

128 FERC ¶ 61,280  
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 No. ER08-1055-004

ORDER ACCEPTING COMPLIANCE FILING

(Issued September 28, 2009)

1. On July 30, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)<sup>1</sup> submitted a compliance filing pursuant to the Commission's July 16 Order.<sup>2</sup> In this order, we accept the compliance filing, to be effective January 6, 2009, as requested.

**I. Background**

2. On May 30, 2008, as supplemented,<sup>3</sup> Midwest ISO, under section 205 of the Federal Power Act,<sup>4</sup> filed the Amended and Restated Midwest Contingency Reserve Sharing Group Agreement (Amended CRSG Agreement) to replace the then existing 2006 Midwest Contingency Reserve Sharing Group Agreement (2006 CRSG

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<sup>1</sup> Midwest ISO filed as a party and as agent for and on behalf of Big Rivers Electric Corporation (Big Rivers); Dairyland Power Cooperative; East Kentucky Power Cooperative, Inc. (East Kentucky); E.ON U.S. LLC (E.ON), on behalf of Louisville Gas and Electric Company and Kentucky Utilities Company; Manitoba Hydro; MidAmerican Energy Company; Muscatine Power and Water; and Western Area Power Administration (WAPA).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,052 (2009) (July 16 Order).

<sup>3</sup> On August 6, 2008, August 15, 2008 and September 9, 2008, the Midwest ISO submitted additional information in response to a deficiency letter.

<sup>4</sup> 16 U.S.C. § 824d (2006).

Agreement). In pertinent part, Midwest ISO proposed to reduce the Midwest CRSG's minimum contingency reserve level from 2,250 MW to 1,500 MW.

3. In an order issued December 18, 2008,<sup>5</sup> the Commission conditionally accepted the Amended CRSG Agreement for filing, effective January 6, 2009, and directed Midwest ISO "to revise [the CRSG] agreement to maintain the minimum contingency reserve level of 2,250 MW and the allocations of those reserves under the 2006 CRSG Agreement that the Midwest ISO concluded was deliverable."<sup>6</sup>

4. In response to the December 18 Order, on January 22, 2009 Midwest ISO submitted a compliance filing revising, among other things, Article VIII (Contingency Reserves Requirements and Obligations), § 8.1.1 of the Amended CRSG Agreement to provide that the initial contingency reserve obligation of the Midwest CRSG shall be 2,250 MW and to provide that the total contingency reserve obligation "may be amended by the [Contingency Reserves Committee], and this Agreement shall be amended and re-filed accordingly." Midwest ISO also submitted, for informational purposes only, a copy of the revised Operating Protocols illustrating changes made to the reserve allocation tables.

5. The Commission's July 16 Order conditionally accepted Midwest ISO's January 22, 2009 compliance filing, to be effective January 6, 2009, as requested, subject to a further compliance filing revising the Amended CRSG Agreement to include the allocation of the minimum contingency reserve level.

## **II. Compliance Filing**

6. Midwest ISO submits Schedule CR-4, a new tariff sheet designated as Sheet No. 46A,<sup>7</sup> which sets forth the specific allocation of reserves to be carried by each member of the CRSG. Additionally, Midwest ISO submits a revised tariff sheet, Sheet No. 20,<sup>8</sup> which adds a new reference to Schedule CR-4 in section 8.1.1.1 to establish the individual Contingency Reserve Requirement of each Midwest CRSG member as part of the Amended CRSG Agreement. Finally, Midwest ISO submits a revised Schedule

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<sup>5</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,323 (2008) (December 18 Order).

<sup>6</sup> *Id.* P 33. The December 18 Order also directed Midwest ISO to correct an error in the wording of Section 3.1 of Schedule CR-1. *Id.* P 37.

<sup>7</sup> Midwest ISO Rate Schedule FERC No. 14, Original Sheet No. 46A.

<sup>8</sup> Midwest ISO Rate Schedule FERC No. 14, Second Substitute Original Sheet No. 20.

CR-3<sup>9</sup> to reflect the membership as of the date of filing, so that it will match the allocations reflected in Schedule CR-4. A change in membership, and an agreement between two of the signatories resulted in changes relative to the January 6, 2009 allocation of contingency reserves shown in the Operating Protocols that were filed for informational purposes. Effective April 1, 2009, Lincoln Electric System (LES), Nebraska Public Power District (NPPD), and Omaha Public Power District (OPPD) ceased to be members of the Midwest CRSG. The Contingency Reserve Requirements previously supplied by these three members were reallocated to the remaining signatories to the Amended CRSG Agreement, as approved by the Contingency Reserves Committee, to maintain the Contingency Reserve Sharing Group minimum contingency reserve level at 2250 MW. Further, on May 15, 2009, a contingency reserve requirement of 15 MW was transferred from Western Area Upper East Balancing Authority to the Midwest ISO Balancing Authority, based on an agreement between these two parties. The transfer was to account for some Western Area Upper East load located within the Midwest ISO Balancing Authority, which is being served by the Midwest ISO Energy and Ancillary Services Market.

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

7. Notice of Midwest ISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 40,177 (2009), with comments due on or before August 20, 2009. E.ON filed comments. The Detroit Edison Company (Detroit Edison) filed a motion for leave to answer and answer to E.ON's comments. Duke Energy Corporation (Duke) and Xcel Energy Services Inc. (Xcel) jointly filed a motion for leave to answer and answer to E.ON's comments. Big Rivers filed a motion for leave to intervene out of time, motion for leave to respond, and a response to Duke and Xcel's answer. East Kentucky filed an answer.

