129 FERC ¶ 61,125
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. ER09-1719-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS FOR FILING AND GRANTING REQUEST FOR WAIVER

(Issued November 17, 2009)

1. On September 18, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act,[1] proposed revisions to section 40.1.4.b of the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)[2] regarding the Reliability Assessment Commitment (RAC) Objective Function. Midwest ISO also sought waiver of the current version of section 40.1.4.b for the period between January 6, 2009, the initial effective date of the Tariff, and the effective date of the proposed modifications. In this order, the Commission conditionally accepts the proposed Tariff revisions[3] and grants the Midwest ISO waiver of section 40.1.4.b, as requested.

I. Background

2. On January 6, 2009, the Midwest ISO replaced its previously-effective Open Access Transmission and Energy Markets Tariff with the Tariff in order to establish

[1] 16 U.S.C. § 824d (2006).

[2] Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1.

[3] First Revised, First Revised Sheet No. 913, superseding First Revised Sheet No. 913, is accepted effective September 19, 2009. Third Revised Sheet No. 913, superseding Second Revised Sheet No. 913, is accepted January 1, 2010.

markets for energy and operating reserves,[4] including markets for regulating, spinning,[5] and supplemental reserves.[6] The Midwest ISO also became the balancing authority for the entire Midwest ISO footprint.[7]

3. Under the Tariff, the Midwest ISO operates two markets for energy and operating reserve: the Day-Ahead Energy and Operating Reserve Market (Day-Ahead Market); and the Real-Time Energy and Operating Reserve Market (Real-Time Market). The Day-Ahead Market is a forward and financially-binding market in which cleared Day-Ahead schedules for energy and operating reserve, Day-Ahead market-clearing prices for operating reserve, and Day-Ahead locational marginal prices for energy are calculated for each hour of the next operating day based on submitted offers and bids using a Security Constrained Unit Commitment (SCUC) algorithm and a Security Constrained Economic Dispatch (SCED) algorithm.[8] The Day-Ahead Market provides the Midwest ISO with a mechanism for allocating financial responsibility for energy and operating reserve transactions in the Real-Time Market. The Real-Time Market is the physically binding market for the purchase and sale of energy and operating reserve conducted in the operating day. In the Real-Time Market, the Midwest ISO calculates

[4] Operating reserve is the capacity in excess of system demand maintained in order to provide for regulation, address errors in load forecasting, address outages, and provide for local area protection. It consists of both regulating reserve and contingency reserve. *See* Tariff, §§ 1.358, 1.486, 1.492, 1.550, 1.551. Regulating reserve refers to resources kept available for the automatic and continuous adjustment of output to manage the Midwest ISO's balancing area in accordance with applicable reliability standards. *Id.* §§ 1.549-1.550. Contingency reserve refers to resources held in reserve in order to address system contingencies, and includes spinning reserve and supplemental reserve. *Id.* § 1.86.

[5] Spinning reserve refers to synchronized unloaded resource capacity set aside so that it is available to immediately offset abnormal supply deficiencies. *Id.* at Original Sheet No. 1819.

[6] The Tariff defines supplemental reserve as contingency reserve that is not considered spinning reserve that can be converted to energy within ten minutes of receiving an instruction to deploy contingency reserve from the Midwest ISO and that meets applicable reliability standards. *Id.* §§ 1.633, 1.88-1.89

[7] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318 (2008).

[8] Tariff, § 39.

the dispatch target for energy and operating reserve, locational marginal prices for energy, and market-clearing prices for operating reserve every five minutes based on submitted offers and the SCED algorithm.[9]

4. The RAC process is a method by which the Midwest ISO ensures that sufficient resources are available and online to meet load and operating reserve requirements in the Real-Time Market. The Midwest ISO conducts the RAC process prior to the Day-Ahead Market, after the posting of the Day-Ahead Market results, and during the operating day, as needed.

5. To assure that sufficient resources are available, the Midwest ISO performs the RAC Objective Function to determine which additional uncommitted resources should be scheduled. Section 40.1.4.b, which governs the operation of this function, currently provides as follows:

> The Transmission Provider shall use the RAC process to commit Resources in a manner that minimizes the total Capacity costs to satisfy the Load Forecast and Operating Reserve Requirements using a SCUC algorithm that minimizes the total commitment costs of procuring the Capacity needed to meet one-hundred percent (100%) of the Transmission Provider Load Forecast, Regulating Reserve Requirement, Spinning Reserve Requirement, and Supplemental Reserve requirement while enforcing physical and reliability constraints.
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> The commitment costs to procure Capacity include all costs based on Start-Up Offers, No-Load Offers, Energy Offer curves up to the Hourly Economic Minimum Limit, and applicable Operating Reserve Offers for Generation Resources and Demand Response Resources-Type II, include all costs based on Energy Offers, Shut-Down Offers, Hourly Curtailment Offers and Contingency Reserve Offers for Demand Response Resources-Type I, and include all costs based on Operating Reserve Offers for External Asynchronous Resources.

