

131 FERC ¶ 61,228
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. ER08-394-024

ORDER ON COMPLIANCE FILING

(Issued June 8, 2010)

1. This order rejects the August 18, 2009 compliance filing (August 2009 Compliance Filing) submitted by the Midwest Independent Transmission System Operator, Inc (Midwest ISO) to comply with an order issued on February 19, 2009 (February Order).¹ The February Order required the Midwest ISO to develop a permanent approach to address congestion that limits aggregate deliverability and to examine whether a locational capacity requirement is needed to ensure reliability. Because the Midwest ISO's August 2009 Compliance Filing fails to meet these requirements, we will reject it and require the Midwest ISO to make another compliance filing, as discussed below.

I. Background

2. As part of the Midwest ISO's long-term resource adequacy plan,² the Commission issued orders addressing the relationship between the deliverability analysis for planning zones and the deliverability analysis for designating capacity resources.³ In the February Order, the Commission accepted the Midwest ISO's proposal to resolve deliverability concerns raised by numerous stakeholders, but nonetheless stated that the Midwest ISO needed a more robust and permanent approach to address congestion that limits aggregate

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,144 (2009).

² Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Module E (Tariff).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 (2008), *on reh'g*, February 2009 Order, 126 FERC ¶ 61,144 (2009).

deliverability in the resource adequacy markets.⁴ The Commission directed the Midwest ISO to evaluate a locational capacity approach to addressing the deliverability issue, as used in ISO New England, Inc. (ISO New England) and the California Independent System Operator, Inc. (California ISO), as well as any other approach, and to report to the Commission as to what steps are being taken to develop a more permanent approach.⁵ The Midwest ISO filed August 2009 Compliance Filing to address the February Order.

II. Notice of the Compliance Filing and Responsive Pleadings

3. Notice of the August 2009 Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 49373 (2009), with interventions and protests due on or before October 2, 2009.

4. The following parties filed comments and protests regarding the August 2009 Compliance Filing: Duke Energy Corporation (Duke), FirstEnergy Service Company (FirstEnergy), Ameren Services Company (Ameren), and the Coalition of Midwest Transmission Customers and the Midwest Transmission Dependent Utilities (jointly, CMTC/MTDUs).

5. The Midwest ISO filed a motion to answer and answer to the comments and protests.

III. Discussion

A. Procedural Matters

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of the Midwest ISO because it has provided information that assisted us in our decision-making process.

⁴ February Order, 126 FERC ¶ 61,144 at P 47.

⁵ *Id.*

⁶ 18 C.F.R. § 385.213(a)(2) (2009).

B. Substantive Matters**1. August 2009 Compliance Filing**

7. In its August 2009 Compliance Filing, the Midwest ISO stated that it had multiple discussions with stakeholders to address aggregate deliverability.⁷ The Midwest ISO noted that while the discussions generated numerous comments and questions, the stakeholders could not reach a consensus on the best approach to resolving the issue. Nor was there much support, according to the Midwest ISO, for adopting the local capacity requirement used by other regional transmission operators (RTOs) as a means to improve reliability and maintain aggregate deliverability.

8. Given the lack of consensus, the Midwest ISO believes that its existing Tariff, without further modification, is sufficient to address congestion that may limit aggregate deliverability.⁸ The Midwest ISO indicates that many of the concerns raised by commenters prior to the February Order are no longer applicable. For example, the Midwest ISO states that commenters were concerned that the loss of load expectation (LOLE) study for planning reserve margins would create many small zones with excessively high planning reserve margins. The Midwest ISO further notes that the Midwest ISO Transmission Expansion Plan (MTEP) has been effective in developing solutions for congestion and maintaining a reliable system. The Midwest ISO emphasizes that when an LOLE study identifies a congestion issue, then that issue is “passed on to the MTEP study process to identify solutions to the problem.”⁹ The Midwest ISO argues that the LOLE and MTEP study processes are sufficient for addressing constraints that may limit aggregate deliverability.¹⁰

9. As for the locational capacity requirements used by ISO New England and the California ISO, the Midwest ISO does not believe that such requirements are necessary in the Midwest ISO. In particular, it notes that while other RTOs set local requirements to maintain system reliability, the Midwest ISO’s resource adequacy plan is based on the premise that a robust transmission system is needed in order to provide load serving entities (LSE) with access to a fleet of resources to meet their planning reserve

⁷ August 2009 Compliance Filing at 4-5.