8. E.ON argues that Midwest ISO misstated how the Contingency Reserve Requirements were reallocated following the departures of LES, NPPD and OPPD from the Midwest Contingency Reserve Sharing Group. E.ON contends that rather than Midwest ISO's statement that the Contingency Reserve Requirements "were reallocated to the remaining signatories to the Amended CRSG Agreement," E.ON states that the Contingency Reserve Requirements were reallocated only to the Contingency Reserve Sharing Group members that are external to Midwest ISO. E.ON seeks Commission guidance on whether Contingency Reserve Requirements must be allocated pursuant to a particular, stated methodology, such as a load-based or contingency-based calculation, or whether Contingency Reserve Requirements may be allocated per committee vote and direction. Further, E.ON requests that, if the Commission determines that a particular

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<sup>9</sup> Midwest ISO Rate Schedule FERC No. 14, Second Substitute Original Sheet No. 46.

methodology be used, the Commission require Midwest ISO to submit a further compliance filing to incorporate a technical-based methodology for the reallocation of Contingency Reserve Requirements upon the departure of members of the Midwest Contingency Reserve Sharing Group.<sup>10</sup>

9. Further, E.ON requests Commission guidance regarding the appropriate process for ascertaining whether the remaining Midwest CRSG members have reliable alternative reserve arrangements in place prior to the termination of the Amended CRSG Agreement. To this end, E.ON suggests that the Midwest CRSG members be required to make a concurrence certificate filing to any future notice of termination filing in order to ascertain the status of each remaining Midwest CRSG member's plans for continued reliability, and that such filing be made well in advance of the Amended CRSG Agreement's termination in order to allow for a seamless post-termination transition.

#### **IV. Discussion**

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

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Big Rivers' late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

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<sup>10</sup> E.ON states that it is less concerned with the methodology used when a Midwest CRSG member Balancing Authority joins the Midwest ISO and merges in the Midwest ISO Balancing Authority, as is the case with the filing made in ER09-1537 (Cancellation of Adjacent Balancing Authority Coordination Agreement between Midwest ISO and Muscatine Power and Water). E.ON states that when an external Balancing Authority merges into the Midwest ISO Balancing Authority, the external Balancing Authority's Contingency Reserve Requirement share will be absorbed by the Midwest ISO Balancing Authority, and its contingency reserve deliverability capability could be maintained. In that situation, E.ON states that it seems appropriate for Midwest ISO, as Balancing Authority, to absorb the joining Midwest CRSG member's Contingency Reserve Requirement allocation, because Midwest ISO obtains control over additional generation resources and can maintain the locational diversity and proven deliverability of contingency reserves.

**B. Substantive Matters**

12. We find that Midwest ISO's July 30, 2009 compliance filing complies with the July 16 Order by including the specific allocation of reserves to be carried by each party to the Amended CRSG Agreement. Therefore, we will accept Midwest ISO's compliance filing, to be effective January 6, 2009, as requested.

13. All of E.ON's concerns are beyond the scope of this compliance filing.<sup>11</sup> E.ON's request that the Commission provide guidance on the appropriate methodology for allocating reserves to be carried by each member, or require Midwest ISO to make a compliance filing setting forth the methodology for allocating reserves, goes well beyond any compliance requirement in the Commission's July 16 Order. That order simply required Midwest ISO to provide the specific allocation of reserves to be carried by each party, which is what Midwest ISO did. Indeed, the Commission in the July 16 Order had no requirement that Midwest ISO provide a reallocation methodology on compliance.<sup>12</sup> To the extent E.ON now seeks guidance or a different result, it may file a petition for declaratory order or a complaint under section 206 of the Federal Power Act.

14. Further, we deny E.ON's request for Commission guidance regarding the appropriate process for ascertaining whether the remaining Midwest CRSG members have reliable alternative reserve arrangements in place prior to the termination of the Amended CRSG Agreement. As stated above, the July 16 Order simply required Midwest ISO to file the allocation of reserves to be carried by each party. Therefore, E.ON's guidance request is beyond the scope of the July 30, 2009 compliance filing. Further, any suggestion that Midwest CRSG members may not be in a position to transition to an alternative reserve arrangement on the termination date is both speculative and beyond the scope of the compliance filing. As we noted in the December 18 Order accepting the termination provision in section 4.2.3 of the Amended CRSG Agreement, Midwest ISO must file a notice of cancellation to effect such

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<sup>11</sup> E.ON's argument that Midwest ISO made a misstatement in its transmittal letter by stating that the Contingency Reserve Requirements "were reallocated to the remaining signatories to the Amended CRSG Agreement" is incorrect. Schedule CR-4 shows that Midwest ISO has an increase in responsibility of 27 MW, only 15 MW of which is explained by an agreement with WAPA, leaving 12 MW attributable to the reallocation of LES, NPPD and OPPD's share of the contingency reserve requirements. In any case, Midwest ISO's statement in its transmittal letter is not dispositive of whether Midwest ISO's filing satisfies the requirements in the July 16 Order.

<sup>12</sup> If E.ON wanted a methodology for reallocating reserves in the Amended CRSG Agreement, it should have raised that issue in its protest to the Midwest ISO's initial filing in this proceeding.

termination.<sup>13</sup> If and when such notice of termination filing is made, E.ON can raise such arguments at that time.

The Commission orders:

Midwest ISO's compliance filing is hereby accepted, to be effective January 6, 2009, as requested.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>13</sup> December 18 Order, 125 FERC ¶ 61,323 at P 46.