

123 FERC ¶ 61,135
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER07-1372-005

ORDER GRANTING MOTION FOR TEMPORARY WAIVER OF
TARIFF PROVISIONS, SUBJECT TO REFUND

(Issued May 7, 2008)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) has filed a motion for temporary waiver of the manual redispatch compensation provisions in section 33.8.1 of its Open Access Transmission and Energy Markets Tariff (tariff). The Midwest ISO seeks to use the manual redispatch make-whole payment during operational testing of its forthcoming ancillary services market (ASM) to ensure that market participants that participate in the testing are paid adequately. The Midwest ISO needs a waiver because section 33.8.1 limits the use of manual redispatch and its associated payments to specific circumstances when reliability is compromised. For the reasons explained below, we grant limited waiver of section 33.8.1 as well as sections 33.8.2 and 33.8.3. We also grant limited waiver of section 1.121, which defines the term “[g]eneration [r]esource(s),” as that section is applied to section 33.8, section 1.141a, and Schedule 27-A. As discussed below, certain of these provisions are subject to refund and the outcome of other proceedings.

I. Background

2. In its Price Volatility Order,¹ the Commission conditionally accepted revisions to the Midwest ISO’s tariff that included new section 33.8 to provide a make-whole payment to resources that are manually redispatched under certain circumstances, if eligible, in order to ensure adequate cost recovery. In its Manual Redispatch Order,² the Commission conditionally accepted revisions to section 33.8 and new Schedule 27-A to

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325 (2006) (Price Volatility Order), *reh’g denied*, 119 FERC ¶ 61,176 (2007).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,198 (2008), *reh’g pending* (Manual Redispatch Order).

implement compensation of manually redispatched resources independent of the price volatility make-whole payment program, which has been delayed.

3. The Commission recently conditionally accepted the Midwest ISO's ASM proposal to implement day-ahead and real-time markets for operating reserves.³

4. In the filing at hand, the Midwest ISO requests temporary waiver of section 33.8.1 to allow it to use the manual redispatch make-whole payment provisions to compensate market participants during operational testing of the ASM from May 7, 2008 through the earlier of September 8, 2008 or the completion of testing. While it has successfully conducted other ASM operational tests, the Midwest ISO explains that more extensive testing (i.e., during longer periods of four or more hours and more challenging peak load periods) is required to ensure that ASM systems work. During such operational tests, the Midwest ISO will compensate resources using the tariff's energy-only locational market price (LMP) provisions. Considering only energy offers in setting the LMP may not ensure adequate compensation during testing, however, because the Midwest ISO will dispatch units based on the simultaneous co-optimization of both energy and operating reserve offers. When the energy-only LMP is inadequate to cover a unit's incremental energy costs, the Midwest ISO proposes to use the manual redispatch make-whole payment to make the market participant whole.

II. Notice of Filing and Responsive Pleadings

5. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 20,281 (2008), with interventions and protests due on or before April 17, 2008. Ameren Services Company (Ameren), Duke Energy Shared Services, Inc. (Duke), Consumers Energy Company (Consumers), and Wisconsin Electric Power Company (Wisconsin Electric), all of which are already parties in this docket, filed timely protests. The parties generally support the Midwest ISO's request, but have concerns regarding the application of the other manual redispatch make-whole payment tariff provisions.⁴ The Midwest ISO filed an answer on April 25, 2008.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008), *reh'g pending*.

⁴ Ameren notes that its request for rehearing of the Commission's Manual Redispatch Order is pending and contends that the Midwest ISO's use of the manual redispatch make-whole payment provisions here should be made subject to the outcome of that proceeding. *See Ameren's April 3, 2008 Request for Clarification or Rehearing*, Docket Nos. ER08-416-002 and ER06-1552-004.