Also, as relevant here, in Docket No. ER09-1126-000, which is currently pending before the Commission, the Midwest ISO has proposed to modify section 40.1.4.b as follows:

> The commitment costs to procure Capacity include all costs based on Start-Up Offers, No-Load Offers, Energy Offer curves up to the Hourly Economic Minimum Limit, and applicable Operating Reserve Offers for

[9] *Id.* § 40.2.

> Generation Resources and Demand Response Resources-Type II, all costs based on Energy Offers, Shut-Down Offers, Hourly Curtailment Offers and Contingency Reserve Offers for Demand Response Resources-Type I, all costs based on Operating Reserve Offers for External Asynchronous Resources, and all costs based on Regulating Reserve Offers for Stored Energy Resources *and all costs based on Regulating Reserve Offers for Stored Energy Resources*.[10]

If the Midwest ISO commits a resource through any RAC process, that resource must adhere to the Midwest ISO's operating instructions and must submit energy offers and applicable operating reserve offers for the resource's full capacity in the Real-Time Market.[11] Committed resources are then dispatched when economic, paid the market price for energy and operating reserve,[12] and provided Real-Time Revenue Sufficiency Guarantee Credits to the extent that their costs exceed the market price received.[13]

II. Filing

6. The Midwest ISO proposes to revise section 40.1.4.b of the Tariff, which sets the parameters for the RAC Objective Function analysis, to remove all costs based on: (1) operating reserve offers for Generation Resources and Demand Response Resources-Type II;[14] (2) contingency reserve offers for Demand Response Resources-Type I;[15]

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[10] We make no ruling regarding the change proposed in Docket No. ER09-1126-000 at this time. We will consider this in a separate order.

[11] Tariff, § 40.1.4.d.

[12] *Id.* § 40.3.3.b.

[13] *Id.* §§ 40.3.3.b.ii-40.3.3.b.v.

[14] The Tariff defines a Demand Response Resource-Type II as "[a] Resource hosted by an Energy Consumer or Load Serving Entity that is capable of supplying a range of Energy and/or Operating Reserve, at the choice of the Market Participant, to the Energy and Operating Reserve Market through Behind the Meter generation and/or controllable Load." *Id.* § 1.142.

[15] Under the Tariff, a Demand Response Resource-Type I is a resource that is capable of supplying energy or contingency reserve to the Energy and Operating Reserve Market through physical load interruption. *Id.* § 1.141

(3) operating reserve offers for External Asynchronous Resources;[16] and (4) all costs based on regulating reserve offers for Stored Energy Resources.[17] Thus, section 40.1.4.b would read as follows:

> The commitment costs to procure Capacity include all costs based on Start-Up Offers, No-Load Offers, Energy Offer curves up to the Hourly Economic Minimum Limit, ~~and applicable Operating Reserve Offers~~ for Generation Resources and Demand Response Resources-Type II, all costs based on Energy Offers, Shut-Down Offers, and Hourly Curtailment Offers ~~and Contingency Reserve Offers~~ for Demand Response Resources-Type I, ~~all costs based on Operating Reserve Offers for External Asynchronous Resources and all costs based on Regulating Reserve Offers for Stored Energy Resources~~.[18]

7. The Midwest ISO contends that operating reserve offer costs and contingency reserve offer costs should not be considered significant factors in RAC commitments because they are not part of the costs of bringing a resource online.[19] The Midwest ISO notes that, after a resource has already been committed through the RAC process, it may be selected to provide regulating reserve or contingency reserve in the Real-Time Market. When selected, its costs will be recovered by the applicable market-clearing price. Regarding External Asynchronous Resources and Stored Energy Resources, the Midwest ISO states that neither type of resource requires start-up, no-load, hourly economic minimum limit, or emergency minimum values.[20] According to the

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[16] An External Asynchronous Resource is an asynchronous direct current tie between the synchronous Eastern Interconnection grid and an asynchronous grid that is represented within the Midwest ISO region through a Dynamic Interchange Schedule Import Schedule in the Day-Ahead Market and/or Real-Time Market. These resources are located where the asynchronous tie terminates in the Eastern Interconnection grid. *Id.* § 1.216.

