

128 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER09-660-000
ER09-660-001

ORDER ACCEPTING TARIFF AMENDMENTS

(Issued July 2, 2009)

1. On February 6, 2009, as amended February 11, 2009 and May 6, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)² to include procedures for shedding load during capacity shortage conditions. In this order the Commission accepts the Tariff amendments.

I. Background

2. Section 40.2.20 of the currently effective Tariff generally provides for the actions the Midwest ISO will take to maintain reliability within its Balancing Authority Area in the event of capacity shortage conditions. Section 40.2.20.b specifies the actions the Midwest ISO will implement during a Real-Time Dispatch Interval. Specifically, section 40.2.20.b.i of the Tariff addresses situations where an Energy Emergency Alert Level 1 or Level 2 has been declared but further actions by the Midwest ISO are required to clear the energy and reserves markets. Section 40.2.20.b.ii states that if, after the Midwest ISO takes action pursuant to section 40.2.20.b.i. of the Tariff, it is unable to achieve energy balance, the Midwest ISO shall declare an EEA-Level 3 and may implement load shedding pursuant to its emergency operating procedures.

¹ 16 U.S.C. § 824d (2006).

² FERC Electric Tariff Fourth Revised Volume No. 1.

II. The February 2009 Filing

3. The Midwest ISO proposes to amend its Tariff to incorporate its existing policy of implementing load shedding on a *pro rata* basis during an energy and/or capacity emergency after declaring an Energy Emergency Alert Level 3 (EEA-Level 3).³ The proposed Tariff amendments specify that load shedding pursuant to section 40.2.20.b.ii will be implemented on a Midwest ISO Balancing Authority Area basis, or on a Sub-Area basis⁴ if limited by transmission constraints, as required to restore energy balance. The Tariff amendments allocate such load shedding to each affected Local Balancing Authority on a *pro rata*, load ratio share basis and describe how the allocation is calculated.⁵ The Midwest ISO states that the details of implementing load shedding directives are found in the Midwest ISO emergency operating procedures, the same emergency operating procedures referred to in the currently effective Tariff. The Midwest ISO requests an April 12, 2009 effective date for the proposed amendment to section 40.2.20.b.ii.

4. According to the Midwest ISO, the fundamental obligation of a Local Balancing Authority or load serving entity to shed load, even though the Local Balancing Authority or the load serving entity may not be deficient, should be explicitly stated in the Tariff. The Midwest ISO asserts that because the currently effective Tariff does not explicitly provide for the use of load shedding on a *pro rata* basis, the absence of a specific load shedding scheme in the Tariff creates latent ambiguities in light of other parts of the Tariff that adopt by reference NERC reliability standards. The Midwest ISO cites NERC standard EOP-002-0, which describes “Energy Deficient Entity” obligations as follows, as an example: “The deficient Balancing Authority or load serving entity must agree that, upon notification from its Reliability Coordinator of the situation, it will immediately take whatever actions are necessary to mitigate any undue risk to the

³ EEA-Level 3 alerts are declared where a “Balancing Authority or Load Serving Entity foresees or has implemented firm load obligation interruption. ...” NERC Standard EOP-002-2.1 – Capacity and Energy Emergencies at 9 (May 13, 2009).

⁴ Sub-Area is defined at section 1.630 of the Tariff as: “A Reserve Zone, or any other portion of the Midwest ISO Balancing Authority Area identified by the Midwest ISO as described in the Midwest ISO’s emergency operating procedures, that may require the implementation of emergency actions to address a local reliability problem.”

⁵ See February 2009 Filing, proposed Original Sheet 1084A: “Load Shedding shall be allocated to each affected Local Balancing Authority on a *pro rata*, Load Ratio Share basis, determined by the ratio of the total amount of Load Shedding required to achieve Energy balance to the amount of the real-time load remaining, or if the Load Shedding is to occur in the next hour, to the projected load for the next-hour, for the Sub-Area or the entire Midwest ISO Balancing Authority Area, as applicable.”

