

122 FERC ¶ 61,198  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER08-416-000

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-1552-003

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS,  
REQUIRING FURTHER COMPLIANCE FILING, AND ACCEPTING IN PART AND  
REJECTING IN PART COMPLIANCE FILING

(Issued March 4, 2008)

1. On January 4, 2008, in Docket No. ER08-416-000, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT or Tariff)<sup>1</sup> to compensate generation units that are manually redispatched by Midwest ISO. Such compensation was previously accepted by the Commission as a subset of the price volatility make-whole payment (PV MWP) in Docket No. ER06-1552, but the PV MWP has been delayed due to software limitations. This proceeding generally reflects procedural changes in order to implement compensation of manually redispatched units independent of the delayed PV MWP program. These tariff revisions will allow Midwest ISO to implement compensation associated with manual redispatch as soon as possible. In this order, we will conditionally accept the proposed tariff revisions to provide manual redispatch make-whole payments (MRD MWP), and we will require a further compliance filing, as discussed below. We will also make certain sheets previously accepted in Docket No. ER06-1552 effective on February 1, 2008.

2. On June 18, 2007, in Docket No. ER06-1552-003, Midwest ISO submitted revisions to its TEMT regarding the PV MWP in compliance with the Commission's

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<sup>1</sup> FERC Electric Tariff, Third Revised Vol. No. 1.

May 18 Order.<sup>2</sup> In this order, we will accept in part and reject in part the compliance filing. As discussed below, we will not require Midwest ISO to submit a further compliance filing to address our market power mitigation concerns because these issues will be addressed in Docket Nos. ER08-416-000 and ER07-1372-000.<sup>3</sup>

## **I. Background**

### **A. Docket No. ER06-1552-000, et al.**

3. On September 29, 2006, Midwest ISO submitted proposed revisions to its TEMT that included: (1) a new section 40.3.5 to provide for a real-time PV MWP to generation resources that meet certain eligibility criteria when real-time prices are insufficient to allow recovery of their incremental energy costs; and (2) a new section 33.8 to clarify the circumstances under which Midwest ISO can manually redispatch generation resources and provide a PV MWP to such resources, if eligible, in order to ensure adequate cost recovery (September 29 Filing).<sup>4</sup> Among other things, the proposal provided that, if the Independent Market Monitor (IMM) finds behavior to manipulate the PV MWP to extract undue payments “in accordance with the criteria in Section 63,” then it will seek Commission approval to remove the generation resource’s PV MWP eligibility.<sup>5</sup>

4. In its December 22 Order, the Commission conditionally accepted Midwest ISO’s September 29 Filing and ordered Midwest ISO to make tariff revisions in a subsequent compliance filing “to ensure that potential manipulation of the PV MWP is clearly covered by the IMM’s market monitoring and mitigation procedures.”<sup>6</sup>

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<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325 (2006) (December 22 Order), *order on compliance*, 119 FERC ¶ 61,160 (May 18 Order), *order on reh’g*, 119 FERC ¶ 61,176 (2007) (May 21 Order).

<sup>3</sup> *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008) (February 25 Order).

<sup>4</sup> Midwest ISO manually redispatches generators when its automated real-time energy market dispatch procedures are inadequate to maintain system reliability.

<sup>5</sup> Midwest ISO September 29, 2006 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 587T.

<sup>6</sup> The December 22 Order also required Midwest ISO to submit an informational report no later than one year from the effective date of the PV MWP program. *See* December 22 Order, 117 FERC ¶ 61,325 at P 41-42; May 21 Order, 119 FERC ¶ 61,176 at P 27.

5. On January 23, 2007, as amended on January 24, 2007, Midwest ISO submitted its compliance filing. Midwest ISO proposed that the IMM would review and analyze offers resulting in revenue sufficiency guarantee (RSG) payments, PV MWPs, and “other similar payments.”<sup>7</sup>

6. The January 23 Compliance Filing, as amended, was conditionally accepted by the Commission in its May 18 Order, which also required a further compliance filing. The Commission required Midwest ISO to clarify its mitigation plan, including “which portions of section 63, and by reference sections 64 and 65, will apply to the PV MWP.”<sup>8</sup>

7. Midwest ISO submitted its subsequent compliance filing on June 18, 2007. Midwest ISO proposed thresholds and sanctions to detect and mitigate behavior to manipulate or game the PV MWP program. The proposed PV MWP is not currently effective, because Midwest ISO has not notified the Commission that the software for the PV MWP has been implemented.

**B. Docket No. ER08-416-000**

8. In its January 4, 2008 Filing, Midwest ISO states that at this time it cannot implement the PV MWP provisions previously accepted by the Commission in its December 22 Order due to vendor and internal Midwest ISO resource limitations. These resource limitations prevent the associated software from being developed and tested, and training for and implementation of PV MWP provisions from occurring in the near future.

9. Currently, compensation for units that are manually redispatched is incorporated as a subset of the PV MWP tariff sheets. However, Midwest ISO explains that it can implement payments to compensate manually redispatched units at this time and, as such, proposes a separate MRD MWP to compensate such resources.<sup>9</sup> Accordingly, in this filing, Midwest ISO proposes to modify the previously accepted tariff sheets in order to remove all tariff language ties between the MRD MWP and PV MWP and provide new tariff provisions associated with the MRD MWP.

