129 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Midwest Independent Transmission System Operator, Inc. Docket No. ER10-128-000

ORDER ON TARIFF FILING

(Issued December 23, 2009)

1. On October 28, 2009, the Midwest Independent System Operator, Inc. (Midwest ISO) submitted a filing under section 205 of the Federal Power Act[1] amending section 38.2.5 of the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff),[2] to revise the procedures for requesting and scheduling outages of both nuclear and non-nuclear generation resources. In this order, we will accept the tariff revisions, subject to a further compliance filing.

I. Background

2. Midwest ISO states that as an independent system operator, it is responsible, in part, for the coordination of planned outages of generation resources to ensure reliable operations.[3] Midwest ISO states that based on prior real-time system events of significant forced outages of generation resources, and conflicts between planned nuclear generation outages, it has concluded that the current outage coordination language found in section 38.2.5.g of the tariff is unduly restrictive and requires clarification.

3. Midwest ISO also states that it seeks to balance the potentially conflicting interests of owners of generation resources, including nuclear generation resources,[4] in scheduling planned outages while ensuring system reliability. Midwest ISO asserts that failure to

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[1] 16 U.S.C. § 824d (2006).

[2] FERC Electric Tariff, Fourth Revised Vol. No. 1.

[3] 18 C.F.R. § 35.34(j)(4)(iii) (2009).

[4] Nuclear generation resources are also subject to Nuclear Regulatory Commission jurisdiction.

revise its tariff, as proposed, could lead to potential adverse reliability problems on the bulk electric system caused by: (1) multiple conflicting generator outages; or (2) scheduled transmission substation upgrades that are unable to occur due to conflicting generation outages.

4. Midwest ISO states that it conducted an extensive process with its stakeholders to review the proposed tariff amendments to the outage procedures. Specifically, Midwest ISO states that it discussed the topic and reviewed draft language with stakeholders during meetings of the Reliability Subcommittee from March through August 2009, encouraging comments and alternative proposals. Midwest ISO also shared proposed language with its Market Subcommittee, Operations Working Group, and Supply Adequacy Working Group.

5. Midwest ISO specifically proposes to modify tariff section 38.2.5.g to require non-nuclear generator operators to request planned outages two years in advance and nuclear generator operators to request planned outages three years in advance. Currently the tariff provides for non-nuclear generator operators to request planned outages one year in advance and nuclear generator operators to request planned outages two years in advance. Within three months of such a request, Midwest ISO will provide notice as to whether the requested outage is expected to have a material impact on reliability.

6. In addition, Midwest ISO seeks express authority to require mandatory rescheduling of the planned outage of a generation resource, as a last resort, after attempts to coordinate the affected parties have failed. Midwest ISO states that the Commission permits such authority[5] and that other regional transmission organizations (RTOs) have included similar language in their Commission-approved tariffs.[6] Thus, Midwest ISO proposes that it may reschedule the planned outage if or when there is a documented reasonable expectation of any of the following three conditions: (1) inability to maintain voltage required by nuclear generation or other nuclear generation interface requirements, as defined by NERC; (2) inability to maintain the Transmission System within System Operating Limits using normal (non-emergency) operating procedures; or (3) the potential for contingencies to significantly affect Transmission System reliability of metropolitan areas.[7]

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[5] *See* Order No. 2000, Regional Transmission Organizations, FERC & Stats. & Regs. ¶ 31,089 (1999).

[6] *See, e.g.*, PJM Interconnection, L.L.C. (PJM) Interconnection Tariff § 1.9.2(b); California Independent System Operator Corporation (CAISO) Tariff § 9.3.7.

[7] Midwest ISO's tariff already provides that it may reschedule a planned outage if there is a documented reasonable expectation of an Emergency. "Emergency" is defined in section 1.179 of the tariff as: "(i) An abnormal system condition requiring manual or

(continued…)

7. Under the terms of the proposal, in reviewing whether to reschedule a planned generator outage, Midwest ISO will: (1) attempt to minimize the economic consequences of rescheduling (excluding opportunity costs); (2) consider physical feasibility of rescheduling planned outages; and (3) coordinate planned outages with the affected Market Participants. Midwest ISO states that it will coordinate with other generators in an effort to facilitate voluntary rescheduling. If that fails, Midwest ISO will assign priority for outages based on the chronological order in which the scheduling requests were received.

