

131 FERC ¶ 61,073
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-810-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS AND
ORDERING COMPLIANCE FILING

(Issued April 27, 2010)

1. This order accepts, subject to modification, Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed amendment to Section 38.2.5.g of its Open Access Transmission, Energy and Operating Reserve Markets Tariff designed to clarify the consequences if a market participant does not comply with the tariff procedures for requesting and scheduling outages of generation resources. Midwest ISO's proposed tariff revisions are accepted, subject to further modification, effective April 28, 2010.

I. Background

2. Midwest ISO states that, as an independent system operator, it is responsible for the coordination of generator planned outages to ensure reliable operations.¹ In light of prior real-time system events of significant forced outages of generation resources and conflicts between planned nuclear generation outages, Midwest ISO filed proposed revised tariff language intended to improve the outage coordination provisions found in Section 38.2.5.g of the tariff on October 28, 2009 in Docket No. ER10-128-000. Those proposed revisions addressed the procedures that the operators of generation resources must use to notify Midwest ISO of potentially conflicting generator planned outages.

¹ 18 C.F.R. § 35.34(j)(4)(iii) (2009).

The Commission conditionally approved the proposed enhanced generation outage tariff procedures on December 23, 2009.²

3. Midwest ISO further states that from July 2009 through February 2010, it also engaged in discussions with affected stakeholders concerning the need for additional tariff language that addresses the consequences if a market participant does not comply with the approved, outage coordination procedures.

II. Midwest ISO's Filing

4. From its discussions with stakeholders, Midwest ISO states that it has developed additional tariff procedures with the objective of encouraging market participant compliance with the outage scheduling provisions. The proposed modification applies to the situation where: (1) a market participant does not provide Midwest ISO with at least one year advance notice of a generator planned outage (Criterion 1); (2) Midwest ISO determines that the proposed outage would cause a scheduling conflict (Criterion 2); and (3) the market participant refuses to reschedule the generator planned outage as Midwest ISO requests (Criterion 3).³

5. According to Midwest ISO, the proposed modifications penalize the market participant in the situation described above by designating the outage taken as an unplanned/forced outage for the purposes of calculating the unforced capacity of the generation resource pursuant to Module E (Resource Adequacy) of the tariff. That is, the

² *Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,268 (2009) (December 23 Order). Midwest ISO made the required compliance filing on January 22, 2010. The compliance filing was accepted by delegated letter order on March 18, 2010.

³ Section 38.2.5.g.vii states: "If: (1) a market participant does not provide the Transmission Provider with at least one year advance notice of a proposed Generator Planned Outage; (2) the Transmission Provider determines that the proposed outage would cause a scheduling conflict; and (3) the market participant refuses to reschedule the proposed Generator Planned Outage as requested by the Transmission Provider, then the Transmission Provider shall consider the hours of the market participant's scheduled outage that the Transmission Provider had requested to be rescheduled to be an unplanned/forced outage when calculating the Unforced Capacity value for such Generation Resource under Module E for the next Planning Year. The Transmission Provider will calculate the XEFOR_d for such Generation Resource such that the cumulative effect that the unplanned/forced outage would have had on the XEFOR_d of the Generation Resource over the subsequent three Planning Years will be realized in only the next Planning Year."

proposed modifications provide that such an unplanned/forced outage would not be treated as a generator planned outage for the calculation of XEFOR_d.⁴ Midwest ISO states that the original proposal to stakeholders was modified so that only the calculation of XEFOR_d for such generation resource for the following planning year is impacted, rather than the XEFOR_d calculation for the following three (3) years, which would be the normal consequence of an unplanned/forced outage. Thus, Midwest ISO proposes to change an outage from a generator planned outage to a generator forced outage for only the following planning year and the XEFOR_d for the subsequent planning years would not be impacted. Further, Midwest ISO will not report the adverse XEFOR_d impact to the North American Electric Reliability Corporation (NERC) Generating Availability Data System (GADS). Midwest ISO asserts that the proposed generation resource outage enforcement mechanism is necessary because of the potentially significant risk to reliability associated with outages of generation resources that are not properly coordinated. Midwest ISO requests an effective date of April 28, 2010 for the proposed tariff modification.

