



cancellation of the 2006 CRSG Agreement.<sup>5</sup> The Amended CRSG Agreement replaced the 2006 CRSG Agreement commensurate with the start-up of Midwest ISO's Ancillary Services Market, when Midwest ISO began to operate as a North American Electric Reliability Corporation (NERC)-certified Balancing Authority, and the obligation to carry reserves shifted from the multiple Balancing Authorities in the Midwest ISO footprint to the new Midwest ISO Balancing Authority.

3. The Amended CRSG Agreement includes a provision in section 4.2.3 that provides for the termination of the Amended CRSG Agreement on its own terms at midnight, December 31, 2009, unless the Contingency Reserves Committee votes to extend that date.

4. There are two other contingency reserve sharing proceedings being addressed by the Commission concurrently with this proceeding. In Docket No. ER09-1769-000, Midwest ISO filed a Notice of Cancellation of the Amended CRSG Agreement.<sup>6</sup> In Docket No. ER10-54-000, Midwest ISO proposed amendments to its Coordination Agreement with Manitoba Hydro to include terms and conditions that the parties have agreed upon to execute a bilateral reserve sharing group.<sup>7</sup>

## II. Filing

5. According to Midwest ISO, proposed Attachment RR establishes details, rates, and procedures to facilitate the supply of reserves to Transmission Owners that are in the process of integrating into Midwest ISO.<sup>8</sup> Midwest ISO states that Attachment RR affords Balancing Authorities whose loads and resources are connected to an integrating Transmission Owner's facilities the opportunity to meet their NERC reserve obligations by obtaining contingency reserves from Midwest ISO's Energy and Operating Reserves Markets during the Transmission Owner's integration. Attachment RR provides that, to be eligible to obtain reserve service, the Balancing Authority must execute a service agreement, which Midwest ISO includes as proposed Attachment RR-1. In addition, the integrating Transmission Owner must have signed the Transmission Owners Agreement

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<sup>5</sup> *Midwest Indep. Trans. Sys. Operator, Inc.*, 125 FERC ¶ 61,323 (2008).

<sup>6</sup> *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,281 (2009) (accepting notice of cancellation of Amended CRSG Agreement) (Cancellation Order).

<sup>7</sup> *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,282 (2009) (accepting proposed revisions to Coordination Agreement) (Coordination Agreement Order).

<sup>8</sup> October 2 Filing, Transmittal Letter at 2.

and committed in writing to integrate its transmission facilities into Midwest ISO's within nine months from the date service begins, among other conditions.<sup>9</sup>

6. Midwest ISO explains that, under Attachment RR, if an eligible Balancing Authority (Reserve Services Customer) requires reserves for any reason, it will enter a zero-minute ramp schedule between Midwest ISO and the Reserve Services Customer, which Midwest ISO will implement immediately.<sup>10</sup> According to Midwest ISO, the Reserve Services Customer will then use the resulting emergency energy flow to offset the real-time demand on its generation resources in a manner consistent with NERC Reliability Standard BAL-002-0 - Disturbance Control Performance.<sup>11</sup> Midwest ISO also explains that a Reserve Services Customer has no obligation to supply contingency reserves to Midwest ISO under Attachment RR; Midwest ISO will meet its own Balancing Authority obligations to supply contingency reserves by using its Energy and Operating Reserves Market.<sup>12</sup>

7. Under Attachment RR, Midwest ISO will be responsible for carrying and deploying contingency reserves on behalf of each Reserve Services Customer.<sup>13</sup> Section C of Attachment RR provides that a Reserve Services Customer will pay the rates set forth in Schedule 6 of the Tariff for supplemental reserve and Schedule 5 of the Tariff for spinning reserve.<sup>14</sup> In addition, as amended,<sup>15</sup> Section C provides that the hourly load of the Reserve Services Customer shall be reported to Midwest ISO for the purpose of calculating the charges to be paid under Schedules 5 and 6 of the Tariff. Section C further provides that the Reserve Services Customer will be required to pay the locational marginal price at the point of delivery for delivered energy.<sup>16</sup>

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<sup>9</sup> *Id.* at Original Sheets No. 3816-3817.

<sup>10</sup> *Id.*, Transmittal Letter at 3.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> *Id.* at Transmittal Letter 4, Original Sheet No. 3816.

<sup>14</sup> October 14 Filing at Substitute Original Sheet No. 3817.

<sup>15</sup> On October 14, 2009, Midwest ISO filed an amendment to Attachment RR to revise section C.3 to remove language that, according to Midwest ISO, was inadvertently included in the October 2 Filing. Midwest ISO revised section C.3 as follows: "For the sole purposes of calculating the changes to be paid under Schedule 5 and Schedule 6 of the Tariff, the hourly load of the eligible Balancing Authority, ~~for the period of time that an e-Tag transaction is required under Section D of this Attachment RR,~~ shall be reported to the Transmission Provider." *Id.*, Transmittal Letter at 1.

