

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc. Docket Nos. ER04-458-004
ER04-458-006

ORDER ACCEPTING IN PART AND REJECTING IN PART
COMPLIANCE FILING TO ORDER NOS. 2003 AND 2003-A

(Issued April 15, 2005)

1. In this order, we accept in part and reject in part Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its open access transmission tariff (OATT) filed pursuant to the Commission's order issued on July 8, 2004, and clarified by order issued on October 28, 2004,¹ and pursuant to Order Nos. 2003 and 2003-A.² We also direct a further compliance filing from Midwest ISO. This action benefits Midwest ISO customers because it ensures that the rates, terms, and conditions for service are just and reasonable and further safeguards the reliability of the transmission system within Midwest ISO's footprint.

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 (July 8 Order), *order on clarification*, 109 FERC ¶ 61,085 (2004) (October 28 Order). On August 26, 2004, the Commission granted Midwest ISO an extension of time to make the instant compliance filing.

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *reh'g pending*; *see also Notice Clarifying Procedures*, 106 FERC ¶ 61,009 (2004).

Background

2. In the July 8 Order, the Commission accepted in part and rejected in part Midwest ISO's proposed revisions to the pro forma tariff sheets filed in compliance with Order Nos. 2003 and 2003-A. The Commission found that certain of Midwest ISO's proposed revisions were inconsistent with Order Nos. 2003 and 2003-A, and rejected them. The Commission also directed Midwest ISO to submit a further compliance filing to compensate Generation Owners for rescheduling outages and for providing emergency redispatch.³ The Commission also required Midwest ISO to revise the Attachment O formula rate to eliminate the potential for over-recovery of certain costs by Transmission Owners.⁴

3. On November 8, 2004 (November 8 Filing) as amended on January 18, 2005 (January 18 Amendment), Midwest ISO submitted a compliance filing. It proposes to add a new Attachment Y (an emergency condition service compensation schedule) and a new Attachment Z (a generator maintenance outage compensation schedule). It also proposes revisions to the Attachment O formula rate to address the Commission's concern about the potential for over-recovery of certain costs by Transmission Owners.

Attachment Y

4. Midwest ISO proposes to compensate Generation Owners⁵ that provide Emergency Conditions Service at Midwest ISO's direction. Specific actions that may be required and compensated under Attachment Y include starting-up, ramping-up, ramping-down, changing reactive power production, assisting with black start or restoration efforts, and deferring maintenance schedules.⁶

³ 108 FERC ¶ 61,027 at P 65-69.

⁴ *Id.* at P 49.

⁵ We note that Midwest ISO uses the term "Generator" when referring to either a generation facility or the entity owning such facility. "Generation Owner" is consistent with Midwest ISO's Transmission Energy Markets Tariff definition for such entity. This order will use that term.

⁶ *See* Midwest ISO's November 8 Transmittal Letter at 5 and 6.

5. Attachment Y has two compensation mechanisms – one that applies when an Emergency Conditions Service order conflicts with an existing obligation of a resource owner and one when such service can be provided without interfering with an existing obligation.⁷
6. When an order to provide Emergency Conditions Service conflicts with an existing obligation, Midwest ISO may either assume financial responsibility for the interrupted sale or assume the delivery obligation of the Generation Owner. Under such circumstances, any compensation would be adjusted to reflect the avoided cost of the Generation Owner.⁸
7. When an order to provide Emergency Conditions Service does not conflict with an existing commitment, the Generation Owner will be paid the greater of: (1) \$100/MWh; or (2) 115 percent of the actual out-of-pocket delivered fuel cost to run the affected facility plus variable operation and maintenance expenses. If start-up is required, compensation shall be consistent with the unit characteristic of each affected facility.⁹
8. With the idea that such service benefits all users of the grid, Midwest ISO will apportion the costs between network and point-to-point customers based on relative use of the transmission system during the emergency. Costs apportioned to network service will be billed on a load ratio share basis; costs apportioned to point-to-point service will be billed based on reserved capacity for the month.¹⁰
9. Finally, Midwest ISO reserves the right to assign all costs of Emergency Conditions Service to an individual entity where circumstances conclusively demonstrate that the actions or inactions of such entity, which were in violation of a Midwest ISO directive or Good Utility Practice, proximately caused the emergency which brought about the need to procure Emergency Conditions Service.¹¹

⁷ See Midwest ISO's November 8 Transmittal Letter at 6.