III. Notice of Filing and Responsive Pleadings

6. Notice of Midwest ISO's filing was published in the *Federal Register*, 75 FR 11162 (2010), with interventions and protests due on or before March 19, 2010. Timely, unopposed motions to intervene, with comments were filed by Basin Electric Power Cooperative (Basin Electric), Wisconsin Electric Power Company (Wisconsin Electric), and MidAmerican Energy Company (MidAmerican). Timely motions to intervene without substantive comments were filed by Detroit Edison Company, RRI Energy, Inc., Consumers Energy Company, Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc., Midwest ISO Transmission Owners,⁵ FirstEnergy

⁴ Sections 69.4 and 69.4.1 of the tariff provide that in order for the Transmission Provider to account for resource performance and availability, "Capacity Resources will be given capacity values based on Unforced Capacity... [t]he Unforced Capacity for a Capacity Resource that is a Generation Resource is based on an evaluation of the type and volume of interconnection service... and XEFOR_d value of such generation resource. Section 1.701a of the tariff defines XEFOR_d as [t]he Equivalent Forced Outage Rate Demand (EFOR_d) excluding outside management control events, as defined in the BPM for Resource Adequacy."

⁵ The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Corporation
(continued...)

Services Company and FirstEnergy Solutions Corporation, Dynegy Power Marketing, Inc., Otter Tail Power Company, Exelon Corporation, American Municipal Power, Inc., and Calpine Corporation. Timely motions to intervene and a joint protest were filed by NextEra Energy Resources, LLC and Dominion Resources Services, Inc. (Joint Protesters).

7. Midwest ISO filed a response to the comments and the protest.

IV. Discussion

A. Procedural Matters

8. 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.

9. 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

10. The Commission will accept the Midwest ISO tariff filing subject to the compliance filing ordered and discussed below.

for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

1. Clarification of Scope and Meaning of Proposal

a. Protest and Comments

11. Basin Electric states that it does not take any position with respect to the proposed penalty provision.⁶ However, it seeks clarification as to the scope of Section 38.2.5.g.vii and points out that the proposed penalty provision is broader in scope than the planned outage reporting requirement. That is, according to Basin Electric, sections 38.2.5.g and 38.2.5.g.i, ii, iii, and v explicitly limit their application to generation resources “within the Transmission Provider Region,” but proposed section 38.2.5.g.vii does not. Basin Electric requests that the Commission direct Midwest ISO to add clarifying language to its penalty provision indicating that it applies only to generation resources “within the Transmission Provider Region.”

12. MidAmerican states that it does not object to the proposed penalty but states that Midwest ISO should clarify the conditions under which the proposed penalty would be imposed.⁷ MidAmerican seeks clarification as to whether Section 38.2.5.g.vii applies to both nuclear and non-nuclear units, noting that, elsewhere, section 38.2.5.g contains separate provisions for nuclear and non-nuclear units, and whether an outage submitted less than one year in advance but nonetheless approved by Midwest ISO would still face the risk of penalty.

13. Joint Protesters agree that Midwest ISO should have some tools to discourage generators from seeking to schedule outages at a late stage but states that without certain clarifications or amendments, the proposal is not just and reasonable.⁸ Joint Protesters ask Midwest ISO to clarify that a generator can take the outage, where Midwest ISO finds there is a conflict, during its proposed period without any adverse implications under the tariff other than that the outage will be treated like an unplanned/forced outage for the purposes of calculating the unforced capacity of the generator pursuant to Module E of the tariff and the calculation of XEFOR_d.

14. In addition, Joint Protesters argue that Midwest ISO should not have unlimited discretion in determining whether the proposed outage would cause a scheduling conflict. They point out that the proposed language uses the term “refuses,” which they assert, implies the generator has a choice to make, and chooses to refuse Midwest ISO’s request. Instead, they argue, if the generator does not have a choice, but must for verifiable,

⁶ See Basin Electric Comments at 4.

⁷ See MidAmerican Comments at 4.

