

131 FERC ¶ 61,057
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. ER08-394-022

ORDER ON COMPLIANCE FILING

(Issued April 21, 2010)

1. This order conditionally accepts the June 17, 2009 compliance filing (June Compliance Filing) in as much as it addresses the participation of load modifying resources in the voluntary capacity auction to become effective 60 days after the date of this order, as requested, subject to the additional compliance filing discussed below.¹

I. Background

2. As part of its April 16, 2009 order,² the Commission required the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to submit tariff revisions that would propose a methodology for determining the deliverability of load modifying resources in the monthly voluntary capacity auction. If, however, the Midwest ISO could not propose a permanent solution to the deliverability issue, the Commission ordered the Midwest ISO to “explain the status of stakeholder discussions, provide a detailed timeline for the development by stakeholders of deliverability rules for load modifying resources and, for the interim, propose a mechanism for participation of load modifying resources in the monthly auction.”³

¹ The Commission will address the remainder of the Midwest ISO’s June Compliance Filing in a separate order.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054 (2009) (April 16 Order).

³ *Id.* P 153.

3. The Midwest ISO states in the June Compliance Filing that it needs additional time to find a permanent solution regarding the deliverability of load modifying resources. In compliance with the April 16 Order, the Midwest ISO provided a detailed schedule by which it will work with stakeholders to propose and find a permanent solution for the deliverability issue. It plans on filing a permanent solution with the Commission on or before December 11, 2009.⁴

4. As for its interim mechanism, the Midwest ISO discussed this issue with stakeholders on two occasions and evaluated stakeholder feedback provided during the meetings. Based on these discussions, the Midwest ISO proposes a modification to Module E of Midwest ISO's Open Access Transmission and Energy Markets Tariff⁵ that would allow load modifying resources to be deemed to be universally deliverable during the interim and thus be able to participate in the voluntary capacity auction. To be deemed universally deliverable, however, the Midwest ISO is requiring the following certification from a market participant:

- (1) the laws or regulations of the relevant electric retail regulatory authorities do not preclude the customers aggregated in the [load modifying resource] from participating directly in the Midwest ISO's markets; and
- (2) it will be responsible for and will indemnify and hold harmless any LSE that acquires such [load modifying resources] through the [voluntary capacity auction] for any and all penalties or other charges that the Midwest ISO would assess if the [load modifying resource] does not perform during an Emergency.⁶

5. The Midwest ISO asserts that the certification is needed for two reasons. First, it claims that the certification is necessary to avoid any potential conflict with state laws or regulations governing the use of load modifying resources. Second, the Midwest ISO asserts that the indemnity provision will provide uniformity among different resources in the voluntary capacity auction—that is, to ensure that load modifying resources are fungible and consistent with other resources in the voluntary capacity auction. The Midwest ISO notes that, without an indemnity provision, load modifying resources would be less valuable than other resources.

⁴ As noted below, the Midwest ISO did not and has not filed with the Commission a permanent solution to ensure that load modifying resources are able to participate in the voluntary capacity auction.

⁵ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Fourth Revised Vol. No. 1.

⁶ Midwest ISO June 17, 2009 Filing at 14.

6. The Midwest ISO also plans to monitor the use of load modifying resources in the voluntary capacity auction for reliability purposes. In particular, the Midwest ISO will make sure that the LSE serving the load associated with the load modifying resource is meeting its resource adequacy obligations with a larger quantity of universally deliverable planning resources than the quantity of load modifying resources that the market participant is seeking to offer into the voluntary capacity auction. The Midwest ISO also plans to review the auction's capacity tracking tool to prevent any double counting of load modifying resources.

7. The Midwest ISO requested an effective date for the interim mechanism that is 60 days after the Commission's issuance of a compliance order. The Midwest ISO claims that this time is necessary to develop and test changes to its capacity auction tools.

8. On February 19, 2010, the Midwest ISO filed an informational filing (February Filing) describing its continued work to find a permanent solution for ensuring the deliverability of load modifying resources. While the Midwest ISO had several meetings in 2009, the Midwest ISO explained that it was unable to reach a consensus with stakeholders and, thus, was unable to file its permanent solution by December 11, 2009. The Midwest ISO emphasized its continued work on a permanent solution. However, it noted that a decision by the Commission on the interim mechanism would help it make a decision on the permanent solution. The Midwest ISO further questioned whether the permanent solution, once filed, could be implemented prior to the commencement of the next planning year on June 1, 2010. It argued that there would be insufficient time to finalize its permanent solution, file it with the Commission, obtain Commission approval, and implement the new plan by June 1, 2010. For planning purposes and efficiency, the Midwest ISO stated that any deliverability changes should be implemented several months before the start of a planning year on June 1, 2011.

