

130 FERC ¶ 61,150  
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. ER10-394-000

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENTS

(Issued February 26, 2010)

1. On December 7, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed amendments to its Open Access Transmission, Energy and Operating Reserve Markets Tariff<sup>1</sup> pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup> that terminate tariff provisions related to the Dispatch Bands option in Midwest ISO markets, as well as changes to the Tolerance Band Threshold and to the calculation of Excessive Energy and Deficient Energy. The Midwest ISO also proposes changes to the eligibility criteria for Day-Ahead Margin Assurance Payment (DA Margin Assurance Payment) and Real-time Offer Revenue Sufficiency Guarantee Payment (RT Offer Revenue Sufficiency Guarantee Payment). As discussed below, we accept the proposed amendments to the ASM Tariff, to become effective March 1, 2010.

**I. Background**

2. On September 14, 2007, as amended on September 19, 2007,<sup>3</sup> the Midwest ISO submitted for Commission approval revisions and amendments to its then-effective Open Access Transmission and Energy Markets Tariff to implement a centralized and co-optimized Energy and Operating Reserve Market within the Midwest ISO Region (ASM Proposal). The ASM Proposal incorporated certain non-price related resource operating

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<sup>1</sup> Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1 (ASM Tariff).

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> See Midwest Independent Transmission System Operator, Inc. Electric Tariff Filing to Reflect Ancillary Services Markets, Docket Nos. ER07-1372-000 and ER07-1372-001.

parameters, including Dispatch Bands. As proposed, a Dispatch Band was defined as a set of limits and ramp rates that apply to a Generation Resource or Demand Response Resource Type II<sup>4</sup> at a given point in time, based on the operating mode and/or status of the Resource. The Commission noted that because market participants may update ramp rates and resource limits within thirty minutes of the beginning of the hour, the use of Dispatch Bands “enable[s] market participants...to ensure that their units are dispatched reasonably below physical maximum limits...”<sup>5</sup> Since Dispatch Bands were designed to assure that Midwest ISO dispatched a resource consistent with its capabilities, the ASM Proposal also narrowed the Tolerance Band<sup>6</sup> for deviations from a resource’s Average Setpoint Instructions from (+/-) 10 percent to (+/-) 4 percent. Specifically, under ASM, the Tolerance Band was equal to (+/-) 4 percent of the average Energy Dispatch Target, adjusted for Regulating Reserve Deployment. Further, the Tolerance Band could be no less than (+/-) 6 MW and no more than (+/-) 20 MW.

3. The Commission conditionally accepted the ASM revisions and, among other things, directed the Midwest ISO to submit clarifications regarding the application of Dispatch Bands.<sup>7</sup> The Commission also directed the Midwest ISO to evaluate the proposed Tolerance Bands after market start-up and to submit a report to the Commission within 180 days.<sup>8</sup>

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<sup>4</sup> DRR-Type II are resources hosted by an energy consumer or load serving entity that are 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. *See generally* Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 119A.

<sup>5</sup> *See Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172, at P 292 (2008) (ASM Order).

<sup>6</sup> The Midwest ISO’s ASM Tariff (section 1.656) defines the Tolerance Band as “the band within which there is no Excessive Energy or Deficient Energy calculated.”

<sup>7</sup> ASM Order, 122 FERC ¶ 61,172 at P 293 and Appendix B.

<sup>8</sup> *Id.* P 257.

4. In its filing to comply with the ASM Order,<sup>9</sup> the Midwest ISO modified proposed section 40.2.5.d of the ASM Tariff to clarify that: (1) Dispatch Band limits cannot be updated with an hourly profile, so Dispatch Band limit changes will be in effect for the next Hour and all remaining Hours until updated again; and (2) the minimum limit across all Dispatch Band minimum limits must be less than or equal to the Resource's Hourly Emergency Minimum Limit, and that the maximum limit across all Dispatch Band maximum limits must be greater than or equal to the Resource's Hourly Emergency Maximum Limit.

5. The Commission conditionally accepted the Midwest ISO's March Compliance Filing, including the Midwest ISO's clarification regarding Dispatch Bands.<sup>10</sup> But the June Compliance Order stated that it was unclear how a Resource can submit Dispatch Band limits that are "greater than or equal to the [h]ourly [e]mergency [m]aximum [l]imit of the resource."<sup>11</sup> The Commission also directed the Midwest ISO to propose ASM Tariff revisions that expressly state that Dispatch Band deactivations would be done in a non-discriminatory manner.

6. The Midwest ISO submitted the compliance filing required by the June Compliance Order on July 23, 2008.<sup>12</sup> It clarified that the phrase "greater than or" was included to allow Market Participants additional flexibility to manage Resource de-rates while using the Dispatch Band option. The Midwest ISO also included specific tariff language stating that Dispatch Band deactivations would be performed in a non-discriminatory manner.

7. On October 2, 2008, the Midwest ISO proposed revisions involving: (1) the sharing of ramp capability between Energy and ASM products; (2) adjustments to the Tolerance Band to take into account ramp sharing and the amount of offered ramp

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<sup>9</sup> See Compliance Filing of the Midwest Independent Transmission System Operator, Inc. Regarding Ancillary Services Markets Provisions, Docket No. ER07-1372-004 (Mar. 26, 2008); Midwest Independent Transmission System Operator, Inc. Errata to Tariff Filing Regarding Ancillary Services Markets Provisions, Docket No. ER07-1372-004 (Mar. 27, 2008) (collectively, March Compliance Filing).

