

129 FERC ¶ 61,282
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-54-000

ORDER ACCEPTING COORDINATION AGREEMENT

(December 29, 2009)

1. On October 13, 2009, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing, pursuant to section 205 of the Federal Power Act, proposed revisions to the Coordination Agreement By and Between Midwest ISO and Manitoba Hydro (Coordination Agreement) in order to incorporate provisions related to the sharing of contingency reserves between the parties to the Coordination Agreement.¹ In this order, the Commission accepts the Coordination Agreement, with an effective date of January 1, 2010, as requested.

I. Background

2. Midwest ISO states that, since September 27, 2001, it has coordinated many aspects of its operations with Manitoba Hydro pursuant to the Coordination Agreement. Manitoba Hydro is a Canadian Crown corporation that owns and operates electric generation and transmission facilities in the province of Manitoba, Canada, which is adjacent to the Midwest ISO region. The Coordination Agreement governs such matters as transmission service and pricing, congestion management, generation and transmission outages, transmission planning, and reliability coordination.

3. As a Canadian Crown corporation, Manitoba Hydro was created by and is governed by the provisions of The Manitoba Hydro Act.² By virtue of provincial law and Manitoba Hydro's membership in the Midwest Reliability Organization, Manitoba Hydro is subject to reliability standards adopted by the North American Electric Reliability Corporation, Inc. (NERC), except to the extent disallowed by provincial law.

¹ Midwest ISO Second Revised Rate Schedule FERC No 2.

² Revised Statutes of Manitoba 1987, c.H190.

In keeping with Manitoba Hydro's statutory framework, Manitoba Hydro acts as its own NERC-certified Balancing Authority area. Midwest ISO has acted as Manitoba Hydro's Reliability Coordinator since the inception of the Coordination Agreement in 2001.

4. Manitoba Hydro, Midwest ISO and other entities have historically shared contingency reserves, initially through the Restated Mid-Continent Area Power Pool (MAPP) Agreement, then through the 2006 Midwest Contingency Reserve Sharing Group Agreement, and most recently through the Amended and Restated Midwest Contingency Reserve Sharing Group Agreement (Amended CRSG Agreement). The Amended CRSG Agreement will terminate by its own terms at midnight, December 31, 2009, pursuant to section 4.2.3 of the Amended CRSG Agreement.³

5. Finally, we note that there are two 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.⁴ In Docket Nos. ER10-27-000 and ER10-27-001, Midwest ISO proposed a new Attachment RR (Real-Time Reserve Services Available to Balancing Authorities During Phased Integration) setting forth the details, rates and procedures to be employed to facilitate the supply of reserves to new Transmission Owners during a phased integration into Midwest ISO.⁵

II. Coordination Agreement

6. Midwest ISO states that, in light of the termination of the Amended CRSG Agreement and in order to preserve the economic efficiencies of reserve sharing arrangements, Midwest ISO proposes revisions to its existing Coordination Agreement with Manitoba Hydro to incorporate reserve sharing provisions agreed upon by the parties under a new Appendix B.

³ See *Midwest Indep. Trans. Sys. Operator, Inc.*, 125 FERC ¶ 61,323, at P 46 (2008) (accepting the termination provision in section 4.2.3 of the Amended CRSG Agreement).

⁴ *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,281 (2009) (accepting notice of cancellation of Amended CRSG Agreement).

⁵ *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,283 (2009) (conditionally accepting proposed Attachment RR).

A. Compliance with NERC Standards

7. Midwest ISO states that the proposed amendments to the Coordination Agreement meet the requirements for a reserve sharing group established in NERC Reliability Standard BAL-002-0 – Disturbance Control Performance. Midwest ISO states that BAL-002-0 provides that a Balancing Authority area may elect to fulfill its Contingency Reserve obligations by participating as a member of a Reserve Sharing Group. Midwest ISO states that, in order to establish a Reserve Sharing Group, BAL-002-0 R2 requires the Reserve Sharing Group to specify how it meets the six elements required by BAL-002-0 R2 in the Reserve Sharing Group's policies. Midwest indicates where language is found in the new Appendix B that addresses each of the six elements:

- (1) The minimum reserve requirement for the group (section 3.1);
- (2) Its allocation among members (section 3.2);
- (3) The permissible mix of Operating Reserve-Spinning and Operating Reserve-Supplemental that may be included in Contingency Reserve (section 4.4);
- (4) The procedure for applying Contingency Reserve in practice (section 5.2);
- (5) The limitations, if any, upon the amount of interruptible load that may be included (section 4.8); and,
- (6) Rules to ensure that the same portion of resource capacity (e.g., reserves from jointly owned generation) shall not be counted more than once as Contingency Reserve by multiple Balancing Authorities (section 3.4).