<sup>16</sup> October 2 Filing, Transmittal Letter at 3.

8. Section E of Attachment RR provides that the availability of reserve service terminates automatically upon the earliest of: (1) full integration of both the Transmission Owner's facilities and the Balancing Authority into Midwest ISO; (2) failure of the Transmission Owner to achieve final integration on the date established in its phased integration plan as approved by the Commission; (3) receipt by Midwest ISO of written notice from the Transmission Owner that the Transmission Owner intends to withdraw from Midwest ISO; or (4) determination by Midwest ISO that the Balancing Authority has taken service under Attachment RR for a purpose other than to meet its reserves obligations under applicable NERC and regional reliability standards.<sup>17</sup>

9. Midwest ISO requests an effective date of January 1, 2010. Midwest ISO asserts that the requested effective date will provide Dairyland Power Cooperative (Dairyland)<sup>18</sup> and others the opportunity to join Midwest ISO, obtain reserves immediately upon termination of the Amended CRSG Agreement, and fully integrate on a schedule that permits them to participate in the Financial Transmission Rights auction scheduled for June 2010.

### **III. Notice of Filing and Responsive Pleadings**

10. Notice of Midwest ISO's October 2, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 52798 (2009), with interventions and protests due on or before October 23, 2009. Notice of Midwest ISO's October 14, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 54985 (2009), with interventions and protests due on or before November 4, 2009.

11. Consumers Energy Company, American Municipal Power, Inc., Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Wisconsin Electric Power Company, and Xcel Energy Services, Inc. filed motions to intervene. Dairyland, Big Rivers Electric Corporation (Big Rivers), E.ON U.S., LLC (E.ON),<sup>19</sup> and Duke Energy Corporation (Duke) filed motions to intervene and comments.<sup>20</sup> Midwest ISO filed an answer on November 12, 2009.

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<sup>17</sup> *Id.* at Original Sheet No. 3820.

<sup>18</sup> On September 10, 2009, Dairyland announced its intention to fully integrate into Midwest ISO as a transmission-owning member on June 1, 2010. During its integration into Midwest ISO, Dairyland plans on obtaining contingency reserves under Attachment RR. *Id.*, Transmittal Letter at 4.

<sup>19</sup> E.ON filed on behalf of its subsidiaries Louisville Gas & Electric Company and Kentucky Utilities Company.

<sup>20</sup> Duke filed on behalf of its subsidiaries Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.

12. Dairyland asks the Commission to accept Attachment RR with an effective date prior to January 1, 2010.<sup>21</sup> Dairyland notes that if the Commission accepts Midwest ISO's proposal to cancel the Amended CRSG Agreement, it will take service under Attachment RR until it completes its phased integration into Midwest ISO. Dairyland asserts that it is essential that the Commission accept Attachment RR with an effective date prior to January 1, 2010, in order to effectuate Dairyland's arrangements to meet its reserve obligations during that time.<sup>22</sup>

13. Big Rivers argues that certain provisions of Attachment RR should be modified because they may deter entities from pursuing integration into Midwest ISO or drive them into less efficient arrangements. First, Big Rivers argues that section B of Attachment RR should be revised so that service under Attachment RR is available to entities that are evaluating whether to join Midwest ISO. Big Rivers states that while it is diligently working to make arrangements to address its contingency reserve needs after the termination of the Amended CRSG Agreement, it is not certain that it will enter into such an arrangement before December 31, 2009. Big Rivers states that requiring it to begin the process of joining Midwest ISO in order to take service under Attachment RR may compromise Big Rivers' ability to perform the complete and unbiased analysis needed to make that decision in the first place and may deter Big Rivers from joining Midwest ISO. Big Rivers argues that revising section B as requested will ensure that Big Rivers does not make a premature commitment to join Midwest ISO.<sup>23</sup>

14. Second, Big Rivers argues that section E of Attachment RR concerning termination of service should be modified to reflect the realities of the processes associated with obtaining the approval of both state regulatory bodies and Midwest ISO. Big Rivers argues that, even if it agreed to join Midwest ISO, it would still face the possibility that it would be left with no contingency reserves if state regulatory bodies deny the approvals necessary to integrate into Midwest ISO. Accordingly, Big Rivers requests that section E be modified so that contingency reserve service will continue to be available to a Transmission Owner for six months following a denial of state regulatory approval. Further, Big Rivers contends that it takes longer than nine months for Midwest ISO to approve a request for membership. Thus, Big Rivers argues that section E of Attachment RR should be revised so that Midwest ISO will continue to provide contingency reserve service to a Transmission Owner who is actively pursuing required regulatory approvals but is unable to obtain them within nine months until integration occurs or for an additional six months after the necessary approvals are denied.<sup>24</sup>

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<sup>21</sup> Dairyland Comments at 3.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> Big Rivers Comments at 6-7.