<sup>10</sup> *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,296 (2008) (June Compliance Order).

<sup>11</sup> *Id.* P 49.

<sup>12</sup> Compliance Filing of Midwest Independent Transmission System Operator, Inc., Regarding Ancillary Services Markets Provisions, Docket No. ER07-1372-010 (July 23, 2008).

capability; (3) adoption of additional ramp rate eligibility rules and requirements for RT Offer Revenue Sufficiency Guarantee Payment<sup>13</sup> and DA Margin Assurance Payment;<sup>14</sup> and (4) the reduction of the Regulating Reserve Demand Curve Price.<sup>15</sup> The Midwest ISO also clarified that an exemption from Excessive Energy/Deficient Energy Deployment Charges<sup>16</sup> would be provided in instances where a Dispatch Band is deactivated.

8. On December 18, 2008, the Commission issued a series of orders authorizing the January 6, 2009 start-up of the ASM markets.<sup>17</sup> The Commission accepted the Midwest ISO's revised Dispatch Band proposal as in compliance with the ASM Order and the

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<sup>13</sup> Midwest ISO's ASM Tariff (section 40.3.5) defines the RT Offer Revenue Sufficiency Guarantee Payment as the "real-time make-whole payment provided under Section 40.3.5 of this Tariff to the Resources described therein, when sum of revenue from hourly real-time LMPs and hourly real-time MCPs do not fully cover the incremental Energy Offer costs and Operating Reserve Costs of such Resources."

<sup>14</sup> Midwest ISO's ASM Tariff (section 40.3.6.1) explains that the purpose of the DA Margin Assurance Payment is "to protect Market Participants' Day-Ahead Margins associated with real-time reductions below Day-Ahead Schedules after accounting for any Market Participants requested real-time de-rates granted by the Midwest ISO, real-time reductions below the Day-Ahead Schedule for Regulating Reserves of Stored Energy Resources as a result of dispatch limitations due to reduced Energy storage capability, and any offsetting Real-Time margins for Operating Reserve cleared in excess of Day-Ahead Schedules for Operating Reserve."

<sup>15</sup> Compliance Filing of Midwest Independent Transmission System Operator, Inc., Regarding Ancillary Services Markets Provisions, Docket No. ER09-24-000 (Oct. 2, 2009) (October 2 Filing).

<sup>16</sup> Midwest ISO's ASM Tariff (section 40.3.4) explains that a "Resource shall be charged Excessive/Deficient Energy Deployment Charges in any Hour for which that Resource's average telemetered output over the Dispatch Interval is outside the Tolerance Band in three (3) or more consecutive Dispatch Intervals...."

<sup>17</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,318 (2008) (ASM Start-Up Order); *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,320 (2008); *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,321 (2008); *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,322 (2008); *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,323 (2008).

June Compliance Order.<sup>18</sup> In addition, the ASM Start-Up Order accepted the Tolerance Band and Dispatch Band modifications proposed in the October 2 Filing. The Commission also accepted the Midwest ISO's ramp sharing proposal and proposed modifications to the eligibility criteria for RT Offer Revenue Sufficiency Guarantee Payment and DA Margin Assurance Payment, subject to further 30-day compliance and 180-day informational reporting requirements.

## **II. The Filing**

9. The Midwest ISO states that since the launch of its ASM, the Dispatch Bands have been disabled approximately 62.9 percent of the time during Dispatch Intervals, and this in turn has led to disproportionate exemption of Resources from Excessive Energy/Deficient Energy Deployment Charges.<sup>19</sup> Consequently, certain Resources were exempted from those performance charges during a majority of the hours when the Tolerance Bands would have been applicable. Moreover, the Midwest ISO states that because these Resources were being exempted during critical ramp and peak periods, the effectiveness of the Tolerance Bands could not be completely assessed based on the data and operational experience available from the first 180 days of ASM operations. Due to the frequent disabling of the Dispatch Bands, the Midwest ISO has requests that it be allowed to remove Dispatch Bands from its ASM Tariff until it develops and implements a "look-ahead" tool that it will use to examine Resource commitment and dispatch capabilities and address the operational and reliability issues caused by the current circumstances.<sup>20</sup>

10. In the December 7, 2009 filing under consideration here, the Midwest ISO proposes changes to Modules A, B, and C of its ASM Tariff. Specifically, the Midwest ISO states that all Dispatch Band related definitions, including sections 1.149 – 1.156, have been deleted from Module A of the ASM Tariff.

11. The Midwest ISO proposes to modify the eligibility for compensation of the DA Margin Assurance Payment and the RT Offer Revenue Sufficiency Guarantee Payment by modifying the tolerance for Dispatch Interval failure in Module B of its ASM Tariff. Specifically Midwest ISO proposes that Dispatch Interval failure occurs when four or

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<sup>18</sup> See *Midwest Independent Transmission System Operator Inc.*, 125 FERC ¶ 61,322, at P 60 (2008).

<sup>19</sup> Midwest ISO December 7, 2009 Filing at 5.

<sup>20</sup> The Midwest ISO's proposed "look-ahead" tool will examine historical data regarding resource commitment and dispatch capabilities for the purpose of more efficiently dispatching resources in the future.

more consecutive Dispatch Intervals within the hour are not dispatchable, or four or more consecutive Dispatch Intervals within the hour have a real-time ramp rate that fails the eligibility criteria.

