128 FERC ¶ 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER09-411-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND IN PART AND CONDITIONALLY ACCEPTING TARIFF SHEETS IN PART

(Issued August 7, 2009)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) proposes to revise its Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff) to exempt certain resources, including intermittent resources, from real-time Revenue Sufficiency Guarantee charges; to modify its determination of deviations subject to real-time Revenue Sufficiency Guarantee charges; and to change other miscellaneous tariff provisions. In this order, we accept and suspend and make effective January 6, 2009, subject to refund and further order, the Midwest ISO's proposal to exempt certain resources, including intermittent resources, from real-time Revenue Sufficiency Guarantee charges. We also conditionally accept the proposed tariff sheets to change other miscellaneous tariff provisions, as discussed below.

I. Background and Summary of the Proposal

2. Pursuant to section 40.2.19 of the tariff, a generation or demand response resource receives a Revenue Sufficiency Guarantee credit if the Midwest ISO commits it through the Reliability Assessment Commitment process[1] after the close of the day-ahead energy

[1] The Reliability Assessment Commitment process ensures that sufficient resources will be available and on-line to meet load, operating reserve, and other demand requirements in the real-time market. The process occurs prior to the day-ahead energy and operating reserve markets, between the day-ahead and real-time markets, and during the real-time markets.

and operating reserve markets and if it receives insufficient real-time energy and operating reserve revenues to cover its as-offered production costs.[2] To fund the Revenue Sufficiency Guarantee credits, section 40.3.3 of the tariff charges market participants a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export, and import deviations from day-ahead schedules.

3. On December 12, 2008, the Midwest ISO submitted a proposal to modify certain Revenue Sufficiency Guarantee charge provisions and to make other miscellaneous tariff revisions. The Midwest ISO proposes to revise section 40.3.3.a.ii(d) to clarify that only those resource deviations that are "not otherwise exempt from hourly [e]xcessive [e]nergy [c]alculations and [e]xcessive/[d]eficient [e]nergy [d]eployment [c]harges" are subject to Revenue Sufficiency Guarantee charges.[3] The exemption would apply to the following resources: (1) resources following Midwest ISO directives; (2) resources in test mode, start-up or shutdown mode; (3) resources that trip and go offline; (4) resources involved in a contingency reserve deployment; (5) resources covered by the deactivation of dispatch band option; (6) resources affected by other events or conditions beyond their control; and (7) intermittent resources. The Midwest ISO states that, as currently written, the assignment of Revenue Sufficiency Guarantee costs to resource deviations in section 40.3.3.a.ii(d) "impliedly indicates that it applies only to such non-exempt deviations." The proposed revision "explicitly states this limitation on the scope of the provision."[4]

4. The Midwest ISO also proposes to revise the elements it uses to determine deviations that are subject to real-time Revenue Sufficiency Guarantee charges in sections 40.3.3.a.iii(d)(2) and 40.3.3.a.iii(d)(3). In addition, the Midwest ISO submitted other miscellaneous tariff modifications, including revisions to clarify and replace terms included in the calculation of the Real-Time Revenue Sufficiency Guarantee and Day-Ahead Margin Assurance Payments and to require that host load zone forecasts for each

---

[2] Real-time Revenue Sufficiency Guarantee credits ensure that generation resources and Demand Response Resources – Type II recover their start-up, no-load, and energy offers costs. The credits also ensure that Demand Response Resources – Type I recover their shut-down and hourly curtailment offer costs. Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff at section 40.2.19, First Revised Sheet No. 1078.

[3] Midwest ISO December 12, 2008 Filing, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1096.

[4] *Id.* at 5.

dispatch interval by demand response resources be submitted in megawatts rather than megawatt-hours.

5. The Midwest ISO requests that the Commission waive the prior notice requirement so that the proposed tariff sheets can be made effective on January 6, 2009, to coincide with the start of the Midwest ISO's ancillary services market. In the case of Module C revisions, the Midwest ISO requests an effective date of December 31, 2008, one week prior to the implementation date of the ancillary services market.

II. Notice of Filing and Responsive Pleadings

6. Notice of the Midwest ISO's December 12, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 79462 (2008), with interventions and protests due on or before January 2, 2009. Motions to intervene were submitted by Wisconsin Electric Power Company, Consumers Energy Company, and (jointly) Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative. Motions to intervene and protests were submitted by DC Energy Midwest, LLC (DC Energy) and EPIC Merchant Energy, LP, SESCO Enterprises, LLC, The AI Funds, Inc., Jump Power, LLC, Solios Power, LLC, and Westar Energy, Inc. (collectively, EPIC/SESCO *et al.*). Motions to intervene out of time were submitted by FirstEnergy Service Company,[5] Integrys Energy Group, Inc.,[6] and FPL Energy Power Marketing, LLC. The Midwest ISO submitted an answer to the protests. DC Energy submitted an answer to the Midwest ISO's answer.

7. On February 9, 2009, Commission staff notified the Midwest ISO that the December 12, 2008 filing was deficient and requested additional information, including: (1) a description of each exemption being proposed or otherwise clarified; (2) a justification for each exemption, including the policy basis and a cost causation analysis for each exemption; and (3) a discussion of the Revenue Sufficiency Guarantee Task Force's findings regarding the exemptions, including any relevant meeting minutes or work papers. On March 11, 2009, the Midwest ISO filed its response, as discussed below.