8. Midwest ISO also states that, under the proposed revisions, it will not reschedule any timely-requested outage within 12 months of a planned outage for a non-nuclear generation asset and 24 months for a nuclear generation asset unless it was forced to reschedule because of an Emergency or any of the three conditions set forth above occurs that are due to severe weather or unplanned (urgent, emergency or forced) outages, as such outages are defined in the Business Practices Manual for Outage Operations.[8]

9. The proposed language also provides for compensation for rescheduling for outage requests that are timely submitted.[9] If a generation resource owner does not submit a timely outage request, it will only receive compensation if the Midwest ISO approved the outage and was forced to reschedule because of an Emergency or any of the three conditions set forth above occurs that are due to severe weather or unplanned (urgent, emergency or forced) outages. Midwest ISO also commits to report to a stakeholder group regarding any outage rescheduling, once the date of the original outage schedule has passed. Finally, the proposed amendment provides that no rescheduling will occur that would violate any judicial orders, or when such rescheduling is not feasible *(e.g.*, due to voided warranty or equipment damage).

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automatic action to maintain system frequency, or to prevent loss of firm Load, equipment damage, or tripping of system elements that could adversely affect the reliability of any electric system or the safety of persons or property; (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of Emergency procedures as defined in this Tariff."

[8] Proposed section 38.2.5.g(iii), Original Sheet No. 629B. In its transmittal letter, Midwest ISO stated that it would not reschedule an outage within 24 months for a non-nuclear generation facility or 36 months for a nuclear facility. Midwest ISO October 28, 2009 Transmittal Letter at 5. In addition to being technically infeasible due to the timeline for submission of planned outage requests, these timelines conflict with the terms of the tariff language. In case of such a conflict, the tariff language controls.

[9] Compensation for rescheduling of a planned outage is provided for in Attachment BB to Midwest ISO's tariff.

II. Notice of Filing and Responsive Pleadings

10. Notice of Midwest ISO's filing was published in the *Federal Register*, 74 Fed. Reg. 58274 (2009), with interventions and comments due on or before November 12, 2009. The Detroit Edison Company, American Municipal Power, Inc., Consumers Energy Company, FirstEnergy Service Company, Exelon Corporation, Constellation Energy Commodities Groups, Inc. and Constellation NewEnergy, Inc., Madison Gas & Electric Co., NextEra Energy Resources, and Dominion Resources Services, Inc. filed timely motions to intervene. Electric Power Supply Association (EPSA), Dynegy Power Marketing, Inc. (Dynegy), RRI Energy, Inc. (RRI Energy), and Xcel Energy Services, Inc. (XES) filed motions to intervene and comments on Midwest ISO's filing. Also, Dominion Resources Services, Inc., Exelon Corporation, and NextEra Energy Resources, LLC (Joint Parties) filed joint comments on Midwest ISO's filing. On November 19, 2009, Wisconsin Electric Power Company filed a motion to intervene out-of-time. On December 3, 2009, Midwest ISO filed an answer to the comments.

A. Comments

11. RRI Energy contends that Midwest ISO has not demonstrated that its tariff filing is just and reasonable. RRI Energy states that Midwest ISO only provided vague, unsupported assertions about potential reliability concerns that might result if the proposed tariff modifications are not adopted. RRI Energy further takes issue with the need for the proposal, noting that Midwest ISO's existing tariff already defines "Emergency" broadly, allowing Midwest ISO flexibility in rescheduling planned outages. RRI Energy also asserts that generation resource owners already have an incentive to plan outages as far in advance as possible, and disputes that Midwest ISO's proposal ensures system reliability while balancing the interests of generation resource owners. Instead, RRI Energy argues that Midwest ISO's proposal would unreasonably restrict generation resource owners' flexibility in evolving circumstances and is related to the length of time, three months, that Midwest ISO requires to approve planned outages (in contrast to PJM which "approves the vast majority of planned outage requests very quickly"). If the Commission accepts Midwest ISO's proposal, RRI Energy argues that the Commission should direct Midwest ISO to revise its proposal to require that Midwest ISO exhaust all other options, including rescheduling any planned transmission outages, before rescheduling a generator planned outage. RRI Energy contends that Midwest ISO's proposal gives it *carte blanche* to reschedule a generation planned outage and that Order No. 2000 and other RTO tariffs do not support Midwest ISO's assertion that it should have broad authority to reschedule planned outages. RRI Energy also argues that generation owners should be able to recover verifiable lost opportunity costs as a result of rescheduling planned outages and notes that Midwest ISO's current tariff provides for "reasonable and explicit additional costs" associated with rescheduling, even if a planned outage request was not timely submitted. Finally, RRI Energy requests that Midwest ISO

be required to provide notice of whether a planned outage will have a material impact on the reliability within 30 days, not the three months set forth in Midwest ISO's proposed tariff revisions.