III. Procedural Matters

6. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

IV. Discussion

7. For the reasons discussed below, we will grant limited waivers of: (1) section 33.8.1, to allow the Midwest ISO to pay testing participants the same way it pays those who are manually redispatched under that provision; (2) section 33.8.2, to make the manual redispatch make-whole payment available when a market participant is starting, implementing, and completing ASM operational testing instructions; (3) section 1.121 as it applies to section 33.8, section 1.141a, and Schedule 27-A, to expand the definition of “[g]eneration [r]esource(s),” to allow any eligible “[r]esource(s)” to receive the manual redispatch make-whole payment; (4) sections 33.8.2.a(1)(a) and 33.8.2.a(2)(a), to remove the minimum ramp rate eligibility criteria; (5) sections 33.8.2.a(1)(b) and 33.8.2.a(2)(b), to remove the fixed economic limit eligibility criteria; and (6) section 33.8.3, to allocate manual redispatch make-whole payment costs associated with the ASM operational testing to all market participants. These waivers are effective during ASM operational testing from May 7, 2008 to the earlier of the completion of testing or September 8, 2008.⁵

A. Adequacy of Compensation

8. Section 33.8.1 describes the circumstances requiring manual redispatch, stating that the Midwest ISO will manually redispatch a generation resource when the Midwest ISO's automated real-time energy market dispatch procedures are inadequate to maintain system reliability. Section 33.8.2 provides that an eligible generation resource will receive the manual redispatch make-whole payment if it does not fully recover its real-time incremental energy cost from the hourly real-time LMP during the period the Midwest ISO has directed it to operate or not operate.

9. The Midwest ISO explains that waiver of section 33.8.1 is necessary for it to compensate market participants using the manual redispatch make-whole payment because the provisions of that section by their terms would not apply to the testing.

10. The Midwest ISO states that the manual redispatch make-whole payment eligibility criteria found in section 33.8.2 are appropriate to apply to energy market offers to help prevent gaming and other anticompetitive behavior, but proposes that “the

⁵ Our acceptance is subject to the outcome of Docket Nos. ER08-416-001, ER08-416-002 and ER06-1552-004, regarding a rehearing request and compliance filing submitted in response to the Manual Redispatch Order.

eligibility criteria will not be applied in a manner that affect[s] [o]ffers made in the ASM market tests, however, as long as [m]arket [p]articipants are following the Midwest ISO's dispatch instructions."⁶

1. Comments

11. No party opposes the waiver generally. However, Duke requests that the compensation period for ASM operational testing extend for at least two hours beyond the end of each test. It notes that section 33.8.2 provides compensation for "the period the [t]ransmission [p]rovider has directed the [g]eneration [r]esources to operate or not operate." However, a test's effects may continue for hours after the test ends, and the participant should continue to be paid. For example, a slow-ramping resource may need time after the end of a test to return to its former output level and, as a result, may incur additional costs.

12. Consumers is concerned that, while the manual redispatch make-whole payment would address times when the LMP is too low to adequately compensate generation resources, the payment does not address what happens when the LMP is so high that generators may reap benefits at the expense of load. Consumers requests that the Commission require the Midwest ISO to adopt a mechanism to control unreasonable charges.

13. Wisconsin Electric contends that section 33.8.2 should separately define the rules for decremental and incremental units.⁷ It suggests that decremental units be exempt from certain real-time revenue sufficiency guarantee (RSG) charges during the redispatch period and for some time following the redispatch period if units need more time to return to pre-redispatch levels. The units should also be compensated for replacement energy charges if the unit cleared the day-ahead market and real-time LMPs are higher than day-ahead LMPs. Wisconsin Electric concludes that the Midwest ISO should include a parallel provision for incremental units.

14. In addition, Wisconsin Electric expresses several general concerns. It requests that the Midwest ISO clarify how manual redispatch information will be communicated to the affected market participants. It also argues that the Midwest ISO must ensure that ASM operational testing does not create seams with PJM Interconnection (PJM).

⁶ Midwest ISO's April 4, 2008 Filing at 8.

⁷ A generator is decremental if it is ramping down to reduce its output; a generator is incremental if it is ramping up to increase its output.

2. Midwest ISO's Answer

15. The Midwest ISO agrees with Duke that, if a generation resource participates in ASM operational testing and is not made whole due to its inability to ramp to its energy market set point at the conclusion of testing, the market participant should continue to be eligible to receive the manual redispatch make-whole payment until one or more of its units are reasonably able to comply with energy-only dispatch instructions.

16. The Midwest ISO does not believe that testing will contribute to any seams issues with PJM, due to the limited nature and scope of the tests. The Midwest ISO does not propose to waive or suspend the applicability of any agreement between itself and PJM relating to the treatment of reciprocal coordinated flowgates and/or redispatch provisions.

