

132 FERC ¶ 61,141
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER08-394-020

ORDER ON COMPLIANCE

(Issued August 17, 2010)

1. On March 23, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing (March 2009 Compliance Filing) to comply with the Commission's order issued February 19, 2009.¹ This order conditionally accepts the March 2009 Compliance Filing subject to a further compliance filing, as discussed below.

I. Background

2. The Commission has issued several orders² addressing the Midwest ISO's long-term resource adequacy plan.³ In the February 2009 Compliance Order, the Commission generally accepted the Midwest ISO's proposed methodology for determining whether a Load Serving Entity (LSE) was meeting its resource obligations. However, the February

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

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 (March 26 Order), *order on reh'g*, 125 FERC ¶ 61,061 (2008); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 (2008) (October 2008 Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060 (2008) (Financial Settlements Order).

³ Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Module E (Tariff).

2009 Compliance Order required additional compliance regarding the Midwest ISO's treatment of Full Responsibility Purchases and Full Responsibility Sales agreements, power purchase agreements, and its definition of Planning Zones. The Midwest ISO filed the March 2009 Compliance Filing to address these issues.

II. Notice of the March 2009 Compliance Filing and Responsive Pleadings

3. Notice of the March 2009 Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 16,853 (2009), with interventions and protests due on or before April 13, 2009.

4. The following parties filed comments and protests regarding the March 2009 Compliance Filing: the Electric Power Supply Association (EPSA); Midwest Transmission Dependent Utilities (Midwest TDUs); and Reliant Energy, Inc. (Reliant).

5. The Midwest ISO filed a motion to answer and answer to the comments and protests. The Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (Hoosier and Southern Illinois) filed a joint answer and Reliant, Midwest TDUs and Manitoba Hydro also filed answers.

III. Substantive Matters

A. Procedural Matters

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Midwest ISO, Hoosier and Southern Illinois, Midwest TDUs, Reliant, and Manitoba Hydro. These answers have provided information that assisted us in our decision-making process.

B. Substantive Issues

1. Full Responsibility Purchases and Full Responsibility Sales Agreements

7. In the February 2009 Compliance Order, the Commission directed the Midwest ISO to make three Tariff revisions relating to Full Responsibility Purchases and Full Responsibility Sales agreements. First, in the event the seller and purchaser cannot agree on whether a particular transaction is a Full Responsibility Sales or Full Responsibility

⁴ 18 C.F.R. § 385.213(a)(2) (2009).

Purchases agreement,⁵ the Commission directed the Midwest ISO to incorporate dispute resolution procedures in its Tariff to cover such disagreements.⁶ Second, in response to a concern raised by the Midwest TDUs, the Commission directed the Midwest ISO to clarify its definition of Full Responsibility Sales and Full Responsibility Purchases agreements to ensure that a buyer under a Full Responsibility Purchases agreement receives credit for the reserves purchased under a system purchases contract.⁷ Finally, the Commission directed the Midwest ISO to revise its Tariff to ensure that an LSE purchaser is responsible for any deficiencies in Full Responsibility Purchases and Full Responsibility Sales agreements in which the seller is not an LSE subject to the Tariff.⁸

a. Dispute Resolution Procedures

i. March 2009 Compliance Filing

8. In its March 2009 Compliance Filing, the Midwest ISO proposes to modify its Tariff to allow for dispute resolution procedures where there is disagreement between purchasers and sellers as to whether an agreement is a Full Responsibility Sales or Full Responsibility Purchase agreement.

⁵ A Full Responsibility Purchases agreement is defined as “[t]he total of all purchases coincident with the expected Demand of the [Load Serving Entity] under which the seller is contractually obligated to deliver Energy plus reserves to the purchaser, expressed in MWs for the hour. Reserve provision by the seller as a percent must meet or exceed the [Planning Reserve Margin] obligation for the purchasing [Load Serving Entity].” A Full Responsibility Sales agreement is “[t]he total of all sales coincident with the expected Demand of the [Load Serving Entity] under which the seller is contractually obligated to deliver Energy plus reserves to the purchaser, expressed in MWs for the hour. Reserve provision by the seller as a percent must meet or exceed the [Planning Reserve Margin] obligation for the purchasing [Load Serving Entity].” Midwest ISO, FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 161.