12. The Midwest ISO states that the Dispatch Band Tariff option was originally intended to provide a mechanism for Market Participants to change a Resource's operational and Offer parameters during an Hour (but updated 30 minutes before the hour), with those changes occurring as often as every five minutes. With the proposed removal of Dispatch Bands, a Market Participant may continue to encounter circumstances in which a Resource is not dispatchable, or is required to modify its real-time ramp rate in order to adjust its operating characteristics, but the Resource no longer will be able to communicate such changes to the Midwest ISO through use of the Dispatch Band option. The Midwest ISO states that this issue is addressed by providing a Resource up to four consecutive Dispatch Intervals before triggering ineligibility. This will allow a Resource up to 20 minutes of not being dispatchable, or failing the real-time ramp eligibility criteria, before it loses its eligibility to receive the RT Offer Revenue Sufficiency Guarantee Payment and the DA Margin Assurance Payment.

13. In order to address concerns over a potential increase in Excessive Energy/Deficient Energy Deployment Charges once Dispatch Bands are removed from the ASM Tariff, the Midwest ISO proposes to increase the existing Tolerance Band values in Module C of its ASM Tariff, to increase the threshold of consecutively failed Dispatch Intervals from three to four, and to calculate Excessive Energy/Deficient Energy only in those hours when the Failure to Follow Dispatch Flag is "true."<sup>21</sup> In hours where the Failure to Follow Dispatch Flag is "true" for a particular Resource, that Resource is not eligible to receive any make-whole payments that it otherwise would have been eligible for in that hour, and it is subject to any Excessive Energy/Deficient Energy Deployment Charges related to its failure to follow dispatch instructions.

14. The Midwest ISO states that increasing the tolerance percentages from 4 percent to 8 percent, and the maximum tolerance threshold from 20 MW to 30 MW, will provide all Resources, including those currently using Dispatch Bands, with the tolerance necessary for Market Participants to avoid incurring performance charges unnecessarily, while still providing the financial incentive for Market Participants to follow the Midwest ISO Setpoint Instructions.<sup>22</sup>

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<sup>21</sup> The Failure to Follow Dispatch Flag is currently set to "true" in any hour that a Resource has three or more consecutive Dispatch Intervals with Excessive Energy/Deficient Energy values outside the Tolerance Band.

<sup>22</sup> No adjustments have been made to the 6 MW minimum threshold value, ramp adder or ramp adjustments.

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

15. Notice of the Midwest ISO's December 7, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 66,633 (2009), with interventions and protests due on or before December 28, 2009. Timely motions to intervene were filed by American Municipal Power, Inc., Coalition of Midwest Transmission Customers,<sup>23</sup> Consumers Energy Company, Duke Energy Corporation, Exelon Corporation; Hoosier Energy Rural Electric Cooperative, Inc.; and MidAmerican Energy Company. Timely motions to intervene and comment or protest were filed by Ameren Services Company; DC Energy Midwest, LLC; Detroit Edison Company; EPIC Merchant Energy, LP, SESCO Enterprises LLC, Big Bog Energy LP, Jump Power, LLC, Solios Power, LLC, and JPTC, LLC (collectively, Financial Marketers); FirstEnergy Solutions Corp.; RRI Energy, Inc.; Wisconsin Electric Power Company; and Xcel Energy Services Inc. The Financial Marketers also filed an additional protest out of time (Supplemental Protest). The Midwest ISO filed an answer to the comments and protests.

### **IV. Discussion**

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

16. Pursuant to 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. We will accept the Financial Marketers' Supplemental Protest given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. 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 unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. Dispatch Band and Tolerance Band**

##### **a. Comments**

18. Many parties express their support for the Midwest ISO's proposal. DC Energy generally supports the Midwest ISO's proposal, and Xcel states that it supports the proposal in its entirety. Ameren and Detroit Edison both support the Midwest ISO's

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<sup>23</sup> The Coalition of Midwest Transmission Customers describes itself as an ad hoc association of large industrial end-users of electricity.

proposal, subject to an informational reporting requirement. Wisconsin Electric supports the proposal but requests that the Commission direct the Midwest ISO to provide more information regarding cost shifting to load.

19. Other parties protest the Midwest ISO's proposal. RRI argues that the proposal is unjust and unreasonable because it will increase the exposure of Resources to Excessive Energy/Deficient Energy Deployment Charges by restricting resource owners in their ability to communicate their current operating parameters to the Midwest ISO. Additionally, RRI states that the Midwest ISO has failed to demonstrate a material market, operations or reliability impact that necessitates the need to eliminate the use of Dispatch Bands. That is, the Midwest ISO has provided no quantification or data justifying its conclusion that there is a disproportionate exemption of resources from Excessive Energy/Deficient Energy Deployment Charges.