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<sup>7</sup> Midwest ISO January 24, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Third Revised Sheet No. 713.

<sup>8</sup> May 18 Order, 119 FERC ¶ 61,160 at P 10.

<sup>9</sup> Generation resources that are manually redispatched, meet certain eligibility criteria, and are not otherwise compensated through real-time RSG payments receive a make-whole payment because they are dispatched out of merit order and thus may not receive sufficient revenue from the real-time locational market price to recover their as-offered incremental energy costs.

10. To accomplish this, Midwest ISO proposes the following tariff revisions: (1) deletion of cross-references to the PV MWP from the provisions for compensation and cost recovery for manual redispatch in sections 33.8.2 and 33.8.3; (2) revisions to the formula for calculating compensation for manual redispatch in a new Schedule 27-A, derived from the corresponding PV MWP cost recovery provisions of the Commission-accepted (but not implemented) provisions of Schedule 27; (3) revisions in section 33.8.2 to clarify that generation resources following manual redispatch instructions will not be required to pay real-time RSG payments or uninstructed deviation penalties; and (4) modifications in section 33.8.2 to the eligibility criteria, including ramp rate and offer limit (economic minimum and economic maximum) requirements, for a generation resource to receive compensation for manual redispatch under proposed Schedule 27-A.

11. In addition, Midwest ISO requests waiver of the 60-day notice requirement to allow the proposed tariff revisions to be effective February 1, 2008. Midwest ISO contends that good cause for such a waiver exists because the proposed tariff revisions are largely the same as those accepted in Docket No. ER06-1552 regarding the PV MWP. Midwest ISO adds that the proposed effective date will facilitate compensation for manually redispatched units as soon as possible, without awaiting implementation of the delayed PV MWP.

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

12. Notice of Midwest ISO's June 18, 2007 compliance filing in Docket No. ER06-1552-003 was published in the *Federal Register*, 72 Fed. Reg. 35,457 (2007), with interventions and protests due on or before July 9, 2007. None were filed.

13. Notice of Midwest ISO's January 4, 2008 filing in Docket No. ER08-416-000 was published in the *Federal Register*, 73 Fed. Reg. 2906 (2008), with interventions and protests due on or before January 25, 2008.

14. Motions to intervene without substantive comments were filed by: (1) FirstEnergy Solutions Corp.; (2) Indianapolis Power & Light Company; (3) Consumers Energy Company; (4) Exelon Corporation; and (5) Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

15. Separate motions to intervene and protests were filed by Ameren Services Company (Ameren) and Wisconsin Electric Power Company (Wisconsin Electric). They generally support the concept of the MRD MWP. However, they believe that some of the proposed eligibility criteria could have perverse results and urge the Commission to reject the proposed criteria in favor of less restrictive eligibility measures. Midwest ISO filed an answer to the protests. The protests and answer are discussed below.

### **III. Discussion**

#### **A. Procedural Issues**

16. 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.

17. 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 Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Issues**

18. In this order, we will accept the proposed tariff sheets concerning the MRD MWP in Docket No. ER08-416-000, subject to the submission of a compliance filing that: (1) modifies the ramp rate eligibility criteria; (2) addresses settlement issues; (3) explains the use of meter data submissions when recalculating payments; (4) revises the tariff and corrects certain pagination errors, effective February 1, 2008; (5) revises the tariff to accommodate implementation of the Ancillary Services Market, effective June 1, 2008; and (6) provides a monitoring and, if appropriate, mitigation plan.<sup>10</sup> We will also make certain tariff sheets previously accepted in Docket No. ER06-1552 effective on February 1, 2008, in order to allow the MRD MWP to be implemented. Further, we will accept the compliance filing submitted in Docket No. ER06-1552-003, with the exception of those sheets addressing monitoring and mitigation, as discussed below. Thus, effective February 1, 2008,<sup>11</sup> as requested, eligible generators will be compensated to ensure recovery of their incremental energy costs when following Midwest ISO's manual redispatch instructions.

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<sup>10</sup> We will accept the proposed removal of cross-references to the PV MWP from section 33.8 of the TEMT and the replacement of Schedule 27 with Schedule 27-A. The cross-references appear to have been simply a tariff writing convenience, as neither the MRD MWP nor the PV MWP is dependent upon the existence of the other type of payment.

<sup>11</sup> We grant Midwest ISO's request for waiver of the prior notice requirement to permit an effective date of February 1, 2008.

**1. Docket No. ER08-416-000****a. Ramp Rate Requirements****i. Midwest ISO January 4, 2008 Filing**

19. In order to qualify for the proposed MRD MWP, a generator's offered ramp rates must meet specific eligibility requirements. As proposed, a generation resource's offer for its day-ahead committed hours must meet the following criteria: (1) its offered ramp rate must be greater than one-half MW per minute; and (2) its offered ramp rate must be greater than one percent of its hourly real-time economic maximum dispatch limit, per minute.<sup>12</sup> As compared to the eligibility requirements associated with the PV MWP (which included payments for manual redispatch), the first requirement increases the minimum ramp rate from being greater than zero to being greater than one-half MW per minute. The second requirement is new with this filing. Midwest ISO also proposes to remove a requirement that ramp rates remain unchanged between day-ahead and real-time offers and within the same day for real-time offers. Failure to meet any of these requirements will result in a generation resource being disqualified from receiving the MRD MWP in the hour during which such failure occurs and in each subsequent hour of the manual redispatch period.