⁶ February 2009 Compliance Order, 126 FERC ¶ 61,144 at P 59.

⁷ *Id.* P 60.

⁸ *Id.* P 61.

ii. Responsive Pleadings

9. Reliant contends that that the Commission should direct the Midwest ISO to revise its Tariff to state that the purchaser—i.e., the LSE—shall be responsible for the resource adequacy requirement, including financial settlement charges, during the pendency of dispute resolution procedures. EPSA asserts that the Commission should direct the Midwest ISO to specify the party responsible for providing a load forecast and any payment of associated deficiency charges while a dispute is in the dispute resolution process.

10. Responding to Reliant and EPSA, the Midwest ISO agrees to modify the dispute resolution process to indicate that during the pendency of any dispute resolution process, the purchaser will be responsible for meeting resource adequacy obligations. The Midwest ISO notes that this clarification is consistent with the Commission's requirement that purchasers remain responsible for financial settlement charges resulting if a seller is an LSE not subject to the Midwest ISO Tariff.

11. Hoosier & Southern Illinois object to requiring the purchaser to remain responsible for any resource adequacy deficiencies during the pendency of dispute resolution procedures, as proposed by Reliant and by the Midwest ISO in its answer. Hoosier & Southern Illinois assert that this proposed language would encourage sellers to deny responsibility for resource adequacy regardless of the specific language in a power purchase agreement. Hoosier & Southern Illinois note that the supplier could avoid resource adequacy requirements during this period and any relief granted to purchasers would be prospective only. Hoosier & Southern Illinois recommend that the determination reached in the dispute resolution process be retroactive to the beginning of the period for which resource adequacy responsibility has been disputed and that the party determined to be responsible must reimburse the party that was responsible during the pendency of the dispute for any financial settlement charges or any other expenses incurred by the latter party to meet resource adequacy during the pendency of the dispute, including interest. Hoosier & Southern Illinois contend that this approach would remove the incentive for sellers to provoke or prolong disputes unnecessarily.

iii. Commission Determination

12. We accept the proposed Tariff provision that allows for dispute resolution in the event of disagreement between purchasers and sellers. We consider it reasonable that LSEs remain responsible for all their planning reserve obligations and any deficiency charges during the pendency of the process. As noted by the Midwest ISO, under its resource adequacy plan, as accepted by the Commission, LSEs are responsible for ensuring they have adequate resources to meet their planning obligations. The Midwest ISO's dispute resolution proposal is consistent with having the LSEs maintain responsibility for resource adequacy during negotiations. We see no reason to relieve

LSEs of that obligation while they are resolving disputes. To the extent that LSEs believe that suppliers are provoking disputes or delaying resolution of negotiations, the LSEs can avail themselves of the auction option or obtain reserves from other suppliers. We require that the Midwest ISO submit in a compliance filing within 30 days of the date of this order revised Tariff sheets to modify the dispute resolution process indicating that during the pendency of any dispute resolution process, the purchaser will be responsible for meeting resource adequacy obligations.

13. With respect to Hoosier & Southern Illinois's concerns, we will not generically determine in this proceeding whether a dispute resolution award should be retroactive or whether a party should be reimbursed during the pendency of the dispute resolution process. These issues should be addressed as part of the dispute resolution process and we will not prejudge that issue here.

b. Crediting for Reserves

i. March 2009 Compliance Filing

14. With regard to the Commission's directive that the Midwest ISO clarify its definition of Full Responsibility Sales and Full Responsibility Purchases agreement to ensure that a buyer under a Full Responsibility Purchases agreement receives credit for the reserves purchased under a system purchases contract and clarify the crediting of reserves for buyers of Full Responsibility Purchases, the Midwest ISO proposes to revise its Tariff to clarify that a Full Responsibility Sales and Full Responsibility Purchases agreement represents a transfer of responsibilities for the specified demand, including, but not limited to the associated resource adequacy requirement pursuant to Module E for such transferred demand. In other words, the seller under a Full Responsibility Sales or Full Responsibility Purchases agreement will be required to assume the responsibility of both the demand and the associated planning reserve margin requirements. To the extent that existing agreements do not address who will assume responsibility, the Midwest ISO asserts that the parties have an obligation to take the appropriate steps to address the contractual situation.

