) costs based on net virtual offers, among other things. The Commission rejected this proposal and required the Midwest ISO to assess RSG by requiring the actual withdrawal of energy by market participants, and other factors.
2. In its filing to comply with the RSG Compliance Order, the Midwest ISO reinserted language requiring the actual withdrawal of energy by market participants, restored its original tariff language allocating RSG costs to virtual transactions, revised the effective date for allocation to imports, provided an explanation of its efforts to reflect partial-hour revenue determinations in its software development, and revised several definitions. In this order, the Commission accepts the compliance filing and revisions proposed by the Midwest ISO, as they comply with the Commission's directives.

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,213 (2007) (RSG Compliance Order).

## I. Background

3. Pursuant to section 40.3.3 of the Midwest ISO's Transmission and Energy Markets Tariff (TEMT), market participants are charged for withdrawing energy in the real-time market an RSG charge based on their virtual supply offers and real-time load, injection, export and import deviations. The purpose of the RSG charge is to ensure that any generator scheduled or dispatched by the Midwest ISO after the close of the day-ahead energy market – either through the Reliability Assessment Commitment (RAC) or the real-time energy market – will receive no less than its offer price for start-up, no-load and incremental energy. RSG credits are paid to units scheduled in the RAC or in the real-time market that do not earn sufficient real-time energy revenues to cover their start-up and no-load costs.

4. This proceeding began with the Midwest ISO's proposal to delete from the TEMT provision governing real-time RSG a reference to virtual supply offers. The effect of the proposed change would have been that RSG costs would not have been allocated to virtual supply offers. The Commission rejected the Midwest ISO's proposal finding that virtual supply offers cause RSG costs to be incurred and should share in RSG charges, and also required the Midwest ISO to revise its proposal so that RSG charges and credits are assessed on imports and generation deviations.<sup>2</sup>

5. An October 26, 2006 rehearing order<sup>3</sup> affirmed the RSG Order's rejection of the Midwest ISO proposal to not allocate RSG costs to virtual supply offers. It also required the Midwest ISO to determine the amount of RSG costs caused by virtual supply offers and to resubmit a proposal to allocate RSG costs to virtual supply offers based on a cost-causation analysis. The RSG Rehearing Order also clarified that refunds would be required for RSG charges incorrectly assessed to imports and for incorrect assessments of RSG charges and credits for deviations from dispatch instructions. Finally, the RSG Rehearing Order required other tariff revisions, including specification of a tolerance band that would be used in determining liability for RSG charges and eligibility for RSG credits.

6. On March 15, 2007, the Commission addressed the Midwest ISO's filings to comply with the RSG Rehearing Order, and required a further compliance filing. The

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<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,108 (2006) (RSG Order).

<sup>3</sup> *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,113 (2006) (RSG Rehearing Order).

Commission rejected language proposed by the Midwest ISO to allocate RSG costs based on net virtual offers and required the Midwest ISO to: (1) reinsert language requiring the actual withdrawal of energy by market participants; (2) either revise the tariff language to reflect partial-hour Security Constrained Unit Commitment (SCUC) instructions or provide an explanation of its efforts to incorporate this refinement in its software development; (3) correct the citation for the definition of real-time revenue sufficiency guarantee; and (4) provide revisions, including the reference to Unit Dispatch System (UDS), for the definitions of economic maximum and minimum dispatch. Separately, the Commission denied requests for rehearing of the RSG Rehearing Order that addressed a number of issues, including the effective date for refunds and the applicability of RSG costs to virtual supply offers.<sup>4</sup>

7. Responding to requirements of the RSG Compliance Order, on April 17, 2007, the Midwest ISO submitted its compliance filing (April 17 Filing).

## **II. Notice, Interventions and Protests**

8. Notice of the April 17 Filing was published in the *Federal Register*, 72 Fed. Reg. 24,284 (2007), with interventions and protests due on or before May 8, 2007. Strategic Energy, LLC (Strategic), Wisconsin Electric Power Company and Wisconsin Public Power Inc. (collectively Wisconsin Electric/WPPI), Ameren Services Company (Ameren), Alliant Energy Corporate Services, Inc. (Alliant), EPIC Merchant Energy, LP and SESCO Enterprises, LLC (collectively, Financial Marketers), DC Energy Midwest, LLC (DC Energy), Indianapolis Power & Light Co. (IPL), Integrys Energy Group (Integrys),<sup>5</sup> and Lehman Brothers Commodity Services, Inc. and Credit Suisse Energy, LLC (Lehman/Suisse) filed timely motions to intervene and comments or protests.