⁸ *Id.* at 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

obligations in a bilateral market.¹¹ The Midwest ISO asserts its LOLE study process establishes a system wide planning reserve margin. To the extent that there are import limited zones, the Midwest ISO undertakes a load deliverability test to ensure that there is enough physical capacity and import capability to maintain the same level of reliability as the rest of the system.¹² The Midwest ISO asserts that its initial LOLE study in 2008 showed no local reliability problems in the Midwest ISO until 2018.

10. The Midwest ISO also contends that adoption of locationally restricted methodologies would negatively impact the use of Planning Resource Credits¹³ to meet resource adequacy requirements. The Midwest ISO notes that the qualification of Planning Resource Credits includes a demonstration of deliverability and that resources associated with aggregate Planning Resource Credits have passed the deliverability test.

11. The Midwest ISO further contends that local capacity requirements are deficient for the following reasons: (1) they do not address the system condition that led to local congestion; (2) they do not address the issue of ensuring aggregate deliverability of resources; and (3) they do not fit into the Midwest ISO construct for resource adequacy.

2. Comments and Protests

12. Ameren, Duke, and First Energy, argue that the Midwest ISO failed to explain or provide any detail on how it will address the impact of congestion on aggregate deliverability of planning resources, as directed by the February Order. They request that the Commission reject the proposed Tariff revisions in the August 2009 Compliance Filing and require a compliance filing that complies with the February Order. Ameren further requests a substantive explanation and information as to how the Midwest ISO will provide sufficient data concerning congestion and import-constrained zones within the Midwest ISO footprint to enable market participants to provide solutions to aggregate deliverability problems.

13. FirstEnergy argues that the August 2009 Compliance Filing is deficient from several perspectives including: (1) the filing does not inform the Commission as to what steps are being taken to develop a more permanent approach, as the Commission had

¹¹ *Id.* at 2.

¹² *Id.* The Midwest ISO measures reliability as the loss of load expectation of no more than one day in ten years.

¹³ A Planning Resource Credit is one MW/month unit of unforced capacity from a planning resource. Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 244, Section 1.505a.

requested; (2) the filing does not specify the appropriate steps it will take under the Tariff to encourage the optimal economic solution; and (3) the filing does not describe the steps that the Midwest ISO would take if either the optimal economic, or any other, solution is not implemented to address the constraints that may limit aggregate deliverability. For these reasons, FirstEnergy also argues that the Commission should reject the August 2009 Compliance Filing.

14. Commenting on the Midwest ISO MTEP process, FirstEnergy asserts that it is unclear how the locational value of generation will be determined on a market basis or otherwise incorporated into this analysis. Excluding the locational value of generation will lead to sub-optimal solutions, according to FirstEnergy. FirstEnergy recommends, as a first step toward locational resource adequacy, that the Midwest ISO require identification and commitment of capacity resources on a twelve-month rolling basis with a must offer requirement in the day-ahead market. FirstEnergy also recommends that the System Supply Resource (SSR) provisions¹⁴ in the Tariff be expanded to provide compensation sufficient to support continued operation of generation in import-constrained zones during low load periods.

