

130 FERC ¶ 61,087  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER10-386-000

ORDER ON TARIFF REVISIONS

(Issued February 2, 2010)

1. On December 4, 2009, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, under section 205 of the Federal Power Act (FPA)<sup>1</sup> revisions to its Open Access Transmission, Energy and Operating Reserves Markets Tariff (Tariff).<sup>2</sup> Midwest ISO proposes to amend its Tariff to provide Demand Response Resources-Type I (DRR-Type I)<sup>3</sup> with more flexibility to offer spinning reserves. Midwest ISO requests that these proposed Tariff revisions become effective February 2, 2010. As discussed below, we conditionally accept, in part, and reject, in part, Midwest ISO's filing, subject to a compliance filing as discussed below.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1. Midwest ISO uses the term "Ancillary Services Market" or "ASM" to refer collectively to the markets for Energy and Operating Reserves established in the Tariff.

<sup>3</sup> DRR-Type I resources are resources hosted by an energy consumer or load serving entity that are capable of supplying a specific quantity of energy or contingency reserve, at the choice of the market participant, to the energy and operating reserve market through physical load interruption. *See generally* Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 119.

## I. Background

2. On February 25, 2008, the Commission issued an order on Midwest ISO's proposed ancillary services market.<sup>4</sup> In that proposal, Midwest ISO asserted that the proposed ancillary services market would "increase the efficiency of the energy markets while minimizing the costs, provide for the efficient acquisition and pricing of operating reserves, provide a mechanism for increased competition through additional available resources, including demand response resources . . . ."<sup>5</sup> Midwest ISO classified demand response resources into two categories: DRR-Type I and DRR-Type II.<sup>6</sup> While Midwest ISO proposed to allow certain demand response resources to set market clearing prices, it did not propose to apply its market monitoring and mitigation plan to demand response resources that may set locational marginal prices and/or market clearing prices.

3. After holding a technical conference to consider, in part, whether demand response resources should be subject to mitigation measures, the Commission issued an order (*i.e.*, ASM Order) addressing the proposed Tariff revisions. In the *ASM Order*, the Commission acknowledged that while it may be possible for demand response resources to exercise market power,<sup>7</sup> it highlighted the difficulty of establishing appropriate reference levels and applying mitigation using the conduct and impact approach for demand response resources.<sup>8</sup> Furthermore, the Commission emphasized the importance of ensuring comparable treatment of demand response resources in Midwest ISO's markets, including the ability of such resources to help mitigate market power. The Commission expressed concern that mitigation, if inappropriately applied, could hinder participation in the market by demand response resources.<sup>9</sup>

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<sup>4</sup> See *Midwest Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008) (*ASM Order*).

<sup>5</sup> *Id.* P 19.

<sup>6</sup> DDR-Type II resources, as compared to DRR-Type I resources, do not rely upon physical load interruption to supply a range of energy and/or operating reserve, but instead rely upon behind the meter generation and/or controllable load to meet the need of the market participant. See generally *Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 119A*.

<sup>7</sup> 122 FERC ¶ 61,172 at P 188.

<sup>8</sup> *Id.* P 189.

<sup>9</sup> *Id.*

4. Subsequently, on October 17, 2008, the Commission issued Order No. 719,<sup>10</sup> which requires, among other things, that Regional Transmission Organizations (RTOs) operating organized markets for energy and/or ancillary services accept bids from demand response resources for such products on a basis comparable to other resources, as long as the demand response resource meets technical requirements and properly submits a bid at or below the market clearing price, unless the laws or regulations of the relevant electric retail regulatory authority prohibit participation by demand response resources.<sup>11</sup> Order No. 719 also required each RTO to assess and report on any remaining barriers to comparable treatment of demand response resources that are within the Commission's jurisdiction and to submit its findings and any proposed solutions, along with a timeline for implementation. Each RTO's independent market monitor was also required to submit a report describing its views on these issues to the Commission.<sup>12</sup>

## II. Proposed Tariff Amendments

5. Midwest ISO proposes to amend its Tariff to provide DRR-Type I resources with the flexibility to offer either spinning or supplemental reserves, rather than just supplemental reserves, as is the case now. For this purpose, Midwest ISO proposes to amend the definition of a DRR-Type I Offer to make clear that DRR-Type I resources can provide spinning reserves. In addition, Midwest ISO proposes to amend several provisions that previously indicated DRR-Type I resources were prohibited from providing spinning reserve.

6. Under the proposal, to be qualified to provide spinning reserves, a DRR-Type I resource must have a minimum interruption duration of 60 minutes or less.<sup>13</sup> Each DRR-Type I Offer, whether day-ahead or real-time, is required to have a "Contingency Reserve Status," specifying whether the resource will be cleared and deployed in the same manner as on-line spinning or supplemental reserves, or in the same manner as off-line supplemental reserves. If a DRR-Type I Offer does not indicate its Contingency Reserve Status, the status defaults to the status that was specified for the DRR-Type I resource during the asset registration process.<sup>14</sup>

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<sup>10</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008) (Order No. 719 or Final Rule).