**ii. Comments**

20. Wisconsin Electric requests that the Commission reject the real-time ramp rate requirements as unduly discriminatory because they are too restrictive and will result in many coal units being disqualified from the MRD MWP. However, if the Commission allows Midwest ISO to retain its proposed ramp rate requirements, then Wisconsin Electric requests that the criteria instead be the greater of one half MW per minute and one half of one percent of the economic maximum level of the unit.

21. Ameren supports the proposed requirement that a generation resource's real-time ramp rate be greater than one-half MW per minute. However, Ameren argues that the requirement that a unit's real-time ramp rate be greater than one percent of its economic maximum unfairly penalizes market participants with large generation resources that have lower ramp rates. It notes that some market participants, including the Ameren companies, have generators of 600 MW or more with ramp rates in the 4-5 MW per minute range. As such, they would not qualify for the MRD MWP. Ameren believes that these resources could respond to manual redispatch instructions faster than smaller units, protecting system reliability more than a generation resource with a ramp rate of greater than one percent of its economic maximum. Ameren contends that tying the ramp rate requirement to a unit's economic maximum is unjust and unreasonable. It argues

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<sup>12</sup> These requirements also apply to real-time must run committed hours.

that this ramp rate requirement should be revised to instead require that a generation resource's real-time ramp rate must be greater than or equal to its ramp rate in its day-ahead offer.

22. In addition, Ameren argues that Midwest ISO should clarify that, if ramp rate curve segments are used in the day-ahead market, then each segment in the real-time market must be greater than or equal to the day-ahead offer. Ameren contends that this change will ensure that all generation resources meet their as-offered ramp rates in order to receive the MRD MWP, while allowing generation resources with ramp rates of less than one percent to provide manual redispatch and to be appropriately compensated for doing so.

**iii. Midwest ISO Answer**

23. Midwest ISO states that the proposed ramp rate criteria will ensure that units eligible for compensation can be manually redispatched in sufficient quantities to meet expected system needs. It says that it cannot check a unit's ramp rate from the day-ahead to the real-time energy market, as Ameren requests, due to system limitations. Midwest ISO explains that the current system will only allow it to check a unit's ramp rate as an output of the unit dispatch system. As a result, Midwest ISO can only check whether the day-ahead ramp rate remains unchanged in real-time, which would unduly penalize resources that utilize a ramp rate curve. Thus, it argues that it is reasonable to establish the proposed ramp rate requirements in order to give generation resources the incentive to maintain greater ramp rates in the real-time energy market, thereby increasing the accessible dispatch range.

24. However, Midwest ISO says that it is amenable to an adjustment of the requirement that a unit's real-time ramp rate be greater than one percent of its economic maximum such that the ramp rate must be greater than one-half of one percent of its economic maximum, as proposed by Wisconsin Electric. Midwest ISO explains that, while its proposed one percent requirement would provide a greater incentive to increase the accessible dispatch range, it agrees that the one percent requirement might unduly penalize resources with greater economic maximum dispatch levels that have smaller physical ramp capabilities, such as coal generation resources.

**iv. Commission Determination**

25. With respect to the proposed ramp rate requirements, we conclude that it is appropriate for Midwest ISO to require ramp rate flexibility in order for parties to qualify for the MRD MWP. The purpose of the MRD MWP is to give generators the incentive to comply with manual redispatch instructions, in order to help ensure system reliability. Allowing parties to severely limit their ramp rates would undermine such reliability gains. However, we also find that parties should not be required to have ramp rates beyond those that are operationally feasible for their units, as would be true for large coal

units due to the requirement that a unit's real-time ramp rate be greater than one percent of its economic maximum. As such, we will require Midwest ISO, in its compliance filing, to modify the ramp rate eligibility criteria to require greater than one half MW per minute and greater than one half of one percent of the hourly economic maximum dispatch level of the generation resource, per minute.

26. Furthermore, given the current system limitations identified by Midwest ISO, we find that it would be inappropriate to require Midwest ISO to compare ramp rates between the day-ahead and real-time market to determine whether generation resources should qualify for the MRD MWP, as Ameren requests.

**b. Offer Limits**

**i. Midwest ISO January 4, 2008 Filing**

27. For a generation resource to qualify for the MRD MWP its offers also must meet requirements associated with its offer limits (which determine its dispatch range). Midwest ISO proposes that a generator be required to submit the same real-time offer parameters for its economic minimum dispatch limit (economic minimum) and its economic maximum dispatch limit (economic maximum) as those that its day-ahead commitment was based on, and as its real-time offers at the close of the real-time energy market hour as submitted by the market participant. For real-time must-run committed hours, Midwest ISO proposes to require that a unit's economic minimum and economic maximum parameters in its offers remain unchanged for each consecutive real-time must-run committed hour in the manual redispatch period. A generation resource's offered economic minimum and economic maximum dispatch limits must be the same for the first hour of the real-time must-run committed hour in the manual redispatch period and the previous hour, if committed. Further, a generation resource must be dispatchable, having a more than one megawatt difference between its economic maximum and economic minimum. These basic requirements relating specifically to offer limits are unchanged when compared to those that were accepted in the PV MWP proceeding.