20. Wisconsin Electric argues that the proposed increase to the Tolerance Bands will increase and shift costs to load, including costs caused by generation resources that fail to comply with Midwest ISO Setpoint Instructions. Wisconsin Electric posits five scenarios whereby costs would be shifted to load under the proposal.<sup>24</sup> In light of this, it asks the Commission to require the Midwest to evaluate, eight months after implementation, the impact of the increase in the tolerance band threshold to 8 percent, along with the tolerance for Dispatch Interval Failure being increased to 4 consecutive intervals. Wisconsin Electric also requests that the Commission require the Midwest ISO to seek

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<sup>24</sup> First, Wisconsin Electric contends that the proposed increase in the Tolerance Bands would allow generators that would otherwise be ineligible to receive RT Offer Revenue Sufficiency Guarantee Payments and DA Margin Assurance Payments to receive these payments and that the costs allocated to load would therefore increase. Second, Wisconsin Electric states that the proposal to increase the number of failed dispatch intervals from three to four will increase costs to load to the extent that resources that would have been assigned deployment charges are excluded due to the increased forgiveness of non-performance. Third, Wisconsin Electric maintains that non-regulating Generation Resources' responsiveness to dispatch instructions may decline due to the reduced risk of financial consequences for not following dispatch instructions. The cost of any necessary additional regulation reserves would be paid in large part by load. Fourth, Wisconsin Electric states the increased forgiveness for non-performance may cause Generation Resources that provide regulation reserves to be less responsive to the Midwest ISO's four-second setpoint instructions. This may require the Midwest ISO to increase the amount of regulation reserves being cleared to satisfy reliability criteria, and the additional cost would be paid largely by load. Finally, Wisconsin Electric argues that an increase in payments to generators for output that would be excessive under the current Tariff would increase uplift payments paid by load.

approval for any increase in the amount of operating reserves to be cleared in any hour of the day-ahead or real-time Energy and Operating Reserves Markets.

21. RRI and FirstEnergy argue that if the Midwest ISO is allowed to alter the Tolerance Bands, it should be required to raise them not to (+/-) 8 percent but rather to the (+/-) 10 percent that the Tolerance Band was set to prior to the creation of the ASM.

**b. Answer**

22. The Midwest ISO states that it is just and reasonable to remove the Dispatch Bands until a more suitable solution can be developed and implemented to account for unit operating characteristics without unduly shifting costs to load. Regarding a generator's exposure to deviation charges, the Midwest ISO states that it has proposed, in conjunction with its stakeholders, modifications to the Tolerance Bands that strike an appropriate balance between the need to provide Resources an adequate margin to operate and the need to avoid being so lenient as to remove the incentive for generators to follow Dispatch Instructions.

23. With respect to Wisconsin Electric's request concerning operating reserves, the Midwest ISO states that not only is there no requirement that the amount of operating reserves be specified in the ASM Tariff, but the inclusion of operating reserves in the Business Practices Manuals provides the Midwest ISO the flexibility and timeliness that it needs to ensure reliable operations, while balancing the need to implement and communicate reserve requirement changes effectively. Finally, the Midwest ISO states that it is infeasible to quantify all changes to reserves maintained in the day-ahead and real-time markets for purposes of determining whether each change is the direct result of increased tolerances.

24. The Midwest ISO states that the pre-ASM Tolerance Band range of (+/-) 10 percent is not comparable to the (+/-) 8 percent proposed here because the pre-ASM range was based on and applied to hourly values, while the currently effective ASM Tariff applies the range to five-minute dispatch intervals. The Midwest ISO argues that the proposed Tolerance Band of (+/-) 8 percent reasonably protects stakeholders from undue exposure to deviation charges, but also provides an appropriate incentive for Generators to follow dispatch instructions. Finally, the Midwest ISO states that it does not oppose providing periodic updates on the effectiveness of the modified (+/-) 8 percent Tolerance Band value, including any discussion regarding or suggested changes to the tolerance range.

**c. Discussion**

25. We understand from the Midwest ISO that having the Dispatch Bands disabled approximately 63 percent of the time during Dispatch Intervals is excessive and that this has led to a disproportionate exemption of Excessive Energy/Deficient Energy

Deployment Charges that would have otherwise applied to Resources. Thus, the discontinued use of the Dispatch Bands option appears to be necessary until Midwest ISO develops sufficient capability to use Dispatch Bands through, for example, a “look-ahead” tool. We disagree with RRI that discontinuing the use of Dispatch Bands will unduly restrict a resource owners’ ability to communicate their current operating parameters to the Midwest ISO. We find that the hourly resource limits a resource owner must continue to provide the Midwest ISO, in conjunction with four dispatch intervals to meet dispatch instructions, are sufficient for a resource to operate in a manner that does not unduly restrict its operations.

26. We disagree with RRI’s contention that the Midwest ISO has not demonstrated that there are material market, operations, or reliability impacts that justify eliminating the Dispatch Bands. As we note above, the fact that the Dispatch Bands are disabled approximately two-thirds of the time and that these times include “critical ramp and peak periods”<sup>25</sup> is sufficient to demonstrate that there is a material market impact since Resources that would otherwise be paying deployment charges are now being exempted. Any costs associated with deploying additional Resources would then be recovered from other Resources and Load under Module C of the ASM Tariff.

27. Given our acceptance of the discontinuation of the Dispatch Bands option, we accept the Midwest ISO’s proposal to expand the Tolerance Band from (+/-) 4 percent to (+/-) 8 percent as well as raising the Tolerance Band maximum from (+/-) 20 MW to (+/-) 30 MW. We agree that this change is necessary to provide additional tolerance to all Resources, including those currently using Dispatch Bands, in order for market participants to avoid unnecessary performance charges, while still providing financial incentive to follow Midwest ISO dispatch instructions. Wisconsin Electric presents a number of scenarios that describe how the proposed increase to the Tolerance Bands could shift costs to load, but it does not suggest how probable these scenarios in fact are. Additionally, we reject the underlying premise of these scenarios that a modestly larger Tolerance Band will cause generators to not comply with their dispatch orders and therefore require more reserves to be acquired. We decline to require the Midwest ISO to seek approval for any increases to the amount of operating reserves to be cleared in the day-ahead or real-time markets, as there has been no showing that the methodology the Midwest ISO uses is either unjust or unreasonable. However, we will require the Midwest ISO to evaluate, eight months after implementation, the impact of the increase in the tolerance band threshold to 8 percent along with the tolerance for Dispatch Interval Failure being increased to 4 consecutive intervals in an informational report to the Commission, as discussed below.