[17] Filing, Transmittal Letter at 3. A Stored Energy Resource is "capable of supplying Regulating Reserve, but not Energy or Contingency Reserve through the short-term storage and discharge of electrical Energy in response to Setpoint Instructions." Tariff, § 1.629.

[18] Filing, Third Revised Sheet No. 913.

[19] Filing, Transmittal Letter at 3.

[20] *Id.* at 4.

Midwest ISO, no commitment costs are associated with External Asynchronous Resources and Stored Energy Resources because such resources are treated as online and dispatchable unless unavailable.[21]

8. In addition, the Midwest ISO asks the Commission to grant it limited waiver of the current version of section 40.1.4.b of the Tariff from the initial effective date of the Tariff, January 6, 2009, to September 19, 2009.[22] The Midwest ISO states that in the course of reviewing the results of the RAC process it noticed that the RAC Objective Function algorithm already scales down substantially the cost of operating reserve offers for Generation Resources and Demand Response Resources-Type II, contingency reserve offers for Demand Response Resources-Type I, operating reserve offers for External Asynchronous Resources, and regulating reserve offers for Stored Energy Resources.[23] The Midwest ISO states that, by scaling down these four types of costs, the algorithm essentially removes these costs from the RAC Objective Function.[24] The Midwest ISO acknowledges that this feature of the RAC algorithm is inconsistent with the current version of section 40.1.4.b, which still includes these costs.[25]

9. The Midwest ISO seeks waiver of the 60-day notice requirement to allow the proposed revision to become effective September 19, 2009, one day after the date of its filing.[26] The Midwest ISO argues that such a waiver is necessary to ensure timely and efficient resolution of the inconsistency between the RAC algorithm and the Tariff.[27]

III. Notice of Filing and Responsive Pleadings

10. Notice of the Midwest ISO's filing was published in the *Federal Register*, 74 FR 49369 (2009), with interventions and protests due on or before October 9, 2009.

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 385.3(a)(1) (2009).

[27] Filing, Transmittal Letter at 4.

The Midwest Transmission Dependent Utilities (Midwest TDUs)[28] filed a motion to intervene and comments. Wisconsin Electric Power Company; Ameren Services Company (Ameren);[29] Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Consumers Energy Company; American Municipal Power, Inc.; Exelon Corporation; and Xcel Energy Services, Inc. (Xcel) filed motions to intervene.[30] The Midwest ISO filed an answer to the Midwest TDUs' comments.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.[31] We accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Midwest TDUs Comment

12. The Midwest TDUs argue that the proposed revisions, if accepted, will modify section 40.1.4.b so that the section will no longer provide for minimizing the total commitment costs of procuring capacity, as is currently required, but will now provide for minimizing the capacity component of those commitment costs.[32] They add that the

[28] In this proceeding, the Midwest TDUs consist of Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, and Great Lakes Utilities.

[29] Ameren filed on behalf of Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, Illinois Power Company, Ameren Energy Marketing Company, Ameren Energy Generating Company, and AmerenEnergy Resources Generating Company.

[30] Xcel filed on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

[31] 18 C.F.R. § 385.213(a)(2) (2009).

[32] Midwest TDUs Comments at 3.

Midwest ISO has not justified this change, and that the issue requires further explanation and consideration. The Midwest TDUs note that the issue is currently being discussed in ongoing stakeholder proceedings, but that a white paper on this topic is delayed.[33] They argue that the Commission should not decide the issue at this time.[34] Instead, they suggest requiring the Midwest ISO to provide a status report in early 2010 regarding the ongoing stakeholder process, and making the outcome of this proceeding subject to reconsideration after the Midwest ISO makes a filing following completion of the stakeholder negotiations or by a certain date if the negotiations stall. Midwest TDUs do not oppose acceptance of the present filing on that basis.[35]

2. Midwest ISO Answer

13. The Midwest ISO answers that there is no reason to delay the removal of the current and continuing inconsistency between section 40.1.4.b of the Tariff and the existing RAC Objective Function algorithm. The Midwest ISO explains that the inconsistency should be eliminated as soon as possible in this proceeding, without prejudice to any further improvement or replacement of the RAC Objection Function that the stakeholder process may develop later. Further, the Midwest ISO contends that it should be granted a waiver of the inconsistency if the Commission defers action on the proposed Tariff revisions until the stakeholder process regarding the RAC Objective Function is complete.[36]

3. Commission Determination

14. Under the first paragraph of section 40.1.4.b, and as the Commission has recognized,[37] the Midwest ISO is required to use the RAC process "to commit Resources

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[33] *Id.* at 3-4.

[34] *Id.*

[35] *Id.* at 4.

[36] Midwest ISO Answer at 3-4.