ii. Responsive Pleadings

15. The Midwest TDUs argue that the Midwest ISO has not complied with the February 2009 Compliance Order because it has not revised the definitions of Full Responsibility Purchases and Full Responsibility Sales agreement. They claim that these definitions remain ambiguous and continue to expose customers to the risk of not receiving credit for reserves for which they have contracted.

16. The Midwest ISO responds that it modified its Tariff to make clear that purchasers under Full Responsibility Purchaser and Full Responsibility Sales agreements will receive 100 percent credit for their reserves, thereby addressing the concerns of the

Midwest TDUs. The Midwest ISO states that the result of its proposed modification is the same as would occur with modifications to the Full Responsibility Purchases and Full Responsibility Sales agreements definitions.

17. The Midwest TDUs answer that the Full Responsibility Purchases and Full Responsibility Sales agreements definitions would preclude purchasers under some contracts from getting full credit for the reserves they have purchased. The Midwest TDUs explain that the Midwest ISO answer fails to recognize that if a contract expressly limits the seller's planning reserve obligation at a level that is less than the purchaser's planning reserve margin, the purchase will not qualify as a Full Responsibility Sales and Full Responsibility Purchases agreement. For this reason, the Midwest TDUs recommend that the Commission order the Midwest ISO to delete from the definition of Full Responsibility Sale and Full Responsibility Purchase the sentence that states: "Reserve provision by the seller as a percent must meet or exceed the planning reserve margin obligation for the purchasing LSE."

iii. Commission Determination

18. While agreements cannot be considered Full Responsibility Sales and Full Responsibility Purchases agreements if they are with sellers that do not assume responsibility for all planning reserve margin requirements associated with the transferred demand, we expect that an LSE contracting with suppliers under power purchase agreements for lesser amounts of reserves would still get credit for whatever reserves the supplier provides. With respect to the concerns raised by Midwest TDUs, we do not find any provision in the Midwest ISO Tariff that would result in an LSE receiving no credit for the reserves provided in a qualifying power purchase agreement.

19. We find no purpose is served by deleting the reserve provision requirements of Full Responsibility Sales and Full Responsibility Purchases agreements, as recommended by the Midwest TDUs. These definitions apply to sellers that take on the full reserve requirements of the purchasing LSE and, therefore, it is appropriate that the seller must meet or exceed the planning reserve margin obligation for the purchasing LSE in this circumstance.

c. Non-Jurisdictional LSE Sellers

i. March 2009 Compliance Filing

20. The Midwest ISO proposes to revise its Tariff to provide that if the seller under a Full Responsibility Purchases and Full Responsibility Sales agreement is not an LSE under the jurisdiction of the Midwest ISO, then the purchaser under that agreement will remain responsible for any resource adequacy deficiencies associated with the demand transferred under the agreement.

ii. Commission Determination

21. As the Commission stated in prior orders, under the Midwest ISO resource adequacy plan, it is the LSE's obligation to have sufficient reserves to meet the requirements of the Midwest ISO resource adequacy plan.⁹ The only exceptions to this requirement are Full Responsibility Sales and Full Responsibility Purchases agreements where the seller is an LSE subject to the Midwest ISO Tariff. For such agreements, the seller takes on the resource adequacy obligation as if the amounts in the agreements were its own demand. In the event the seller is not an LSE subject to the Midwest ISO Tariff and the agreement does not provide that the seller will assume responsibility for all planning reserve margin requirements associated with the transferred demand, the purchasing LSE retains the obligation to obtain sufficient reserves.¹⁰