<sup>24</sup> *Id.* at 7-8.

15. E.ON states that it does not protest Attachment RR at this time because it is moving toward alternative arrangements for contingency reserves, but E.ON raises the following concerns regarding Midwest ISO's actions. E.ON argues that Midwest ISO is giving the appearance of providing services on a preferential basis by providing reserve sharing through Attachment RR only to those who have a stated intent to join Midwest ISO and extending reserve sharing service to Manitoba Hydro, a non-Transmission Owner. Finally, E.ON argues that the Commission should review Attachment RR, the Notice of Cancellation of the Amended CRSG Agreement (Docket No. ER09-1769-000), and the Manitoba Hydro filing (Docket No. ER10-54-000) together in order that the totality of consequences might be considered.<sup>25</sup>

16. Duke states that it supports Attachment RR. Duke asserts that, despite the fact that the Midwest ancillary services market is structured so that the costs of the market are borne by Midwest ISO market participants, proposed Attachment RR will in effect provide an eligible customer with benefits without that customer having paid its full share of the cost of those benefits.<sup>26</sup> Specifically, Duke states that it believes that a Reserve Services Customer must take Reliability Coordination services if it plans to take contingency reserve service under Attachment RR.<sup>27</sup> Duke also requests clarification that Reserve Service Customers will be assessed charges under Schedules 5 and 6 during all hours of the transition period.<sup>28</sup>

17. Midwest ISO responds to Big Rivers' concerns about section B by stating that the simplest solution for Big Rivers, and other CRSG members seeking alternative arrangements, is for it to carry the required level of reserves on its own system until Big Rivers is able to make alternative arrangements.<sup>29</sup> With respect to Big Rivers' concerns about the possibility of regulatory delay, Midwest ISO states that once Big Rivers signs the Transmission Owners Agreement, it will make every reasonable effort to assist Big Rivers with obtaining the necessary regulatory approvals. Midwest ISO states that it believes nine months from the commencement of service under Attachment RR is enough time to obtain the approvals necessary for integration. Midwest ISO further states that, in the event that Big Rivers is unable to meet the nine month deadline despite good faith efforts to do so, it will make a section 205 filing to amend Attachment RR to extend the deadline.<sup>30</sup>

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<sup>25</sup> E.ON Comments at 4-5.

<sup>26</sup> Duke Comments at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *Id.*

<sup>29</sup> Midwest ISO Answer at 4.

<sup>30</sup> *Id.* at 5.

18. Midwest ISO urges the Commission to reject E.ON's arguments. Midwest ISO notes that E.ON's comments are similar to those presented by E.ON in the proceedings concerning the cancellation of the Amended CRSG Agreement and the Coordination Agreement with Manitoba Hydro, and that Midwest ISO has addressed E.ON's arguments there at length.<sup>31</sup> Midwest ISO argues that Attachment RR is not discriminatory because contingency reserve service under Attachment RR will be available to E.ON on the same basis as other Balancing Authorities.<sup>32</sup> Midwest ISO argues that E.ON seeks to have the Commission rule that Midwest ISO must share its operating reserves with non-member Balancing Authorities. According to Midwest ISO, such a ruling would have the effect of requiring Midwest ISO to offer any service offered to members of Midwest ISO to E.ON without presenting E.ON with the dilemma of having to give up pancaked rates and is not supported by Commission precedent.<sup>33</sup>

19. Midwest ISO assures Duke that Attachment RR is transitional and limited to only Transmission Owners that are integrating into Midwest ISO.<sup>34</sup> Regarding Duke's request for clarification, Midwest ISO states that the revisions made to section C.3 of Attachment RR in its October 14 Filing ensure that Schedule 5 and 6 charges are assessed for all hours and not merely the hours during which emergency energy may be provided.<sup>35</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

20. 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.

21. 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.

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<sup>31</sup> See Midwest ISO Answer, Docket No. ER09-1769-000, at 6.

<sup>32</sup> Midwest ISO Answer at 5.

<sup>33</sup> *Id.* at 6 (citing *Midwest Indep. Trans. System Operator, Inc.*, 126 FERC ¶ 61,139 (2009)).

<sup>34</sup> Midwest ISO Answer at 4.

<sup>35</sup> *Id.* at 4.

**B. Substantive Matters**

22. We will conditionally accept Midwest ISO's proposed Attachments RR and RR-1, to be effective January 1, 2010, as requested. We will reject Dairyland's request for an effective date prior to January 1, 2010 as unnecessary. The Amended CRSG Agreement will terminate on December 31, 2009,<sup>36</sup> and Dairyland will be able to take service under Attachment RR commencing January 1, 2010.

