

121 FERC ¶ 61,190  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.                      Docket Nos. ER07-1372-000  
ER07-1372-001

ORDER ESTABLISHING TECHNICAL CONFERENCE

(Issued November 19, 2007)

1. On September 14, 2007, as amended on September 19, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a revised proposal for an Ancillary Services Market (ASM), including a market power analysis<sup>1</sup> and mitigation plan. In this order, we direct the Commission staff to convene a technical conference to explore the issues raised by the Midwest ISO's market power analysis and proposed mitigation plan. The Commission will address the Midwest ISO's entire ASM proposal in a future order after the technical conference.

**I. Background**

2. In the September 14, 2007 filing, the Midwest ISO included a market power analysis and mitigation plan. The market power analysis, conducted by the Independent Market Monitor (IMM), finds that the overall Midwest ISO region does not face market power concerns, but that several of the sub-regional zones do indicate the potential for the exercise of market power.<sup>2</sup>

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<sup>1</sup> The Midwest ISO states that its analysis followed the market power analysis guidelines set forth in *Ocean Vista Power Generation, L.L.C.*, 82 FERC ¶ 61,114, at 61,406-07 (1998).

<sup>2</sup> The IMM defines the relevant market to be the full RTO region of the Midwest ISO. The IMM explains that, pursuant to the requirements of Order No. 697 (Market-Based Rates Rule), the RTO region serves as the default relevant market area, absent specific findings by the Commission that there are submarkets within the RTO. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007). The IMM also explains that the analysis considers sub-areas

3. The Midwest ISO asserts that the proposed ASM will provide for the efficient acquisition and pricing of Regulating and Contingency Reserves.<sup>3</sup> According to the Midwest ISO, the simultaneous co-optimization approach seeks to minimize overall production costs in the Midwest ISO markets through the coordinated market-based procurement of both Energy and Operating Reserves. The Midwest ISO explains that variations of this approach are being used by existing ISOs/RTOs that provide ancillary services through market-based mechanisms.

4. The Midwest ISO proposes scarcity demand curves for Regulating and Contingency Reserves to be invoked when either Regulating or Contingency Reserves are deficient. The demand curves may be invoked on either a market-wide or zonal basis, depending on the nature of the deficiency.

5. The IMM provides market analyses covering several different geographic areas. The analyses include one market-wide analysis, three analyses of “known congested areas” (WUMS NCA, Minnesota NCA, and Michigan) and four analyses of clusters (Midwest ISO central region and First Energy, northwestern Michigan excluding the upper peninsula, Northwestern Illinois and southwestern Wisconsin, and Minnesota and western WUMS). For the entire Midwest ISO, the IMM finds market shares ranging from 12.5 to 12.6 percent and Herfindahl-Hirschman Indexes (HHIs) ranging from 204 to 2,429 for the regulating reserve and contingency reserve product markets. These results are below the 20 percent market share and 2,500 HHI<sup>4</sup> standards that the Commission has used to indicate the potential for the exercise of market power. With respect to the sub-regional analysis, the IMM finds market shares ranging from 23 to more than 80 percent and HHIs ranging from 3,200 to 6,200 for these markets, above the thresholds typically indicating the potential for the exercise of market power.

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within the Midwest ISO to be additional relevant geographic markets due to the presence of transmission constraints that limit suppliers outside of the area from providing reserves to satisfy local requirements when constraints in these areas are binding.

<sup>3</sup> The IMM identifies the relevant product markets as Regulating, Spinning and Supplemental Reserves. Further, the IMM determines that Spinning and Supplemental Reserves represent comparable substitutes and, therefore, are bundled into a single product market referred to as Contingency Reserves. The IMM refers to Regulating and Contingency Reserves collectively as Operating Reserves.

<sup>4</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 89-91, 110-13.

6. The IMM also conducts a pivotal supplier analysis<sup>5</sup> of the potential for the exercise of market power in the sub-regions. For Regulating and Contingency Reserves, markets in these regions face pivotal suppliers for periods ranging from 14.3 to 100 percent of hours.

7. The IMM briefly discusses barriers to entry and potential competition and points to Midwest ISO's open access transmission tariff, which prevents market participants from restricting access to transmission facilities by competing suppliers. The IMM claims that transparent price signals should promote long-term investment in reserve-capable resources in areas with prices high enough to support such investment.

8. To address locational market power concerns, the IMM proposes conduct and impact thresholds to trigger mitigation measures, similar to the mitigation framework currently in effect in the Midwest ISO energy markets. The IMM proposes an economic withholding conduct threshold of 300 percent, or a \$50 per MW/h increase, whichever is lower, an uneconomic production conduct threshold of less than 50 percent of the applicable energy reference level, and an impact threshold of \$50 per MW/h.

9. The IMM supports these conduct and impact thresholds, claiming that they are designed to mitigate abuses of locational market power while minimizing interference when it is workably competitive. The IMM proposes no change in physical withholding thresholds.

10. The impact test threshold the IMM proposes (\$50 per MWh) is lower than the \$100 per MWh threshold currently used in the Midwest ISO energy markets. The IMM states that the lower threshold for ancillary services markets is appropriate because prices in these markets are generally lower than energy prices.