22. In this context, we consider the Midwest ISO proposal regarding Full Responsibility Sales and Full Responsibility Purchases agreements to be reasonable and consistent with the overall design of its resource adequacy program that holds LSEs responsible for resource deficiencies. As the Commission stated in the February 2009 Compliance Order, while Full Responsibility Sales and Full Responsibility Purchases agreements can transfer that obligation in situations where another Midwest ISO LSE is the seller, they cannot relieve the purchasing LSE of its resource adequacy obligations for agreements in which the seller does not assume responsibility for all planning reserve margin requirements associated with the transferred demand and the seller is either not an LSE or is not subject to the Midwest ISO Tariff.¹¹

2. Power Purchase Agreements

23. In the February 2009 Compliance Order, the Commission directed the Midwest ISO to work with stakeholders to develop alternative documentation and verification procedures to qualify power purchase agreements as Capacity Resources,¹² including the

⁹ March 26 Order, 122 FERC ¶ 61,283 at P 11-12; Financial Settlements Order, 125 FERC ¶ 61,060 at P 8-9.

¹⁰ March 2009 Filing at 4.

¹¹ February 2009 Compliance Order, 126 FERC ¶ 61,144 at P 61.

¹² Capacity Resources are those generation resources, demand response resources, external resources and power purchase agreements that are designated to meet demand for the purposes of determining resource adequacy of an LSE in the Midwest ISO resource adequacy plan.

process by which the Midwest ISO will determine whether such alternative documentation is sufficient. The Commission recognized that market participants may have executed power purchase agreements before the existence of the Midwest ISO resource adequacy program that do not specify the necessary information required by section 69.2.1.2.e of the Tariff,¹³ and therefore alternative documentation and verification procedures are necessary. The Commission's goal was to ensure that power purchase agreements can qualify to be Capacity Resources even if the terms of the contracts do not expressly specify each and every requirement of section 69.2.1.2.e.¹⁴

a. March 2009 Compliance Filing

24. The Midwest ISO proposes a new section 69.2.1.2.e(iii) to provide that market participants seeking Capacity Resource status for a non-conforming power purchase

¹³ Section 69.2.1.2.e requires that power purchase agreements meet the following criteria in order to qualify to be a Capacity Resource: "(i) identify one or more specific Generation Resources or External Resources that can be verified by the Midwest ISO as Capacity Resources; (ii) in the event the agreement does not identify the full Installed Capacity from which power will be supplied must specify the portions of each such Generation resource or External resource that are available under the agreement and are verifiable by the Midwest ISO. Each specified resource must meet the criteria for a Capacity Resource for all of the portion of the contract amount assigned to the Generation Resource or External Resource; (iii) a copy of every agreement must be provided to the Midwest ISO to enable it to verify the capacity backing the agreement and to verify compliance with the resource adequacy requirements; (iv) an agreement may qualify as a Capacity Resource only if it is interruptible as a last resort under Requirement 6.3 of NERC Standard EOP-002; (v) an agreement backed by internal Generation Resources must demonstrate that it is deliverable, the Generation Resources are not otherwise being designated as Capacity Resources by any other entity and satisfy all other Capacity Resource requirements including the must-offer requirement; (vi) an agreement backed by External Resources must demonstrate firm transmission from the resource to the Midwest ISO region and that firm transmission service has been obtained on the Midwest ISO system from the resource to the LSE, the External Resources are not otherwise being used as capacity resources in any other RTO/ISO or in another state resource adequacy program, and satisfy all other Capacity Resource requirements, including those for External Resources and the must-offer requirement; and (vii) an agreement may be designated a Capacity Resource only if the agreement establishes a firm obligation with respect to the delivery of Capacity." Midwest ISO, FERC Electric Tariff, First Revised Sheet Nos. 1461-1464 and Substitute Original Sheet No. 1465.