B. Administration of the Midwest ISO-Manitoba Hydro Contingency Reserve Sharing Group

8. Midwest ISO states that Appendix B of the Coordination Agreement establishes a Contingency Reserve Sharing Group Committee composed of one representative of each of the parties to the Coordination Agreement, to implement and oversee the operation of the group. Midwest ISO states that this implementation must be in compliance with NERC Reliability Standards, Regional Entity Requirements and Appendix B. Midwest ISO states that one of the responsibilities of the Contingency Reserve Sharing Group Committee is to develop Operating Protocols that are binding on the parties pursuant to section 3.11 of Appendix B. Midwest ISO states that it also performs the services of Group Administrator to assist the parties in implementing the provisions of Appendix B and the Operating Protocols. Midwest ISO states that it is paid for its services as Group Administrator through Schedule CR-2 to Appendix B. Schedule CR-2 obligates Manitoba Hydro to pay the lesser of \$3,000.00 per month or 50 percent of Midwest ISO's

annual Reserve Sharing Group Administration Costs. Schedule CR-2 provides that Midwest ISO is responsible for the remainder. Schedule CR-2 also provides that cost recovery for capital costs is to be negotiated by the parties in advance of the proposed projects.

C. Contingency Reserve Obligation and Allocation

9. Midwest ISO states that section 3.1 of Appendix B of the Coordination Agreement provides that the Contingency Reserve Obligation of the Midwest ISO-Manitoba Hydro Contingency Reserve Sharing Group shall be 2,000 MW, unless otherwise specified in the NERC Disturbance Control Standards as a result of a violation.

10. Section 3.2 of Appendix B allocates 1,850 MWs of the Contingency Reserve Obligation to Midwest ISO and 150 MWs to Manitoba Hydro. Midwest ISO states that the allocation was negotiated between the parties and was confirmed as being deliverable through the combined transmission systems in accordance with sections 3.5 and 3.6 of Appendix B, which require that each party ensure that their Contingency Resources are deliverable.⁶

11. Midwest ISO states that a deliverability study was conducted to demonstrate the ability to deliver Contingency Reserves between the Midwest ISO and Manitoba Hydro Balancing Authority areas, for the loss of the Reserve Sharing Group's most severe single contingency, the D602F 500 kV alternating current line and associated high-voltage direct current run back. Midwest ISO describes the methodology that was used to conduct the deliverability study and provides all data files and study results in a non-public version of the filing.

12. Midwest ISO states that deliverability of Contingency Reserves within the Midwest ISO Balancing Authority for Midwest ISO Contingencies is ensured through the Energy and Operating Reserve Markets Reserve Zone methodology. Midwest ISO states that its Reserve Zone methodology was approved by the Commission in various orders on the Ancillary Services Market.⁷ Midwest ISO states that, in real-time operation,

⁶ In addition to BAL-002-0, another Commission approved reliability standard TOP-002 requires that the reserves be deliverable (TOP-002, R7 states that "Each Balancing Authority shall plan to meet capacity and energy reserve requirements, including the deliverability/capability for any single Contingency.").

⁷ Midwest ISO Transmittal Letter at 7 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008), *order on reh'g*, 123 FERC ¶ 61,297 (2008); *Midwest Indep. Trans. Sys. Operator, Inc.*, 125 FERC ¶ 61,318 (2008); *see also Midwest Indep. Trans. Sys. Operator, Inc.*, 125 FERC ¶ 61,062 (2008), *order on reh'g*, 126 FERC ¶ 61,144 (2009)).

contingency reserve deliverability is preserved either through use of Real-time Contingency Analysis or Operating Guides.