---

[5] FirstEnergy submitted the filing on behalf of its affiliate operating utility companies, The Cleveland Electric Illuminating Co., Ohio Edison Co., The Toledo Edison Co., and Pennsylvania Power Co., and its power marketing affiliate, FirstEnergy Solutions Corporation.

[6] Integrys and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Co., and Integrys Energy Services, Inc., submitted the filing.

8. Notice of the Midwest ISO's March 11, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 12348 (2009), with interventions and protests due on or before April 1, 2009. Motions to intervene were submitted by American Electric Power Company, Inc. (AEP), Midwest Transmission Dependent Utilities (Midwest TDUs)[7] and Reliant Energy, Inc. Protests were submitted by EPIC/SESCO *et al.*,[8] and DC Energy. The Midwest ISO filed an answer to the protests. DC Energy and Westar Energy, Inc. submitted answers to the Midwest ISO's answer. The American Wind Energy Association and Wind on the Wires (jointly), and Otter Tail Power Company submitted motions to intervene out of time.

9. On May 8, 2009, Commission staff notified the Midwest ISO that its responses to the February 9, 2008 deficiency letter were deficient. Staff requested further information, including: (1) a detailed description of how the Midwest ISO forecasts, schedules, and dispatches for intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under the proposal; and (2) a detailed description of how the Midwest ISO determines the amount of headroom needed for intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under the proposal.[9] On June 8, 2009, the Midwest ISO filed its response, as discussed below.

10. Notice of the Midwest ISO's June 8, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 28686 (2009), with interventions and protests due on or before June 29, 2009. Exelon Corporation filed a timely motion to intervene. Xcel Energy Services, Inc. filed a timely motion to intervene and comments.

11. EPIC/SESCO *et al.* filed a supplemental protest and comments on July 15, 2009. The Midwest ISO and Northern Indiana Public Service Company, together with Ameren Services Company (collectively, Northern Indiana/Ameren), filed answers to the supplemental protest and comments of EPIC/SESCO *et al.*

---

[7] For the purposes of this filing, Midwest TDUs include: Great Lakes Utilities, Indiana Municipal Power Agency, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and WPPI Energy.

[8] Westar Energy, Inc. did not participate in this filing by EPIC/SESCO *et al.* or in the supplemental protest and comments filed on July 15, 2009.

[9] "Headroom" refers to the sum of the differences between the real-time Economic Maximum Dispatch and Dispatch Targets for energy of resources committed in Reliability Assessment Commitment processes conducted for the Operating Day, resulting from various factors including, but not limited to, intra-hour changes in demand.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) 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 of FirstEnergy Service Company, Integrys Energy Group, Inc., FPL Energy Power Marketing, LLC, the American Wind Energy Association and Wind on the Wires, and Otter Tail Power Company, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. 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 or an answer unless otherwise ordered by the decisional authority. We will accept the answers with regard to the Midwest ISO's December 12, 2008 and March 11, 2009 filings because they provided information that assisted us in our decision-making process. We are not persuaded to accept the answers of the Midwest ISO and Northern Indiana/Ameren to the supplemental protest of EPIC/SESCO *et al.* and will, therefore, reject them.

B. Substantive Issues

1. Exemptions from Revenue Sufficiency Guarantee Charges

14. The Midwest ISO's December 12 Filing proposes to revise the tariff to clarify that resource deviations subject to Revenue Sufficiency Guarantee charges are those deviations not otherwise exempt from these charges under other provisions of the tariff. Midwest ISO states that this is implied in the current version of section 40.3.3.a.ii(d), but that it is appropriate to add language to the tariff that states the limitation explicitly.

15. The proposed tariff revision states that resource deviations are subject to Revenue Sufficiency Guarantee charges, except for resource deviations otherwise exempt from hourly Excessive Energy Calculations and Excessive/Deficient Energy Deployment Charges.[10] The exemption would apply to the following resources, including intermittent resources: (1) resources following Midwest ISO directives; (2) resources in test mode, start-up or shutdown mode; (3) resources that trip and go offline; (4) resources involved

[10] Excessive Energy is the amount a resource's injection exceeds the penalty threshold. The Excessive/Deficient Energy Deployment Charge is the penalty charge assessed on resources with injections that exceed the penalty threshold.

in a contingency reserve deployment; (5) resources covered by the deactivation of dispatch band option; and (6) resources affected by other events or conditions beyond their control.

a. Protests to December 12, 2008 Filing

16. EPIC/SESCO *et al.* and DC Energy disagree that the existing tariff exempts certain resource deviations from Revenue Sufficiency Guarantee charges. EPIC/SESCO *et al.* maintain that Revenue Sufficiency Guarantee charges unambiguously apply to "all deviations by [m]arket [p]articipants that withdraw energy" under the current tariff.[11] They argue that the tariff does not imply that the proposed deviations are exempt from Revenue Sufficiency Guarantee charges, and they point out that the Midwest ISO has not identified any existing tariff language that clearly grants such an exemption. EPIC/SESCO *et al.* contend that exempting the proposed deviations would violate the filed rate doctrine because the charges are not on file with the Commission. They conclude that the Midwest ISO's proposed exemption is not a mere clarification but instead constitutes a rate change. DC Energy also argues that the Midwest ISO's filing includes a new rate proposal. It maintains that none of the deviations in question are exempt from Revenue Sufficiency Guarantee charges under the current tariff.