12. The Joint Parties contend that the proposed tariff revision provides Midwest ISO with much greater flexibility to reschedule planned outages than other RTOs have. The Joint Parties contrast Midwest ISO's proposal to PJM's tariff, which they say limits PJM's authority to reschedule an approved generation outage only when it would affect reliability. The Joint Parties argue that the Midwest ISO proposal is vague and lacks safeguards that would prevent a rescheduling decision that might adversely affect a generator before exhausting other alternatives. Specifically, the Joint Parties express concern that any change by Midwest ISO to a planned outage would cause problems with scheduling outside vendors, including those who provide nuclear fuel. The Joint Parties further request that, in the event that Midwest ISO must reschedule planned outages, nuclear facilities should be given priority. The Joint Parties state that nuclear power plants require a refueling and maintenance outage in 18- to 24-month cycles, and that Midwest ISO's 36-month outage request requirement does not allow sufficient flexibility to nuclear operators to make changes to their planned outage schedules based on the results of interim outages. The Joint Parties further question how conflicts between planned generation and transmission outages will be resolved. Finally, the Joint Parties note that Midwest ISO does not address how previously scheduled outages will be addressed, or whether the modifications will be phased in over a three-year period to allow previously scheduled outages to take place.

13. Dynegy asserts that there is a vast difference between the generator outage proposal and the existing transmission outage requirements and argues that Midwest ISO's proposal is unduly discriminatory and should be rejected. Dynegy notes that the Midwest ISO Transmission Owners Agreement[10] provides for a rolling one-year notice for planned maintenance schedules and that outage requests must be submitted two weeks in advance of the outage.[11] If the Commission accepts Midwest ISO's proposal, Dynegy argues that the Commission should direct Midwest ISO to modify the transmission outage provisions of its tariff to align with the generator outage provisions. Dynegy further asserts that Midwest ISO's proposed rescheduling review process is very narrow

[10] *See* Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix E, VII.A., Original Sheet No. 162.

[11] Dynegy November 18, 2009 Comments at 4 (citing Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix E, III.C., Original Sheet No. 156). Dynegy also cites Midwest ISO's Business Practices Manual 008 on Outage Operations, which provides for modifications to previously scheduled planned outages on 10 business days advance notice.

and does not consider the economic and reliability consequences of rescheduling planned transmission maintenance outages while rescheduling generation outages. Moreover, Dynegy expresses concern that Midwest ISO's proposal does not allow for generators to modify previously submitted outage requests due to changed circumstances, which could lead to unintended negative consequences, such as a forced outage.

14. EPSA also states that it is concerned about Midwest ISO's proposed extension for the timeframe for generators to submit planned outage scheduling. Among other things, EPSA states that the proposed revisions to Midwest ISO's tariff would increase the scrutiny with which Midwest ISO will evaluate planned generator outage requests and expand the situations in which Midwest ISO can reschedule a planned generator outage. EPSA also notes that Midwest ISO does not propose concurrent alterations to the transmission outage scheduling provisions in its tariff. EPSA contrasts Midwest ISO's two-year planning horizon for non-nuclear generators with provisions in other RTO tariffs, such as the 30-day requirement for outage requests in PJM and a rolling one-year requirement, submitted in a quarterly report, for outage requests in CAISO, as well as additional flexibility for a generator to reschedule its outage if necessary. EPSA further argues that Midwest ISO has not provided sufficient justification for its proposed revisions. In addition, EPSA contends that Midwest ISO's proposal places a higher burden on generation owners than it does on transmission owners, without justification. EPSA states that it supports efforts to ensure system reliability, but that Midwest ISO's proposed revisions do not appear linked to reliability because there are no proposed revisions regarding transmission outages.

15. XES states that Midwest ISO did not provide any detail as to how Midwest ISO will review subsequent changes that are submitted by a generator to its planned outage schedule and that it is not clear whether the three months to review the initial outage schedule would also apply to modifications to that schedule. Along these lines, XES proposes a timeline for Midwest ISO to respond to generators seeking to modify their outage schedules.[12] XES notes that timely submittal of an outage request is not generally required, "but is only a prerequisite for reimbursement and for [Midwest ISO] to assign priority for outages based on the chronological order in which requests were received."[13] XES questions what consequences will befall a generator owner that does not submit a timely schedule of planned outages, how Midwest ISO will accommodate generator owners who amend a previously-submitted outage plan, and how previously-planned outages will be treated under Midwest ISO's proposal. XES recommends that the

[12] XES November 18, 2009 Comments at 5.