9. On May 18, 2007, Northern Indiana Public Service Company (NIPSCO) filed a motion to intervene out of time and protest.

10. The Midwest ISO filed an answer to the protests, and DC Energy and Lehman/Suisse filed a joint answer in response to the Midwest ISO answer.

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<sup>4</sup> *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,212 (2007) (RSG Second Rehearing Order).

<sup>5</sup> When WPS Resources Corporation and Peoples Energy Company merged to create Integrys Energy Group, Inc., WPS Energy Services, Inc. was renamed Integrys Energy Services, Inc.

### **III. Discussion**

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

11. 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. Given NIPSCO's interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant its motion to intervene out of time.

12. 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 the Midwest ISO, DC Energy, and Lehman/Suisse because they have provided information that assisted us in our decision-making process.

#### **B. Compliance Filing**

##### **1. RSG Charge**

##### **a. RSG Compliance Order and the Midwest ISO's Proposal**

13. In the RSG Compliance Order, the Commission rejected the Midwest ISO's proposal to allocate RSG costs to net virtual transactions and found that the currently-effective tariff remained in effect, including the revisions accepted by the Commission regarding assignment of RSG costs to imports and exports, and various revisions related to dispatch procedures.<sup>6</sup>

14. In its April 17 Filing, the Midwest ISO filed revised tariff provisions on the allocation of RSG costs that reinstate all Commission-accepted tariff provisions that are currently in effect. Specifically, the revised tariff provisions apply the RSG charge on any day when a market participant actually withdraws energy and bases the RSG charge on all virtual supply offers and real-time deviations for load, imports, exports, injections and economic minimum and maximum amounts. These amounts are multiplied by the per-unit RSG charge rate, which is derived by dividing the RSG charge payment attributed to resources committed in the RAC process by the greater of the sum of the absolute value of real-time deviations or the aggregate of the economic maximum dispatch amounts of all resources committed in the RAC process. In the event the RSG charge in an hour exceeds the RSG charges of market participants, the excess is funded

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<sup>6</sup> RSG Compliance Order, 118 FERC ¶ 61,213 at P 93.

through an assessment of debits on all market participants on a *pro rata* basis, based on their load ratio share.

**b. Comments and Protests**

15. Protesters object to discrepancies between the language of the currently-effective tariff and the April 17 Filing. Financial Marketers argue that the RSG per-unit charge in the April 17 Filing does not reference virtual supply offers and therefore it is unclear whether RSG charges are to be allocated to virtual supply offers made by market participants also engaging in physical withdrawals of energy. Financial Marketers also note that the denominator of the per-unit RSG rate is identical to the components used to determine the hourly RSG charge, which thereby cancels out the quantities in the per-unit RSG rate and renders any calculations superfluous.

16. Financial Marketers and Lehman/Suisse assert that the Midwest ISO erred in excluding the phrase “for that Hour” in its filed RSG calculation, claiming that this revision to the currently-effective tariff results in RSG charges being applied to all virtual supply transactions in a day rather than only in the hour in which energy is withdrawn. These protesters aver that the revision would: (1) result in an unwarranted and prohibitively high RSG charge; (2) not be consistent with cost causation since there is no rational nexus between a virtual supplier that engages in a one-hour, physical export transaction and the application of RSG charges to that supplier’s virtual transactions for the entire day; (3) penalize market participants that in good faith concluded they would not be subject to RSG charges; and (4) result in market participants ceasing to engage in physical export transactions even when they are economically efficient.

17. Financial Marketers object to the term “deviation rate” in the April 17 Filing since the Commission did not accept the term in previous orders; they allege that it is a material change to the existing tariff language that is not explained or supported. Financial Marketers also consider the phrase “the aggregate of the Economic Maximum Dispatch amounts of all Resources committed in any RAC processes conducted for the Operating Day” to be a new and unexplained quantity in the calculation of the per-unit RSG charge.