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<sup>25</sup> Midwest ISO December 7 Filing at 5.

28. Finally, we agree with the Midwest ISO that the proposed Tolerance Band of (+/-) 8 percent (based on five-minute Dispatch Intervals) is sufficiently large to allow reasonable operation of Resources and to ensure compliance with dispatch instructions and disagree with parties that suggest that Midwest ISO should revert to a (+/-) 10 percent Tolerance Band (previously applied to hourly values - but now applied to a five minute dispatch intervals). We are concerned that reversion to (+/-) 10 percent Tolerance Band, with a five-minute dispatch interval, would not sufficiently protect stakeholders from undue exposure to increased costs by providing an appropriate incentive for Generators to follow dispatch instructions. As noted by the Midwest ISO (in the context of 5 minute dispatch intervals versus hourly dispatch intervals), the AMS Tariff lowered the tolerance range because the (+/-) 10 percent Tolerance Band was too wide and creates “free rider” concerns.<sup>26</sup> Additionally, we note that the Midwest ISO vetted its proposal to temporarily remove Dispatch Bands from its ASM Tariff, to increase the range of the Tolerance Bands, and the number of failed dispatch intervals before a generator would be subject to Excessive Energy/Deficient Energy Deployment Charges through its Market Subcommittee. And while approval through a stakeholder process is not dispositive, we are encouraged to see that the Midwest ISO has secured stakeholder approval in conjunction with setting the Tolerance Band at (+/-) 8 percent.

## **2. Excessive/Deficient Energy Charges**

29. The Midwest ISO states that to address concerns over a potential increase in Excessive Energy/Deficient Energy Deployment Charge once Dispatch Bands are removed from its ASM Tariff, it will: (1) increase the existing Tolerance Band values; (2) increase the threshold of consecutively failed Dispatch Intervals from three to four; and (3) only calculate Excessive Energy/Deficient Energy in those hours that the Failure to Follow Dispatch Flag is “true.”

### **a. Comments**

30. FirstEnergy requests that the Commission require further revisions to the ASM Tariff in order to trigger Revenue Sufficiency Guarantee and Excessive Energy/Deficient Energy charges only when the MWs exceeds the maximum for five, rather than the proposed four, consecutive intervals in order to account for subminimum operations<sup>27</sup> and equipment with long cycle times. FirstEnergy also asks that the Commission require

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<sup>26</sup> Midwest ISO Answer at 11.

<sup>27</sup> FirstEnergy describes subminimum operations as an operation that is critical to reliable and economic operations of the system and states that such moving out of such operations can take between twenty-five to forty-five minutes, depending on the particular unit being transitioned.

the ASM Tariff to be revised to grant an Excessive Energy Exemption Flag, along with Status #3 when a unit is operating in subminimum bands or involves equipment with long cycle times.<sup>28</sup>

31. Wisconsin Electric maintains that if the Midwest ISO only calculates Excessive Energy/Deficient Energy in hours with at least four consecutive failed Dispatch Intervals, Resources would have gaming opportunities due to their ability to modify their dispatch activities for the latter part of an hour based on prices observed at the start of the hour.

**b. Answer**

32. The Midwest ISO states that it evaluated the option of a five consecutive Dispatch Interval threshold, as FirstEnergy suggests, but determined that four consecutive Dispatch Intervals were appropriate to establish a pattern of conduct that would make the assessment of deviation charges appropriate once the Dispatch Bands are removed from its ASM Tariff. The Midwest ISO argues that FirstEnergy's requested Excessive Energy Exemption Flag is tantamount to an exemption from Excessive Energy/Deficient Energy Deployment Charges for those units operating in subminimum bands or transitioning equipment with long cycle times even if their operational characteristics result in a deviation from the Tolerance Band for more than four Dispatch Intervals. The Midwest ISO continues by stating that to the extent that FirstEnergy's references to subminimum operation and/or long cycle equipment may involve circumstances beyond a unit operator's control, those situations may already be covered by section 40.3.4.d.v of the Midwest ISO's ASM Tariff.

33. As to Wisconsin Electric's concerns regarding opportunities for gaming, the Midwest ISO states that it does not believe that the changes to the Tolerance Band range represent a significant financial impact and asserts that concerns about gaming are generally unfounded. However, the Midwest ISO offers to provide updates on the effectiveness of the four consecutive Dispatch Interval thresholds as part of a 180-day informational reporting requirement.

**c. Discussion**

34. We accept the Midwest ISO's proposal to change the Tolerance Bands (as discussed above), to increase the threshold of consecutively failed Dispatch Intervals from three to four, and to calculate Excessive Energy/Deficient Energy Deployment

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<sup>28</sup> FirstEnergy states that Status #3 is used for generators that for some mechanical reason are unable to follow the Midwest ISO's dispatch instructions. The unit is not exempt from any penalties, and the Midwest ISO base point will simply mirror the generator's output.