II. Notice of the Compliance Filing and Responsive Pleadings

9. Notice of the June Compliance Filing was published in the *Federal Register*, 74 FR 31022 (2009), with interventions and protests due on or before July 8, 2009.

10. Six parties filed comments or protests regarding the Midwest ISO's plan for ensuring the participation of load modifying resources in the voluntary capacity auction. RRI Energy, Inc. (RRI Energy) (formerly Reliant Energy, Inc.) and the Electric Power Supply Association (EPSA) separately argue that the Midwest ISO's interim mechanism is premature. As claimed by RRI Energy, the interim mechanism merely conceals the non-deliverability of certain load modifying resources and allows them to masquerade as universally deliverable to allow them to participate in the voluntary capacity auction. RRI Energy, as well as EPSA, argue that the Midwest ISO's plan unduly discriminates against other resources that have waited in the interconnection queue to obtain deliverability. Duke contends that the interim mechanism creates an undue advantage by

treating load modifying resources as fully deliverable without an adequate demonstration of such capability.

11. RRI Energy also questions whether the Midwest ISO can prevent load modifying resources from being double counted. RRI Energy notes that the Midwest ISO cannot determine whether a load modifying resource has been used for a load serving entities' demand, as well as resource adequacy, until after the voluntary capacity auction.

12. The Detroit Edison Company (Detroit Edison) likewise asserts that the interim mechanism is premature and could lead to double counting of load modifying resources. Detroit Edison is further concerned about the relationship between load modifying resources and load serving entities. It argues that the Midwest ISO has introduced a new term, "LMR MP" (i.e., market participants with rights to control the energy demand or energy production from load modifying resources), that has not been clearly defined and may create possible reliability issues and may shift costs to load serving entities.

13. While Consumers Energy Company (Consumers Energy) states that it generally supports the interim mechanism, Consumers Energy requests clarification regarding the new term, LMR MP. It raises two questions: (1) whether the Midwest ISO will ensure that a LMR MP with an interruptible rate should be disqualified from participating in the voluntary capacity auction; and (2) whether a pro rated load modifying resource will be pro rated based on the planning resources of the load serving entity.

14. Integrys Energy Services, Inc. (Integrys) does not challenge the reasonableness of the Midwest ISO's interim mechanism. It notes, however, that the interim mechanism only addresses the deliverability "status" of load modifying resources—not their physical deliverability. Integrys recommends that the Midwest ISO continue to work with stakeholders to find a permanent solution to the deliverability issue, especially as it relates to load modifying resources that are external to the Midwest ISO.

15. The Midwest ISO and the Coalition of Midwest Transmission Customers (CMTC) filed separate answers to the comments and protests. Both the Midwest ISO and CMTC assert that the June Compliance Filing complies with the plain requirements of the April 16 Order—that is, the Midwest ISO proposed a detailed timeline for finding a permanent solution regarding the deliverability of load modifying resources and provided an interim mechanism to allow load modifying resources to participate in the voluntary capacity auction. To the extent that certain parties are now challenging whether an interim mechanism is premature, CMTC argues that such a claim is an untimely request for rehearing of the April 16 Order.

16. In addition, the Midwest ISO asserts that Consumers' request should be rejected because Consumers has not presented sufficient evidence to support its proposal to disqualify an LMR MP that is on an interruptible rate. If Consumers is arguing that the MWs of a customer on interruptible rates are already being used by the LSE and

therefore no additional Planning Resources are being covered by these MWs, then the proposed tariff covers this situation because, as the Midwest ISO has emphasized, no double counting will be allowed. The Midwest ISO also believes that a clarification is not necessary to state that the universally deliverable Planning Resources offered by an LMR MP must be pro rated since the tariff already requires such a result in section 69.2.1.5.3.

17. CMTC further states that the Midwest ISO has submitted appropriate tariff provisions to prevent double counting of load modifying resources. It notes that the Midwest ISO's Module E capacity tracking tool will allow it to detect market participants who attempt to register a load modifying resource that was already registered by another market participant or by a load serving entity. CMTC further disagrees with RRI Energy's claim that the Midwest ISO cannot use the Module E capacity tracking tool as a means of avoiding double counting. By way of example, CMTC notes that the results of the voluntary capacity auction for the August 2009 planning month were known by June 24, 2009, which is seven days before a load serving entity must provide its updated load forecast. In other words, according to CMTC, the Midwest ISO will have the information necessary to prevent double counting.