Interconnection. These actions may include load shedding.”⁶ Thus, although the NERC reliability standards make reference to deficient Balancing Authorities and load serving entities, those standards do not establish a prearranged scheme among multiple Local Balancing Authority Areas to shed load on a *pro rata* load ratio share basis to achieve energy balance. The Midwest ISO believes that explicitly stating that load shedding will occur on a *pro rata* basis “will eliminate confusion that might otherwise arise during an emergency event.”⁷ Further, the Midwest ISO states the Tariff amendments are consistent with NERC reliability standards.⁸

5. The Midwest ISO notes that in 2007, members of existing Midwest ISO working groups, including the Supply Adequacy Working Group and the Operations Working Group, formed the Midwest ISO Real Time Sufficiency Tool Task Force (Task Force). The Task Force was formed to evaluate the development of tools and business rules that would provide the Midwest ISO with the capability to assess, during an energy emergency, which Balancing Authority Areas had insufficient resources dedicated to load serving entities within their areas. The Task Force studied whether a proposed Real Time Sufficiency Tool could be used to provide the Midwest ISO with the information necessary to direct actions, up to and including firm load shedding, in deficient areas prior to the implementation of *pro rata* load shedding under the most severe step of the Midwest ISO Max Gen Event in RTO-EOP-002, the Midwest ISO’s existing load shedding procedure.

6. The Midwest ISO states that it supported the proposed Real Time Sufficiency Tool, but the proposal met with “substantial opposition” in the Midwest ISO Markets Subcommittee.⁹ Stakeholders who opposed the Real Time Sufficiency Tool proposal claimed that the Midwest ISO Tariff does not specifically provide for targeted load shedding to mitigate an energy deficiency and that although the Midwest ISO has never had to implement a load shedding directive, the existing procedure, RTO-EOP-002, had always been based upon a *pro rata* load shedding mechanism. In August 2008, the Midwest ISO Advisory Committee voted against the Real Time Sufficiency Tool proposal. According to the Midwest ISO, the Midwest ISO Advisory Committee stated that the existing *pro rata* load shedding procedure should continue to be used for energy emergencies. Following the Midwest ISO Advisory Committee vote in August, the Reliability Subcommittee and the Midwest ISO staff developed tariff language to

⁶ February 2009 Filing at 2.

⁷ *Id.*

⁸ *Id.*

⁹ February 2009 Filing at 2.

incorporate the existing *pro rata* load shedding procedure into the Tariff. The Midwest ISO Market Subcommittee voted to support the tariff language at its December 2008 meeting.

III. Notice of Filing and Responsive Pleadings

7. Notice of the Midwest ISO's filing was published in the *Federal Register*, 74 FR 8523 (2009), with interventions, comments and protests due on or before March 6, 2009.

8. Consumers Energy Company, Otter Tail Power Company, Wisconsin Electric Power Company, Exelon Corporation, American Municipal Power–Ohio, Inc., Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. filed motions to intervene. Duke Energy Corporation (Duke) filed a motion to intervene and comments in support of the Tariff amendments. Detroit Edison Company, the Illinois Commerce Commission, Integrys Energy Services, Inc. and Reliant Energy Inc. filed motions to intervene out of time. The Missouri Public Service Commission (Missouri Commission) filed a notice of intervention and protest of and comments on the Tariff amendments. Ameren Services Company (Ameren) filed a motion to intervene and protest of the Tariff amendments. Potomac Economics, Ltd., the Midwest ISO Independent Market Monitor (Midwest ISO Market Monitor), filed a motion to intervene out of time and comments on the Tariff amendments.

9. On March 26, 2009, the Midwest ISO filed a motion for leave to answer and answer to the comments and protests submitted in this proceeding. In its answer, the Midwest ISO supports the Midwest ISO Market Monitor's comments and provides additional background on the Real Time Sufficiency Tool proposal considered in the stakeholder process.

10. On March 27, 2009, Duke filed a motion for leave to answer and answer to Ameren's protest.

11. On April 7, 2009, the Commission issued a deficiency letter regarding the February 2009 Filing. The deficiency letter required the Midwest ISO to provide additional information regarding the relationship between the Tariff amendments and a number of reliability standards and to address an ambiguity in the language of the Tariff amendments.