⁸ *Id.*

⁹ Proposed section B.2(b) of Attachment Y.

¹⁰ Proposed section C.1 of Attachment Y.

¹¹ *Id.*

Attachment Z

10. Midwest ISO proposes to: (1) compensate Generation Owners for direct and verifiable costs incurred as a result of the Midwest ISO's request to reschedule a previously-approved or self-scheduled generator maintenance outage; and (2) allocate to firm transmission customers the amount of its compensation to Generation Owners.¹²

11. Midwest ISO may request voluntary rescheduling: if a planned outage unexpectedly exceeds the original outage schedule and conflicts with other approved outages; to prevent or limit equipment damage or the loss of facilities or supply that could adversely affect reliability; or to prevent or resolve abnormal system conditions arising due to unexpected events.¹³

12. Midwest ISO will compensate the Generation Owner for any direct and verifiable costs, incurred as a result of the rescheduling of a planned outage, to include labor and equipment rental costs¹⁴ and incremental replacement energy costs.¹⁵ A Generation Owner will not receive compensation if the Transmission Provider determines that rescheduling of a planned outage is required as a result of the planned outage of any generating facility(ies) that are owned, controlled or operated by the same entities owning, controlling or operating the generating facility that is being requested to reschedule.

13. Midwest ISO will bill each Transmission Customer taking either firm monthly or annual point-to-point transmission service or network integration transmission Service during the month in which rescheduling costs have been incurred, based on the customer's pro rata share of such rescheduling costs, based on either reserved capacity or monthly network load, as applicable.¹⁶

¹² See Midwest ISO's November 8 Transmittal Letter at 7.

¹³ Proposed Original Sheet Nos. 860 and 861.

¹⁴ Proposed Original Sheet No. 862.

¹⁵ See Midwest ISO's January 18 Amendment, Response to Staff Question No. 1. Incremental replacement energy costs associated with a rescheduled generator outage would qualify as direct costs and be subject to recovery if the replacement costs were incurred as a direct result of the Midwest ISO's request to reschedule.

¹⁶ Proposed section 5 of Attachment Z.

14. Attachment Z also provides that, if a Generation Owner has been notified by Midwest ISO that an Emergency Condition could result if the Generation Owner does not voluntarily reschedule a planned outage and the Generation Owner does not voluntarily reschedule, and such failure to voluntarily reschedule results in the anticipated Emergency Condition, the Generation Owner shall be subject to the direct assignment of Emergency Conditions Service costs under Attachment Y.¹⁷

Notice and Responsive Pleadings

15. Notice of Midwest ISO's November 8, 2004 compliance filing was published in the *Federal Register*,¹⁸ with motions to intervene and protests due on or before November 29, 2004. Detroit Edison Company (Detroit Edison) filed a timely motion to intervene and protest. Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Missouri River Energy Services and Wisconsin Public Power Inc. (collectively, Midwest TDUs), which had previously intervened, filed a joint protest. Consumers Energy Company (Consumers Energy), which had previously intervened, filed timely comments. Timely motions to intervene and comments were filed by Calpine Corporation (Calpine), Wisconsin Electric Power Company (Wisconsin Electric), and the Electric Power Supply Association (EPSA). MidAmerican Energy Company filed a timely motion to intervene, raising no substantive issues.

16. Notice of Midwest ISO's January 18, 2005 amendment to its November 8, 2004 compliance filing was published in the *Federal Register*,¹⁹ with motions to intervene and protests due on or before February 8, 2005. Wisconsin Electric filed timely comments. Alcoa Power Generating, Inc. filed a timely motion to intervene, raising no substantive issues.

Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁷ Proposed section 3.3 of Attachment Z.

¹⁸ 69 Fed. Reg. 67,716 (2004).

¹⁹ 70 Fed. Reg. 5177 (2005).