⁸ See Joint Protest at 2.

material reasons take the outage at the time it requests then it should not be subject to the penalty Midwest ISO proposes.⁹ Joint Protesters assert that Midwest ISO should be required to consider the same factors it applies under Section 38.2.5 of its tariff regarding rescheduling planned outages by a generator. Thus, they conclude that the proposed penalty should apply only when a generator has discretion as to whether to take an outage at the proposed time.¹⁰

b. Midwest ISO Answer

15. Midwest ISO states that it is willing to make the clarifications and modifications requested by Basin Electric.¹¹ Midwest ISO addresses MidAmerican's concern by pointing out that the penalty provisions are triggered regardless of whether the unit is nuclear or non-nuclear, and an outage submitted less than a year in advance, but approved by Midwest ISO, would not be subject to penalty provisions because each of the three conditions in Section 38.5.2.g.vii must be present to trigger the penalty.

16. Midwest ISO challenges Joint Protesters' characterization of the proposal. Midwest ISO points out that the language merely proposes penalties when such outages are taken despite Midwest ISO's request to reschedule. In addition, Midwest ISO points out that Section 38.2.5.g already provides an opportunity for parties to negotiate where rescheduling is not feasible.

c. Commission Determination

17. We find that Midwest ISO has sufficiently addressed questions raised by Joint Protesters and MidAmerican. We note that Midwest ISO is willing to make the clarification that Basin Electric requests to address the question of the scope of the penalty. We agree that this change is needed and direct Midwest ISO to modify the tariff language to include that agreed upon clarification in the compliance filing directed below.

⁹ *Id.* at 3.

¹⁰ According to Joint Protesters, if a generator does not have a choice, but must for verifiable, material reasons take the outage at the time it requests, then it should not be subject to the penalty proposed by Midwest ISO. *See* Joint Protest at 3.

¹¹ *See* Midwest ISO Answer at 6.

2. Criterion for Triggering the Penalty

a. Protest and Clarification Requests

18. Regarding Criterion 2, which refers to the possibility that a proposed generator outage would cause a scheduling conflict, MidAmerican notes that Sections 38.2.5.g.ii and iii currently describe various criteria for determining whether an outage must be rescheduled, depending on whether the outage request was “timely” and on how far in advance the outage is scheduled. MidAmerican asks which of these criteria would be used by Midwest ISO to determine whether an outage must be rescheduled.

19. Wisconsin Electric supports Midwest ISO’s filing and the proposed penalty;¹² however, Wisconsin Electric similarly requests clarification regarding the criterion for determining whether a proposed outage would cause a scheduling conflict. Wisconsin Electric requests that Midwest ISO be directed to modify the proposed tariff language to include the explanatory language contained in Midwest ISO’s transmittal letter. Wisconsin Electric specifically proposes that Midwest ISO be directed to modify Criterion (2) to state: “... (2) the Transmission Provider determines that the proposed outage would cause a scheduling conflict *as specified in this Section 38.5.2.g; . . .*” [Underlined language added].

b. Midwest ISO Answer

20. Midwest ISO argues that, contrary to Joint Protesters’ characterization, it does not have unlimited discretion as to whether the proposed outage would cause a scheduling conflict. Midwest ISO states that it would determine whether such conflicts exist in accordance with the Commission-approved procedures contained in Section 38.2.5.g. Midwest ISO states that it would make explicit in the tariff that it will use the procedures in Section 38.2.5.g to evaluate outage conflicts, if so directed by the Commission.¹³

c. Commission Determination

21. We find that Midwest ISO has clearly explained how it will evaluate whether a proposed generator outage would cause a scheduling conflict; specifically Midwest ISO will use existing tariff language Section 38.2.5.g. We direct Midwest ISO, in the interest of transparency, to include the tariff language proposed by Wisconsin Electric in the compliance filing ordered below.

¹² See Wisconsin Electric Comments at 3.

¹³ See Midwest ISO Answer at 5.