12. On May 6, 2009, the Midwest ISO filed a response to the deficiency letter. Notice of the filing was published in the *Federal Register*, 74 FR 23,687 (2009), with interventions, comments and protests due on or before May 27, 2009. None were filed.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed motions to intervene and the late-filed comments of the Midwest ISO Market Monitor given the interests in this proceeding of the entities that filed them, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process. We reject Duke Energy's unauthorized answer.

B. Substantive Matters

1. Comments

16. The Missouri Commission argues that the *pro rata* load shedding methodology will lead to inequitable results and produce perverse incentives when there is sufficient time prior to curtailment to (1) determine which load serving entities within specific areas are the cause of the resource deficiency and (2) inform selected Balancing Authorities how much load will need to be shed in their specific areas.

17. According to the Missouri Commission, the perverse incentives which will result from *pro rata* load shedding are connected to the Midwest ISO's Resource Adequacy procedures. The Missouri Commission notes that the Midwest ISO Tariff requires that resources which are designated as meeting the Resource Adequacy requirement under Module E of the Tariff (Module E) must be offered into the Midwest ISO energy and ancillary services market, if available. The Missouri Commission contends that without some form of a Resource Adequacy Sufficiency Tool, such as the proposed Real Time Sufficiency Tool, the Midwest ISO has no way of tracking resources or enforcing whether resources designated under Module E as meeting the Resource Adequacy requirement are actually being offered into the Midwest ISO markets. The Missouri Commission states that without an effective Resource Adequacy requirement, the combination of *pro rata* load shedding and market shortages will require Missouri retail and wholesale customers in the Ameren Missouri Balancing Authority Area to shed load to meet shortages that are due to entities outside of Missouri being resource deficient.

18. The Missouri Commission argues that with a tracking tool like the Real Time Sufficiency Tool, the Midwest ISO could inform a Balancing Authority of a shortage in its area and the Balancing Authority could contact the deficient entity directly and request that the entity take action to correct the deficiency. It states that, without a tracking tool, since the Midwest ISO cannot identify who is short, it will curtail load on a *pro rata* basis and no market participant will have responsibility for taking corrective action. The Missouri Commission claims that since the Tariff permits the capacity of generation units that are down for maintenance to count as Module E resources in months when they are down, load serving entities will not be motivated to ensure that their contracts require that maintenance not take place during peak periods since load shedding will occur *pro rata* and the costs of these actions will be socialized among market participants.

19. The Missouri Commission requests that the Commission reject the Tariff amendments and direct the Midwest ISO to submit a Real Time Sufficiency Tool that identifies, ahead of real time, entities that are short so that Balancing Authorities can direct those entities to correct the shortage. In the alternative, if the Commission accepts the *pro rata* load shedding mechanism, the Missouri Commission requests that the Commission require the Midwest ISO to implement a Resource Adequacy Sufficiency Tool that can track which entity causes the shortage and file those results with the Commission, which would then identify any inappropriate behavior.

20. Ameren claims that *pro rata* load shedding, along with the Midwest ISO's inability to track adequate available resources, implies that the Midwest ISO cannot fully enforce the Module E "must offer" obligation during the operating horizon¹⁰ and that even full tracking will not ensure adequate available resources during that time frame. Ameren requests that the Commission reject the Tariff amendments and direct the Midwest ISO to develop a complete mechanism for tracking the available resources of individual entities during the operating horizon.

21. Ameren alleges that the Midwest ISO's proposal to implement *pro rata* load shedding across the entire Midwest ISO footprint will unfairly disadvantage load serving entities that have made appropriate arrangements to have sufficient resources on hand to meet their firm load-serving obligations. Ameren posits an example to illustrate this point. In Ameren's example, two load serving entities have satisfied the Module E requirement to obtain adequate resources for the operating month. In the days leading up to the start of the operating month, both load serving entities lose a resource due to an

¹⁰ Ameren explains that the NERC Standards use the term "operating horizon" to refer to the period of actual operations. The "planning horizon" is the period in advance of actual operations. Ameren uses the term "operating horizon" to refer to a period consistent with the Module E must offer obligation, as opposed to the planning period. Ameren Protest at n.2.