<sup>11</sup> *Id.* P 47.

<sup>12</sup> *Id.* P 247.

<sup>13</sup> Midwest ISO December 4, 2009 Filing at 2.

<sup>14</sup> *Id.* at 2-3.

7. As proposed, if the DRR-Type I resource selects “on-line” for its Contingency Reserve Status, and it clears spinning reserves, the resource is deployed during any event in which contingency reserves are deployed, together with all other offered resources that were cleared as on-line Contingency Reserves. If it instead selects “off-line” for its Contingency Reserve Status, and it is cleared as supplemental reserve, the resource is deployed during an event only if reserves classified as off-line are needed.<sup>15</sup>

8. If offered as on-line spinning reserve, the DRR-Type I resource is compensated at the market clearing price for spinning reserves for any reserves cleared. The DRR-Type I resource is eligible for payment of the real-time offer revenue sufficiency guarantee payment.<sup>16</sup> If offered as off-line spinning reserve, the DRR-Type I resource is compensated at the market clearing price for supplemental reserves for any reserves cleared but is not eligible for payment of the real-time offer revenue sufficiency guarantee payment.<sup>17</sup>

9. Midwest ISO’s proposal further exempts DRR-Type I resources from the offer flexibility requirement associated with real-time offer revenue sufficiency guarantee payments. Midwest ISO notes that DRR-Type I resources can offer only a single reduction quantity and, thus, do not have flexibility of other resources providing spinning reserve. However, DRR-Type I resources are required to have the same targeted demand reduction level for each consecutive real-time must run committed hour, and they are required to have non-excessive energy levels above zero to be eligible for those payments.<sup>18</sup> A reference to DRR-Type I resource is added to the initial Tariff provision regarding eligibility for such make-whole payments. The enumeration of the specific types of resources covered by the provisions of real-time offer revenue sufficiency guarantee payment is replaced with the broader term “Resource,” which the Tariff already defines as including DRR-Type I resources.

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> Midwest ISO states that these eligibilities are comparable to the treatment of an on-line deployment of a generation resource, which is not eligible for a make-whole payment of commitment costs because of the deployment of contingency reserves. *Id.*

<sup>17</sup> *Id.* at 3-4. These eligibilities also are comparable to the current treatment for the off-line deployment of a generation resource which is eligible for a make whole payment of commitment costs as well as real-time offer revenue sufficiency guarantee payment due to deployment of contingency reserves.

<sup>18</sup> *Id.* at 4.

10. Midwest ISO also proposes to revise section 64.1.2.a.i of its Tariff<sup>19</sup> to include resource offer parameters specific to DRR-Type I resources. Midwest ISO states that this proposed revision clarifies that demand response resources are subject to market monitoring and mitigation for economic withholding.<sup>20</sup>

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

11. Notice of Midwest ISO's December 4, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 67,869 (2009), with interventions and protests due on or before December 28, 2009.

12. Timely motions to intervene were filed by American Municipal Power, Inc.; Coalition of Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; Duke Energy Corporation; Exelon Corporation; MidAmerican Energy Company; Midwest Transmission Customers; and Wisconsin Electric Power Company. Steel Producers<sup>21</sup> filed a timely motion to intervene and protest. Midwest ISO filed an answer to the protest.

13. Consumers Energy Company filed an untimely motion to intervene.

14. In its protest, Steel Producers state that they support the work Midwest ISO has done to prepare the ancillary services markets for the potential participation of demand response resources. Although Steel Producers support the modifications in this filing, they are concerned about the intended application of a ten percent limit on the participation of demand response resources as spinning reserve. They assert that this limit is arbitrary and may constitute a barrier to entry for demand response resources.<sup>22</sup> Steel Producers contend that implementing a ten percent limit, whether by Tariff or per the Business Practices Manuals, will result in opportunities to debate incremental increases to the limit. They argue that parties opposed to competition from demand response resources would likely oppose increases to the limit at every step.

15. In support of their position, Steel Producers point out that PJM Interconnection, L.L.C.'s (PJM) Manual 11, section 4, allows demand response resources to supply

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<sup>19</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1398.

<sup>20</sup> Midwest ISO December 4, 2009 Filing at 4.

<sup>21</sup> Steel Producers include Nucor Steel Marion, Inc., Nucor Steel-Indiana, and Steel Dynamics, Inc.

<sup>22</sup> Steel Producers December 28, 2009 Protest at 4.

25 percent of its synchronized reserve requirements.<sup>23</sup> As Steel Producers note, PJM has not reported any negative consequences resulting from the participation of demand response in its synchronized reserve market. Accordingly, Steel Producers request that the Commission reject Midwest ISO's proposed ten percent limit.