**ii. Comments**

28. Wisconsin Electric submits that the criterion that the economic maximum and economic minimum be unchanged between the day-ahead commitment and real-time dispatch could cause generators to offer in the day-ahead market with narrower dispatch ranges, making it harder for Midwest ISO to resolve the day-ahead market at the lowest cost. It also argues that it creates a strong disincentive for units that may be manually redispatched to update their real-time offers to reflect current capabilities, since doing so would make them ineligible to receive the MRD MWP. If there is a short-term condition that prevents a generator from moving downward (such as a stuck valve) or upward, the generator would be reluctant to update its offer since doing so would eliminate its MRD MWP. Ameren argues that, if the change in a unit's economic maximum or minimum

would not cause increased congestion, then the generation resource should remain eligible for the MRD MWP.

29. Ameren provides an example of a resource having to reduce its economic maximum from 500 MW to 400 MW due to one of its coal mills going out, followed by an instance of negative congestion, where the generator is instructed by Midwest ISO to reduce its economic minimum from 300 MW to 200 MW. In this instance, Ameren says that by lowering its economic maximum by 100 MW, the resource has actually alleviated congestion. Ameren argues that under these circumstances the generator should be eligible for the MRD MWP to the extent it followed Midwest ISO's dispatch instructions. It states that similarly, if a generator raises its economic minimum, leaving its economic maximum unchanged, and is instructed to manually increase generation toward its economic maximum, the generator should remain eligible for the MRD MWP.

30. Further, Ameren advocates that generation resources providing a wider dispatch range in its real-time offer than in its day-ahead offers should be eligible for the MRD MWP. Ameren offers the example of a generator with an equipment problem in the day-ahead market that manages to resolve the problem and to increase its economic maximum in the real-time market over that which it offered in the day-ahead market. If congestion occurs, the generator can be dispatched downward in the real-time market to alleviate the constraint. Ameren asserts that in this circumstance the generator should be eligible for the MRD MWP.

31. Wisconsin Electric goes further, submitting that in place of the proposed MRD MWP eligibility criteria, Midwest ISO's IMM should be responsible for after-the-fact review of a generation resource's actions to determine if changes to its offer limits were reasonable. It asserts that the MRD MWP could be withheld and potential penalties assessed if it is determined that any actions were manipulative or otherwise inappropriate.

### **iii. Midwest ISO Answer**

32. Midwest ISO argues that many of the arguments against the eligibility criteria are impermissible collateral attacks on the December 22 Order and May 21 Order, which accepted what Midwest ISO characterizes as "largely the same criteria in Midwest ISO's September 26, 2006 filing concerning PV MWP and Manual Redispatch."<sup>13</sup> Midwest ISO asserts that the "January 4 Filing does not propose to radically depart from these Commission-approved [eligibility] criteria." Midwest ISO says that it simply seeks to restate the criteria separately for manual redispatch, to facilitate the separate implementation of the manual redispatch provisions. It explains that the eligibility provisions accepted in these orders include those provisions that deal with the offer limits. Because the provisions related to the dispatch range challenged by Ameren and

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<sup>13</sup> Midwest ISO February 11, 2008 Answer at 7.

Wisconsin Energy are unchanged in the current filing, Midwest ISO concludes that their arguments should be dismissed as an impermissible collateral attack.

33. Midwest ISO also argues that criticisms of the dispatch range eligibility criteria should be rejected on their merits. First, it notes that many of the arguments raised are not new and were addressed by the December 22 Order. In particular, it points to Ameren's arguments that the MRD MWP eligibility requirement for unchanged offer limits for day-ahead committed units would give a generator an incentive to offer less flexibly and to avoid changing its real-time offer parameters when operationally feasible. Midwest ISO similarly points to earlier Ameren comments alleging that the proposed eligibility requirements were overly restrictive and, thus, would undermine the goal of correcting market inefficiencies, and that it was counter-productive to implement the PV MWP (including for manual redispatch) if the eligibility criteria prevented market participants from receiving the associated payments. In addition, Midwest ISO points to Wisconsin Electric and others' comments in that proceeding urging the use of the IMM's monitoring and the Commission's authority to impose civil penalties, rather than the proposed eligibility criteria.

34. Midwest ISO reiterates its response to these comments, in which it argued that the prevention of gaming is preferable to mere punishment, stating:

prudence dictates the gaming door remain locked. Otherwise the Midwest ISO would have to guard the entrance with unwieldy eligibility checks, as market participants profess legitimate reasons for multiple changes to their offer parameters. It is unclear whether such complicated eligibility screening can be automated. Moreover, it is uncertain whether any possible gains achieved by additional automated eligibility checks would outweigh the cost in time as well as dollars required to design and implement them.<sup>14</sup>

35. Midwest ISO points to the Commission's finding that the eligibility criteria are required to address the potential gaming risks, and its statement that it did not believe that monitoring by the IMM alone would be sufficient to prevent gaming. Midwest ISO argues that neither Ameren nor Wisconsin Electric have given any reason why these same arguments should now be accepted in this proceeding with respect to the same eligibility criteria accepted in the December 22 Order.<sup>15</sup>

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<sup>14</sup> *Id.* at 10 (citing Midwest ISO November 6, 2006 Answer at 4-5 in Docket No. ER06-1552-000).