¹⁴ February 2009 Compliance Order, 126 FERC ¶ 61,144 at P 72.

agreement submit written documentation indicating the following information: (1) the power purchase agreement was executed before October 20, 2008, when the Commission first approved the current Tariff provisions regarding power purchase agreements; (2) the power purchase agreement was accredited by a regional entity (e.g., Midwest Reliability Organization (MRO)) to satisfy resource adequacy requirement; (3) the resource has provided reliable service; (4) the seller has committed a defined amount of capacity during a defined period; (5) the resource will not be interrupted for economic reasons and will only be interrupted as a last resort during an Emergency; (6) the energy associated with the power purchase agreement is offered into the Energy Markets for all periods for which it is available by either the purchaser(s) or seller(s) of the capacity; (7) the physical resource(s) backing the power purchase agreement are identified by the supplier under the power purchase agreement; (8) the portion of the resources backing the power purchase agreement are not otherwise being designated as Capacity Resources; and (9) if the power purchase agreement is renewed, it will be modified to comply with the terms of section 69.2.1.2.e(i) through (vii).

25. The Midwest ISO proposes to analyze and verify all information and inform the party seeking Capacity Resource status for the power purchase agreement within 30 days whether the power purchase agreement qualifies as a Capacity Resource.

b. Comments and Protests

26. Reliant faults the Midwest ISO proposal for not clearly limiting the use of alternative documentation to verify that non-conforming power purchase agreements satisfy the requirements of section 69.2.1.2.e(i) through (vii). Reliant also criticizes the Midwest ISO for establishing a separate and less stringent set of requirements for non-conforming power purchase agreements to qualify as Capacity Resources. Reliant objects to several of the proposed alternative documentation requirements arguing that they are vague, ineffective and do not reflect the requirements of section 69.2.1.2.e. For these reasons, Reliant recommends that the proposal be modified to establish documentation sufficient to verify each requirement of subsections 69.2.1.2.e(i) through (vii).

27. Reliant also asserts that the Midwest ISO proposal is deficient because it fails to establish minimum standards for alternative documentation and fails to specify how the Midwest ISO will determine whether such alternative documentation is sufficient. Reliant states that alternative documentation should only be deemed sufficient to verify the power purchase agreement if it provides the same degree of reliability as if the information had been included in the executed power purchase agreement. Reliant proposes revisions to the Midwest ISO proposal so that the proposal is in compliance with the Commission's stated intent in February 2009 Compliance Order.

28. EPSA recommends that the Commission direct the Midwest ISO to clarify that the alternative documentation requirements are an addition to existing Tariff requirements

and do not denote a new class of Capacity Resources that can circumvent the established Tariff requirements. EPSA contends the proposed documentation requirements are deficient because they do not require firm transmission or a must-offer requirement. EPSA also faults the Midwest ISO for not specifying how it will determine whether its alternative documentation is sufficient.

29. The Midwest TDUs contend that it is unreasonable and unnecessary to require that all power purchase agreements meet each of the criteria. They argue that each item should not be treated as a litmus test such that a “no” answer on any item would result in automatic disqualification of the power purchase agreement as a Capacity Resource. They also assert that the alternate verification process should be available to LSEs to support accreditation of system-power purchase agreements that are entered into even after the new Tariff provisions are accepted, particularly with respect to the requirement that the contract itself identify specific portions of resources serving the customer. The Midwest TDUs claim that system-power purchase agreements would be rendered unworkable if the identification of the specific portions of units serving a given customer had to be designated in the contract text itself, rather than verified through alternative documentation.

c. Answers

30. The Midwest ISO responds that the Commission has stated that it is the responsibility of the Midwest ISO to determine whether a power purchase agreement is eligible to be classified as a Capacity Resource.¹⁵ The Midwest ISO asserts that the February 2009 Compliance Order is clear that the Commission is requiring the Midwest ISO to use its expertise and such alternate documentation and verification procedures to determine whether a party has provided sufficient documentation that enables the Midwest ISO to verify a power purchase agreement as a Capacity Resource under Module E of the Tariff. The Midwest ISO contends that the Commission did not direct it to simply determine if the alternate verification procedures demonstrate that the power purchase agreement meets each requirement of section 69.2.1.2.e(i) through (vii), as Reliant claims.