outage which reduces both of their available capacity to amounts less than their obligations. In Ameren's example, one load serving entity, LSE 1, then contracts with another entity to cover its load; the other load serving entity, LSE 2, does not replace its lost resource and is deficient going into the operating horizon. Ameren explains that if the Midwest ISO Balancing Authority Area experiences an energy emergency, in part due to LSE 2's failure to maintain adequate available resources, and the Midwest ISO directs system-wide load shedding on a *pro rata* basis, both LSE 1 and LSE 2 will be forced to shed the same amount of load even though LSE 1 covered its deficiency. According to Ameren, this result is unfair and is exacerbated by Module E permitting States within the Midwest ISO footprint to establish their own reserve margins – with a *pro rata* load shedding mechanism, States that have arranged for sufficient resources to cover their loads will nevertheless have their load curtailed.

22. Ameren claims that the Midwest ISO acknowledges that it does not possess a mechanism to determine, during an energy emergency, which Local Balancing Authorities have insufficient resources dedicated to load serving entities in their areas. Ameren suggests that the Midwest ISO has merely conceptualized a mechanism for determining compliance with the Module E must offer obligation during the operating horizon and that until the Midwest ISO develops this mechanism, the Midwest ISO does not have a complete picture with respect to available resources in the operating horizon.¹¹ Ameren asserts that planned reserves under Module E do not carry over into the operating horizon, and argues that as such they are “useless;” further, if resources designated under Module E are not available in the operating time frame and the Midwest ISO cannot detect their unavailability, the Midwest ISO must shed load indiscriminately.¹² Ameren argues that two flaws exist in the Midwest ISO's mechanism: (1) that the Midwest ISO lacks the capability to determine whether resources that are located outside the Midwest ISO footprint are complying with the must offer requirement; and (2) that the Midwest ISO's compliance mechanism would not identify resources that are in a partial or full outage going into the operating horizon because only resources that are available are subject to the must offer obligation.

23. In its comments, Duke asserts that the Tariff amendments provide clarity and remove ambiguities caused by the absence of language specifying the method by which emergency load shedding may, if necessary, be implemented in the Midwest ISO.

24. In its comments responding to the protests, the Midwest ISO Market Monitor supports the Midwest ISO's proposal to implement *pro rata* load shedding and opposes

¹¹ Ameren relies on a draft version of Midwest ISO Business Practices Manual No. 11, Resource Adequacy from March 2009. The final version of that business practice manual became effective June 1, 2009, after Ameren filed its protest.

¹² Ameren Protest at 10.

proposals that would allocate load shedding obligations to load serving entities that are capacity deficient at the time of the emergency. In particular, the Midwest ISO Market Monitor opposes adoption of a Real Time Sufficiency Tool.

25. The Midwest ISO Market Monitor claims that Real Time Sufficiency Tools are fundamentally flawed because the premise underlying them, that deficient load serving entities are causing the need to shed load, is incorrect for at least two reasons, one due to geography and one due to the divergence between Day-Ahead commitment and Real-Time dispatch.

26. First, the Midwest ISO Market Monitor explains that system-wide shortages are highly unlikely to be the cause of a load shedding event. Rather, load shedding is more likely to be needed in specific sub-regions or constrained areas within the Midwest ISO when additional imports into the area are limited by transmission constraints. However, because there are no specific deliverability requirements associated with capacity that is designated by a load serving entity, it would be incorrect to conclude that because a load serving entity has sufficient capacity on a Midwest ISO-wide basis it can necessarily deliver that capacity into a constrained area to replace a unit. Thus, a “sufficient” load serving entity could suffer a forced outage in a constrained area that causes the load shedding, but a Real Time Sufficiency Tool would not accurately identify that load serving entity as the cause. Alternatively, if the same load serving entity suffered a forced outage on a unit outside of the constrained area and the outage was large enough to make the load serving entity deficient system-wide, the load serving entity might be targeted for load shedding even though a transmission or generation outage by another load serving entity resulted in load shedding in the constrained area. These two results would violate the causality premise underlying a Real Time Sufficiency Tool.¹³