15. Duke agrees with FirstEnergy's comments. It asserts that the Midwest ISO has failed to fully and properly evaluate potential locational capacity requirements as a tool to ensure or promote deliverability. Duke states that the Midwest ISO has proposed a physical solution to what might better be addressed through a broader assessment of the issues.¹⁵ For this reason, Duke recommends that the Midwest ISO and its stakeholders revisit this issue with broader consideration of the implications of deliverability and local needs to fully comply with the Commission order, and report back to the Commission with a broader, long-term solution.

16. CMTC/MTDUs argues that the proposed Tariff revisions in the August 2009 Compliance Filing comply with the February Order. CMTC/MTDUs assert that FirstEnergy and Duke's comments are directed toward reversing the basic design of the Midwest ISO resource adequacy program, as accepted by the Commission in its previous orders. CMTC/MTDUs express their support for a customized resource adequacy plan for the Midwest ISO, region-wide capacity products such as Planning Resource Credits

¹⁴ SSRs are generation resources or synchronous condenser units that are uneconomic to remain in service or otherwise would be decommissioned, placed into extended reserve shutdown or disconnected from the Midwest ISO region. The Midwest ISO may enter into agreements with market participants owning these units to maintain system reliability. Midwest ISO FERC Electric Tariff, Attachment Y-1.

¹⁵ Duke notes that the Midwest ISO has failed to review the methodology used by PJM to address locational deliverability.

and bilateral contracting. CMTC/MTDUs contend that neither FirstEnergy nor Duke have presented reasons to reconsider these three basic design elements. According to CMTC/MTDUs, it is too late in the process to redesign the resource adequacy plan on the basis of how other regions provide for resource adequacy.

17. CMTC/MTDUs state that the Midwest ISO has enhanced its approach to aggregate deliverability constraints through its March 23, 2009 filing in compliance with the February Order and the refinement of associated business practices. While CMTC/MTDUs are not opposed to Ameren's data availability request, they note that Attachment FF already provides substantial information and they note that the Midwest ISO commits to undertake enhancements to that information in the August 2009 Compliance Filing.

3. Midwest ISO Answer

18. In its answer, the Midwest ISO argues the proposed Tariff revisions in the August 2009 Compliance Filing comply with the February Order. It further reiterates the steps it is taking to address congestion and aggregate deliverability of Planning Resources. The Midwest ISO believes that the MTEP process is the appropriate methodology for addressing congestion and aggregate deliverability of Planning Resources because this process focuses on long-term planning needs and includes an evaluation of generation, demand response and transmission solutions.

19. The Midwest ISO notes that while the initial LOLE study shows no upcoming issues related to the aggregate deliverability of Planning Resources through 2018, these studies will be assessed by stakeholders through the MTEP process in the event that future studies indicate the potential for congestion affecting aggregate deliverability of Planning Resources. In the interim, while the MTEP process is worked through, if studies indicate a need for local resources to remain online to support reliable grid operation, the Midwest ISO will invoke SSR protocols until additional resources are available.¹⁶

20. The Midwest ISO asserts that locational capacity requirements are not appropriate for the Midwest ISO and would add uncertainty while not improving reliability and are inconsistent with the energy-only resource adequacy construct adopted by the Midwest ISO. Adopting an alternative process that only stipulates a locational capacity requirement would preempt the full engagement of stakeholders to consider the location of capacity resources, the location of demand resources and transmission expansion as solutions, according to the Midwest ISO.

¹⁶ The Midwest ISO also notes that it is evaluating the viability of its resource adequacy plan and is conducting stakeholder discussions.

21. The Midwest ISO submits that if capacity had different values based upon its location, the Planning Resource Credit would vary in value depending upon where the Planning Resource that produced the Planning Resource Credit was located -- an outcome that is contrary to the resource adequacy plan protocols that the Commission has approved for the Midwest ISO. The Midwest ISO maintains that the best approach is to have the Midwest ISO determine the load based on information from the Load Serving Entities and then to allow such entities to decide how best to meet their load obligations.