17. DC Energy contends that the existing exemptions for Excessive/Deficient Energy Deployment Charges do not apply to Revenue Sufficiency Guarantee charges. It states that the two types of charges serve different purposes. According to DC Energy, exempting a market participant from a penalty (i.e., Excessive/Deficient Energy Deployment charges) for its failure to perform as required is "completely different and independent" from exempting a market participant from the Revenue Sufficiency Guarantee charges it causes.[12] DC Energy argues that the proposed addition to section 40.3.3.a.ii of a parenthetical reference to section 40.3.4 is vague and could cause discriminatory cost shifting.

18. EPIC/SESCO *et al.* and DC Energy argue that the proposed exemptions for certain deviations are not based on cost causation principles. EPIC/SESCO *et al.* argue that the Midwest ISO has not provided any evidence either for exempting certain resource deviations from Revenue Sufficiency Guarantee charges or for shifting the charges otherwise associated with those resource deviations to other market participants.[13] In their supplemental protest and comments, EPIC/SESCO *et al.* present a study and

---

[11] EPIC/SESCO *et al.* Protest at 6 (Jan. 2, 2009).

[12] *Id.* at 5, 9.

[13] *Id.* at 8.

econometric analysis that they maintain shows that virtual supply offers cause minimal, if any, Revenue Sufficiency Guarantee costs.

19. DC Energy argues that all generator deviations can necessitate additional Revenue Sufficiency Guarantee credits. According to DC Energy, it is arbitrary to exempt intermittent resources from Revenue Sufficiency Guarantee charges because their output is not known until moments before real time and may result in an inefficient and extremely narrow dispatch solution set.[14] DC Energy states that virtual supply offers are not exempt from Revenue Sufficiency Guarantee charges and they are not even capable of under- or over-delivering.[15]

20. DC Energy also argues that it is discriminatory to allocate Revenue Sufficiency Guarantee costs to other resources that did not cause those costs.[[16]] If the Commission accepts the proposed Revenue Sufficiency Guarantee exemption, DC Energy argues that it should require any associated shortfall in Revenue Sufficiency Guarantee costs to be recovered on a load ratio share basis by directing the Midwest ISO to retain all generator deviations in the denominator used to calculate the Revenue Sufficiency Guarantee rate. Any shortfall in cost recovery would be uplifted on a load ratio share basis.[17]

b. Answers

21. The Midwest ISO maintains that requests to socialize Revenue Sufficiency Guarantee costs and to require the Midwest ISO to present cost causation evidence constitute collateral attacks on the November 5, 2007[18] and November 7, 2008 Orders. According to the Midwest ISO, commenters advocate socializing Revenue Sufficiency Guarantee costs, as demonstrated by DC Energy's argument that even if the disputed deviations were exempted from Revenue Sufficiency Guarantee charges, they should be retained in the rate calculation denominator and allowed to cause a shortfall in the recovery of Revenue Sufficiency Guarantee costs. The Midwest ISO contends that this rate structure would involve a mismatch and a shortfall, contrary to previous Commission orders. Similarly, the Midwest ISO maintains that it is unreasonable to require it to

---

[14] DC Energy January 2, 2009 Protest at 10.

[15] *Id.* at 6.

[16] *Id.*

[17] *Id.* at 11.

[18] *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,132 (2007), *order on reh'g*, 125 FERC ¶ 61,156 (2008) (November 7 Order), *reh'g dismissed*, 127 FERC ¶ 61,241 (2009), *reh'g pending*.

supply cost causation and other supporting evidence relating to the rate mismatch issue. The Commission's previous orders have already found it just and reasonable to construe the Revenue Sufficiency Guarantee rate as not entailing any mismatch or shortfall, and it is therefore appropriate and even necessary for the Midwest ISO to propose its revision to section 40.3.3.a.ii(d). This action is consistent with the Commission's orders and does not require additional evidence.

22. The Midwest ISO contends that the proposed revision does not add any new Revenue Sufficiency Guarantee exemption to the tariff because it simply references existing Revenue Sufficiency Guarantee charge exemptions. The Midwest ISO argues that the proposed revision does not give it unfettered discretion to determine Revenue Sufficiency Guarantee exemptions because it excludes from the Revenue Sufficiency Guarantee denominator only deviations that are already "otherwise exempt" from Excessive Energy Calculations and from Excessive/Deficient Energy Deployment charges under section 40.3.4.d of the tariff. According to the Midwest ISO, it is appropriate to exempt from Revenue Sufficiency Guarantee charges transactions that are exempt from Excessive/Deficient Energy Deployment charges. The tariff specifically exempts deviations caused by following the Midwest ISO's instructions from Real-Time Revenue Sufficiency Guarantee Make-Whole Payments if they are manually redispatched, or if they follow the Midwest ISO's emergency directives.[19] The Midwest ISO also states that the Commission has recognized that when following the Midwest ISO's directives, certain resources "will not be subject to uninstructed deviation penalties and [Revenue Sufficiency Guarantee] uplift charges, or lose eligibility to receive a full [Revenue Sufficiency Guarantee] make-whole payment."[20] The Midwest ISO contends that Revenue Sufficiency Guarantee charges should not be imposed on deviations that are due to state estimator and unit dispatch system lags in tracking output.

23. The Midwest ISO maintains that the proposed Revenue Sufficiency Guarantee charge exemptions are broadly based on the principle of cost causation and its corollary precept that market participants should not be held responsible for results that are beyond their control and that they therefore did not intentionally or negligently cause. The Midwest ISO contends that it is appropriate to deem a deviation from dispatch instructions that a resource cannot or cannot be expected to control as one that does not warrant the imposition of Revenue Sufficiency Guarantee charges.