23. We will not direct Midwest ISO to revise section B of Attachment RR as requested by Big Rivers. We find that Midwest ISO's decision to limit service under Attachment RR to entities that have committed to integrate into Midwest ISO, as opposed to just considering doing so, is just and reasonable. We reject Big Rivers' argument that it will be required to prematurely commit to integration into Midwest ISO. While Big Rivers would be required to commit to integration into Midwest ISO in order to take service under Attachment RR, Big Rivers' argument belies the fact that Big Rivers is not required to take service under Attachment RR. As Midwest ISO points out, Big Rivers has the option of simply carrying its reserve requirement on its own system or seeking other arrangements rather than relying on Midwest ISO.

24. Additionally, we will not direct Midwest ISO to modify the language of section E as requested by Big Rivers. We agree with Midwest ISO that nine months is a sufficient amount of time for regional or state regulatory approval to be sought and acquired. We note Midwest ISO's answer that if it appears that such approvals are still pending in spite of timely filings and every good faith effort to meet the nine month deadline, the Midwest ISO will make a section 205 filing to amend Attachment RR to extend the deadline as necessary.<sup>37</sup>

25. In response to E.ON's concerns, we find that Attachment RR is not unduly discriminatory or preferential. As the Commission has explained, "it is not undue discrimination to treat categories of customers with different characteristics differently."<sup>38</sup> Here, Attachment RR is not differentiating between customers. On the contrary, Attachment RR offers all customers (Transmission Owners) the opportunity to receive contingency reserve service so long as they take the steps necessary to be eligible for service. In other words, E.ON and other Transmission Owners would not be treated differently and will receive contingency reserve service under Attachment RR from Midwest ISO so long as they take the steps prescribed in section B of Attachment RR, including agreeing to integrate into Midwest ISO.

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<sup>36</sup> Cancellation Order, 129 FERC ¶ 61,281.

<sup>37</sup> Midwest ISO Answer at 5.

<sup>38</sup> *Entergy Servs. Inc.*, 93 FERC ¶ 61,156, at n.8 (2000).

26. We reject as beyond the scope of this proceeding E.ON's arguments that Midwest ISO's proposal to amend its Coordination Agreement with Manitoba Hydro is unduly preferential. E.ON has raised similar arguments in Docket No. ER10-54-000, and we will address those arguments in that docket.<sup>39</sup>

27. In response to Duke's request for clarification, we find that section C.3 of Attachment RR, as revised by Midwest ISO in Docket No. ER10-27-001, provides that Schedule 5 and Schedule 6 charges will be assessed for all the hours in which emergency reserves are scheduled, and not prorated to reflect the time they are provided. With respect to Duke's comment that it believes that a Reserve Service Customer must take Reliability Coordination services, we note that section B of Attachment RR provides that, in order to take service under Attachment RR, "[t]he Balancing Authority or the Transmission Owner [must have] executed a Service Agreement KK-1 to obtain Reliability Coordination Service."<sup>40</sup>

28. Finally, we note that the tariff sheets submitted by Midwest ISO contain several ambiguities and discrepancies that must be corrected. First, we note that there is a discrepancy between the *four* potential reasons for termination of service under Attachment RR in section E and the *two* listed in section 7.0 of the *pro forma* Attachment RR-1. Second, we find that the reference to "RSG" in section C.4 could be ambiguous, and we will require Midwest ISO to clarify the reference by spelling out the acronym.<sup>41</sup> Third, we note that the references in Attachment RR to "Service Agreement KK-1" and "Service Agreement RR-1" are ambiguous.<sup>42</sup> While Attachment KK-1 is a form of service agreement under the Tariff, the title is "Attachment KK-1." Similarly, Attachment RR-1 is a form of service agreement, but the title is "Attachment RR-1," and, upon acceptance, will be found under the Tariff as such. Accordingly, Attachment RR should refer to "a service agreement as shown in Attachment KK-1," as opposed to "Service Agreement KK-1," and "a service agreement as shown in Attachment RR-1," as opposed to "Service Agreement RR-1." Thus, we condition our acceptance on Midwest ISO making a compliance filing, within 30 days of the date of this order, setting forth language that eliminates this discrepancy and resolves these ambiguities.

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<sup>39</sup> Coordination Agreement Order, 129 FERC ¶ 61,282.

<sup>40</sup> October 2 Filing at Original Sheet No. 3816.

<sup>41</sup> "Reserve Sharing Group" or "RSG" is a defined term in the NERC Glossary of Terms. Here, however, we believe Midwest ISO refers to Revenue Sufficiency Guarantee.

<sup>42</sup> See, e.g., October 2 Filing at Original Sheet No. 3816.

The Commission orders:

(A) Attachments RR and RR-1 are hereby conditionally accepted, effective January 1, 2010.

(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 )

Kimberly D. Bose,  
Secretary.