D. Emergency Energy Sales

13. Midwest ISO states that the activation of Contingency Reserves and the resulting delivery of Contingency Resources effectively constitute the sale of Emergency Energy from one party to the other party and that section 3.8 of Appendix B provides that each party is obligated to pay for Emergency Energy pursuant to Schedule CR-1 of the Coordination Agreement. The newly added Schedule CR-1 specifies the rate as the hourly Locational Marginal Price at the MHEB Interface CP Node plus \$50.00 per MWh.

E. Operating Protocols

14. Midwest ISO includes for informational purposes the initial set of Operating Protocols that provide the practices and procedures to be used by the Midwest ISO-Manitoba Hydro Contingency Reserve Sharing Group. Midwest ISO states that the Midwest ISO-Manitoba Hydro Contingency Reserve Sharing Group is charged with reviewing new NERC and Regional Entity requirements to determine if revisions to the Operating Protocols are required.

F. Benefits

15. Midwest ISO states that the proposed amendments to the Coordination Agreement provide the immediate benefit of allowing the parties to continue to share contingency reserves after the anticipated termination of the Amended CRSG Agreement at midnight on December 31, 2009. Midwest ISO states that it is in an optimum position to share contingency reserves with Manitoba Hydro given Midwest ISO's role as Reliability Coordinator for Manitoba Hydro, which gives Midwest ISO visibility over the Manitoba Hydro Balancing Authority area. Further, Midwest ISO states that, unlike other external entities, Manitoba Hydro is able to participate in the Midwest ISO's Energy and Operating Reserve Markets by submitting offers from its External Asynchronous Resource, which is supplied by hydro generation. Midwest ISO states that offers from Manitoba Hydro's External Asynchronous Resource are subject to a four-second dispatch by Midwest ISO, and such resource is valuable for fast-ramping Regulation and Contingency Reserve, in addition to energy for the Midwest ISO region. Midwest ISO states that, if Manitoba Hydro is unable to negotiate a reserve sharing arrangement with one or more Balancing Authority areas, Manitoba Hydro's contingency reserve obligation would increase significantly, thereby reducing the amount of low cost renewable hydroelectric energy and regulation service available for sale by Manitoba Hydro into Midwest ISO's Energy and Operating Reserve Markets.

III. Notice of Filing and Responsive Pleadings

16. Notice of Midwest ISO's October 13, 2009 filing was published in the *Federal Register*, 74 FR 54984 (2009), with interventions and protests due on or before November 5, 2009. Duke Energy Corporation,⁸ Consumers Energy Company, and Xcel Energy Services, Inc. filed motions to intervene.

17. E.ON U.S., LLC (E.ON)⁹ and Big Rivers Electric Corporation (Big Rivers) filed motions to intervene and comments. Manitoba Hydro filed a motion to intervene out of time and comments. Midwest ISO filed an answer.

18. Manitoba Hydro states that it fully supports Midwest ISO's proposed revisions to the Coordination Agreement and urges the Commission to approve the filing for the reasons stated by Midwest ISO in its transmittal letter.

19. While not protesting the filing at this time, E.ON states its belief that the Commission should review this proceeding, the Notice of Cancellation of the Amended CRSG Agreement, and the Attachment RR filings together in order that the totality of the consequences might be considered. Specifically, E.ON questions whether the consequence of these filings is one of undue preference, in that "a continuity of reserves for certain Midwest C[ontingency] R[eserve] S[haring] G[roup] member Balancing Authorities is assured to the exclusion of others."¹⁰

20. Both E.ON and Big Rivers argue that Midwest ISO is giving the appearance of providing services on a preferential basis in the wake of the cancellation of the Amended CRSG Agreement. Specifically, E.ON and Big Rivers assert that it is unduly preferential for Midwest ISO to revise its Coordination Agreement with Manitoba Hydro to provide reserve sharing service to a non-Midwest ISO Transmission Owner when it is unwilling to do so with E.ON, Big Rivers or East Kentucky Power Cooperative, Inc. and where Midwest ISO is doing so purely for economic reasons.¹¹

21. Finally, Big Rivers states that it does not believe that it, and other similarly situated entities, should be required to become a Midwest ISO Transmission Owner in

⁸ Duke filed on behalf of its subsidiaries Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc. and Duke Energy Business Services, LLC.