<sup>15</sup> *See id.* at 10-11.

**iv. Commission Determination**

36. We note that the eligibility criteria that relate to the offer limits being contested here are unchanged as compared to those accepted in the PV MWP proceeding. We conclude, for the same reasons expressed in the December 22 Order, that these criteria are appropriate in this proceeding.<sup>16</sup>

37. As stated in the December 22 Order, while we find that it is best to implement this new program in a somewhat conservative mode, we will encourage Midwest ISO to work through its stakeholder process to explore alternative methods of enhancing participation in the MRD MWP program.<sup>17</sup> As Midwest ISO gains experience with the MRD MWP program, it should consider whether the eligibility criteria may cause inefficiencies or discourage generation resources from providing flexible offers. It is in the interests of both market participants and Midwest ISO that the MRD MWP procedures operate in a manner that encourages market participants to provide the offer flexibility needed for the market to operate efficiently at the lowest possible cost.<sup>18</sup> Therefore, we reiterate our requirement that Midwest ISO should endeavor to loosen the eligibility criteria in the future to encourage greater participation in the MRD MWP program while addressing any potential gaming of the MRD MWP.<sup>19</sup>

38. We do not agree with Wisconsin Electric that oversight by the IMM with after-the-fact review of generation resources' actions to determine if changes to offer limits were reasonable should replace the eligibility criteria. As we explained in the December 22 Order, the proposed MRD MWP eligibility criteria are required to address potential gaming strategies.<sup>20</sup>

**c. Settlement Statements**

39. Wisconsin Electric points to Midwest ISO's statement in its transmittal letter that it is capable of developing software solutions and/or manual processes to calculate and

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<sup>16</sup> December 22 Order, 117 FERC ¶ 61,325 at P 7-9, 38-39.

<sup>17</sup> *See id.* P 38, 40.

<sup>18</sup> *See id.*

<sup>19</sup> We note that the December 22 Order requires Midwest ISO to consider any adverse effects of the eligibility criteria as part of its report due 12 months from the effective date of the MRD MWP program. *See id.* P 41-42.

<sup>20</sup> *See id.* P 39.

provide compensation for manual redispatch.<sup>21</sup> Wisconsin Electric says that Midwest ISO should be able to provide market participants with more detail on the processes it intends to use. In particular, it argues that “it should be determined in advance by which settlements statement after the manual redispatch occurs the Midwest ISO will be able to settle for the MRD MWP.” Wisconsin Electric’s concern is that without the use of “manual processes” Midwest ISO may not have data available and calculations completed by the S7 settlement statement. It argues that Midwest ISO should be required to provide assurance that calculations are completed in time for inclusion in the S7 settlement statement.

40. In its answer, Midwest ISO argues that Wisconsin Electric’s argument for inclusion of manual redispatch calculations in the S7 settlement statement is impractical and unnecessary, as it is the S14 financial statement that is binding. It notes that even charges that appear for the first time in an S55 settlement statement can still be reviewed and disputed by market participants within fifteen days if adjustments need to be reflected in the S105 settlement statement.

41. We will not require Midwest ISO to include MRD MWP data in S7 settlement statements because market participants are not invoiced for the operating day’s charges and credits until both the S7 and S14 settlements have been completed.<sup>22</sup> As the S55 and S105 statements are designed to accommodate updates to meter data submitted by market participants,<sup>23</sup> we conclude that Midwest ISO intends to include MRD MWP data in the S14 settlement statement. To provide greater clarity on this issue, however, we will require Midwest ISO to explain, in its compliance filing, how it intends to provide settlements for the MRD MWP, including the specific settlement statements that will include such payments.

**d. Schedule 27-A**

42. Schedule 27-A provides for the calculation of the MRD MWP. In it, the costs and payments of following manual redispatch instructions are calculated and compared to determine the necessary MRD MWP. The base output and the pay output are terms in the calculation of the cost of following dispatch. Schedule 27-A provides that neither

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<sup>21</sup> Midwest ISO’s standard settlement calendar provides for an initial settlement statement 7 days (S7) after the operating day and recalculated settlement statements 14 days (S14), 55 days (S55), and 105 days (S105) after the operating day. When an operating day is settled, the most recent data that has been provided to settlements is used in the calculations. See Midwest ISO Business Practices Manual No. 5, section 2.1.3.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

output will be recalculated on the basis of meter data submissions. This is consistent with the calculation of the PV MWP in Schedule 27, which was accepted in the Commission's December 22 Order.

43. Wisconsin Electric asks for changes to the calculation of the MRD MWP in Midwest ISO's proposed Schedule 27-A. In particular, in these calculations neither the base output nor the pay output are recalculated based on meter data submissions. Wisconsin Electric believes that, if there are meter data submissions that change the base output of the generator, then they should be included in the MRD MWP, so that the most accurate values are calculated for the MRD MWP.

44. In its answer, Midwest ISO argues that its use of meter data submissions is unchanged from the process the Commission considered in its December 22 Order and, thus, Wisconsin Electric's new arguments are an impermissible collateral attack on the Commission's previous order. Midwest ISO concludes that the treatment of these issues should not be modified here.