24. DC Energy responds that the Midwest ISO's entire justification for its filing depends on whether the existing tariff already exempts certain deviations from the

---

[19] *Id.* at 9.

[20] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,009, at P 80, 82, *order on reh'g*, 119 FERC ¶ 61,327 (2007)).

Revenue Sufficiency Guarantee charges. If it does not, the Midwest ISO's filing lacks a foundation because it has not offered any cost causation analysis to support the change. DC Energy argues that the Midwest ISO does not identify anything in the existing tariff that exempts from Revenue Sufficiency Guarantee charges units that are exempt from Excessive/Deficient Energy Deployment charges. DC Energy maintains that Revenue Sufficiency Guarantee charges are fundamentally different from Excessive/Deficiency Energy Deployment charges. The latter are penalties designed to provide incentives for generators to produce energy within a predictable range. Revenue Sufficiency Guarantee charges do not function as penalties because they are assessed to ensure that resources committed through the Reliability Assessment Commitment process receive adequate compensation.

25. With respect to mismatch and shortfall, DC Energy contends that the Commission never directed the Midwest ISO to remove certain deviations from the denominator of the Revenue Sufficiency Guarantee rate calculation.[21] DC Energy adds that while the November 10 Order required the Midwest ISO to remove the "actually withdraws energy" clause from section 40.3.3.a.ii, the tariff indicates that beginning August 10, 2007, the Revenue Sufficiency Guarantee charge applies to some of the deviations that the Midwest ISO now proposes to exempt.[22] DC Energy also reiterates its arguments that cost causation evidence is necessary to change the Revenue Sufficiency Guarantee rate.

26. DC Energy argues that the existing tariff does not already provide for the proposed real-time Revenue Sufficiency Guarantee charge exemptions for deviations due to under- and over-generation volumes, derate volumes, and must-run volumes. It adds that the Midwest ISO previously included all of these deviations in the denominator of the Revenue Sufficiency Guarantee rate calculation.[23]

c. **March 11, 2009 Filing**

27. In its March 11, 2009 response to the Commission's data request, the Midwest ISO reiterates that the Revenue Sufficiency Guarantee charge exemptions in the proposed revision to section 40.3.3.a.ii(d) are already provided for under existing section 40.3.4.d. Under the existing tariff, three categories of resource deviations are allocated Revenue Sufficiency Guarantee charges: (1) excessive/deficient energy volumes, (2) must-run

---

[21] *Id.* at 12-13.

[22] *Id.* at 13.

[23] *Id.* at 8-10.

volumes,[24] and (3) derate volumes.[25] According to the Midwest ISO, excessive/deficient energy volumes and derate volumes may result in committing additional units during the Reliability Assessment Commitment process, which may increase real-time Revenue Sufficiency Guarantee costs. The Midwest ISO also explains that excessive/deficient energy volumes and must-run volumes may reduce real-time prices, thereby causing additional unit commitment costs not to be recovered by real-time prices.

28. In regard to the proposed exemption for intermittent resources, the Midwest ISO reiterates that the policy factors that justify the existing exemption of intermittent resources from Excessive/Deficient Energy Deployment Charges also justify the proposed exemption of intermittent resources from Revenue Sufficiency Guarantee charges. Given the uncontrollable nature of their fuel source, intermittent resources are not dispatchable and do not receive dispatch instructions. The Midwest ISO maintains that these resources do not involve any deviations from dispatch instructions on which charges can be imposed. It contends that its proposal more closely aligns the treatment of intermittent resources with cost causation. Under the proposal, any unit commitments to provide the headroom required for intermittent resources would be allocated "under the [h]eadroom provisions, as opposed to allocating any costs to other deviations."[26] The proposal excludes the ability for market participants to net the real-time output of intermittent resources against other deviations because these resources were not available for commitment and dispatch by the Midwest ISO in real-time. Finally, the Midwest ISO claims that the proposal would allocate real-time Revenue Sufficiency Guarantee costs to any intermittent resource that chooses to clear supply in the day-ahead market and performs below its day-ahead schedule.

29. The Midwest ISO asserts that the proposed exemption from Revenue Sufficiency Guarantee charges for intermittent resources is consistent with the Commission's policy of promoting intermittent resources in the Midwest ISO's markets. The Midwest ISO argues that the Commission has stated that intermittent resources should be exempt from Excessive/Deficient Energy Deployment Charges;[27] it has accepted tariff revisions

---

[24] The Midwest ISO states that must-run volumes would include any negative difference between energy scheduled in the day-ahead energy and operating reserve market and real-time hourly economic minimum dispatch amounts.

[25] The Midwest ISO states that derate volumes would include any negative difference between real-time hourly economic maximum dispatch amounts and energy scheduled in the day-ahead energy market.

[26] Midwest ISO March 11, 2009 Filing at 11.