III. Discussion

A. Procedural Matters

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁷ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO and CMTC because they provided information that assisted us in our decision-making process.

B. Commission Determination

19. We will accept the Midwest ISO's interim mechanism regarding the participation of load modifying resources in the voluntary capacity auction, but will require the Midwest ISO to file its permanent solution with the Commission by August 27, 2010. This will provide the Midwest ISO and stakeholders with sufficient time to review this order and finalize the plan for ensuring the deliverability of load modifying resources in the voluntary capacity auction.

20. To the extent that parties are opposed to having an interim mechanism prior to a permanent solution, as argued by RRI Energy, EPSA and Detroit Edison, their arguments

⁷ 18 C.F.R. § 385.213(a)(2) (2009).

should have been raised in a request for rehearing of the April 16 Order. No requests for rehearing were filed on this issue.

21. We also find no basis to conclude that the interim mechanism, as part of a comprehensive plan that requires the filing of a permanent solution, is unduly discriminatory or otherwise unreasonable. The interim plan would allow load modifying resources that are able to provide capacity to the load serving entity in whose zone the resource is located to help that load serving entity meet its resource adequacy requirements. Because the affected load modifying resources already are interconnected and, under the interim mechanism, their participation is limited to the zone in which they are located, it is reasonable to consider such resources as deliverable to those zones under the interim proposal.

22. Nor do we agree with protestors that allowing load modifying resources to participate in the voluntary capacity auction in the manner proposed in the interim mechanism will create reliability risks. The Midwest ISO has taken several steps to minimize these risks, including a certification by market participants that a load modifying resource being offered into the voluntary capacity auction is able to participate under applicable state law and regulations. The Midwest ISO also requires a market participant to indemnify a load serving entity against penalties if the load modifying resource fails to perform in an emergency. No party challenges these requirements and we find them to be reasonable under the facts of this proceeding as an interim mechanism.

23. In addition, the Midwest ISO has minimized reliability risks by allowing market participants to only provide load modifying resources in the voluntary capacity auction if they have a larger quantity of universally deliverable planning resources than they are offering into the voluntary capacity auction as load modifying resources. Also, participation of market participants in the voluntary capacity auction is limited by the amount of universally deliverable planning resources that the load serving entity serving load associated with the load modifying resource has historically used to meet its resource obligations. When planning resources are needed in a peak demand situation, the load modifying resources will provide capacity for the load of the offering market participant and the other planning resources of that market participant, that are universally deliverable, will be available to meet the peak load needs of the LSE purchasing the load modifying resources in the voluntary capacity auction. We believe that, for the interim, this process will ensure resource adequacy with planning resources that are universally deliverable.

24. In the same context, we disagree with RRI Energy's and Detroit Edison's claims that the Midwest ISO will not be able to monitor for double counting. We agree with CMTC that the Midwest ISO will know whether a load modifying resource has been chosen in the voluntary capacity auction when the load serving entity submits its load forecast, and therefore the Midwest ISO will have the information necessary to ensure

that load modifying resources that clear the voluntary capacity auction are not counted in the load serving entity's load forecast. Therefore, the Midwest ISO's interim proposal provides the Midwest ISO with the information and data necessary to detect and prevent double counting of load modifying resources. We expect the Midwest ISO to comply with these requirements and have no basis for finding otherwise with regard to the interim proposal.

25. With regard to Detroit Edison's concerns regarding the relationship between the load modifying resources and the load serving entity, we agree that coordination is important and we expect such coordination to exist and occur on an ongoing basis. We note that the Midwest ISO will ensure resources are tracked correctly and it has a load forecast and resource planning process that ensures communication and coordination between the load serving entities, resources and the Midwest ISO staff. Therefore, we believe that the Midwest ISO has the procedures in place for the interim mechanism that address Detroit Edison's concerns.

26. Regarding Detroit Edison's concern that load modifying resources could shift revenue sufficiency guarantee charges or potentially other costs to load serving entities, we agree that cost shifting can be an important issue. However, Detroit Edison has not shown how potential cost shifts would occur under the interim mechanism.

27. We also will not require the Midwest ISO to clarify that load modifying resources with interruptible rates for which no Planning Resources have been obtained are not allowed to participate in the voluntary capacity auction as Consumers requested. As discussed above, under the interim proposal, the Midwest ISO would allow market participants to provide load modifying resources in the voluntary capacity auction only if they have a larger quantity of universally deliverable Planning Resources than they are offering into the voluntary capacity auction as load modifying resources. Accordingly, the proposal provides adequate customer protections and performance incentives.⁸

⁸ We consider the Midwest ISO to have adequately responded to Consumers Energy's clarification request (i.e., whether a pro rated load modifying resource will be pro rated based on the planning resources of the load serving entity) in its answer by asserting that Consumer Energy's interpretation is consistent with the intent of the proposed tariff language.