Charges only in hours when the Failure to Follow Dispatch Flag is “true.” We are satisfied that – with the discontinued use of Dispatch Bands – setting the threshold of consecutively failed Dispatch Intervals to four balances a generator’s need for operational flexibility with the Midwest ISO’s need to have generators meet their commitments or face the appropriate Excessive Energy/Deficient Energy Deployment Charges.

35. Also, we will not direct the Midwest ISO to revise its ASM Tariff to provide an Excessive Energy Exemption Flag for units operating in subminimum bands, as requested by FirstEnergy. We find that this exemption has not been demonstrated to be necessary; and, in any case, to the extent that FirstEnergy’s references to subminimum operation and/or long-cycle equipment may involve circumstances beyond a unit operator’s control, similar situations appear to be covered by the Midwest ISO’s ASM Tariff.<sup>29</sup>

36. Finally, we do not share Wisconsin Electric’s concern regarding gaming. Under the tariff language being accepted here, a Resource will not only have to abide by its effective hourly resource limits but it will also have to be within (+/-) 8 percent of its Midwest ISO-directed output target to avoid a Failure to Follow Dispatch Flag of “true,” and the attendant charges described above. And even if this risk was not sufficient to prevent gaming, the current mitigation regime in Module D of the ASM Tariff is not being revised by this filing and would apply in such instance.

### **3. RT Offer Revenue Sufficiency Guarantee and DA Margin Assurance Payments**

37. The Midwest ISO acknowledges that there are concerns regarding the potential loss of RT Offer Revenue Sufficiency Guarantee Payments and DA Margin Assurance Payments once Dispatch Bands are removed from the ASM Tariff. To mitigate these concerns, the Midwest ISO proposes to revise the eligibility criteria for receiving these payments.

38. Under section 40.3.5 of the ASM Tariff, if a Resource is not dispatchable in a Dispatch Interval, it is ineligible for DA Margin Assurance Payment in that hour and RT Offer Revenue Sufficiency Guarantee Payment in that hour and the remainder of the commitment period. Similarly, if a Resource’s real-time ramp rate fails certain eligibility criteria in a given Dispatch Interval, it is ineligible for DA Margin Assurance Payment in

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<sup>29</sup> See section 40.3.4.d.v of the ASM Tariff. Section 40.3.4.d.v describes other grounds for Generation Resources being exempt from Excessive Energy/Deficient Energy Deployment Charges, such as emergencies, the Resource being in test mode, the Resource is starting up or shutting down, the Resource trips off-line, the Resource being deployed for a contingency reserve event.

that hour, and RT Offer Revenue Sufficiency Guarantee Payment in that hour and the remainder of the commitment period.

39. Here, the Midwest ISO is proposing to change the eligibility criteria for DA Margin Assurance Payment and RT Offer Revenue Sufficiency Guarantee Payment (in sections 33.8.2 and 40.3.5 of the ASM Tariff) such that a Resource only becomes ineligible when four or more consecutive Dispatch Intervals within the hour are not dispatchable, or four or more consecutive Dispatch Intervals within the hour have a real-time ramp rate that fails the eligibility criteria. The Midwest ISO states that it believes its proposed adjustments will prevent gaming while maintaining incentives for Market Participants to increase Resource dispatch capabilities in real time.

**a. Comments**

40. Wisconsin Electric asks the Commission to clarify its expectations regarding how and when Market Participants are to make adjustments to the hourly economic maximum limit, the hourly economic minimum limit, and ramp rates. It states that with a tolerance of four consecutive intervals, it is possible that a Resource could be unavailable for dispatch for up to 45 minutes in an hour, or up to 30 consecutive minutes spanning the top of the hour, while it is still considered dispatchable by the Midwest ISO. As a consequence, Wisconsin Electric is concerned that the offer values provided by a Resource would not necessarily reflect the actual known capabilities of the Resource and that this would violate the ASM Tariff's requirement that Offers "reflect the actual known physical capabilities and characteristics of the Generation Resource."<sup>30</sup> In the alternative, Wisconsin Electric requests that the Midwest ISO be directed to revise its ASM Tariff in order to define when the offered values (the hourly economic maximum limit, the hourly economic minimum limit, and ramp rates) do not have to reflect temporary operating limitations.

**b. Answer**

41. The Midwest ISO states that the ASM Tariff sufficiently accounts for the general range of offer parameters relating to unit operating characteristics and their associated impact on the day-ahead and real-time markets. The Midwest ISO also explains that changes to hourly economic maximum limit, hourly economic minimum limit, and ramp rates that fall outside of the timing requirements outlined in the ASM Tariff are addressed in the Business Practice Manuals and Operating Procedures. The Midwest ISO states that these types of overrides are more appropriately considered in the Business Practice Manuals and Operating Procedures than in the ASM Tariff because of the intermittent and variable nature of the circumstances that occasionally necessitate these overrides.

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<sup>30</sup> Wisconsin Electric Protest at 9 (citing ASM Tariff, section 39.2.5.c).

42. Additionally, the Midwest ISO states with regard to its Generator Operator Communication Protocol that dispatchability relates to a Resource's capability to follow dispatch instructions, whereas a derate involves the decrease of a Resource's hourly economic maximum limit due to unforeseen issues. Furthermore, the Midwest ISO states that it is not necessary to update the Generator Operator Communication Protocol because that protocol already addresses the situation where a Resource is not dispatchable but it can still operate up to its hourly economic maximum limit and therefore not experience a derate.