[27] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 535 (2004) (August 6 Order).

relating to that exemption for intermittent resources;[28] it has explained that the exemption for intermittent resources arises from their "special circumstances" and "intermittent nature or characteristics;"[29] it has required intermittent resources to be defined as "a resource that is not capable of being committed or de-committed, or is not capable of following set-point instructions in the real-time market;"[30] and it has declared that all resources are exempt from Excessive/Deficient Energy Deployment Charges if events beyond their control prevent the resource from following instructions.[31] The Midwest ISO adds that in a previous Notice of Proposed Rulemaking regarding intermittent resources, the Commission recognized that those resources have a limited ability to predict and control their output and that since deviations by wind generators are more driven by weather than by controllable factors, generator imbalance provisions may impede access to transmission by intermittent resources in a way that is unduly discriminatory.[32] In addition, the Midwest ISO states that the Commission recognized in Order No. 890 that intermittent resources are not dispatchable because their energy source cannot be controlled or stored.[33]

30. The Midwest ISO contends that it is proper to exempt intermittent resources from Revenue Sufficiency Guarantee charges on excessive/deficient energy volumes because they do not control their fuel sources, and the deviations therefore are normally unintentional and not comparable to the deviations of resources that have controllable fuel sources. The Midwest ISO also argues that intermittent resources are not given setpoint instructions that they are expected to comply with. Instead, the Midwest ISO

---

[28] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053, at P 220, 222 (2005).

[29] *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 32 (2008).

[30] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318, at P 185 (2008) (December 18 Order).

[31] *Id.* P 258.

[32] *Imbalance Provisions for Intermittent Resources; Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, 70 FR 21349 (Apr. 26, 2005), FERC Stats. & Regs. ¶ 32,581 at P 9-10 (2005).

[33] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

merely sends them setpoint instructions that typically comprise an “echo back” of the previous state estimator-calculated output amount from the previous dispatch interval. These instructions simply describe after the fact observed output without any expectation that the output during the current dispatch interval would match the output amount “echoed back” from the prior dispatch interval.

31. The Midwest ISO recognizes that the excessive/deficient energy volumes of intermittent resources can result in Revenue Sufficiency Guarantee costs to the extent that the Reliability Assessment Commitment process must commit capacity to provide sufficient headroom to account for the variability and uncertainty of the output of intermittent resources. But providing headroom for intermittent resources is based on the estimated change of their current output within a specific hour, while Reliability Assessment Commitments for non-intermittent resources are based on the actual change in their current output within an hour. The Midwest ISO states that the Revenue Sufficiency Guarantee costs associated with these headroom commitments are allocated based on load ratio share, rather than being allocated directly to intermittent resources.

32. The Midwest ISO states that intermittent resources cannot have real-time must-run volumes that are comparable to other resources because neither the Midwest ISO nor the market participant can commit intermittent resources in the real-time market, and thus no economic minimum limits constrain the unit commitment and dispatch processes for those resources. The Midwest ISO adds that the definition of economic minimum dispatch logically excludes intermittent resources because they are not dispatched but instead merely have their previous output echoed. The Midwest ISO also states that the Reliability Assessment Commitment process considers forecasted values of intermittent resources, but an increase in their real-time output can cause some Revenue Sufficiency Guarantee costs. To the extent that the Reliability Assessment Commitment process commits resources for economic reasons and intermittent resource output exceeds forecasts, the real-time prices and associated revenue may be reduced, which increases Revenue Sufficiency Guarantee credits. The Midwest ISO notes that any Revenue Sufficiency Guarantee costs associated with such must-run volumes for intermittent resources relate to headroom and are therefore uplifted to market participants instead of allocated directly to intermittent resources.

33. The Midwest ISO states that intermittent resources cannot have derate volumes comparable to other resources because they cannot submit real-time offers with associated hourly economic maximum limits. As a result, intermittent resources that choose to clear in the day-ahead market cannot update those limits in real time. According to the Midwest ISO, the current definition of economic maximum dispatch logically excludes intermittent resources because they are not being dispatched but merely have their previous output echoed. But the reduced real-time output of intermittent resources may cause Revenue Sufficiency Guarantee costs to a limited extent. To the degree that day-ahead committed intermittent resources displace the

commitment of generation resources in the day-ahead market, the Reliability Assessment Commitment process may commit resources for the reduced forecast, reduced levels, or unavailability of intermittent resources. The Midwest ISO concludes that any unrecovered production costs associated with such additional resource commitments may result in Revenue Sufficiency Guarantee credits.

34. The Midwest ISO states that resources that comply with its directions during emergencies and are exempted from Excessive/Deficient Energy Deployment charges should also be exempted from Revenue Sufficiency Guarantee charges. The Midwest ISO states that the existing tariff exempts those resources from Excessive/Deficient Energy Deployment Charges based on the non-controllable nature of emergencies. It argues that in previous proceedings the Commission required additional detail on resources exempted from Excessive/Deficient Energy Deployment Charges during emergencies,[34] and the Commission also stated that "all resources are exempt from these charges if events beyond their control cause the resource not to be able to follow instructions, such as emergencies."[35] The Midwest ISO also contends that market participants that comply with its instructions during emergencies typically would not be expected to cause additional unrecovered Reliability Assessment Commitment costs. It makes similar arguments with respect to resources in the test mode, start-up or shutdown mode, resources that trip and go off-line, resources responding to contingency reserve deployments, deactivation of the dispatch band option and any resource operating under conditions beyond its control.

d. **Protests to March 11, 2009 Filing**

35. DC Energy argues that the Midwest ISO fails to show a tariff basis to exempt from Revenue Sufficiency Guarantee charges certain resources that are exempt from Excessive/Deficient Energy Deployment charges. DC Energy reiterates that Excessive/Deficient Energy Deployment charges are different from Revenue Sufficiency Guarantee charges because the charges have different purposes, are subject to different rules, and are located in different sections of the tariff.