28. Responding to Detroit Edison, we do not consider the Order No. 719⁹ compliance process to be a basis to foreclose the Midwest ISO from developing a definition of load modifying resources that allows load modifying resources to be offered into the voluntary capacity auction by market participants. We find no reason to wait until the Midwest ISO completes its compliance with Order No. 719 before allowing load modifying resources to participate in the voluntary capacity auction. We note, however, that the Midwest ISO's Order No. 719 and Order No. 719-A compliance filings are pending in Docket No. ER09-1049. Accordingly, our conditional acceptance of the Midwest ISO's interim mechanism is subject to, and without prejudice to, the outcome of the Order No. 719 and Order No. 719-A compliance proceedings. Nothing in this order relieves the Midwest ISO from the obligations that the Commission imposed in Order Nos. 719 and 719-A.

29. With respect to the effective date of the interim mechanism,¹⁰ the Midwest ISO must modify the proposed tariff sheets to properly reflect an effective date of June 21, 2010 (i.e., 60 days after the date of this order). These modifications must be made in a compliance filing due within 30 days of the date of this order. As one last point of clarification, this order does not address other aspects of the Midwest ISO's June Compliance Filing. The Commission will be acting on these provisions in a separate order.

The Commission orders:

(A) The proposed interim mechanism to allow load modifying resources to participate in the voluntary capacity auction, as well as those tariff revisions associated with the interim mechanism, are hereby accepted, as discussed in the body of this order, to be effective 60 days after the date of this order.

(B) The Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

⁹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292, at P 51 (2009).

¹⁰ These tariff sheets are First Revised Sheet Nos. 192 and 1473 – 1473B of the Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Fourth Revised Vol. No. 1.

(C) The Midwest ISO is hereby directed to file a permanent solution to ensure the deliverability of load modifying resources in the voluntary capacity auction by August 27, 2010, as discussed in the body of this order.

By the Commission. Commissioner Moeller concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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MOELLER, Commissioner, *concurring*:

This interim mechanism is accepted on the condition that the Midwest ISO files “its permanent solution with the Commission by August 27, 2010.” Order at P 19 and ordering paragraph (C). Without this condition, I would need more evidence that this mechanism will not create additional and unnecessary reliability risks. See the Order at P 22.

At this time, most of the demand response programs in the Midwest ISO are part of legacy utility programs.¹ While those existing programs were developed, in part, to improve reliability of the system at its peak,² the reliability impact of newly-developed demand response has not been fully examined in this proceeding. However, this reliability issue does not need further examination in this case because of the short time between now and August 27, especially considering the weak economy across the footprint of the Midwest ISO, and the availability of generation capacity this upcoming summer.³

Yet the filing that we receive on August 27 will certainly need to include a rigorous examination of how that proposal could impact reliability. The reliability of the Midwest ISO is critical, and we need to ensure that reliability is maintained as more demand resources are placed into the system.⁴

¹ Demand Response in the Midwest ISO, by Sam Newell and Attila Hajos of the Brattle Group, January 29, 2010 at p. 12.

² *Id.* at p. 16.

³ The 2008 State of the Market Report for the Midwest ISO describes reserve margins and demand response capability at pages 20, 121, and 125. Also, see the 2009 Long-Term Reliability Assessment, issued by the North American Electric Reliability Corp. (NERC), October 2009 (“Reduced economic activity and higher adoption of Demand-Side Management programs have led to decreased projected peak demand for electricity and, as a result, higher reserve margins throughout North America for much of the ten-year period.”).

⁴ See 2008 Long-Term Reliability Assessment of NERC at page 20, December
(continued)

Philip D. Moeller
Commissioner

2007 (“Voluntary participation in these programs may decline as a result of ... higher usage, causing the program to suffer ‘response fatigue.’ If this occurs, system reliability could be affected as other resources may not be built or available in time to provide the ancillary services or energy required. In many cases, dispatchable demand response resources have not yet been tested to meet system reliability requirements at these potentially higher dispatch frequencies.”). Further information on reliability for demand response is available in NERC’s Phase I & II Final Report on its Demand Response Availability Data System (DADS), beginning with pp. 5-6, March 5, 2010.