27. Second, the Midwest ISO Market Monitor states that most Real Time Sufficiency Tools permit resources offered in the Day-Ahead market to count towards a load serving entity’s capacity sufficiency requirement. However, a load serving entity that is “sufficient” in the day-ahead market could cause a real-time load shedding event if it loses a unit in real-time. The Midwest ISO Market Monitor explains that a Real Time Sufficiency Tool would not identify this load serving entity as providing insufficient capacity, and thus would not accurately identify the cause of the event. According to the Midwest ISO Market Monitor, these examples illustrate the flawed causality premise upon which Real Time Sufficiency Tools rest and that the unreliable causality used in

¹³ The Midwest ISO Market Monitor notes that this issue cannot be resolved by establishing a deliverability requirement because that would likely create significant market power concerns. These concerns arise when most of the capacity in a constrained area is needed to meet the local requirements so that withholding of capacity by even relatively small suppliers could substantially increase local capacity prices.

Real Time Sufficiency Tools is the primary reason why the Commission should not consider targeted load shedding.

28. The Midwest ISO Market Monitor also contends that Real Time Sufficiency Tools would impact bilateral capacity trading. It argues that if a Real Time Sufficiency Tool were implemented, it would be rational for load serving entities to require generators selling capacity to accept damage provisions to address situations where the supplier's forced outage contributes to the load serving entities' targeted load shedding. The costs of these damage provisions would raise capacity prices under Module E, generate costs for consumers and constitute a barrier to contracting.¹⁴ The Midwest ISO Market Monitor also notes that a Real Time Sufficiency Tool would create incentives for generators to omit reporting forced outages in the day-ahead time frame when supply conditions are tight, an incentive which stems from the fact that generation offered in the Day-Ahead market is counted towards a load serving entity's sufficiency, even if that generation is subsequently unavailable.

29. Finally, the Midwest ISO Market Monitor argues that a Real Time Sufficiency Tool would motivate load serving entities to engage in short-term purchases of capacity, purchases which, whether made from suppliers within or outside of the Midwest ISO, would not address shortage problems or eliminate the reliability issue causing the need to shed load. It argues that, in fact, purchases of short-term capacity from suppliers outside of the Midwest ISO region would not benefit the Midwest ISO system because the high prices that prevail during shortage conditions would likely cause external suppliers to import as much power as the transmission interfaces will allow without capacity contracts. Similarly, if generation is available in the Midwest ISO that is not already designated as a network resource, it believes the Midwest ISO will have utilized that generation under its emergency procedures prior to load shedding.

2. Midwest ISO Answer

30. According to the Midwest ISO, the objective of the Real Time Sufficiency Tool proposal was to establish procedures that would restrict the impact of load shedding to those load serving entities with insufficient energy to balance load during an emergency. In the course of evaluating the Real Time Sufficiency Tool proposal, the Midwest ISO and its stakeholders discovered several issues with the proposal, including: (1) the operational problem of actually containing a load shedding obligation to one or more specific Midwest ISO load serving entities that might be located within multiple Local

¹⁴ The Midwest ISO Market Monitor states that some load serving entities had started requiring these provisions in capacity purchase contracts in anticipation of implementation of a Real Time Sufficiency Tool. Motion to Intervene Out of Time and Comments of the Midwest ISO Independent Market Monitor at 5.

Balancing Authority Areas; (2) the disruption of contractual obligations that might result from changing the load shedding method; and (3) the development of Module E, which reduced the need for targeting deficient load serving entities in real time. In light of these concerns, the Midwest ISO withdrew the Real Time Sufficiency Tool proposal in the stakeholder process. The Midwest ISO asserts that *pro rata* load shedding, rather than a Real Time Sufficiency Tool, is more efficient for its energy markets and resource planning.