36. EPIC/SESCO *et al.* disagree with the Midwest ISO's claim that the November 7 Order already addressed the proposed exemptions. EPIC/SESCO *et al.* state that the November 7 Order directed the Midwest ISO to remove from the Revenue Sufficiency Guarantee denominator the virtual supply offers of market participants that did not withdraw energy on a given day. The Midwest ISO's proposed exemptions were not at issue in that proceeding, according to EPIC/SESCO *et al.*

---

[34] August 6 Order, 108 FERC ¶ 61,163, at P 535 (2004).

[35] December 18 Order, 125 FERC ¶ 61,318, at P 258 (2008).

37. DC Energy and EPIC/SESCO *et al.* again argue that the Midwest ISO fails to provide cost support for its proposal and thus does not meet the evidentiary requirement for a section 205 filing. They contend that the Midwest ISO does not support its claims that incurring small costs justifies an exemption. In addition, they argue that Commission policy of encouraging the participation by certain resources in the market does not justify the proposed exemptions because nothing in FPA section 205 allows granting such undue preference to certain market participants. DC Energy and EPIC/SESCO *et al.* also again contend that the Midwest ISO has not justified shifting Revenue Sufficiency Guarantee costs caused by certain market participants to non-exempt deviations.

38. In response to the Midwest ISO's claim that any headroom associated with intermittent resources will be allocated under the headroom provisions, EPIC/SESCO *et al.* contend that the Midwest ISO has failed to identify where its proposed tariff provides for this allocation or the basis for performing it. They state that formula rates "must contain enough specificity to operate without discretion in their implementation."[36] As a result, the Midwest ISO must at minimum provide tariff language that is specific enough to show how the Revenue Sufficiency Guarantee costs caused by intermittent resources will be calculated and allocated before exempting those resources.

39. EPIC/SESCO *et al.* maintain that the Midwest ISO is proposing to increase rates retroactively in violation of the filed rate doctrine and the requirements of FPA section 205. They argue that the Commission has no authority to approve a retroactive rate increase.[37]

40. EPIC/SESCO *et al.* contend that the Midwest ISO's proposal creates a new rate mismatch. The Revenue Sufficiency Guarantee rate formula would include in the numerator all of the Revenue Sufficiency Guarantee costs that are incurred, including those caused by the proposed exemptions, but it would exclude all of the proposed exemptions from the denominator. EPIC/SESCO *et al.* claim that the resulting rate would unjustly and unreasonably increase the Revenue Sufficiency Guarantee charge borne by the remaining deviations without regard to cost causation principles. EPIC/SESCO *et al.* maintain that the costs associated with any exemptions should be socialized to load.

---

[36] EPIC/SESCO *et al.* April 1, 2009 Protest at 15 (*citing Potomac Appalachian Transmission Highline, LLC,* 122 FERC 61,288, at P 146 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC 61, 235, at P 68 (2004); *American Electric Power Service Corp.*, 120 FERC 61,205, at P 33 (2007)).

[37] EPIC/SESCO *et al.* support this argument through reference to *City of Anaheim, California v. FERC,* No. 07-1222, at 3 (D.C. Cir. Feb. 27, 2009) (*City of Anaheim*).

e. **Answers**

41. The Midwest ISO contends that the November 7 Order's no mismatch ruling is not limited to virtual supply offers that do not involve actual energy withdrawal. It maintains that the order's major premise is that all market participants covered by the denominator of the Revenue Sufficiency Guarantee charge rate are subject to Revenue Sufficiency Guarantee charges.[38] According to the Midwest ISO, the November 7 Order's conclusion that there is no mismatch applies to virtual supply offers "as well as the other load and deviation components" of the Revenue Sufficiency Guarantee numerator, which should be aggregated in the denominator.[39] It also argues that the November 7 Order required the Midwest ISO's billing of Revenue Sufficiency Guarantee charges to conform to the no-mismatch interpretation both prospectively and retrospectively. The Midwest ISO contends that the November 7 Order clarified that the Commission's prior pronouncement regarding the existence of a rate mismatch was erroneous and that it was appropriate for the Midwest ISO to correct the operational calculation of the Revenue Sufficiency Guarantee rate to remove any rate mismatch.

42. The Midwest ISO rejects the assertion by EPIC/SESCO *et al.* that its proposal is a violation of the filed rate doctrine and the requirements for rate changes. It argues that the November 7 Order construed rather than changed the filed rate,[40] and its actions are consistent with that construction. The change does not entail the submission of any revised tariff sheets because the filed rate already requires the exclusion of exempt transactions from the Revenue Sufficiency Guarantee denominator. The Midwest ISO argues that it is the protesters that bear the burden of proving that the Revenue Sufficiency Guarantee rate should be changed to allow the denominator to include Revenue Sufficiency Guarantee exempt transactions.

43. The Midwest ISO argues that *City of Anaheim* does not shield EPIC/SESCO *et al.* from the resettlement resulting from the Midwest ISO's compliance with the November 7 Order's conclusion that there is no mismatch in the existing Revenue Sufficiency Guarantee rate. The Midwest ISO contends that the disputed resettlement does not retroactively increase the filed rate within the meaning of *City of Anaheim* because the resettlement arises from an operational correction that applies, rather than amends, the filed rate, as construed in the November 7 Order.