45. We interpret the proposed tariff sheets to mean that, while meter data submissions will not be used to recalculate some specific subsets of the inputs used to determine the MRD MWP, meter data submissions will still be used, as appropriate, to recalculate the MRD MWP during the settlements process when issuing the S55 and S105 statements. As such, we will conditionally accept the proposed tariff revisions specifying that the base output and pay output for the MRD MWP will not be recalculated based on meter data submissions because the Commission previously accepted in its December 22 Order similar language regarding the manual redispatch under the PV MWP.<sup>24</sup>

46. However, while we note that Wisconsin Electric did not raise this meter data submissions issue in the prior proceeding in Docket No. ER06-1552, this does not preclude our consideration of this issue here. We are now concerned that Midwest ISO does not intend to permit any recalculations of the MRD MWP on the basis of available meter data and, if so, that such actions may be unjust and unreasonable. We will require Midwest ISO, in its compliance filing, to explain its rationale and method for using meter submission data when recalculating the MRD MWP, including the availability of such data and its procedures for adjusting the MRD MWP, as appropriate, in the S55 and S105 settlement statements.

**e. Other Tariff Revisions**

47. Midwest ISO's statement that the software for the MRD MWP is ready to be implemented constitutes the required notice, so that tariff sheets accepted by the

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<sup>24</sup> See Midwest ISO September 29 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Schedule 27.

Commission in Docket No. ER06-1552 should be effective on February 1, 2008. However, Midwest ISO has not specified which of the tariff sheets in Docket No. ER06-1552 should be made effective on February 1, 2008. Sheets that must be made effective in order to implement the MRD MWP, including sheets that were revised in this proceeding, provide for manual redispatch, and define terms that are used in the proposed MRD MWP provisions, will be accepted in Docket No. ER06-1552 effective on February 1, 2008.<sup>25</sup> In addition, we will require Midwest ISO to explain, in its compliance filing, whether any additional sheets in Docket No. ER06-1552 should be effective on February 1, 2008 and, if so, to propose any needed tariff revisions to remove references to the PV MWP from those pages.<sup>26</sup>

48. We will also require Midwest ISO to submit, in its compliance filing in Docket No. ER08-416-000, tariff revisions that are effective February 1, 2008 to: (1) remove the definition of the PV MWP;<sup>27</sup> (2) remove the reference to section 40.3.5 from the definition of production costs;<sup>28</sup> (3) remove the reference to Schedule 27 and insert a reference to Schedule 27-A on the index;<sup>29</sup> (4) define the term “Manual Redispatch

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<sup>25</sup> *Id.* Fourth Revised Sheet Nos. 15 and 16, Third Revised Sheet Nos. 41A, 125, 324, and 330, First Revised Sheet No. 115.01, and Original Sheet No. 330F; January 24, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Fourth Revised Sheet Nos. 9 and 10, Substitute Fourth Revised Sheet No. 85, Substitute Third Revised Sheet No. 94, Substitute Original Sheet Nos. 330A, 330A.01, 330C, 330C.01, and 330C.02, and Second Substitute Original Sheet Nos. 330D and 330E; June 18, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Fourth Revised Sheet No. 14, First Revised Sheet No. 85A, Substitute Third Revised Sheet No. 115, Substitute Second Revised Sheet No. 115A, Fifth Revised Sheet No. 116, and Substitute Original Sheet No. 330B.

<sup>26</sup> We infer that the remaining tariff sheets accepted by the Commission in Docket No. ER06-1552 should be effective when the Ancillary Services Market is implemented on June 1, 2008. *See* February 25 Order, 122 FERC ¶ 61,172 at P 540. However, in order for those remaining tariff sheets to be made effective on June 1, 2008, we remind Midwest ISO that it must notify the Commission on or before May 22, 2008 that the necessary software and other systems are in place. *See* December 22 Order, 117 FERC ¶ 61,325 at Ordering Paragraph A.

<sup>27</sup> Midwest ISO June 18, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Fourth Revised Sheet No. 14 and Substitute Third Revised Sheet No. 115.

<sup>28</sup> *Id.* Substitute Third Revised Sheet No. 115.

<sup>29</sup> Midwest ISO September 29, 2006 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Third Revised Sheet No. 41A.

Make-Whole Payment (MRD MWP);” (5) replace the word “that” with “than” in sections 33.8.2.a.1.a.iii and 33.8.2.a.2.a.iii;<sup>30</sup> and (6) move the zero before the comma in part of the formula for the calculation of the MRD MWP, such that it reads “max { 0, (...” instead of “0 max { , (...”<sup>31</sup>

49. We note that the tariff revisions to implement the ASM on June 1, 2008 contained changes related to manual redispatch and associated compensation. However, the tariff revisions originally proposed here do not include language since accepted in the ASM proceeding. We will require Midwest ISO to submit, in its compliance filing, proposed tariff revisions effective June 1, 2008 that consolidate the tariff revisions accepted in the ASM and MRD MWP proceedings, as appropriate, that relate to Midwest ISO’s manual redispatch procedures and associated compensation. In particular, we note that the tariff revisions accepted in the ASM proceeding allow Midwest ISO to manually redispatch and appropriately compensate Demand Response Resources (DRR)–Type II,<sup>32</sup> but that the proposed tariff revisions here apply only to generation resources. We will require Midwest ISO to include tariff revisions, in its compliance filing, that allow DRRs-Type II to receive the MRD MWP, if eligible. We will also require Midwest ISO to submit, in its compliance filing, tariff revisions effective June 1, 2008 to reinsert the reference to section 40.3.5 into the definition of production costs and the reference to Schedule 27 on the index.<sup>33</sup>

50. In addition, we note that several tariff sheets proposed here have paginations that overlap with sheets accepted in the ASM proceeding, such that we cannot determine whether the sheets proposed here should supersede sheets accepted in the ASM

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<sup>30</sup> Midwest ISO January 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, First Revised Sheet Nos. 330C.01 and 330C.02.