11. On September 19, 2007, the Midwest ISO filed proposed amendments to its September 14, 2007 filing. It explains that the amendments correct minor typographical errors and provide inadvertently omitted language in certain definitions and Energy Markets Tariff sections.

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

12. Notice of the Midwest ISO's September 14, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 54,252 (2007), with interventions and protests due on or

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<sup>5</sup> The pivotal supplier analysis is based on a residual supply index (RSI) that measures the ratio of the total available supply resources, net of the largest supplier, to total demand. A supplier is pivotal when the output of some of its resources is needed to meet demand in the market, as indicated by an RSI of less than one.

before October 15, 2007.<sup>6</sup> Notice of the Midwest ISO's September 19, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 56,733 (2007). Numerous entities submitted motions to intervene, notices of intervention, comments and/or protests. Comments were filed by parties representing a wide array of viewpoints.

13. A number of commenters<sup>7</sup> protest the proposed mitigation plan and recommend a more comprehensive mitigation plan, cost-based offers and tighter mitigation thresholds. OMS, the state regulator group, does not consider the Midwest ISO conduct and impact mitigation sufficient, noting that it would not be appropriate at this time for the Commission to approve an ancillary services market where suppliers are allowed to charge market-based rates, unless there is a comprehensive program in place to prevent or mitigate the exercise of market power. OMS also asserts that the conduct test submitted by the IMM is incomplete and unpersuasive. Specifically, OMS expresses concern that the IMM has no process to assess the accuracy and reliability of reference prices submitted by generating units, and the proposed economic threshold may allow suppliers to manipulate prices when transmission constraints are binding.

14. Midwest TDUs assert that the proposed mitigation measures are not tailored for the serious market power problems identified by the Midwest ISO nor are they adequate to address them, and therefore Midwest TDUs recommend the conduct and impact threshold proposal be rejected. Instead, the Midwest TDUs argue the mitigation measures should cap the offers of dominant suppliers in transmission-constrained zones at marginal cost plus a margin for estimation error. MISO Industrial Customers contend that, in light of the significant market power that will be present in the ancillary services markets, the Midwest ISO should be required to adopt mitigation measures that require offers based on actual unit-specific costs. MISO Industrial Customers also assert that the IMM has not adequately identified the geographic or product markets. Indianapolis P&L, noting the IMM market power analysis does not include a spring or fall assessment and therefore is incomplete, contends that the conduct and impact mitigation proposal is inadequate to mitigate the severity of market power shown in the data provided by the IMM.

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<sup>6</sup> See Notice of Extension of Time, Docket No. ER07-1372-000 (Sept 26, 2007) and Notice of Extension of Time, Docket No. ER07-1372-001 (Sept. 28, 2007).

<sup>7</sup> E.g., Organization of Midwest ISO States (OMS), Midwest TDUs, MISO Industrial Customers and Indianapolis Power & Light (Indianapolis P&L), Indiana Utility Regulatory Commission (Indiana Commission).

15. Transmission owners also express concern regarding the proposed mitigation.<sup>8</sup> Ameren expresses concern that the thresholds may be set too low, which may result in over-mitigation that impairs reliability and appropriate cost recovery and interferes with the market's ability to send proper price signals. Ameren proposes that the Midwest ISO conduct periodic reviews to ensure that existing mitigation measures are sufficient. Duke contends that the Midwest ISO should better clarify its market monitoring and mitigation rules prior to implementation.

### **III. Commission Determination**

16. The Midwest ISO's filing and the comments address several indicators of the potential for the exercise of market power in the IMM analysis.

17. There are aspects of Midwest ISO's filing that require further explanation. For example, it is not clear that the geographic submarkets the IMM uses will be the actual geographic submarkets since the Midwest ISO proposes to modify the reserve zones quarterly. Since there is not a single, static list of geographic markets that were defined for Midwest ISO's study, it is not clear whether it will be necessary for the IMM to re-evaluate market power when the Midwest ISO changes zones to ensure any zonal reconfiguration will not create market power concerns.

18. We therefore direct Commission staff to hold a staff-led technical conference to address the market power analysis and mitigation proposal, and will allow an opportunity for interested parties to file comments after the technical conference. The record from the technical conference and any subsequent comments will provide the Commission with a better understanding of the nature of the proposed ancillary services market in the Midwest ISO. It also will allow commenters to address whether the Midwest ISO proposal effectively mitigates the potential for the exercise of market power and to compare the effectiveness of the Midwest ISO proposal with the mitigation methods they recommend. Further, it will provide the Commission with a better basis to determine if the Midwest ISO mitigation proposal will result in effective mitigation, and ultimately result in just and reasonable and not unduly discriminatory or preferential rates. Separate notice(s) will be issued to establish dates and technical conference details.

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<sup>8</sup> *E.g.*, Ameren Services Company (Ameren) and Duke Energy Corporation (Duke).

The Commission orders:

Commission staff is hereby directed to convene a technical conference to further explore the Midwest ISO's market power analysis and proposed mitigation plan, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.