---

[38] Midwest ISO April 20, 2009 Answer at 5-6.

[39] *Id.* at 6-7 (citing November 7 Order, 125 FERC ¶ 61,156 at P 30).

[40] *Id.* at 8.

44. DC Energy repeats its assertion that the Midwest ISO is using the rate mismatch issue as a *post-hoc* attempt to justify an exemption from Revenue Sufficiency Guarantee charges that is not in the tariff. Westar asserts that the Midwest ISO has misinterpreted the November 7 Order since its proposed revisions include virtually all Revenue Sufficiency Guarantee costs in the numerator, regardless of causation, but exclude certain exempt deviations from the denominator. If the Commission accepts the proposed revisions, Westar recommends that it require the Midwest ISO demonstrate that it has complied with cost causation principles and the no-mismatch directive in the November 7 Order.

f. June 8, 2009 Filing

45. In its June 8, 2009 response to the Commission's second data request, the Midwest ISO provided information on how it forecasts, schedules, commits, and dispatches all intermittent and other resources exempted from real-time Revenue Sufficiency Guarantee charges.

46. The Midwest ISO explains that the Reliability Assessment Commitment process ensures that sufficient headroom is available. It states that incremental capacity requirements or deficiencies that may occur because of differences between intermittent resource forecasts and actual output are considered part of the headroom and operating reserve requirements, as are unexpected deviations that are otherwise exempt due to other grounds for excessive energy exemptions for resources. There is no specific and separate input for which commitments are made in the Reliability Assessment Commitment process because of intermittent and other exempt resources.

47. The Midwest ISO clarifies that the intermittent resource forecasting tool forecasts intermittent generation for each hour of the operating day. The Transmission Provider can override the forecast as necessary, and the forecasting mechanism therefore provides ad hoc forecasting capability. The Midwest ISO also explains that the available capacity for intermittent resources is equal to the intermittent forecast. Resources exempt from the Excessive/Deficient Energy Deployment Charge are not considered to be dispatchable in real-time, except when dispatch bands are disabled.

48. The Midwest ISO clarifies that the Peak Hour Real-Time Unit Commitment Performance Rating, a measure of commitment efficiency, compares the actual headroom in the peak hour of the day against target levels. Headroom of less than 1,100 MW is viewed as good performance, and headroom less than 750 MW is viewed as excellent performance. The Midwest ISO states that these targets have been established over time through operational experience, and they are not based on an empirical analysis of the reasons for headroom. Any headroom amounts associated with those reasons, including intermittent or otherwise Revenue Sufficiency Guarantee charge exempted resources, thus cannot be quantified.

g. Comment

49. Xcel argues that intermittent resources should not be allocated any production costs related to commitment of peaking generators needed for managing headroom associated with changes in wind direction. Xcel contends that the reasons that support the exemption of intermittent resources from Excessive/Deficient Energy Deployment Charges and Revenue Sufficiency Guarantee charges equally support their exemption from the production costs related to peaking generator commitment.

2. Commission Determination

50. Our review of the record in this proceeding indicates that the Midwest ISO's proposed exemptions from Revenue Sufficiency Guarantee charges have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the Midwest ISO's proposed revisions for filing, suspend them and make them effective January 6, 2009, subject to refund and further Commission order.

51. We note that the Midwest ISO and its stakeholders have formed an RSG Task Force that analyzes and discusses issues associated with allocating Revenue Sufficiency Guarantee costs and that the RSG Task Force has been addressing the allocation of Revenue Sufficiency Guarantee costs to intermittent resources in recent months.[41] To allow time for the RSG Task Force to evaluate the impact on unit commitment and Revenue Sufficiency Guarantee costs of intermittent resources and other activities exempted from the Excessive/Deficient Energy Deployment charge, as well as other issues pertinent to cost allocation, we will hold in abeyance further proceedings to address the Midwest ISO's proposed exemptions from Revenue Sufficiency Guarantee charges. We direct the Midwest ISO to submit to the Commission a filing within 30 days of the date of this order a proposed plan and timeline for the RSG Task Force to perform an analysis that considers and addresses, among other things that the RSG Task Force deems relevant: (1) the types of and characteristics of all resources that contribute to real-time Revenue Sufficiency Guarantee costs, as well as how such resources cause real-time Revenue Sufficiency Guarantee costs to be incurred; (2) the operation of the regulation and contingency reserve markets when accounting for real-time resource deviations and the interplay between such markets and the incurrence of real-time RSG

---

[41] Meeting materials for these stakeholder discussions are posted on the Midwest ISO website at http://www.midwestiso.org/publish/Document/6ef35b_121e89707ed_-7dc50a48324a/Item%2019.d%20RSG%20status%20report.pdf?action=download&_property=Attachment and http://www.midwestiso.org/publish/Folder/1d44c3_11e1d03fcc5_-7f0f0a48324a.

costs; and (3) the operational, dispatch, and reliability rules and parameters that may be impacting the level of real-time Revenue Sufficiency Guarantee costs, including forecasting methods and headroom commitments. To the extent that the analysis of the RSG Task Force is expected to result in future revisions to the allocation of Revenue Sufficiency Guarantee charges, we direct the Midwest ISO to specify milestones for software development and expected implementation dates in this compliance filing. The Commission directs the Midwest ISO to submit a further compliance filing within 90 days of the date of this order providing further support for its proposed exemptions from real-time Revenue Sufficiency Guarantee charges based on the findings and recommendations of the RSG Task Force or, as appropriate, amending its proposal based on the findings and recommendations of the RSG Task Force.