B. Substantive Matters**1. Assigning Emergency Condition Service Costs to Individual Entities in Attachment Y**

18. In section C.1 of Attachment Y, Midwest ISO proposes to reserve the right to assign all costs of Emergency Condition Services to an individual Transmission Customer, a Generator, or an Operating Authority where circumstances conclusively demonstrate that the actions or inactions of one or more such entities, which were in violation of a Midwest ISO directive or Good Utility Practices, proximately caused the Emergency Condition to arise. Any dispute over causation would be resolved through section 12 of the Midwest ISO Tariff.

Commission Determination

19. We understand that the default cost recovery under Attachment Y will be from each Transmission Customer taking service within the Midwest ISO footprint during the Emergency,²⁰ but that in a given situation, direct assignment of Emergency Condition Service costs may be proper and necessary. However, Midwest ISO must receive approval from the Commission, through a filing under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), that proposes such treatment, before Midwest ISO may directly assign these costs to one or more entities. Midwest ISO should modify the language in section C.1 accordingly.

2. Notice to Generator of Potential Liability in Attachment Z

20. Several parties protest Midwest ISO's inclusion of language in Attachment Z that puts a Generation Owner on notice of potential liability that can arise under Attachment Y should anticipated Emergency Conditions develop as a result of the Generation Owner's failure to reschedule a maintenance outage as requested by Midwest ISO. These parties argue that: (1) the provision places undue risk of direct cost assignment on Generation Owners; (2) the provision is unjust and unreasonable given that Emergency Conditions would not have been declared at the time of the request to reschedule; (3) there appears to be no provision for a Generation Owner to explain and demonstrate the problems that would result from re-scheduling; (4) it appears that no other regional transmission organizations (RTOs) or independent system operators (ISOs) expose Generation Owners to financial liability when deciding whether to voluntarily reschedule based on unspecified concerns arising out of reassessments of forecast

²⁰ Midwest ISO's January 18 Amendment at 2.

conditions; and (5) as argued by Detroit Edison, subjecting Generation Owners to such financial risk for non-compliance is an apparent attempt by Midwest ISO to accomplish indirectly what it cannot do directly under the Federal Power Act, *i.e.*, “bring under Midwest ISO's and the Commission's jurisdictional cloak issues related directly to generation.”²¹

21. In its January 18 Amendment, Midwest ISO states that it would declare an “anticipated Emergency Condition” based on a next-day or current-day security analysis of forecasted weather, loads, and calculated system conditions, and that, to be considered to be causing an “anticipated Emergency Condition,” the generator outage would need to be the cause of a clear step change on the system and significantly change voltage stability, steady state voltage profiles, and/or thermal loading in the transmission area of concern.

Commission Determination

22. The protested language in section 3.3 of Attachment Z is inconsistent with the voluntary response afforded the Generation Owner under the proposed Attachment Z, and we direct Midwest ISO to remove it. But to be clear, we believe that where Midwest ISO expects that action is needed to maintain transmission system reliability, such response by the Generation Owner must be mandatory. We note that Midwest ISO will have authority under its Transmission and Energy Markets Tariff (TEMT) to “reschedule generation outages consistent with Good Utility Practice when faced with a documented reasonable *expectation of an Emergency* as determined by the Transmission Provider” post Day 2 operations, pursuant to the Commission-approved settlement in Docket Nos. ER04-691-002 and EL04-104-002.²²

2. Adequacy of Procedures under Attachments Y and Z

23. Wisconsin Electric contends that Attachment Y does not indicate what steps Midwest ISO will take prior to invoking an Emergency Conditions order. Detroit Edison argues that Attachment Z fails to address Midwest ISO's procedures, including: (1) specific criteria to identify whether a specific maintenance outage should be rescheduled;

²¹ Wisconsin Electric at 20-21; Calpine at 3; Consumers Energy at 3; EPSA at 4; Detroit Edison at 3-4.

²² TEMT section 38.6.1(k) (emphasis added). *See Midwest Independent System Operator, Inc.*, 110 FERC ¶ 61,177 (2005), *reh'g pending* (Balancing Authority Settlement Order).