31. The Midwest ISO suggests that Ameren's protest is predicated on factual errors, is a collateral attack on Module E, and is based on a misunderstanding of Module E and the Midwest ISO's resource adequacy requirements. With respect to Ameren's example purporting to demonstrate the unfair results between two similarly situated load serving entities, the Midwest ISO contends that Module E does not require LSE 1 to obtain additional capacity to cover a unit forced out of service in real time. The Midwest ISO explains that since Module E is based on plans for a firm load shedding event on no more than one day in ten years, the resource plan ensures that sufficient capacity will be available to meet all firm load obligations across all areas, within the one day in ten years limit. With respect to Ameren's concern that the Midwest ISO has failed to connect how planning resources translate to operating capacity, the Midwest ISO explains that the "gap" Ameren perceives does not exist: planning reserves have a must offer requirement in the Day-Ahead market and the Forward Reliability Assessment Commitment unless they report an outage status in the Outage Scheduler. The Midwest ISO states that it can, in fact, determine whether resources that are located outside the Midwest ISO footprint are complying with the must offer requirement and that it plans to coordinate the must offer requirements in the Day-Ahead market with the Outage Scheduler. Finally, the Midwest ISO asserts that Module E addresses the planning horizon, and the Midwest ISO reserve markets and scarcity pricing address the operating horizon.

32. In response to Ameren's claim that some states with higher reserve margins may end up subsidizing states with lower reserve margins, the Midwest ISO states that, to date, all states have defaulted to the reserve margin established pursuant to Module E as part of the one day in ten years limit and that Ameren's concern is premature. Based on these and what it states are other alleged errors by Ameren in its protest, the Midwest ISO concludes that Ameren's protest cannot justify rejection of the Midwest ISO's tariff amendment to include *pro rata* load shedding in the Tariff.

3. Commission Determination

33. We find that the proposed Tariff amendments are just and reasonable and will therefore accept them. As explained by the Midwest ISO, the Tariff amendments do not change the way the Midwest ISO would implement load shedding during an emergency. Rather, as noted above, the purpose of the Tariff amendments is to state explicitly in the Tariff that load shedding may be implemented on a *pro rata* basis during an EEA-Level 3 in order to achieve energy balance. The details of load shedding directives

implementation are contained in the Midwest ISO emergency operating procedures, the same emergency operating procedures which are referred to in the currently effective Tariff.¹⁵ Furthermore, the Midwest ISO has represented that the Tariff amendments are consistent with its emergency operating procedures and NERC reliability standards.¹⁶

34. The Tariff amendments provide clarity by making explicit that load shedding, if necessary, will be implemented on a *pro rata* basis, as required to restore energy balance. The Tariff amendments also provide sufficient flexibility for the Midwest ISO to take appropriate actions during EEA-Level 3 emergencies pursuant to its emergency operating procedures. Where circumstances of extreme shortage situations arise, as during an EEA-Level 3, the Midwest ISO must have the operational flexibility to implement load shedding in a manner that will relieve emergencies and maintain operation of the grid. The protestors supporting a more targeted load shedding methodology, such as a Real Time Sufficiency Tool, have not shown that the *pro rata* load shedding methodology is not just and reasonable.

35. The Commission rejects protestors' requests that it order the Midwest ISO to implement a Real Time Sufficiency Tool or similar mechanism. These parties assert that without a Real Time Sufficiency Tool, or comparable mechanism, the Midwest ISO will not be able to monitor or ensure compliance with the Midwest ISO resource adequacy requirements. We disagree. The Commission believes that a Real Time Sufficiency Tool is not necessary to ensure compliance with the Midwest ISO's resource adequacy requirements since the Commission has previously found that Module E provides sufficient incentives to guarantee compliance with resource adequacy requirements. In particular, in the proceeding on Module E the Commission concluded that "properly-structured financial assessments will, over the long-term, create appropriate incentives for load serving entities to obtain adequate capacity in order to avoid deficiency charges."¹⁷ The Commission also determined that financial assessments would likely create

¹⁵ February 2009 Filing at 3.

¹⁶ For example, in the deficiency letter, Commission Staff questioned whether the Tariff amendments would result in the Midwest ISO shedding load on a system-wide basis unnecessarily when localized load shedding would be sufficient, or more effective, in mitigating the emergency condition. The Midwest ISO confirmed that system-wide *pro rata* load shedding would not be utilized to alleviate such an emergency since to do so could risk further uncontrolled separation, loss of generation, or system shutdown. The Midwest ISO also explained that voltage problems in one area of the system would be resolved pursuant to the Midwest ISO's Transmission Emergency Procedure through appropriate targeted or localized load shedding.