[13] *Id.* at 4 n.4.

Commission direct further stakeholder discussions to address these and other related issues and direct Midwest ISO to provide an update to the Commission along with revisions to its proposal or its Business Practice Manuals.[14]

B. Answer

16. Midwest ISO contends that its proposal is a limited, reasonable attempt to ensure reliability in a way that minimizes the impact on generation owners and provides compensation for costs incurred due to rescheduled outages. Midwest ISO argues that the proposed tariff amendment falls far short of giving Midwest ISO *carte blanche* authority to reschedule outages, noting that the proposed revisions specifically limit when Midwest ISO may reschedule planned outages and only as a last resort. First, Midwest ISO states that the tariff obligates it to notify parties of whether their proposed outage schedule will have a material impact on reliability within three months of submission.[15] Second, Midwest ISO states that the tariff provides that prior to making any decisions with regard to rescheduling, the Midwest ISO will "attempt to minimize the economic consequences of rescheduling including direct costs (excluding Opportunity Costs), to consider physical feasibility, and to coordinate with the affected Market Participants."[16] Further, Midwest ISO states that the tariff clearly provides that rescheduling will occur consistent with Good Utility Practice, and under limited circumstances where the Midwest ISO is faced with "a documented reasonable expectation of an Emergency" or the specific "circumstances that compromise the reliability of the Transmission System," which are listed in the tariff provision itself.[17] Midwest ISO also notes that most of its stakeholders agreed that extending the planning horizon for outages will facilitate reliability, and asserts that its provisions are more detailed and narrow than those used by other RTOs to reschedule outages. Midwest ISO further asserts that its stakeholder process also considered the effect of transmission outages and that, where there is a conflict between a generation and transmission outage, the transmission outage is rescheduled and mitigation procedures are developed; if those steps fail, then the generator outage would be rescheduled. In any case, Midwest ISO states that because generation and transmission are different, discrimination between treatment of outages of generation and transmission is not "undue," particularly when reliability is at issue.

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[14] XES also notes that Midwest ISO should correct Attachment BB section A, changing references to 38.2.5.h and 38.2.5.h.v to 38.2.5.g and 38.2.5.g.v.

[15] Midwest ISO December 3, 2009 Answer at 7 (citing proposed Original Sheet No. 628A) (emphasis added in Midwest ISO Answer).

[16] *Id.* at 7 (citing proposed First Revised Sheet No. 629).

[17] *Id.* (emphasis added in Midwest ISO December 3, 2009 Answer).

17. Regarding whether nuclear generation should receive priority in consideration of whether to reschedule planned outages, Midwest ISO notes that "automatic" priority for nuclear facilities was not supported by stakeholders and argues that, from a reliability standpoint, generation resources should be treated comparably in rescheduling. Further, Midwest ISO notes that, because of the large number of nuclear units in the Midwest ISO footprint, and the difficulty in rescheduling their outages, outages for nuclear facilities are normally set and in place well in advance of non-nuclear units. Midwest ISO also contends that generator operators would be provided opportunities to reschedule outages if necessary due to reliability or if Midwest ISO identified a need for rescheduling. Midwest ISO further offers to clarify procedures for amending previously submitted outage schedules, if so directed. Midwest ISO states that it could not review an outage request within 30 days, as requested by RRI Energy, and that its proposed response time is reasonable. Midwest ISO also states that its filing does address the "consequences" of a generation owner's failure to submit a timely outage schedule; specifically, there would be no opportunity to recover compensation under Midwest ISO's tariff. Midwest ISO further rejects RRI Energy's other efforts to recover opportunity costs related to generator outages. Midwest ISO did offer to work with stakeholders to resolve how currently scheduled outages would be treated under its new tariff provisions, but rejects the Joint Parties' proposed resolution as possibly creating reliability problems.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2009), the Commission will grant Wisconsin Electric Power Company's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

19. The Commission will accept Midwest ISO's tariff filing subject to a further compliance filing, as discussed below. We find that Midwest ISO's proposed tariff revisions will enhance reliability of the Midwest ISO system, and as modified below, are just and reasonable. We also find that Midwest ISO's revisions are not unduly discriminatory.