43. With regard to the eligibility criteria for DA Margin Assurance Payment and RT Offer Revenue Sufficiency Guarantee Payment, the Midwest ISO states that the changes it has proposed to the Tolerance Bands and other eligibility criteria do not alter the ASM Tariff's requirement that offers must reflect actual unit capabilities and characteristics. Moreover, the Midwest ISO asserts that Module D of the ASM Tariff adequately protects against any gaming that may occur due to deviations in unit operations that intentionally exploit the allowance for deviations for periods of less than four consecutive Dispatch Intervals.

**c. Discussion**

44. We accept the Midwest ISO's revised eligibility criteria for DA Margin Assurance Payments and RT Offer Revenue Sufficiency Guarantee Payments. We agree with the Midwest ISO that its ASM Tariff sufficiently accounts for the range of offer parameters relating to the operating characteristics of a generation resource, and that changes to parameters that fall outside of the ASM Tariff are best addressed in the Business Practice Manuals and Operating Procedures. Additionally, we agree with the Midwest ISO that changing the Tolerance Bands and related eligibility criteria for make whole payments does not modify or alter the ASM Tariff's requirement that offers reflect known actual unit capabilities and characteristics. Finally, if a Resource was found to be exploiting the four-dispatch interval failure provisions, that Resource would be subject to the ASM Tariff's provisions for mitigation as describe in Module D of the ASM Tariff. Thus, we will not direct the Midwest ISO to revise its ASM Tariff to define when the offered values do not have to reflect temporary operating limits as requested by Wisconsin Electric.

**4. Relevance of Docket No. ER09-411**

**a. Comments**

45. The Financial Marketers state that the Midwest ISO's filing in this proceeding purports to implement the Commission's directive in Docket No. ER09-411-000 that the Midwest ISO amend its proposal in that docket to further support its proposed exemptions from real-time Revenue Sufficiency Guarantee charges based on the findings

and recommendations of the RSG Task Force. The Financial Marketers maintain that the filing falls short of that requirement.

46. The Financial Marketers argue that the Commission found in its August 7, 2009 order in Docket No. ER09-411-000 that the Midwest ISO's proposed Revenue Sufficiency Guarantee charge exemption for Dispatch Band deactivation may be unjust and unreasonable, and the Commission therefore allowed the proposal to become effective subject to refund and subject to the Midwest ISO revising its proposal or providing additional evidence to support it.<sup>31</sup> The Financial Marketers state that the Midwest ISO now proposes to eliminate the Revenue Sufficiency Guarantee charge exemption, but to do so only prospectively from March 1, 2010, rather than making the change retroactive to January 6, 2009 and providing refunds to those market participants who were subjected to rate increases as a result of the exemption. The Financial Marketers argue that the elimination of the Revenue Sufficiency Guarantee charge exemption must be made retroactive to January 6, 2009, consistent with the August 7 Order.

47. The Financial Marketers maintain that they have been subjected to an unsupported and unlawful rate increase since the January 6, 2009 effective date of Midwest ISO's proposed Revenue Sufficiency Guarantee charge exemptions and are entitled to full refunds.

48. The Financial Marketers also state that the Midwest ISO has not demonstrated the justness and reasonableness of its other proposals in the present filing, specifically (1) increasing existing Tolerance Band values from 4 percent to 8 percent, (2) increasing the maximum tolerance threshold value from 20 MW to 30 MW, (3) increasing the threshold of consecutively failed Dispatch Intervals from three to four, and (4) only calculating Excessive/Deficient Energy in those hours that the Failure to Follow Dispatch Flag is set to "true." They maintain that these revisions are expressly designed to limit the circumstances under which resources could be assessed Revenue Sufficiency Guarantee charges for the Revenue Sufficiency Guarantee costs they cause, and the Midwest ISO has not demonstrated the justness and reasonableness of the resulting exemptions of those resources from Revenue Sufficiency Guarantee charges.

49. The Financial Marketers' Supplemental Protest provides a discussion of the justness and reasonableness of the allocation of Revenue Sufficiency Guarantee costs, in particular as this issue pertains to virtual supply offers.

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<sup>31</sup> Financial Marketers' Dec. 28, 2009 Intervention and Protest at 9 (citing *Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,142 (2009) (August 7 Order)).

50. DC Energy states that the Commission's order in this docket should be coordinated with its action in Docket No. ER09-411. In particular, any modification to or rejection of the Revenue Sufficiency Guarantee charge exemption in that docket should not be impaired by any action taken in this docket. DC Energy argues that if the Commission accepts the elimination of the Dispatch Band option in this docket, then the deviations associated with Dispatch Band deactivation should become subject to the Revenue Sufficiency Guarantee charge.

**b. Answer**

51. The Midwest ISO states that its filing in this proceeding is not a compliance filing pursuant to the August 7 Order. It maintains that the two proceedings deal with different subject matter. According to the Midwest ISO, this proceeding primarily involves Dispatch Bands and only incidentally relates to Revenue Sufficiency Guarantee charges, whereas Docket No. ER09-411 largely concerns Revenue Sufficiency Guarantee charge exemptions. The Midwest ISO argues that the Commission should thus reject requests to make the resolution of the ASM Tariff revisions submitted in this proceeding dependent on, or determinative of, the Commission's action in Docket No. ER09-411.