<sup>31</sup> *Id.* Original Sheet No. 1050Z.23.

<sup>32</sup> TEMT section 1.67a defines a DRR-Type II as a “Resource hosted by an Energy Consumer or Load Serving Entity that is capable of supplying a range of Energy and/or Operating Reserve, at the choice of the Market Participant, to the Energy and Operating Reserve Market through behind-the-meter generation and/or controllable Load.” Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Third Revised Sheet No. 65.

<sup>33</sup> Midwest ISO June 18, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Third Revised Sheet No. 115; September 29, 2006 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Third Revised Sheet No. 41A.

proceeding. As such, we will require Midwest ISO, in its compliance filing, to revise the proposed tariff sheets to ensure that they have unique and appropriate paginations.<sup>34</sup>

51. Finally, as discussed below, we will reject the proposed tariff revisions in Docket No. ER06-1552 that provide for the monitoring and mitigation of the PV MWP. We also note that the proposed tariff revisions do not modify Midwest ISO's monitoring and mitigation plan to include the MRD MWP. As such, we will direct Midwest ISO to clarify its plan to monitor and, if appropriate, mitigate the MRD MWP. We will require that such a monitoring and mitigation plan consider: (1) the types of behavior that the IMM will monitor for, including which markets are relevant to manipulation of these payments; (2) the types of impacts the IMM should monitor, including whether it should consider only the effects on the MRD MWP itself, or additional effects on market prices and/or RSG payments; (3) whether monitoring and any mitigation would occur only when there is a binding transmission constraint; (4) whether mitigation should apply only within constrained areas, such as Broad Constrained Areas (BCAs), Narrow Constrained Areas (NCAs), and/or constrained reserve zones; (5) any specific mitigation thresholds that will apply; and (6) whether the IMM may apply any mitigation or sanctions in response to gaming activities. We note that care must be taken with any mitigation to ensure that the behavior in question is objectively identifiable. We will require Midwest ISO to include any appropriate tariff modifications to incorporate its clarifications in the compliance filing directed herein.

**2. Docket No. ER06-1552-003**

**a. Midwest ISO June 18, 2007 Filing**

52. On June 18, 2007, Midwest ISO submitted tariff revisions in compliance with the Commission's May 18 Order. In section 53.1.a, Midwest ISO proposed that the IMM review and analyze offers resulting in a PV MWP, RSG payment, or other similar payments by (1) "utilizing the criteria found in Section 63.3.a through 63.3.c;" (2) screening for conduct "at thresholds lower than the mitigation thresholds set forth in Section 64, or use other appropriate screens;" and (3) applying "any appropriate sanctions provided in Section 65."

**b. Commission Determination**

53. We will reject the revisions to TEMT sections 53.1.a<sup>35</sup> and 65.3.5<sup>36</sup> because they do not adequately clarify Midwest ISO's mitigation plan regarding the PV MWP, as

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<sup>34</sup> Midwest ISO January 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, First Revised Sheet Nos. 330C, 330C.01, 330C.02, and 330D.

<sup>35</sup> Midwest ISO January 24, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Second Revised Sheet No. 796.

required by the Commission's December 22 Order and May 18 Order, respectively. We find that the other tariff revisions comply with the Commission's May 18 Order and, as such, we will accept the remaining tariff sheets filed on June 18.<sup>37</sup>

54. We find that proposed section 53.1.a does not satisfy the Commission's requirement in its May 18 Order that Midwest ISO clarify which portions of section 63, and by reference sections 64 and 65, apply to the PV MWP.<sup>38</sup> It is unclear whether PV MWP mitigation measures would apply when transmission constraints are not binding because the proposed tariff revisions suggest that section 63.4, which defines BCAs and NCAs, does not apply to the PV MWP. It is unclear which of the mitigation thresholds in section 64 would apply to the PV MWP, because such thresholds are applicable in BCAs and NCAs, as defined in section 63.4. In addition, we are concerned that the proposed tariff provisions give the IMM undue discretion to apply any thresholds in section 64, any other thresholds that are not specified in the tariff that the IMM deems to be appropriate, and any sanctions in section 65. We note that the IMM may administer compliance with tariff provisions only if they are expressly set forth in the tariff, involve objectively identifiable behavior, and do not subject the seller to sanctions or consequences other than those expressly approved by the Commission and set forth in the tariff, with the right of appeal to the Commission.