18. Financial Marketers contend that the Midwest ISO has not met its burden under section 205 of the Federal Power Act (FPA)<sup>7</sup> to establish that the tariff changes it proposes are just and reasonable. Financial Marketers claim the changes in the April 17 Filing are substantive and have not been authorized by any Commission order or shown to be just and reasonable.

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<sup>7</sup> 16 U.S.C. § 824d (2000).

19. Protesters next recommend revisions to the load-ratio share allocation of RSG costs not recovered in the RSG charges. Ameren, objecting that the rate is not based on cost causation,<sup>8</sup> recommends that the Commission direct the Midwest ISO to revise the RSG charge rate design to minimize the uplift charges<sup>9</sup> and ensure a more fair method of allocation.<sup>10</sup> Ameren specifically recommends that the Midwest ISO only use virtual supply offers of market participants deemed to be actually withdrawing energy as deviations in the denominator of the RSG charge, rather than using all virtual supply offers, and that the allocation of the shortfall be applied to all market participants rather than on a load ratio share basis that disproportionately affects load-serving entities. Alliant and Wisconsin Electric/WPPI agree that the load-ratio share allocation is unjust and unreasonable and recommend that the allocation be revised,<sup>11</sup> citing the Commission statement in the RSG Second Rehearing Order that unrecovered costs are recovered through uplift charges assessed to all market participants as a Commission directive to revise the tariff.<sup>12</sup>

c. Answers

20. The Midwest ISO clarifies that virtual supply offers will be included in the aggregate rate calculation in section 40.3.3.iii in accordance with the RSG Second Rehearing Order.<sup>13</sup> The Midwest ISO also agrees to clarify section 40.3.3.iii by adding

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<sup>8</sup> Strategic Energy and Integrys, contending the Commission must reject the compliance filing, agree that the RSG rate violates principles of cost causation. They further argue that substantial and increasing harm will result if the Commission's orders are allowed to stand.

<sup>9</sup> Ameren claims that the increased uplift would add more than \$440 million to revenue neutrality charges for the period April 1, 2005 through February 28, 2007.

<sup>10</sup> Ameren notes that the Commission finding in RSG Rehearing Order that virtual supply offers can cause RSG costs to be incurred regardless of whether the entity submitting the offer is physically withdrawing energy makes the allocation doubly unfair. *See* RSG Rehearing Order, 117 FERC ¶ 61,113 at P 111.

<sup>11</sup> IPL supports the joint protest submitted by Wisconsin Electric and WPPI. NIPSCO supports the protests of Ameren, IPL, Alliant, Integrys and Wisconsin Electric and WPPI.

<sup>12</sup> RSG Second Rehearing Order, 118 FERC ¶ 61,212 at P 58.

<sup>13</sup> *Id.*

the term “aggregate” to describe the deviations being calculated in the per-unit rate. With respect to the phrase “for that Hour,” the Midwest ISO responds that removal of that phrase does not change the hourly calculation that specifies the per-unit RSG charge deviation rate for any given hour and the Commission has previously accepted the Midwest ISO proposal to assess the RSG charge based on an hourly analysis that is aggregated to a daily settlement amount. The Midwest ISO further notes the RSG Second Rehearing Order did not require restoration of the reference to “hour.”

21. Lehman/Suisse respond by arguing that when the Commission rejected the Midwest ISO’s proposed tariff amendment in the RSG Order, the actual withdrawal requirement of section 40.3.3.a.ii remained the filed rate, including the hourly nexus created by the “for that Hour” language, and therefore it would be inappropriate to delete this hourly nexus in the application of RSG charges in a compliance filing. Lehman/Suisse also cite to a Midwest ISO presentation that says that the Midwest ISO assesses RSG charges for all hours of the day to a market participant withdrawing energy in any hour of the day. They note that the Midwest ISO answer is unresponsive since the presence of the hourly nexus in one subsection does not render the hourly nexus superfluous in another subsection.