⁹ E.ON filed on behalf of its subsidiaries Louisville Gas & Electric Company and Kentucky Utilities Company.

¹⁰ E.ON Comments at 5.

¹¹ E.ON Comments at 7; Big Rivers Comments at 6 (citing Midwest ISO Transmittal Letter at 2).

order to obtain access to contingency reserves pursuant to Attachment RR when Midwest ISO is willing to make a permanent contingency reserve arrangement with Manitoba Hydro. Further, Big Rivers argues that, while it has no direct coordination arrangement with Midwest ISO, Midwest ISO is a party to the Joint Reliability Coordination Agreement, a seams agreement Midwest ISO has with the PJM Interconnection LLC and the Tennessee Valley Authority, acting in their capacities as Reliability Coordinators. Big Rivers argues that, as a party to a Reliability Coordination Agreement with Tennessee Valley Authority, Big Rivers has agreed to operate by the provisions of the Joint Reliability Coordination Agreement and thus Big Rivers effectively coordinates with Midwest ISO for reliability purposes.

22. Midwest ISO responds that it is not showing undue preference to Manitoba Hydro. Midwest ISO asserts that “[t]o prove the existence of undue discrimination or undue preference, it must be shown that: (1) two classes of customers are treated differently; and (2) that the two classes of customers are similarly situated.”¹² Midwest ISO maintains that E.ON and Big Rivers share none of the characteristics of Manitoba Hydro that are reflected in the Coordination Agreement.

23. Specifically, Midwest ISO points out that Manitoba Hydro is a “Coordinating Owner” of Midwest ISO pursuant to section 1.97 of the Midwest ISO Tariff.¹³ Midwest ISO states that, but for the legal barriers of placing Canadian utility assets under foreign control, Manitoba Hydro would be capable of full membership in Midwest ISO as a Transmission Owner. Further, Midwest ISO states that the Coordination Agreement has historically substituted as closely as possible for the membership that is available to United States transmission owners. Midwest ISO notes that E.ON and Big Rivers are not

¹² Midwest ISO Answer at 4 (citing *Energy Transfer Partners, L.P.*, 120 FERC ¶ 61,086, at P 169 & n.140 (2007)).

¹³ Section 1.97 of the Midwest ISO Tariff defines “Coordinating Owner” as

an entity that is not subject to the jurisdiction of the Commission but participating in the ISO through the execution of a coordination agreement which includes reciprocity provisions with regard to the transmission pricing consistent with Appendix C of the ISO Agreement and as such shall be considered to be within the Transmission Provider Region for the purposes of determining applicable system-average rates. The terms and provisions of a Coordinating Owner’s coordination agreement shall supersede the similar terms and provision of this Tariff where applicable.

similarly situated, as they are not “hobbled by international law from becoming Transmission Owners” of Midwest ISO.¹⁴ However, Midwest ISO states that the proposed revisions to the Coordination Agreement would be extended to Big Rivers and E.ON if they too were Coordinating Owners under the Midwest ISO Tariff.

24. Midwest ISO also distinguishes Big Rivers’ arrangements with its Reliability Coordinator, Tennessee Valley Authority, which is a party to the Joint Reliability Coordination Agreement. Midwest ISO states that, in addition to other obvious differences between the Coordination Agreement and the Joint Reliability Coordination Agreement regarding common Reliability Coordination, tariff administration, and de-pancaked rates,¹⁵ TVA has recently informed Midwest ISO that it will not honor, without compensation, the Joint Reliability Coordination Agreement section 6.5 obligation to share transmission capacity on common contract paths. Further, Midwest ISO states that the chief objective of the Joint Reliability Coordination Agreement, to flow emergency energy between parties when requested, cannot be implemented. Midwest ISO states that, since its inception, section 8.2 of the Joint Reliability Coordination Agreement has provided that under no circumstances would TVA supply emergency energy to PJM or Midwest ISO.¹⁶

25. Finally, Midwest ISO states that the benefits of sharing reserves in the Midwest ISO Energy and Operating Reserves Markets are part and parcel of Regional Transmission Organization membership.