(2) intervening steps or mitigation measures to be taken prior to requesting rescheduling of a maintenance outage; and (3) a generic timeline for the request to reschedule by Midwest ISO and the response to such request.²³

24. In its January 18 Amendment, Midwest ISO describes the mitigation measures that it will seek prior to requesting rescheduling of an outage, including working with the party to determine if there are any operating procedures that can be employed to mitigate anticipated problems, and consideration of revoking scheduled transmission outages in order to permit a generator outage to commence as scheduled. Midwest ISO also provides specific engineering criteria that it will use to identify outage(s) that it would request to be rescheduled.²⁴

Commission Determination

25. We note that the initial paragraphs of proposed Attachments Y and Z refer to several documents. We direct Midwest ISO to modify Attachments Y and Z to ensure that they reference all documents that address relevant intervening steps, mitigation measures and criteria. For example, Attachment Y does not refer to Midwest ISO's Emergency Response Procedures, as provided in its January 18 Amendment.

26. We find that Midwest ISO's proposed procedures -- to determine that a scheduled maintenance outage must be rescheduled, including: (1) criteria to identify specific outage schedules that Midwest ISO will request be rescheduled, and (2) mitigation measures to be sought prior to requesting rescheduling²⁵ -- adequately address Detroit Edison's concerns on those issues and are just and reasonable. We further believe that Midwest ISO must consider rescheduling generation outages as soon as the situation requiring rescheduling is detected. Therefore, we are unconvinced that a generic timeline to request rescheduling and to respond to such request is feasible.

3. Allocation of Costs under Attachments Y and Z

27. Consumers Energy argues that the compliance filing fails to explicitly address whether its intent is to spread a Generation Owner's Attachment Y or Z costs across the entire Midwest ISO footprint, assuming that such costs may not be properly assigned to one entity, and, if so, Consumers Energy argues that Midwest ISO should explain and

²³ Wisconsin Electric at 10, 15-16; Detroit Edison at 5.

²⁴ Midwest ISO's January 18 Amendment at 3.

²⁵ *Id.*

support its choice.²⁶ Wisconsin Electric points to language in section C.2 of Attachment Y to recover from Generation Owners on a pro rata basis any deficiency in the collection of Emergency Conditions Services costs arising from a defaulting Transmission Customer, and asks why it is just and reasonable to recover from only Generation Owners and not from all Transmission Customers. Similarly, Wisconsin Electric argues, Midwest ISO does not explain why costs under Attachment Y are not apportioned to weekly and daily point-to-point service customers and to customers with grandfathered agreements (GFAs).²⁷

28. Midwest ISO states that the costs of redispatch incurred to avoid an Emergency Condition under Attachment Y will be charged across the entire Midwest ISO footprint on the basis that all customers benefit from avoidance of an Emergency Condition that could result in widespread outages.²⁸

Commission Determination

29. We agree that redispatch costs incurred to alleviate Emergency Conditions should be recovered from the entire Midwest ISO footprint, assuming that direct assignment pursuant to section C.1 is not indicated. We direct Midwest ISO to explicitly state in both Attachments how costs will be recovered.

30. Regarding Attachment Z, Midwest ISO should explain and support how rescheduling costs will be recovered (e.g., from the entire Midwest ISO footprint), and include associated language in its Attachment Z.

31. We reject the proposal to recover from Generation Owners on a pro rata basis any deficiency in the collection of Emergency Conditions Service costs arising from a defaulting Transmission Customer. Midwest ISO has not supported limiting recovery of the deficiency on a pro rata basis to only Generation Owners, rather than uplifting such recovery to all firm Transmission Customers. Similarly, Midwest ISO has not supported the exclusion of weekly and daily point-to-point service customers from recovery of Emergency Conditions Service costs. We direct Midwest ISO to revise Attachment Y to recover such costs from all firm Transmission Customers taking service during the Emergency Condition.

²⁶ Consumers Energy at 2.

²⁷ Wisconsin Electric at 12-14.

²⁸ Midwest ISO's January 18 Amendment at 2.

32. One commenter objects to the omission of GFAs from the customers to whom Emergency Conditions Service costs are allocated. As the Commission has said, all users of the grid operated by Midwest ISO “benefit from the Midwest ISO’s operational and planning responsibilities for the Midwest ISO transmission system, as well as increased grid reliability....”²⁹ Here, by fairly compensating Generation Owners that provide Emergency Conditions Service, Midwest ISO increases the likelihood that responses by Generation Owners during Emergency Conditions will be effective and timely in alleviating those conditions, and in doing so, promotes reliability.