22. On the load-ratio share issue, the Midwest ISO responds that the Commission has not required the Midwest ISO to change the load-ratio share allocation, contrary to protesters’ argument. The Midwest ISO explains that when read in its entirety, the relevant provision of the RSG Second Rehearing Order is a description of the TEMT’s existing allocation mechanism rather than a prescription for change. Specifically, the Commission ended the relevant provision by stressing the unchanged status of the existing allocation provision and declaring the impermissibility of changing that provision in the present proceeding. Therefore, according to the Midwest ISO, the criticisms of the load-ratio share are beyond the scope of this proceeding. Lehman/Suisse agree with the Midwest ISO position, noting that no parties filed a petition for review of the RSG Rehearing Order on the load-ratio share issue and therefore the issue is final and non-appealable.

**d. Commission Determination**

23. Upon review of the accepted provisions for calculating the RSG charge, we accept the revision proposed by the Midwest ISO in its answer to add virtual supply offers to the denominator of the per-unit RSG rate to conform the Midwest ISO filing to the currently effective tariff. We also agree that adding the term “aggregate” to the denominator of the per-unit RSG rate, as the Midwest ISO proposes in its answer, will correctly and clearly state that the market participant’s virtual offers and deviations will be multiplied by a per-unit rate that is determined on the basis of all virtual offers and deviations, and thereby

conform the filing with the currently-effective tariff. We require the Midwest ISO to file these revisions in a compliance filing within 30 days of the date of this order.

24. We also accept the term “deviation rate” in the April 17 Filing since it does not change the meaning of the accepted tariff provision and it accurately defines the transactions being assessed the RSG charge as load, import, export or injection deviations from day-ahead schedules, and each deviation is fully defined in the tariff provision.<sup>14</sup>

25. With regard to the phrase “for that Hour,” the Commission accepted the deletion of this phrase in its previous orders.<sup>15</sup> We agreed with the Midwest ISO that removal of the phrase does not change the calculation of the RSG charge since the per-unit charge (and therefore the charge to customers) is calculated on an hourly basis. Also, the April 17 Filing correctly restores virtual supply as a component of the market participant RSG charge, and we accept the phrase “all virtual supply offers for market participants in the day-ahead energy market” as a phrase that reflects the currently-effective tariff language.

26. Based on our review of the Midwest ISO RSG charge and rate tariff provision, we provide the following clarification on the meaning of these provisions, to address Ameren’s concerns. Per the terms of the tariff in the April 17 Filing, the denominator in the RSG rate in section 40.3.3.a.iii is based on the sum of the absolute values of the amounts in section 40.3.3.a.ii(a) – (d). We interpret this formulation to mean that the RSG rate denominator is the aggregate of the amounts for market participants withdrawing energy on that day, since they are entities being assessed the RSG charge in section 40.3.3.a.ii. Therefore, the amounts in the individual RSG charges in section 40.3.3.a.ii should sum to the same summed and aggregate number in the denominator of section 40.3.3.a.iii, thereby eliminating the possibility of developing the RSG charge and RSG rate on different bases and resulting in a shortfall in recovery of RSG costs.<sup>16</sup> The

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<sup>14</sup> With respect to the Economic Maximum Dispatch phrase in the RSG calculation, that phrase was evaluated and accepted by the Commission. *See* RSG Compliance Order, 118 FERC ¶ 61,213 at P 120.

<sup>15</sup> *See* RSG Rehearing Order, 117 FERC ¶ 61,113 at P 151. Responding to Lehman/Suisse, we do not consider that phrase part of the phrase in the currently effective tariff stating that market participants are assessed RSG charges on any day they withdraw energy.

<sup>16</sup> We recognize that a shortfall may still occur if the alternative denominator, i.e., the aggregate of the economic maximum amounts of all resources, is used. It is our expectation that this possibility will only occur infrequently. *See* RSG Order, 115 FERC (continued)

fact that the RSG charge is calculated on a daily basis and the RSG rate is computed hourly does not change our conclusion that the summed amounts in the RSG charge should equal the aggregate and summed amounts in the RSG rate. As the Commission noted in the Rehearing Order, the hourly analysis in the RSG rate is aggregated to a daily settlement amount.<sup>17</sup> This interpretation of the complete tariff provision, as submitted to us in the April 17 Filing, represents our determination of the most reasonable meaning for the RSG charge and rate formulation. Finally, with respect to the load-ratio share allocation of costs not recovered in the RSG charge, this provision has been previously accepted by the Commission, and the Commission clearly indicated its intent not to change this provision.<sup>18</sup>

27. In sum, the provisions of the April 17 Filing and the proposed revisions in the Midwest ISO answer accurately represent the currently-effective tariff, and therefore comply with the RSG Compliance Order.