3. Commission Determination

17. We recognize the importance of ASM operational testing to ensure that the systems, processes, and procedures that have been developed for or will be affected by the ASM will function correctly. We find that the Midwest ISO's use of the manual redispatch make-whole payment during such testing will remove a potential barrier to market participants' involvement by ensuring that they receive adequate compensation. We will waive section 33.8.2⁸ to ensure that market participants receive the manual redispatch make-whole payment during all time periods in which they follow the Midwest ISO's instructions issued during testing, including when a unit is starting, implementing, or completing such instructions. This waiver is consistent with our previous findings regarding compensation for manual redispatch.⁹

18. We are concerned, however, that the application of the manual redispatch make-whole payment to only generation resources prevents demand response resources that participate in ASM operational testing from receiving compensation in a manner comparable to generation resources and may serve as a barrier to their involvement in such testing. We will waive section 1.121 defining "[g]eneration [r]esource(s)" as it

⁸ Specifically, we will waive the requirement of section 33.8.2 that allows market participants to receive the manual redispatch make-whole payment "during the period the [t]ransmission [p]rovider has directed the [g]eneration [r]esources to operate or not operate."

⁹ See Price Volatility Order, 117 FERC ¶ 61,325 at P 53.

applies to sections 1.141a,¹⁰ section 33.8, and Schedule 27-A,¹¹ and in any additional sections referenced therein, in order to allow all eligible “[r]esource(s)”¹² to receive the manual redispatch make-whole payment as necessary.

19. During ASM operational testing market participants will pay and/or receive the energy-only LMP determined under the tariff, which will ensure that load pays a just and reasonable rate. We find that the concern voiced by Consumers (i.e., that load would pay excessively high prices) is unsupported. In the situation where a load is served by a generator that is dispatched at an LMP below its incremental energy costs (thus necessitating a make-whole payment), the load could benefit unfairly by paying an LMP that does not reflect the cost of that energy.

20. Wisconsin Electric previously raised its arguments regarding manual redispatch communication procedures, decremental and incremental units, and potential manual redispatch make-whole payment seams issues,¹³ and we addressed them in a prior proceeding.¹⁴ We will not reiterate our previous findings here. General arguments regarding the Midwest ISO’s manual redispatch procedures are outside of the scope of this proceeding. We note that Wisconsin Electric has not identified any specific seams concerns in regard to ASM testing and that the Midwest ISO does not believe that the testing will cause any seams issues with PJM.

B. Manual Redispatch Make-Whole Payment Eligibility Criteria

21. Section 33.8.2 explains that a manually redispatched generation resource will receive the manual redispatch make-whole payment if its offer meets the fixed economic limit and minimum ramp rate eligibility criteria. The fixed economic limit eligibility criteria of sections 33.8.2.a(1)(b) and 33.8.2.a(2)(b) require a unit’s hourly as-committed day-ahead economic minimum and maximum dispatch limits to remain unchanged in its

¹⁰ Section 1.141a defines incremental energy cost as the “area under a [g]eneration [r]esource’s offered incremental [e]nergy cost curve....”

¹¹ Schedule 27-A provides the calculation of the manual redispatch make-whole payment.

¹² Section 1.273 defines a “[r]esource” to be “[e]ither a [g]eneration [r]esource or a [d]emand [r]esponse [r]esource that can reliably adjust its electricity output and/or usage by some specified range and rate at a specific [c]ommercial [n]ode in response to [d]ispatch [i]nstructions.”

¹³ See Wisconsin Electric’s October 19, 2006 Comments, Docket No. ER06-1552-000 at 4-6.

¹⁴ See Price Volatility Order, 117 FERC ¶ 61,325 at P 31, 45-47, 53, 56.

real-time offer.¹⁵ The minimum ramp rate eligibility criteria of sections 33.8.2.a(1)(a) and 33.8.2.a(2)(a) require a unit's ramp rate to be greater than one-half megawatt (MW) per minute and greater than one percent of the its economic maximum dispatch limit per minute,¹⁶ and its dispatch range to be greater than 1 MW.¹⁷

1. Comments

22. Duke argues that the Commission should waive the eligibility criteria during and immediately after an ASM operational test. It explains that the minimum ramp rate requirements will prevent all slow-ramping generation resources, including most nuclear power plants and large coal plants, from receiving appropriate compensation and, thus, will prevent them from participating in testing. Excluding such resources would hinder efforts to include a large and representative sample in testing.