20. We find that Midwest ISO's ability to reschedule outages is sufficiently limited to situations that pose a threat to reliability.[18] Specifically, Midwest ISO proposes to reschedule outages if there is "a documented reasonable expectation of any of the following circumstances that compromise the reliability of the Transmission System," including the inability to maintain voltage required by nuclear generation or other nuclear generation interface requirements, as defined by NERC**,** the inability to maintain the Transmission System within System Operating Limits, or the potential for contingencies to significantly affect Transmission System reliability of metropolitan areas. In the case of a rescheduling decision, Midwest ISO will first attempt to facilitate voluntary rescheduling. It will seek to minimize the economic consequences of rescheduling and consider the physical feasibility of rescheduling, as well. We believe that the tariff is sufficiently clear in that Midwest ISO may require mandatory rescheduling of planned generator outage only after all other options have been exhausted, to maintain system reliability. We further find that the tariff revisions sought by Midwest ISO are consistent with its responsibilities under the Commission's regulations.[19] Thus, we decline to direct Midwest ISO to clarify how it intends to use rescheduling as a last resort to preserve reliability.

21. We accept Midwest ISO's proposal to modify its tariff to require the Midwest ISO to provide notification as to whether the requested outage is expected to have a material impact on reliability, within three months of submission of such request. With regard to concerns that three months may be excessive, we expect that Midwest ISO and its stakeholders will review on an on-going basis whether three months continues to be necessary in light of information and experience that they gain from the new timing requirements to initially request planned outages.

22. We accept Midwest ISO's proposal that a nuclear generation operator will request a planned outage three years in advance and a non-nuclear generation operator will request a planned outage two years in advance, subject to condition. In general, we believe that Midwest ISO's consideration of rescheduling of concurrent nuclear and non-nuclear generation facility outages based on chronological order will favor nuclear generation facilities that are subject to the three-year planning horizon over non-nuclear generation facilities subject to the two-year planning horizon. However, we find that the proposal does not provide for a generator to reschedule or modify a planned outage. As noted by the commenters, events may necessitate modifications to a planned outage, and

[18] As previously noted, Midwest ISO's tariff already provides for rescheduling outages in an Emergency, as that term is currently defined in the tariff. The proposed tariff revisions do not modify the definition of Emergency and any challenge to tariff provisions already accepted by the Commission are beyond the scope of this proceeding.

[19] 18 C.F.R. § 35.34(j)(4)(iii) (2009).

inflexibility in accommodating such modifications may result in unintended consequences, such as a forced outage, which would impair reliability in conflict with the rationale for the proposed tariff changes. Thus, we direct Midwest ISO to submit in a compliance filing, due within 30 days of the date of this order, proposed revisions to allow generator modifications to a previously submitted planned outage request. In addition, we note that the proposed tariff revisions do not address how to resolve planned outages currently scheduled. We also direct Midwest ISO to clarify, in its compliance filing, the application of its procedures for currently planned outages.

23. We also find that Midwest ISO's proposal does not discriminate against generation resources in favor of transmission resources. Midwest ISO notes that generation outages will be established first, and transmission owners will then request outages to accommodate the generation outage schedule. Importantly, if a conflict necessitates Midwest ISO to reschedule an outage, Midwest ISO has stated that it will reschedule transmission outages first and that operating procedures will be developed pursuant to the Outage Operations Business Practices Manual to mitigate reliability concerns. If those steps do not address the reliability concerns, then Midwest ISO will reschedule the generation outage.[20] Because the burden of requesting a planned outage in advance is balanced against the benefit of being the last resource to be rescheduled in the event of a reliability issue, we find that Midwest ISO's proposal is not unduly discriminatory. Thus we decline to direct Midwest ISO to submit concurrent modifications to its transmission outage provisions, as suggested by parties in this proceeding.

24. Finally, regarding questions of compensation where Midwest ISO requires that a generator reschedule its planned outage, we find that such compensation is appropriately dependent upon whether the generator provided Midwest ISO sufficient notice of its planned outage. Regarding whether opportunity costs are recoverable, we find that, because the language regarding opportunity costs was not modified by the proposed tariff revisions, this issue is beyond the scope of this proceeding.[21]

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[20] Midwest ISO December 3, 2009 Answer at 8.

[21] *See* the Subsection 38.2.5.g.iii last sentence where, "The Market Participant shall not be compensated for any opportunity costs associated with such rescheduling." Thus, the currently- accepted tariff already addresses this issue. If a party has a subsequent concern regarding compensation for a planned outage rescheduled by Midwest ISO, the party may file a complaint with the Commission under section 206.

The Commission orders:

(A) Midwest ISO's tariff filing is hereby accepted, as modified in accordance with Ordering Paragraph (B), as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.