33. In accordance with Opinion Nos. 453 and 453-A, the Midwest ISO OATT requires Transmission Owners and ITC Participants to take network service or point-to-point service pursuant to a service agreement under the Midwest ISO OATT in order to meet their transmission service obligations under the GFAs.³⁰ Here, we similarly instruct Midwest ISO to revise its filing so that Transmission Owners and ITC Participants taking service under the Midwest ISO OATT are allocated costs from Attachment Y³¹ on behalf of load located in the Midwest ISO footprint, including transmission service for GFA transactions.

4. Invoicing, Billings and Payments under Attachments Y and Z

34. Under section D.2 of Attachment Y, a Generator must invoice the Midwest ISO by the end of the month in which such Emergency Conditions Services were rendered, and Midwest ISO must pay the Generator’s invoice within 60 days. Consumers Energy and Wisconsin Electric argue that 60 days is unnecessarily long and that invoices should be payable within 30 days.

²⁹ See *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033 at 61,169 (2001), *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on remand*, 102 FERC ¶ 61,192 (2003), *reh'g denied*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

³⁰ Opinion No. 453, 97 FERC at 61,170-71. See also Midwest ISO OATT, section 37.1.

³¹ We note that, according to section B.3 of Attachment Y, after the effective date of Midwest ISO’s Transmission Energy Markets Tariff (TEMT), Emergency Conditions shall be governed by that tariff, unless Emergency Conditions Services are requested or directed outside the LMP provisions of the TEMT.

35. Under Attachment Z, the Generation Owner has 30 days - from the date of notification to reschedule the maintenance outage - to request compensation from the Transmission Provider. Wisconsin Electric believes that Generators should have 60 days to submit their actual rescheduling costs as Generators will need to place their immediate priority on rescheduling contractors and materials for the new outage dates rather than documenting costs.³²

Commission Determination

36. Under Attachment Z, after the Transmission Provider has verified the rescheduling cost information in the Generator's invoice and calculated the appropriate allocation of costs to the Transmission Customers in the next billing cycle, the Transmission Provider must remit monies received from the Transmission Customers to the Generator within 30 days of billing the Transmission Customers. This information is lacking with respect to Attachment Y's allowance of 60 days for remittance of monies to a Generation Owner that provides Emergency Conditions Service. While we believe that there is an industry trend toward shortening invoicing and billing cycles,³³ we also understand that any instance of providing service under Attachment Y will likely be unique and may require similar activities by Midwest ISO as was described in Attachment Z. We direct Midwest ISO to support its proposed timelines of invoicing and billings under Attachment Y.

37. Regarding Attachment Z, Wisconsin Electric does not argue that information for invoicing Midwest ISO is unknown or unavailable and does not support why the invoice cannot be issued within 30 days. We accept the invoicing and billing cycle as proposed in Attachment Z.

5. Compensation for Rescheduling under Attachment Z

38. Midwest TDUs request that Attachment Z be modified to provide for rescheduling compensation only if the scheduled outage was approved by the Midwest ISO under an optional generator maintenance outage schedule process. Such optional process would be voluntary, evaluate proposed outages from a regional perspective, and ensure that planned outage decisions of individual generators do not threaten system reliability.³⁴

³² Wisconsin Electric at 23 and 25; Consumers Energy at 2.

³³ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 473, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043; *New England Power Pool*, 107 FERC ¶ 61,201 at P 10 (2004).

³⁴ Midwest TDUs at 3.

Detroit Edison requests clarification that Generation Owners will be entitled to seek recovery of incremental replacement energy costs incurred as a result of outage rescheduling.³⁵

Commission Determination

39. We believe that section 38.6.1 of the Midwest ISO's TEMT that was approved as part of the Balancing Authority Settlement Order³⁶ addresses the Reliability Authority responsibilities for the Transmission Provider. Specifically, we note: subsection (h), Midwest ISO's responsibility to receive generation maintenance plans from generators for reliability analysis; and subsection (k), Midwest ISO's responsibility to reschedule generation outages consistent with Good Utility Practice when faced with a documented reasonable expectation for an Emergency as determined by the Transmission Provider. We believe that these provisions will allow Midwest ISO to evaluate generator maintenance outages from a regional perspective and to ensure that reliability is maintained. Therefore, we will not direct the modifications requested by Midwest TDUs.