31. The Midwest ISO explains that its proposed alternate verification methodology will provide the additional information necessary for the Midwest ISO to independently and objectively determine whether the power purchase agreement qualifies as a Capacity Resource. The Midwest ISO asserts that it will apply equally stringent scrutiny to the

¹⁵ October 2008 Order, 125 FERC ¶ 61,062 at P 59; *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,185, at P 42 (2009).

alternate documentation provisions as it will use to evaluate other power purchase agreements.

32. Responding to EPSA and the Midwest TDUs, the Midwest ISO clarifies that if a power purchase agreement does not contain every requirement in sections 69.2.1.2.e(i) through (vii), then the market participant may submit the information required in proposed section 69.2.1.2.e(viii) in order to allow the Midwest ISO to make a full assessment of the power purchase agreement's potential to qualify as a Capacity Resource. The Midwest ISO also clarifies that the proposed alternate documentation is not meant to satisfy the other requirements in sections 69.2.1.2.e(i) through (vii).

33. Manitoba Hydro considers the alternate documentation to be reasonable since it requires a firm obligation to deliver capacity, in the same way subsection (vii) of section 69.2.1.2 requires firm deliverability. Manitoba Hydro asserts that prior accreditation and a history of deliverability of the resource demonstrate firmness of supply. Manitoba Hydro notes that historically accredited capacity transactions in the Mid-Continent Area Power Pool have been required to be continuously available and therefore prior accreditation of these transactions and their actual delivery history can reasonably be viewed as documentation relating to the firmness of the seller's supply obligation, even though the relevant power purchase agreements do not contain the word "firm."

34. Manitoba Hydro contends that some degree of latitude must be granted when considering what the requirements are, or the Commission's directive regarding alternative documentation and verification would be rendered meaningless. Manitoba Hydro argues that the Midwest ISO proposal allows the alternative documentation to satisfy the general requirements of section 69.2.1.2 and therefore the documentation is not restricted to power purchase agreements executed prior to October 22, 2008, as Reliant claims.

35. Manitoba Hydro also disagrees with Reliant's claim that the alternative documentation should demonstrate that the power purchase agreement is only interruptible as a last resort under Requirement 6.3 of North America Electric Reliability Corporation (NERC) Standard EOP-002. Manitoba Hydro asserts that Reliant misreads the proposed Tariff provision, and that the correct reading of subsection 69.2.1.2.e(iv) is that power purchase agreements may, but need not, specify that they are only interruptible under this NERC standard. Manitoba Hydro argues that Reliant misreads the Tariff when it states that the alternate documentation must demonstrate that the power purchase agreement satisfies all other requirements applicable to Capacity Resources. Manitoba Hydro notes that the Tariff provisions cited by Reliant apply to an LSE seeking to designate a power purchase agreement as a Capacity Resource, and therefore such wording is not required to be contained in the power purchase agreement. Nor would there be a need for alternative documentation or verification procedures.

36. Hoosier and Southern Illinois considers Reliant's protest to be an impermissible collateral attack on the February 2009 Compliance Order.

37. In response to the Midwest ISO's answer, Reliant asserts that the Midwest ISO is incorrect in assuming that the Commission intended to allow the Midwest ISO to substitute its own judgment for the Tariff provisions that the Commission approved in section 69.2.1.2.e(i) through (vii). Reliant contends that the Midwest ISO answer disregards the Commission's holding in Docket No. ER09-566 that stated the Midwest ISO may only use alternative documentation to verify compliance with section 69.2.1.2.e(i) through (vii).¹⁶

38. While agreeing with Manitoba Hydro that the purpose of allowing alternative documentation is to provide some latitude in verifying the requirements of section 69.2.1.2e(i) through (vii), Reliant disagrees with Manitoba Hydro's arguments that it is necessary to give the Midwest ISO leeway to waive or diminish the requirements of these sections.