22. The Midwest ISO contends that its market-based approach, in conjunction with the MTEP process, will provide the necessary long-term evaluation of capacity requirements and will resolve congestion and aggregate deliverability of Planning Resources concerns. The MTEP process will afford the retail regulatory authorities with ample time to consider the tradeoffs among transmission, demand resources and generation resources, according to the Midwest ISO.

4. Commission Determination

23. We will reject the Midwest ISO's August 2009 Compliance Filing. As noted by several parties, the Midwest ISO has not identified a permanent approach to address congestion that limits aggregate deliverability in the resource adequacy markets. Therefore, it is not in compliance with the requirements of the February Order.

24. As discussed above, in the February Order, the Commission required that the Midwest ISO and its stakeholders evaluate programs of other RTOs/ISOs, such as ISO New England and California ISO, that utilize market mechanisms such as locational pricing and locational market rules that provide incentives for market participants to obtain sufficient local resources to ensure reliability. The Commission's directive was that the Midwest ISO and its stakeholders, based on this evaluation, would develop a plan that details the steps that will be taken to incorporate these market mechanisms into the Resource Adequacy Plan. We reiterate that requirement, and for this reason we require that the Midwest ISO submit its plan and a discussion of stakeholder perspectives in a filing to be submitted within six months of the date of this order.

25. The Midwest ISO's arguments for not complying with the February Order constitute an untimely request for rehearing. If the Midwest ISO believed that its existing Tariff was sufficient to address congestion that limits aggregate deliverability (i.e., Tariff provisions that were in effect in February), then it should have requested rehearing of the February Order. Likewise, if the Midwest ISO believed that the 2008 LOLE study provided a basis for not implementing a locational capacity requirement, it should have

raised this issue prior to the issuance of the February Order or on rehearing. These arguments do not now provide a basis for failing to comply with a final Commission order.

26. In any event, we do not agree that the LOLE and MTEP study processes, as well as its use of SSR resources, are sufficient to address the impact of congestion on aggregate deliverability. This fact was recently noted in a report by the Brattle Group regarding the Midwest ISO's resource adequacy plan. It noted that the Midwest ISO's reliance on traditional planning mechanisms had several short-comings including: (1) such mechanisms do not provide a locational bilateral or centralized capacity price incentive to develop or retain resources in the right location; (2) the MTEP process is subject to error; and (3) these out-of-market interventions can also undermine the energy and ancillary markets price signals.¹⁷ The February Order was intended to complement the Midwest ISO's traditional resource planning with market mechanisms, such as locational capacity requirements, which would allow the Midwest ISO to take advantage of the incentives that can be provided via price signals and market rules.¹⁸

27. While we understand the Midwest ISO's interest in developing tradable resource credits,¹⁹ we do not consider it reasonable that the Midwest ISO and its stakeholders not develop market mechanisms that address locational resource adequacy and reliability for the sake of a newly developed auction refinement. Locational resource adequacy and reliability are fundamental to an effective resource adequacy program, and therefore to dismiss these important issues because market participants desire a more convenient auction tool would be sacrificing long-term locational reliability. We expect that the Midwest ISO and its stakeholders will be able to develop a plan that allows auction planning credits and locational market mechanisms to coexist in the Resource Adequacy Plan. We encourage the Midwest ISO and its stakeholders to address these issues in the development of their plan.

¹⁷ See The Brattle Group, *Review of MISO's Resource Adequacy Construct*, Nov. 23, 2009, at 23 (http://www.midwestiso.org/publish/Document/254927_1254c287a0c_7e320a48324a?rev=3).

¹⁸ We emphasize that, in directing the Midwest ISO to address concerns regarding locational resource adequacy, the Commission in the February Order did not require the Midwest ISO to consider a centralized capacity market.

¹⁹ We note the Commission addressed planning resource credits in an order issued in Docket No. ER10-86. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,261 (2009).

The Commission orders:

(A) The Midwest ISO's August 2009 Compliance Filing is rejected, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.