40. With respect to Detroit Edison's concern, Midwest ISO's January 18 Amendment clarifies that, if a Generation Owner agrees to reschedule a planned outage to a later period in which incremental replacement energy costs are higher than the costs the Generation Owner otherwise would have incurred, that Generation Owner's incremental replacement energy costs can qualify as direct costs under section 3.1 of Attachment Z, assuming the incremental replacement energy costs were incurred as a direct result of the Midwest ISO's request to reschedule.³⁷ We thus believe that the January 18 Amendment adequately addresses Detroit Edison's concern.

6. Billing for Emergency Conditions Service Provided under Attachment Y

41. Wisconsin Electric argues that Emergency Conditions Service can only be sold from the "Generation Owner's service agreement or tariff - as required by Commission policy," and further contends that Schedule 11 of Midwest ISO's tariff is reserved exclusively for Wholesale Distribution Services and is inappropriate for billing costs for

³⁵ Detroit Edison at 4-5.

³⁶ See *supra* note 22

³⁷ *Supra* note 15.

Emergency Conditions Service.³⁸ Midwest ISO asserts that it has always used Schedule 11 for after-the-fact manual billing adjustments and that doing so allows the adjustment to be part of a regular billing cycle and provides an audit trail.³⁹

Commission Determination

42. Regarding the argument that Emergency Conditions Service can only be sold under the Generator Owner's service agreement or tariff, this argument inaccurately describes Commission policy. Order No. 2000⁴⁰ requires that the RTO ensure short-term reliability and order redispatch if necessary for reliability, and that the RTO compensate generators that are redispatched for reliability.⁴¹ Such compensation must be provided consistently and fairly, and as a practical matter should occur through the RTO's OATT. Moreover, it would be administratively burdensome to require Midwest ISO and each Generation Owner to execute service agreements for each Generation Owner to provide Emergency Conditions Service. We will require, however, that Midwest ISO explain in Attachment Y which party will be responsible for meeting the Commission's reporting requirements.

43. We note that Schedule 11 is not used solely for billing Wholesale Distribution Service, and may also be used to pass through specific line item charges and adjustments supplied to the Midwest ISO by Transmission Owners and ITCs. Here, Midwest ISO is in direct receipt of such cost information and may use Schedule 11 to fulfill its responsibilities under the Midwest ISO Agreement.⁴²

³⁸ Wisconsin Electric at 11, 13.

³⁹ Midwest ISO's January 18 Amendment at 2.

⁴⁰ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴¹ See Order No. 2000 at 31,104; *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,326 (2001).

⁴² See Appendix E to the Midwest ISO Agreement.

7. Miscellaneous Clarifications and Revisions for Attachments Y and Z

44. Wisconsin Electric requests that Midwest ISO clarify and/or revise several proposed provisions as follows: (1) exclude federal holidays from the definition of “business day;” (2) uniformly state that Midwest ISO’s issuance of an order to provide Emergency Conditions Service is either discretionary or mandatory; (3) Midwest ISO’s proposal is silent with respect to compensation of Generation Owners for the provision of “lagging” service associated with reactive power support; (4) Midwest ISO should confirm an Emergency Conditions Service order within one hour instead of the proposed 72 hours; and (5) Attachment Z should correspond with industry-recognized definitions of terms such as “planned outages.”⁴³ Consumers Energy suggests several minor revisions to correct apparent typographical errors and clarify Midwest ISO’s filing.⁴⁴

Commission Determination

45. We direct Midwest ISO to address Wisconsin Electric’s and Consumers Energy’s concerns by providing the requested clarifications or revisions.