d. Commission Determination

39. We find that the Midwest ISO's proposed alternative documentation provision complies with the February 2009 Compliance Order. The provision makes clear that the alternative documentation is to be used in the event that a power purchase agreement does not explicitly conform to every requirement of section 69.2.1.2.e(i) through (vii). This formulation is consistent with the Commission's requirement that the Midwest ISO develop alternative documentation and verification procedures to ensure that power purchase agreements can qualify to be Capacity Resources even if the terms of the contracts do not expressly specify each and every requirement of section 69.2.1.2.e. All parties, including Reliant, recognize that the nature of the alternative documentation process requires that the Midwest ISO be allowed some amount of latitude in looking outside the express terms of the power purchase agreements themselves to verify compliance. These alternative standards provide a reasonable basis for ensuring resource adequacy and long-term reliability and, thus, comply with the February 2009 Compliance Order.

40. In response to Reliant's argument that the alternative documentation must be limited to verifying that non-conforming power purchase agreements satisfy the requirements of section 69.2.1.2.e(i) through (vii) and its proposal to establish documentation sufficient to verify each requirement of these subsections, the purpose of the Commission's directions is to ensure resource adequacy, not to substitute each

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,185 at P 43.

provision in section 69.2.1.2.e(i) through (vii) with an identical counter-part in the alternative documentation.

41. We understand Reliant's primary concern to be that the Midwest ISO may waive or diminish the requirements of section 69.2.1.2.e(i) through (vii) in its administration of the alternative documentation and verification process. We also understand that those concerns have been addressed in part in the answers. For example, Reliant notes in its answer that it considers the Manitoba Hydro's explanation acceptable regarding the proposed alternative standard that is based on resource adequacy accreditation by a regional reliability entity.¹⁷

42. We find no basis to conclude that the alternative documentation requirements waive or otherwise diminish the requirements of section 69.2.1.2.e(i) through (vii). For example, we do not see why a provision documenting that the power purchase agreement cannot be interrupted for economic reasons and will only be interrupted for force majeure type conditions as a last resort during Emergency conditions is somehow inferior to Requirement 6.3 of NERC Standard EOP-002, as Reliant asserts. The proposed provision is intended to ensure the availability of resources backing the power purchase agreement under all but force majeure conditions, and therefore we expect the provision, subject to verification by the Midwest ISO, will ensure resource adequacy and long-term reliability. For this reason, we find that no purpose is served by reinserting the NERC Standard EOP-002 standard from section 69.2.1.2.e(iv) into the alternative documentation provision, as Reliant recommends.

43. We will not require the Midwest ISO to add a provision stating that the alternative documentation will be deemed sufficient to verify the power purchase agreement if it provides the same degree of reliability as if the information had been included in the executed power purchase agreement, as Reliant recommends. The Midwest ISO proposal requires market participants to submit a number of items that bear on the reliability of the agreement, and therefore would allow the Midwest ISO to make an informed assessment on how reliable the agreements will be. We do not expect that the Reliant proposal would provide better information or more pertinent information for the Midwest ISO assessment, and for this reason we will not require that it be adopted by the Midwest ISO.

44. We will not require that the Midwest ISO delete the alternative documentation provision stating that a power purchase agreement has provided reliable capacity to the Midwest ISO region as Reliant recommends. We consider the written information

¹⁷ We do not consider it necessary to list the specific regional reliability entities or the specific attachments containing resource adequacy provisions in the Tariff, as Reliant recommends.

required by this provision to be a reasonable requirement that provides information to the Midwest ISO that it can use in its verification process.

3. Multiple Unit Power Purchase Agreements

45. In the February 2009 Commission Order, the Commission required that the Midwest ISO revise its Tariff so that the accreditation and must-offer requirements are consistent for external and internal multiple unit specific Capacity Resources or, in the alternative, explain why there is a need to treat them differently.¹⁸

a. March 2009 Compliance Filing

46. In its March 2009 Compliance Filing, the Midwest ISO clarifies that the must-offer requirement of the Tariff applies equally to Capacity Resources that are external multiple unit specific Capacity Resources and to internal multiple unit specific Capacity Resources. The Midwest ISO also proposes to modify the Tariff by replacing existing references to “non-unit specific” resources with “multiple unit specific” resources and by revising the last sentence to indicate that both internal and external multiple unit specific resources will be accredited at their unforced capacity rating.