23. Duke is also concerned that the fixed economic limit requirements will hamper ASM testing participation. While recognizing that these requirements prevent gaming, it argues that at least some generation resources will need to adjust their economic dispatch limits due to unexpected factors outside of their control. The risk of being completely disqualified from receiving compensation through the end of an ASM test due to relatively minor or temporary adjustments would deter generation resources from participating in ASM testing. If the Commission is concerned about the potential for market manipulation during ASM testing, Duke requests that the Commission consider alternatives to the eligibility criteria. For example, the Commission could require that any generation resource that changes its economic limits during an ASM test make available to the Midwest ISO its logs and other underlying audit documentation to establish the cause of its economic limit change.

24. Similarly, Consumers requests that the Commission waive the fixed economic limit eligibility criteria in order to facilitate participation in ASM operational testing. Market participants must be insulated from the risk of becoming ineligible for the manual

¹⁵ For real-time must-run committed hours, a unit's economic minimum and maximum levels must be the same for each consecutive real-time must-run committed hour. For the first hour of the manual redispatch period, these values must be the same as the previous hour, if the unit was committed.

¹⁶ The Commission required the Midwest ISO to change this eligibility requirement to instead be one half of one percent of a unit's hourly economic maximum dispatch level in a subsequent compliance filing. Manual Redispatch Order, 122 FERC ¶ 61,198 at P 25.

¹⁷ Section 33.8.2.b exempts generation resources from real-time RSG charges and uninstructed deviation penalties during periods of manual redispatch.

redispatch make-whole payment, especially when a market participant must correct limits that it had initially overestimated. It adds that this is particularly true given market participants' minimal experience in current tests and possible problems associated with temperature-sensitive units. To address any gaming concerns created by this waiver, Consumer recommends that the Commission instead grant the Independent Market Monitor (IMM) the authority to review and disallow the manual redispatch make-whole payment if it identifies manipulation.

25. Ameren requests clarification that the eligibility criteria will not keep a market participant from being paid if it is responding to the Midwest ISO's dispatch instructions. For example, if a generator changes its real-time offer to respond to an ASM directive, it should not be disqualified from compensation because of the fixed economic limit eligibility criteria. Similarly, Wisconsin Electric requests clarification that a market participant following the Midwest ISO's dispatch instructions will be eligible for the manual redispatch make-whole payment during ASM operational testing regardless of whether it meets the eligibility criteria. For example, it is unclear whether a combined cycle unit would be eligible for a make-whole payment if it increased its real-time economic minimum dispatch limit from its as-offered day-ahead value. In addition, Wisconsin Electric argues that the Midwest ISO should address an additional disincentive to participating in the ASM operational tests found in section 33.8.2, which explains that generation resources may not fully recover their incremental energy cost from the hourly real-time LMP when it is manually redispatched.

2. Midwest ISO's Answer

26. The Midwest ISO states that it would agree, if so ordered by the Commission, to waive the part of the ramp rate eligibility criteria in sections 33.8.2.a(1)(a)(iii) and 33.8.2.a(2)(a)(iii) that requires a unit's offered ramp rate to be greater than one-half of one percent of its hourly real-time economic maximum dispatch limit, per minute. It says that this waiver should be limited to testing participants and to the period of each test. It recognizes that this criterion may unnecessarily limit testing participation by certain market participants.

27. However, the Midwest ISO disagrees that waiver of the remaining eligibility criteria is either necessary or appropriate to encourage testing participation. It explains that the remaining ramp rate eligibility criteria are necessary to ensure that market participants provide at least the minimal amount of ramp and dispatch capability needed for meaningful operational testing. While it is committed to monitoring requests for reimbursement and referring any requests that might raise anticompetitive concerns to the IMM, the Midwest ISO argues that the fixed economic limit eligibility criteria are needed to prevent gaming. The rationale for applying these eligibility criteria to manual redispatch applies equally to ASM operational testing. In addition, the Midwest ISO notes that a waiver of all of the eligibility criteria would increase the amount of uplift costs during testing.

3. Commission Determination

28. ASM operational testing provides an important opportunity for market participants to gain a better understanding of ASM systems and procedures. It is essential that all market participants have a reasonable opportunity to participate in ASM operational testing in order to ensure that the ASM functions smoothly when it begins. We will waive the ramp rate eligibility criteria of sections 33.8.2.a(1)(a) and 33.8.2.a(2)(a) in order to ensure that all market participants, including large coal and nuclear power plants with slow ramp rates, are able to receive adequate compensation and participate in ASM operational testing. In previous proceedings, we found that minimum ramp rate requirements were necessary to provide reliability benefits¹⁸ and to address price volatility concerns.¹⁹ We find that ASM operational testing over limited time periods does not present similar reliability or price volatility concerns. In addition, we note that the Midwest ISO's energy market does not have minimum ramp rate requirements; thus, the absence of such requirements should not preclude meaningful operational testing.