## **2. Software Development**

28. In response to a Commission requirement in the RSG Compliance Order to either revise the tariff language to reflect partial-hour SCUC instructions or explain its efforts to incorporate this refinement in its software development,<sup>19</sup> the Midwest ISO explains the issue has significance for only 0.7 percent of all real-time commitments, specifically those commitments in partial hours following a market participant-designated must-run period or when market participants commit the unit in a must-run status following the Midwest ISO commitment for the remainder of the hour. Nonetheless, the Midwest ISO commits to continue to work with stakeholders to identify specific software changes, costs and timelines to further address this issue. We accept the Midwest ISO explanation and find it to be in compliance with the RSG Compliance Order.

## **3. Effective Date**

29. DC Energy and Lehman/Suisse take exception to the effective date of March 15, 2007, for the tariff sheet that states the RSG charge is applicable to market participants

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¶ 61,108 at P 64 (“[T]he economic maximum dispatch of RAC units occurs much less frequently than the aggregate of actual MW needed to be covered in the RAC process”).

<sup>17</sup> RSG Rehearing Order, 117 FERC ¶ 61,113 at P 151.

<sup>18</sup> RSG Second Rehearing Order, 118 FERC ¶ 61,212 at P 58.

<sup>19</sup> RSG Compliance Order, 118 FERC ¶ 61,213 at P 104.

withdrawing energy, noting that this provision has been in effect since market start in April 2005. While the Midwest ISO agrees that the withdrawal condition has been in effect since market start, it notes the April 17 Filing simply proposes a March 15 effective date for those tariff changes approved in the RSG Compliance Order and the effective date of existing tariff provisions is not affected. Therefore, according to the Midwest ISO, its filing reincorporates such language in its proposal and not in the tariff. We agree with the Midwest ISO that the withdrawing energy provision has been in effect since market start and that the March 15, 2007 date applies to tariff changes. Therefore, we accept the March 15, 2007 effective date for any tariff changes resulting from the RSG Compliance Order.

#### **4. Refunds**

30. Ameren objects to the absence of any information on refunds in the compliance filing and states that the Commission should direct the Midwest ISO to cease delaying and to calculate and provide the appropriate refunds. The Midwest ISO responds that the RSG Compliance Order did not establish a timeline for making or reporting on refunds and therefore the fact that this information is not in the compliance filing does not constitute non-compliance. The Midwest ISO reports that on May 1, 2007, it provided RSG-related informational data to market participants and that resettlement is scheduled to commence on or about July 6, 2007. The Midwest ISO is correct that the RSG Compliance Order did not include a reporting requirement on refunds, and therefore no further compliance on this issue is required of the Midwest ISO.

#### **5. Business Practices Manuals**

31. Ameren faults the Midwest ISO for not reporting that it has conformed its Business Practices Manuals to its tariff. The Midwest ISO responds that the Commission has not specified any timeline for revision of the Business Practices Manuals, nor has it required the filing of any report regarding such revisions. The Midwest ISO notes that it has not been possible to complete all required revisions to the Business Practices Manuals at this time due to the Commission's ongoing consideration of the issues regarding the appropriate allocation of RSG charges to virtual transactions. While the RSG Compliance Order did not require a timeline for revisions to the Business Practices Manuals, we encourage the Midwest ISO to timely make the conforming revisions to ensure its Business Practices Manuals are consistent with the tariff.

#### **The Commission orders:**

(A) The Midwest ISO's proposed tariff revisions are hereby accepted, as detailed in the body of this order.

(B) The Midwest ISO is hereby directed to submit a compliance filing, pursuant to the requirements specified in the body of this order, within 30 days of the date of this order.

By the Commission. Commissioner Moeller not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.