b. Comments and Protests

47. Reliant notes that external unit specific Capacity Resources and internal Capacity Resources are treated differently from external multiple unit specific power purchase agreements. The former are required to offer 100 percent of their installed capacity when available and the latter receive no outage exceptions and must offer 100 percent of their capacity at all times, according to Reliant. Reliant asserts that the Commission should direct the Midwest ISO to correctly state the different treatment of external multiple unit specific power purchase agreements and clarify the self-schedule or must offer requirements for such power purchase agreements. In the alternative, Reliant recommends that the Commission require Midwest ISO to explain how it can treat the accreditation, must offer and self schedule requirements for external multiple unit specific power purchase agreements similarly to those of external unit specific power purchase agreements, internal multiple unit specific power purchase agreements and internal unit specific power purchase agreements.

¹⁸ February 2009 Compliance Order, 126 FERC ¶ 61,144 at P 73.

c. Answers

48. The Midwest ISO agrees with Reliant that the Tariff is internally inconsistent with respect to the treatment of Capacity Resources. To ensure that all Capacity Resources are accredited on an equivalent basis, the Midwest ISO proposes to amend the Tariff to clarify that multiple unit specific power purchase agreements based upon external resources will also be accredited at the unforced capacity ratings of the external resources.

49. Reliant answers that it agrees with the Midwest ISO proposal provided in its answer. However, Reliant contends that other sections of the Tariff will also need to be revised for consistency. Reliant indicates that the must offer requirement must be revised to conform with the approach that external multiple unit specific resources will be accredited on the same basis as all other Capacity Resources.

d. Commission Determination

50. We find that further revisions to the Tariff are necessary to comply with the February 2009 Compliance Order regarding accreditation standards for resources. While the Midwest ISO has revised the provision to indicate that internal and external multiple unit specific power purchase agreements will both be accredited at their unforced capacity rating, another sentence in the same section of the Tariff indicates that a multiple unit specific Capacity Resource that includes an external multiple unit specific power purchase agreement will be accredited at 100 percent of its capacity designated as a Capacity Resource. In its answer the Midwest ISO agrees to revise its Tariff to address this inconsistency. We require that the Midwest ISO submit its proposed revision in a compliance filing within 30 days of the date of this order.

51. As for Reliant's broader challenge to the designation and qualification of external resources as Capacity Resources, as set forth in numerous provisions of the Tariff, we note that the February 2009 Compliance Order only addressed a narrow provision on accreditation in section 69.2.2. The Tariff revisions proposed by Reliant are beyond the scope of this proceeding and, thus, it would not be appropriate to order these changes as part of a compliance filing. We encourage Reliant to discuss its proposals with stakeholders and the Midwest ISO.

4. Planning Zones

52. In the February 2009 Compliance Order, the Commission required that the Midwest ISO revise its Tariff to clearly state that a planning zone will contain no less than 2,000 MW of load.¹⁹

a. March 2009 Compliance Filing

53. The Midwest ISO proposes to revise its Tariff to state that a planning zone (for purposes of determining the planning reserve margin) will contain no less than 2,000 MW of Load.

b. Commission Determination

54. We find the Midwest ISO proposal to be in compliance with the requirements of the February 2009 Compliance Order, and therefore we accept the proposal.

5. Miscellaneous Issues

55. The Commission required that the Midwest ISO submit confidentiality provisions so that it has access to sufficient information to satisfy the verification requirements of its resource adequacy plan.²⁰ We accept the proposed confidentiality provisions and redacted power purchase agreement provision, submitted in the March 2009 Compliance Filing. These revised provisions are in compliance with the February 2009 Compliance Order.

The Commission orders:

(A) The Midwest ISO's March 2009 Compliance Filing is hereby conditionally accepted, as discussed in the body of this order.

¹⁹ *Id.* P 43.

²⁰ *Id.* P 71.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.