55. Proposed section 65.3.5 requires the IMM to seek Commission approval to remove a generation resource's eligibility for the PV MWP if they are found to be manipulating the PV MWP to extract undue payments in accordance with the criteria in section 63. As explained above, we find that the proposed tariff revisions do not identify which of the criteria in section 63, and by reference which of the thresholds in section 64, will be applicable to the PV MWP.<sup>39</sup> In addition, we note that section 53.3 already

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<sup>36</sup> *Id.* Substitute Third Revised Sheet No. 713; Midwest ISO June 18, 2007 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Second Substitute Third Revised Sheet No. 713.

<sup>37</sup> *Id.* Substitute Fourth Revised Sheet No. 14; Substitute First Revised Sheet No. 85A; Substitute Third Revised Sheet No. 115; Substitute Second Revised Sheet No. 115A; Fifth Revised Sheet No. 116; Substitute Original Sheet Nos. 330B, 587F, and 587K; Second Substitute Second Revised Sheet No. 587B; Second Substitute Original Sheet Nos. 587C and 587J.

<sup>38</sup> We note that Midwest ISO did not remove redundant language from section 53.1.a, as required. *See* May 18 Order, 119 FERC ¶ 61,160 at n.10.

<sup>39</sup> We note that the Commission's acceptance of proposed section 65.3.5 in its May 18 Order was made subject to further clarification of Midwest ISO's mitigation plan.

requires that the IMM make referrals to the Commission of behavior that it has reason to believe has violated the tariff or other Commission-accepted market rules. We are concerned that the requirement in proposed section 65.3.5 that the IMM seek Commission approval to remove PV MWP eligibility could be interpreted to limit the IMM's ability to propose and justify other potential mitigation measures when making such a referral to the Commission, in accordance with section 62.c, or to restrain the Commission's discretion to determine any appropriate sanctions in response to such a referral.

56. Notwithstanding these deficiencies, we will not require Midwest ISO to submit a further compliance filing to address our mitigation concerns here, because the proposed tariff sheets have been overtaken by other proceedings. As discussed above, we will require Midwest ISO to clarify its market monitoring and mitigation plan for the proposed MRD MWP in Docket No. ER08-416-000. In addition, we note that the Commission has required Midwest ISO to clarify its market monitoring and mitigation plan for the remaining PV MWP provisions, now called the real-time offer revenue sufficiency guarantee payment (RTORSGP) and day-ahead margin assurance payment (DAMAP),<sup>40</sup> as part of its ASM proposal.<sup>41</sup> Thus, we will address market monitoring and mitigation regarding the MRD MWP, RTORSGP, and DAMAP in their respective proceedings.

57. We note that the December 22 Order required Midwest ISO to file a report no later than 12 months following the effective date of the PV MWP that discusses the effectiveness of the program, identifies any problems, and addresses other issues, including alternative methods of meeting intervenors' concerns.<sup>42</sup> However, Midwest ISO has since proposed to split the PV MWP into the MRD MWP, RTORSGP, and DAMAP, and those payment programs do not have the same effective dates. Therefore, we clarify that Midwest ISO is still required to file a report, as outlined in the December 22 Order, regarding each of the payment programs relating to the PV MWP in their respective proceedings due no later than 12 months following each program's respective effective date.

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<sup>40</sup> The real-time offer revenue sufficiency guarantee payment (RTORSGP) is applicable to the dispatch of energy above day-ahead schedules and the day-ahead margin assurance payment (DAMAP) is applicable to the dispatch of energy below day-ahead schedules. *See* February 25 Order, 122 FERC ¶ 61,172 at P 540.

<sup>41</sup> *See id.* P 543-544.

<sup>42</sup> December 22 Order, 117 FERC ¶ 61,325 at P 41-42.

The Commission orders:

(A) Midwest ISO's tariff sheets proposed in Docket No. ER06-1552-003 are hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) Midwest ISO's tariff sheets proposed in Docket No. ER08-416-000 are hereby conditionally accepted effective February 1, 2008, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to make a compliance filing by March 25, 2008 modifying its proposed tariff revisions as discussed in the body of this order.

By the Commission. Commissioner Wellinghoff concurring with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER08-416-000

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-1552-003

(Issued March 4, 2008)

WELLINGHOFF, Commissioner, concurring:

I dissented from the recent Commission order that approved Midwest ISO's ancillary services market (ASM) proposal because Midwest ISO's proposed market operating rules contain a number of economic disincentives and other barriers for demand response to participate in its markets.<sup>1</sup> In today's order, the Commission takes a step to remove one of those barriers. Specifically, the Commission requires Midwest ISO to submit tariff revisions, to be effective when the ASM is implemented, that allow certain eligible demand response providers (DRRs-Type II) to receive manual redispatch make whole payments. I support that step, which appropriately recognizes that demand resources should be compensated when manually redispatched if a generator receives a payment for manual redispatch.

I write separately, however, to observe that the need to correct the above-noted omission highlights my continuing concerns about Midwest ISO's recently approved market operating rules. As I stated in my previous dissent, Midwest ISO's ASM filing contained no factual record assessing whether demand response will be able to effectively participate in Midwest ISO's co-optimized markets. It remains unclear whether Midwest ISO's eligibility criteria encourage participation by demand resources. Similarly, it is unclear whether Midwest ISO adequately accounts for generators' and demand resources' distinctive characteristics in its approach to compensation.

For this reason, I respectfully concur with today's order.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008).