16. In its answer to Steel Producers, Midwest ISO states that the ten percent limit on the clearing of DRR-Type I resources as spinning reserve is appropriate based on reliability considerations. Midwest ISO asserts that it would be inappropriate to adopt PJM's 25 percent limit given the differences between the contingency reserve deployment methodologies between Midwest ISO and PJM.<sup>24</sup> Midwest ISO states that PJM typically deploys 100 percent of its available spinning reserve to respond to each contingency event, while Midwest ISO's deployment method uses a more targeted approach by calling only an amount of reserves corresponding to the size of a particular contingency event.<sup>25</sup> Midwest ISO says that it plans to evaluate the effectiveness of DRR-Type I resources when deployed as spinning reserves over a period of at least six months and determine whether any increase in the ten percent limit is warranted.<sup>26</sup>

#### IV. Discussion

##### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>27</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant the late-file motion to intervene submitted by Consumers Energy Company pursuant to Rule 214(d) of the Commission's Rules of Practice and

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<sup>23</sup> *Id.*

<sup>24</sup> Midwest ISO January 12, 2010 Answer at 3.

<sup>25</sup> As an example, Midwest ISO states that it is its understanding that if PJM were to lose a 1,000 MW generator at a time when PJM is carrying 1,100 MW of spinning reserves, PJM would most likely call on 100 percent of spinning reserves to be activated, and then terminate the event when they returned their Area Control Error to the appropriate level. By comparison, under the same conditions, Midwest ISO's methodology would deploy exactly 1,000 MW of spinning reserves. *Id.* at 4.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> 18 C.F.R. § 385.214 (2009).

Procedure in view of the early stage of this proceeding, its interests and the interests it represents, and the absence of undue prejudice or delay.<sup>28</sup>

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>29</sup> prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

**B. Commission Determination**

**1. Ten Percent Limit on Providing Spinning Reserves**

19. We find that Midwest ISO's proposal takes an important step towards allowing DRR-Type I resources to provide spinning reserves. We are encouraged that the Tariff revisions will facilitate participation by demand response resources. We further believe that the change is consistent with our direction in the *ASM Order* instructing Midwest ISO to evaluate, through stakeholder discussions, adjustments to operating requirements and market procedures that will remove barriers to comparable treatment of demand response resources in the regulating reserve markets.<sup>30</sup>

20. With regard to Steel Producers' concerns regarding the ten percent limit, we find Midwest ISO's proposal to be just and reasonable. While Steel Producers point to the different limit on demand response resources in PJM, we agree with Midwest ISO that there are important differences between its market and PJM's market, including different deployment methodologies for contingency reserves. We accept Midwest ISO's plan to evaluate the effectiveness of DRR-Type I resources when deployed as spinning reserves over a period of at least six months, to limit their deployment to ten percent during this initial period, and to determine whether any increase in the ten percent is warranted. To the extent that the limit is no longer necessary or appropriate, we expect that Midwest ISO will take appropriate measures to change the limit. Furthermore, we direct Midwest ISO to provide a status report to the Commission, for informational purposes, after it has six months' experience, including a summer period, with deploying DRR-Type I resources as spinning reserves.

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<sup>28</sup> *Id.* § 385.214(d).

<sup>29</sup> *Id.* § 385.213(a)(2).

<sup>30</sup> *ASM Order*, 122 FERC ¶ 61,172 at P 365.

## 2. Mitigation

21. We will reject Midwest ISO's proposal to subject hourly curtailment offers and energy offers of DRR-Type I resources to mitigation for economic withholding, without prejudice to Midwest ISO re-filing a mitigation proposal in the future. We continue to believe that a robust monitoring and mitigation program is critical to ensuring a well-functioning market. In this case, however, Midwest ISO did not explain its proposal or provide any facts to support its proposed tariff revision. In the past we have acknowledged the difficulty inherent in designing a reference level to use to mitigate demand resources using the conduct and impact approach.<sup>31</sup> Midwest ISO does not show how its proposal contains an appropriate reference level for applying mitigation to demand resources for economic withholding. However, the Market Monitor has an obligation to report to the Commission any instances of suspected market power abuse, including economic withholding, by DRR-Type I resources.

## 3. Other Matters

22. Midwest ISO also included new capitalized terms as part of the filing indicating that various terms are defined terms under the Tariff, yet these terms are not defined in the Tariff. We direct Midwest ISO to include in the compliance filing definitions for the following terms: Demand Response Resource – Type I Contingency Reserve Status, Offline Supplemental Reserves, and Offline Supplemental. If Midwest ISO does not believe that these terms must be defined in its Tariff, then we require Midwest ISO to accurately refer to these terms without capitalizing them. We require Midwest ISO to include these changes in a compliance filing due 30 days after the date of this order.

### The Commission orders:

(A) Midwest ISO's proposed Tariff sheets are hereby accepted, in part, and rejected, in part, as discussed in the body of this order.

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<sup>31</sup> *Id.* P 189.

(B) Midwest ISO is hereby directed to submit a compliance filing 30 days after 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.