3. Requests to Further Revise the Tariff Language

a. Comments

22. MidAmerican states that the proposed tariff language does not show how Midwest ISO will calculate the penalty if a market participant refuses to reschedule an outage but notes that Midwest ISO's transmittal letter contains a simple calculation that should be included in the tariff. Alternatively, MidAmerican proposes language that would provide clarity, as follows:

... during the next Planning Year, the Transmission Provider shall ~~consider the hours of the Market Participant's scheduled outage that the Transmission Provider had requested to be rescheduled to be an unplanned/forced outage when calculating~~ calculate the XEFORD used to determine the Unforced Capacity value for such Generation Resource under Module E for the next Planning Year. The Transmission Provider will calculate the XEFORD for such Generation Resource such that the cumulative effect that the unplanned/forced outage would have had on the XEFORD of the Generation Resource over the subsequent three Planning years will be realized in only the next Planning Year by (1) adding to the numerator of the XEFORD equation a number equal to three times the duration of the outage, and (2) adding to the denominator of the XEFORD equation a number equal to the duration of the outage. [Strikeout indicates deleted language and underlining indicates added language].

23. MidAmerican further requests that Midwest ISO confirm whether all uses of the term "generator planned outage" in Section 38.2.5.g are consistent with the definition in Module A of the tariff. MidAmerican points out that Section 1.271 of the tariff defines the term "generator planned outage" as:

The scheduled removal from service, in whole or in part, of a Generation Resource for inspection, maintenance or repair *with the approval of the Transmission Provider* in accordance with the Business Practices Manuals. (Emphasis added.)

MidAmerican notes that usage of the term "generator planned outage" in the proposed revision does not appear to be modified by the phrase "with the approval of the Transmission Provider."

b. Midwest ISO Answer

24. Midwest ISO responds that it does not agree that the language regarding the calculation of the penalty is unclear but it will modify the language to further clarify it, if so directed by the Commission. Regarding MidAmerican's concern regarding use of the

tariff-defined term “generator planned outage,” Midwest ISO notes that in each instance, the word “proposed” precedes the term “generator planned outage,” thus slightly altering the meaning.¹⁴

c. Commission Determination

25. We direct Midwest ISO, in the interest of clarity, to modify the tariff language regarding the calculation used to impose the penalty on a market participant that refuses to reschedule an outage in its compliance filing. We further find that the tariff should be modified to address MidAmerican’s concerns about the use of the phrase “generator planned outage” in the penalty provision; use of “proposed” before a defined term that means “approved” is confusing. These modifications should be included in the compliance filing ordered below.

4. Proposal is Unduly Discriminatory

a. Protest

26. Joint Protesters argue that Midwest ISO must address how it seeks to coordinate between requested generation outages and requested transmission outages. They complain that Midwest ISO seeks to impose stricter scheduling provisions on generators, without proposing any changes or attempting to address whether some of the same objectives can be achieved through adjusting transmission outages. They argue that Midwest ISO has not demonstrated that relying exclusively on adjustments to generator outages is just and reasonable.

b. Midwest ISO Answer

27. Midwest ISO asserts that the Commission has already ruled on the issue of whether its proposal discriminates against generation resources in favor of transmission resources.¹⁵ Therefore, Midwest ISO argues, Joint Protesters’ argument is an impermissible collateral attack on the Commission’s prior decision and should be rejected.

c. Commission Decision

28. We agree with Midwest ISO that the discrimination concern raised by Joint Protesters was addressed by the Commission in the December 23 Order, and as such

¹⁴ See Midwest ISO Answer at 4-6.

¹⁵ See Midwest ISO Answer at 6 citing December 23 Order, 129 FERC ¶ 61,268 at P 23.

represent an impermissible collateral attack on that order.¹⁶ We will not revisit the issue here.

The Commission orders:

(A) The proposed revisions to the Midwest ISO tariff are hereby accepted for filing, effective April 28, 2010, as requested, subject to the compliance filing ordered below.

(B) Midwest ISO is directed to make 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.

¹⁶ In the December 23 Order the Commission said:

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.[] 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. Footnote omitted.

December 23 Order, 129 FERC ¶ 61,268 at P 23.