¹⁴ Midwest ISO Answer at 5.

¹⁵ In contrast with the Joint Reliability Coordination Agreement, Manitoba Hydro’s Coordination Agreement, provides that Manitoba Hydro: (1) offers transmission service to eliminate pancaked rates within Midwest ISO and Manitoba Hydro’s combined system; (2) receives revenue distribution pursuant to Appendix C of the Transmission Owners Agreement and the Funds Trust Agreement similarly to other Transmission Owning Members; (3) pays the full Schedule 10 charge on its native load; (4) obtains Tariff Administration and Reliability Coordination services from Midwest ISO; and (5) if it terminates the Coordination Agreement, is obligated to hold harmless transmission customers with existing service agreements, the same as a Transmission Owner that withdraws from Midwest ISO.

¹⁶ Midwest ISO Answer at 6, citing section 8.2 of the Joint Reliability Coordination Agreement which provides: “Notwithstanding any other provisions of this Agreement, Midwest ISO and PJM acknowledge that TVA cannot sell energy, including emergency energy, to any entity that is not an authorized purchaser under the Tennessee Valley Authority Act.”

IV. Discussion

A. Procedural Matters

26. 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.

27. 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 Manitoba Hydro'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.

28. 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. Commission Determination

29. We accept the proposed revisions to the Coordination Agreement, to be effective January 1, 2010, as requested. We find that the reserve sharing group terms included in the Coordination Agreement are consistent with the requirements set forth in NERC Reliability Standard BAL-002-0, as well as the deliverability requirements set forth in NERC Reliability Standard TOP-002, R7.¹⁷

30. Further, and in response to concerns raised by E.ON and Big Rivers, we find that the reserve sharing provisions included in the Coordination Agreement are not unduly discriminatory or preferential. As we have explained, "it is not undue discrimination to treat categories of customers with different characteristics differently."¹⁸ Here, we find that Manitoba Hydro is different from the other Balancing Authority areas adjacent to Midwest ISO in that it has the status of a "Coordinating Owner" under the Midwest ISO Tariff and, as a Canadian Crown corporation, it is faced with legal barriers to becoming a Midwest ISO Transmission Owner.¹⁹ Midwest ISO has represented that it would provide

¹⁷ See *supra* note 6.

¹⁸ *Entergy Servs. Inc.*, 93 FERC ¶ 61,156, at n.8 (2000).

¹⁹ As Midwest ISO states, the Coordination Agreement has historically substituted as closely as possible for the membership that is available to United States transmission owners. Midwest ISO Answer at 5.

the same benefits under Manitoba Hydro's Coordination Agreement to any other Coordinating Owner.²⁰

31. We agree with Midwest ISO that Big Rivers is not a Coordinating Owner of Midwest ISO via its indirect participation in the Joint Reliability Coordination Agreement. Midwest ISO's Tariff requires that Coordinating Owners have a coordination agreement "which includes reciprocity provisions with regard to the transmission pricing consistent with Appendix C of the ISO Agreement."²¹ The Joint Reliability Coordination Agreement does not contain the requisite reciprocity provisions for transmission pricing and, therefore, Big Rivers cannot be considered a Coordinating Owner. Therefore, we find that Big Rivers and Manitoba Hydro are not similarly-situated and Midwest ISO's treatment of Manitoba Hydro is not unduly discriminatory or preferential given the facts and circumstances in this case.

32. Finally, we reject as beyond the scope of this proceeding E.ON's arguments that Midwest ISO's proposed Attachment RR (Docket Nos. ER10-27-000 & ER10-27-001) is unduly preferential. E.ON has raised similar arguments in that proceeding, and we will address those arguments in those dockets.²²

The Commission orders:

The Coordination Agreement is hereby accepted for filing, to be effective January 1, 2010, as requested.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁰ We note that currently Manitoba Hydro is Midwest ISO's only Coordinating Owner.

²¹ *See supra* note 13.

²² *Midwest Indep. Trans. Sys. Operator, Inc.*, 129 FERC ¶ 61,283 (2009).