29. Similarly, we will waive the fixed economic limit eligibility criteria of sections 33.8.2.a(1)(b) and 33.8.2.a(2)(b). We agree that market participants may need to adjust their economic minimum and maximum levels for legitimate reasons, and we are concerned that they will not participate in the testing if they will become ineligible to receive the manual redispatch make-whole payment due to legitimate adjustments to a unit's economic minimum and maximum levels. With regard to the gaming risks associated with waiving these requirements, we note that sections 40.2.3.b.iii and 40.2.3.b.iv require that the economic minimum and maximum components of a unit's offer "shall be based on the actual capability of the [r]esource to operate on its [o]ffer curve and may not be used to withhold a portion of the [c]apacity of a [r]esource from the [r]eal-[t]ime [e]nergy [m]arket."²⁰ Furthermore, section 53.3 requires the IMM to make a referral to the Commission if it has reason to believe that a market participant has violated these provisions, where an explicit remedy is not otherwise provided by the tariff.²¹ Finally, we note that during periods of operational testing, transactions will receive heightened scrutiny and analysis, and the likelihood of gaming will be reduced during these periods.

¹⁸ See Manual Redispatch Order, 122 FERC ¶ 61,198 at P 25.

¹⁹ See Price Volatility Order, 117 FERC ¶ 61,325 at P 37-38.

²⁰ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Second Revised Sheet No. 546.

²¹ *Id.*, Fourth Revised Sheet No. 716A.

30. Notwithstanding the above discussion, because the Midwest ISO's mitigation plan (in Module D of the tariff) does not yet apply to the manual redispatch make-whole payment,²² and the Midwest ISO's proposed tariff revisions regarding monitoring and mitigation of the manual redispatch make-whole payment effective February 1, 2008 are pending,²³ we will grant the Midwest ISO's motion for temporary waiver, subject to refund and the outcome of that proceeding, so that any manual redispatch make-whole payments made for ASM operational testing will be subject to those Module D revisions.

C. Allocation of Cost of Testing

31. Section 33.8.3 states that manual redispatch make-whole payment costs will be allocated based on the methods specified in sections 39.3.1 and 40.3.3.a for the allocation of RSG costs, or directly assigned in certain circumstances, subject to Commission approval.

1. Comments

32. Ameren contends that the manual redispatch make-whole payment costs of ASM operational testing should not be allocated in the same manner as RSG costs because most RSG costs are assigned to load-serving entities. Ameren requests that the Commission instead require the Midwest ISO to allocate the cost to all market participants through an uplift charge because all market participants, not just load-serving entities, benefit from ASM testing.

2. Midwest ISO's Answer

33. The Midwest ISO contends that the costs should be allocated to all load based on its load-ratio share. It explains that such an allocation correctly uplifts costs to the primary beneficiaries of the tests and is consistent with the current allocation of manual redispatch make-whole payment costs.

3. Commission Determination

34. We find that all market participants will benefit equally from testing and all market participants therefore should share the costs of it. We will waive the cost allocation requirements of section 33.8.3²⁴ for manual redispatch make-whole payment

²² See Manual Redispatch Order, 122 FERC ¶ 61,198 at P 51. The Commission has required the Midwest ISO to make any needed modifications.

²³ See Midwest ISO's March 25, 2008 Filing, Docket No. ER08-416-001.

²⁴ Specifically, we will waive the requirement of section 33.8.3 that "[p]ayments associated with [m]annual [r]edispatch will be allocated based upon the methods specified in [s]ections 39.3.1 [and] 40.3.3 of this [t]ariff."

costs associated with ASM operational testing, and we will require the Midwest ISO to instead allocate such costs to all market participants that inject or withdraw energy from the market, consistent with Schedule 17.²⁵

The Commission orders:

Limited waiver of sections 33.8.1, 33.8.2, 33.8.3 and 1.121 of the Midwest ISO's tariff is hereby granted, as discussed in the body of this order, effective May 7, 2008 to the earlier of the completion of ASM operational testing or September 8, 2008.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁵ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Schedule 17.