8. Applicability of Attachments Y and Z to Day 2 Market

46. In its comments on Midwest ISO’s January 18 Amendment, Wisconsin Electric cites Midwest ISO’s response to Staff Question No. 5(b), where Midwest ISO states that: the proposed Attachments Y and Z are being filed as part of Midwest ISO’s Day 1 tariff, Attachments Y and Z are not part of Midwest ISO’s Day 2 market; and Midwest ISO expects to conduct full stakeholder review of the provisions of Attachments Y and Z in the near future to determine whether they need to be modified to conform to Day 2 market operations; and, “if necessary,” Midwest ISO will file modified Attachment Y and Z provisions as part of the Midwest ISO’s Day 2 [TEMT].⁴⁵ Wisconsin Electric asserts that, notwithstanding Midwest ISO’s response to Staff Question No. 5(b), Midwest ISO made a clarification and compliance filing in Docket Nos. ER04-691-014 and EL04-104-013, in which it amended the TEMT to, among other things, include Attachments Y and Z in the TEMT. Wisconsin Electric requests that, irrespective of the action taken by the

⁴³ Wisconsin Electric at 9 and 22-25.

⁴⁴ Consumers Energy at 5-6.

⁴⁵ See Wisconsin Electric’s February 8 Comments at 4; Midwest ISO’s January 18 Amendment at 4-5.

Commission in the instant proceeding, any orders on Attachments Y and Z provide that, upon commencement of Midwest ISO Day 2, those attachments in whatever form they take, will no longer be applicable.

Commission Determination

47. We deny Wisconsin Electric's request as premature. Midwest ISO commits to a stakeholder review to determine whether Attachments Y and Z need to be modified to conform to Day 2 market operations and to file modifications to Attachments Y and Z, if necessary, as part of the TEMT. We believe that it is appropriate to allow the stakeholder review to address this matter in the first instance.

9. Revisions to Attachment O Formula Rate

48. In its original compliance filing, Midwest ISO proposed modifications to Attachment O to defer transmission service credits in certain circumstances until the network upgrades built for an interconnection customer are actually needed or used. It also proposed that interest not accrue during the accrual period. The Commission conditionally accepted Midwest ISO's proposal. However, out of concern that such a methodology could allow over-recovery by Transmission Owners, the Commission directed Midwest ISO to further modify the Attachment O formula rate "so as to preclude a Transmission Owner from earning a return on assets which are being financed by Interconnection Customers but are not yet required."⁴⁶

49. In the instant compliance filing, Midwest ISO has modified Attachment O to include explanatory language that states that network upgrades for which repayment is suspended pursuant to the Midwest ISO OATT Attachment X Large Generator Interconnection Agreement shall be removed from rate base.⁴⁷ Midwest ISO states that the Midwest ISO transmission owners do not oppose the proposed changes to Attachment O.

50. No intervenor opposes the proposed changes. However, Consumers Energy states that Midwest ISO apparently filed a duplicate clean copy of the revised Attachment O rather than a redlined version of its proposed changes to Attachment O.⁴⁸

⁴⁶ October 28 Order, 109 FERC ¶ 61,085 at P 62; July 8 Order, 108 FERC ¶ 61,027 at P 49.

⁴⁷ Midwest ISO's November 8 Transmittal Letter at 10.

⁴⁸ Consumers Energy at 5.

Commission Determination

51. We find that Midwest ISO's proposed revisions to Attachment O comply with the July 8 Order and the October 28 Order. Consumers Energy does not argue that it could not discern Midwest ISO's proposed changes to Attachment O. However, in order to ensure that the parties have an adequate opportunity to evaluate the proposed changes, Midwest ISO shall provide a redlined version of its revisions to Attachment O in the additional compliance filing ordered herein. Accordingly, we will accept the proposed changes to Attachment O, subject to further order.

10. Effective Date and Conclusion

52. Midwest ISO requests an effective date of November 9, 2004, one day after the date of the compliance filing. We will grant the requested effective date.

53. Based on the discussion above, we will accept in part and reject in part Midwest ISO's compliance filings, and direct Midwest ISO to submit further information and a compliance filing within 60 days of the date of this order, as ordered below.

The Commission orders:

(A) Midwest ISO's compliance filings are hereby accepted in part and rejected in part, effective November 9, 2004, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to submit further information and a compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.