3. Other Issues

52. The Midwest ISO proposes modifications to sections 40.3.3.a(d)(2) and 40.3.3.a(d)(3) to replace the terms "[h]ourly [e]conomic [m]inimum [l]imit" and "[h]ourly [e]conomic [m]aximum [l]imit" with "[e]conomic [m]inimum [d]ispatch" and "[e]conomic [m]aximum [d]ispatch," respectively. As the Midwest ISO explains, when a resource deviates from its designated dispatch limits (i.e., the hourly economic minimum and maximum limits submitted by market participants), the Midwest ISO adjusts dispatch levels based on actual injections in each dispatch interval. This allows the resource to be dispatched despite its failure to follow its designated limits.

53. The Midwest ISO submitted other miscellaneous tariff modifications, including revisions to clarify and replace terms included in the calculation of the Real-Time Revenue Sufficiency Guarantee and Day-Ahead Margin Assurance Payments and to require that host load zone forecasts for each dispatch interval by demand response resources be submitted in megawatts rather than megawatt-hours.

a. Protest

54. EPIC/SESCO *et al.* argue that the Midwest ISO has failed to explain the need to replace, or effect of replacing, the terms "[h]ourly [e]conomic [m]inimum [l]imit" and "[h]ourly [e]conomic [m]aximum [l]imit" used to determine the deviations subject to real-time Revenue Sufficiency Guarantee charges with the terms "[e]conomic [m]inimum [d]ispatch" and "[e]conomic [m]aximum [d]ispatch." EPIC/SESCO *et al.* contend that the proposed changes would exempt without support certain deviations from Revenue Sufficiency Guarantee charges and thereby increase the Revenue Sufficiency Guarantee rate to be borne by other market participants. They ask the Commission to reject the Midwest ISO's proposed revisions or at least to suspend them subject to hearing and refund.

55. EPIC/SESCO *et al.* present in their supplemental protest and comments a study and econometric analysis that they maintain shows that virtual supply offers cause minimal, if any, Revenue Sufficiency Guarantee costs.

56. The Midwest ISO and Northern Indiana/Ameren argue that the supplemental protest of EPIC/SESCO *et al.* represents an attempt to present new evidence at the compliance stage of proceedings.

b. Commission Determination

57. We accept the Midwest ISO's other proposed changes to clarify and replace various tariff terms. We find that deviations for real-time Revenue Sufficiency Guarantee charges should be based, as proposed, on the actual dispatch levels that the Midwest ISO uses, rather than the dispatch limits that market participants designate, because the actual values more accurately represent the potential impact a deviation may have had on real-time Revenue Sufficiency Guarantee charges.[42] We find no basis for the claim of EPIC/SESCO *et al.* that this proposed revision would exempt certain deviations from Revenue Sufficiency Guarantee charges.

58. We accept the Midwest ISO proposal that load zone forecasts for demand response resources be provided in megawatt, rather than megawatt-hour, terms to reflect its software specifications. We also accept any other tariff revisions proposed by the Midwest ISO that are not discussed in this order.

59. We deny the Midwest ISO's request to make its revised Module C tariff sheets effective on December 31, 2008 under the Fourth Revised Vol. No. 1 of the tariff. The Commission has found that while certain tariff sheets should take effect on December 31, 2008 (i.e., one week prior to the launch of the Midwest ISO's ancillary services market), those tariff sheets should be designated under the Third Revised Vol. No. 1 of the tariff in order to apply to the period of December 31, 2008 through January 5, 2009.[43] The Commission explained that it could not accept sheets proposed under the Fourth Revised Vol. No. 1 of the tariff during that period because corresponding sections of both the Third and Fourth Revised Vol. No. 1 would be effective at the same time, which could create confusion.[44] To avoid the potential for confusion, we require that the tariff sheets

[42] We note that the Commission accepted, in an unpublished letter order, further revisions to the definitions. *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-846-000, Letter Order issued May 11, 2009.

[43] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,321, at P 43 (2008).

[44] *Id.*

under the Fourth Revised Vol. No. 1 that currently indicate effective dates of December 31, 2008 be revised, in a compliance filing to be submitted within 30 days of the date of this order, to indicate effective dates of January 6, 2009. We also require the Midwest ISO to submit, in the same compliance filing, those tariff sheets with an effective date of December 31, 2008, and to designate these sheets as part of Third Revised Vol. No. 1 of the tariff. For good cause shown, we will grant the Midwest ISO's request for waiver of the 60-day prior notice requirement.[45]

60. We are not addressing the supplemental protest submitted by EPIC, SESCO, *et al.* because the analysis it supplies does not assess the impact on Revenue Sufficiency Guarantee costs of intermittent resources and other resources exempted from the Excessive/Deficient Energy Deployment Charge.

The Commission orders:

(A) The Midwest ISO's proposed tariff sheets are hereby accepted for filing and suspended, subject to refund, in part, and conditionally accepted in part, as discussed in the body of this order.

(B) The Midwest ISO is hereby required to submit compliance filings within 30 days from the date of this order, as discussed in the body of this order.

(C) The Midwest ISO is hereby required to submit a compliance filing within 90 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[45] *See Central Hudson Gas & Electric Corporation*, 60 FERC 61,106, *reh'g denied*, 61 FERC 61,089 (1992).