[37] The Commission has acknowledged that the RAC Objective Function section minimizes total capacity costs as opposed to total commitment costs. *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 534 (February 25 Order). In that case, the Midwest ISO proposed a version of the RAC Objective Function section that provided that "[t]he Transmission Provider shall use the RAC process to commit Resources in a manner that minimizes the total Capacity costs to satisfy the Load Forecast and Operating Reserve Requirements using a SCUC algorithm that minimizes

(continued…)

in a manner that minimizes the total Capacity costs to satisfy" load and Operating Reserve requirements.[38] Yet, as Midwest ISO explains, the second paragraph of the section currently includes several factors unrelated to minimizing either total commitment costs[39] or capacity costs. The Midwest ISO explains that it is simply remedying that inconsistency by removing factors unrelated to minimizing either total commitment costs or capacity costs from the second paragraph of the section. In other words, the proposed revisions are not inconsistent with the goal of the RAC Objective Function as articulated in the first paragraph of the section, but modify the section to better reflect the goal. We therefore find that its proposed revisions are just and reasonable.

15. We disagree with the Midwest TDUs' argument that it would be premature to accept the proposed changes in light of ongoing stakeholder discussions about the design of the RAC Objective Function. Our finding does not preclude the stakeholder process

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the total commitment costs of procuring the Capacity needed to meet one-hundred percent (100%) of the Transmission Provider Load Forecast, Regulating Reserve Requirement, Spinning Reserve Requirement, and Supplemental Reserve requirement while enforcing physical and reliability constraints." Midwest Indep. Transmission Sys. Operator, Inc., Open Access Transmission and Energy Markets Tariff, Docket No. ER07-1372-000, Second Third Revised Sheet No. 536 (filed September 14, 2007). Ameren Services Company argued that the RAC Objective Function should be modified so that it includes total costs and not only capacity costs. While the Commission acknowledged that the RAC Objective Function only minimized capacity costs, the Commission nevertheless accepted the RAC Objective Function section. *See* February 25 Order, 122 FERC ¶ 61,172 at P 534, app. B P 12 (accepting the RAC Objective Function on the condition that the Midwest ISO modify the RAC Objective Function to include shutdown costs and hourly curtailment offers associated with demand response resources); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,296 (2008) (accepting the RAC Objective Function section as modified to incorporate the costs associated with demand response resources).

[38] Tariff, § 40.1.4.b.

[39] Midwest ISO's use of "total commitment costs" here should be understood to mean total capacity-related commitment costs. The first sentence in § 40.1.4.b states that the RAC process is used "to commit Resources in a manner that minimizes the total Capacity costs …" The remainder of the first sentence refers to using a SCUC algorithm that minimizes the total commitment costs. The Tariff at § 1.599 clearly defines the SCUC as an "algorithm capable of committing Resources to supply Energy and/or Operating Reserve on simultaneously co-optimized basis that *minimizes Capacity costs* while enforcing multiple security constraints." (Emphasis added).

from continuing, or foreclose the possibility that the Midwest ISO will seek to further modify section 40.1.4.b in light of the stakeholder discussions, to again adapt the RAC Objective Function to the continued evolution of the market. As we note that the Midwest ISO Market Subcommittee has updated the status of the white paper on this topic on the schedule Midwest TDUs cited, we decline to require a further status report.[40]

16. We grant the Midwest ISO's request for waiver of the current Tariff provisions regarding the RAC Objective Function for the period between January 6, 2009 and the date of this order. We also find that good cause exists to grant waiver of the 60-day notice requirement and allow the Tariff revisions to be effective September 19, 2009.[41]

17. Finally, we will require that Midwest ISO further revise Third Revised Sheet No. 913. This sheet contains an unnecessary comma after "Hourly Economic Minimum Limit."

The Commission orders:

(A) The Midwest ISO's proposed revisions to section 40.1.4.b of the Midwest ISO Tariff are accepted, effective September 19, 2009 and January 1, 2010, as discussed in the body of this order.

(B) Waiver of section 40.1.4.b is hereby granted for the period between January 6, 2009 and the date of this order, as discussed in the body of this order.

(C) Waiver of the 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

[40] The Midwest ISO's website indicates that the Midwest ISO expects to distribute the white paper by the end of 2009; there is no further indication of a delay. Midwest ISO, Item 04 –Issues MSC110309.xls at 2 (cells A14 – J14), *available at* http://www.midwestiso.org/publish/Document/4dfde8_124a04ca493_-7f1f0a48324a?rev=1.

[41] *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 (1992).

(D) The Midwest ISO is required to further revise Third Revised Sheet No. 913, as described in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.