¹⁷ *Midwest Indep. Trans. System Operator, Inc.*, 125 FERC ¶ 61,060, at P 96 (2008) (Financial Settlements Order).

incentives for load serving entities to build or contract for additional capacity.¹⁸ The Commission continues to believe that these mechanisms provide sufficient incentives to ensure compliance with capacity procurement requirements in the planning horizon contemplated by Module E. With respect to the operating horizon, the Commission concluded in the proceeding on Module E that scarcity pricing in the Midwest ISO's energy and operating reserve markets would "create further incentives for [load serving entities] to be resource adequate."¹⁹ Thus, the Commission has previously determined that the combination of scarcity pricing and the assessment of deficiency charges provide incentives to ensure compliance with the Midwest ISO's capacity procurement requirements.²⁰

36. Protestors also argue that because the Midwest ISO permits states to establish different capacity requirements, load serving entities in states with higher requirements will subsidize load serving entities in other states if emergency load shedding occurs on a *pro rata* basis. In *Midwest Indep. Trans. System Operator, Inc.*,²¹ the Commission rejected similar "free rider" arguments raised when the Commission considered Module E. In that order, the Commission explained that while it accepted the possibility that such a problem could arise, it was unlikely for several reasons:

The reliability of electric service is critical to citizens of every state and state commissions therefore have strong incentives not to undermine reliability through policies that favor short-term economic gains (such as through free riding). Moreover, this free-riding concern is less likely to materialize in the Midwest ISO region because of its ancillary services market. Under the Midwest ISO's ancillary services market...areas short of energy will face scarcity pricing, thereby further deterring the incentive of any one area to be short on capacity.

¹⁸ Financial Settlements Order at P 98. In *Midwest Indep. Trans. System Operator, Inc.*, 127 FERC ¶ 61,054, at P 144 (2009) (Financial Settlements Rehearing Order), the Commission accepted the Midwest ISO's proposed deficiency charge.

¹⁹ Financial Settlements Order, 125 FERC ¶ 61,060 at P 98.

²⁰ Financial Settlements Rehearing Order, 127 FERC ¶ 61,054 at P 147.

²¹ 122 FERC ¶ 61,283 (2008) (Resource Adequacy Order).

Nonetheless, we recognize the possibility that future conflicts could arise between state and regional policies in this area... [and] we decline to adopt any blanket rules to resolve potential future conflicts. If such conflicts do arise, we can address them on a case-by-case basis. Resource Adequacy Order, 122 FERC ¶ 61,283 at P 93-94.

Furthermore, neither the Missouri Commission nor Ameren have provided evidence to support a conclusion that permitting varying reserve margins within the Midwest ISO region will compromise reliability.

37. Protestors also allege that the Midwest ISO cannot ensure compliance with the Module E must offer requirement or the sufficiency of available resources during the operating horizon without “a more robust tracking mechanism.”²² Ameren argues that: (1) the Midwest ISO lacks the capability to determine whether resources that are located outside the Midwest ISO footprint are complying with the must offer requirement; and (2) the Midwest ISO’s compliance mechanism would not identify resources that are in a partial or full outage going into the operating horizon because only resources that are available are subject to the must offer obligation. With respect to the first point, in its answer, the Midwest ISO stated that it can, in fact, determine whether resources that are located outside the Midwest ISO footprint are complying with the must offer requirement. As to the second argument, the Midwest ISO has stated that it will coordinate the must-offer requirements in the Day-Ahead Market with the Outage Scheduler.

38. Finally, while it is true that the must offer requirement would not be imposed where a unit is not available, Ameren and the Missouri Commission ignore the financial consequences of a unit being out of service. To qualify as capacity resources (whether located within or external to the Midwest ISO), generating facilities, other than behind the meter generation, are required to submit unit statistical performance and reliability data to determine the value of the facility as an Unforced Capacity Resource.²³ The more a resource is unavailable, the lower its associated Unforced Capacity Resource value would be, thereby providing an incentive for the resource to maintain availability.

²² Ameren Protest at 8-9.

²³ Midwest ISO Business Practices Manual No. 11, Resource Adequacy at 7-96 (effective June 1, 2009).

The Commission orders:

The Midwest ISO's amendments to section 40.2.20.b.ii of the Midwest ISO Tariff are accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.