52. The Midwest ISO also argues that there is no legal basis for making the Dispatch Band revisions proposed here effective retroactively. It states that the present proceeding involves a section 205 filing that requests a prospective effective date for the proposed removal of the Dispatch Band option on grounds that such a change is just and reasonable. This proceeding is not a section 206 complaint proceeding and is thus not a proceeding in which the existing Dispatch Band-related Revenue Sufficiency Guarantee exemption could be assailed as unjust and unreasonable, subject to possible retroactive adjustment.

**c. Discussion**

53. We agree with the Midwest ISO that its filing in this proceeding is not a compliance filing made in response to the August 7 Order. The filing does not address, and is not intended to address, the ASM Tariff provisions that deal with the calculation of the Revenue Sufficiency Guarantee rate or any existing or proposed exemption from Revenue Sufficiency Guarantee charges.

54. The Financial Marketers support their claim that Midwest ISO's proposed ASM Tariff revisions are designed to limit the circumstances under which resources could be assessed Revenue Sufficiency Guarantee charges by referring to the Midwest ISO's statement that it is necessary to prevent "inappropriate charges due to operational limitations based on [a Resource's] operating limitations."<sup>32</sup> However, they read the Midwest ISO's statement out of context. The Midwest ISO is discussing its reasons for proposing the increase in the Tolerance Bands, and the inappropriate charges it mentions are Excessive Energy/Deficient Energy Deployment Charges. In short, the Financial Marketers have not shown any connection between this proceeding and Docket No. ER09-411. Any effects that the outcome of this proceeding could have on the allocation of Revenue Sufficiency Charges will be, at best, indirect and coincidental.

55. In addition, as the Midwest ISO points out, this is a section 205 proceeding in which it seeks a prospective effective date for its proposed ASM Tariff revisions. There is no basis for the Financial Marketers' request that they should be entitled to retroactive refunds.

56. The Financial Marketers maintain that the Midwest ISO has not demonstrated the justness and reasonableness of its proposals in this proceeding, but they provide no support for this claim. The Financial Marketers do not comment on the specific ASM Tariff revisions that the Midwest ISO is proposing, or address any of the points that the Midwest ISO has made in support of its filing. Instead, they concentrate on the issue of allocation of Revenue Sufficiency Guarantee charges, which, as noted above, is not pertinent here. In addition, the Financial Marketers do not support their claim that the Midwest ISO's proposed ASM Tariff revisions are expressly designed to limit the circumstances under which resources could be assessed Revenue Sufficiency Guarantee charges for the Revenue Sufficiency Guarantee costs they cause. Accordingly, we reject the Financial Marketers' arguments on these points.

57. The Financial Marketers' supplemental protest does not address any aspect of the filing that the Midwest ISO has made in this proceeding, and we therefore need not address it here.

58. Finally, we reject DC Energy's request that the Commission coordinate its action in this docket with its action in Docket No. ER09-411. As noted already, there is no direct connection between this proceeding and the proceeding in Docket No. ER09-411.

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<sup>32</sup> *Id.* at 6 (citing the Midwest ISO's Dec. 7, 2009 filing at 10).

## 5. Reporting Requirements

59. Ameren, Detroit Edison and FirstEnergy ask the Commission to require the Midwest ISO to submit periodic informational reports detailing the progress being made in developing the look-ahead tool necessary to reinstate Dispatch Bands. FirstEnergy also requests that the Commission impose a timeline that would require the Midwest ISO to implement the new look-ahead tool no later than 12 months after the effective date of its proposed changes in this proceeding.

### a. Answer

60. The Midwest ISO states that it does not oppose the suggestion of a timeline and limited informational reporting detailing its efforts to reinstate Dispatch Bands or to adopt comparable mechanisms. The Midwest ISO states that its development and implementation plan should not be expressly limited to 12 months as First Energy suggests. The Midwest ISO states that it and its stakeholders should be permitted the time necessary to ensure that the look-ahead tool is properly designed.

### b. Discussion

61. We direct the Midwest ISO to make an informational report to the Commission in 240 days, and annually thereafter,<sup>33</sup> detailing its progress in developing the tools and operating procedures that will lead to the reinstatement of Dispatch Bands or some other alternative arrangements. This informational report should also include updates on the effectiveness of the modified Tolerance Bands and any other associated operational results, including but not limited to the impact of increasing from three to four the number of consecutive failed dispatch intervals to trigger a Failure to Follow Dispatch Flag.

62. Finally, we will not require the Midwest ISO to reinstate Dispatch Bands using a look-ahead tool or an alternate mechanism within 12 months, as FirstEnergy requests. Simply stated, it is more important to give the Midwest ISO the time that it needs to reinstate Dispatch Bands properly than it is to have a potentially non-optimized solution in 12 months. We believe that the reporting requirement set forth in this order will ensure that the Midwest ISO is making adequate progress and is not unduly delaying reinstating Dispatch Bands.

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<sup>33</sup> The informational reporting requirement, subsequent to the 240-day filing, expires once the Midwest ISO makes a section 205 filing to reinstate Dispatch Bands into the ASM Tariff.

The Commission orders:

(A) The Midwest ISO's proposed ASM Tariff revisions are hereby conditionally accepted for filing, to become effective on March 1, 2010, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to submit informational reports as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.