

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER04-691-046 ER04-691-050
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Public Utilities With Grandfathered Agreements in the Midwest ISO Region	Docket Nos. EL04-104-044 EL04-104-048
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ORDER ON COMPLIANCE FILINGS

(Issued October 24, 2005)

1. On August 6, 2004, the Commission approved the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Transmission and Energy Markets Tariff (TEMT), under which the Midwest ISO has initiated Day 2 operations in its 15-state region.<sup>1</sup> The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity. The TEMT II Order required the Midwest ISO to make an assortment of compliance filings to implement various Commission directives.
2. Compliance Order III addressed the requests for rehearing of the TEMT II Rehearing Order, as well as the Midwest ISO's and the Independent Market Monitor's (IMM) January 7, 2005 filings to comply with the TEMT II Rehearing Order, and required further revisions to the TEMT. This order will address the Midwest ISO's and the IMM's filings to comply with Compliance Order III.

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043 (2005) (Compliance Order III), *reh'g denied*, 112 FERC ¶ 61,086 (2005).

## **I. The Midwest ISO's and the IMM's Filings**

3. The Midwest ISO filed revised tariff sheets on June 14, 2005, to comply with directives in Compliance Order III. As detailed below, the Midwest ISO's filing addresses FTRs for system purchase contracts, a safety-net market power mitigation plan, tariff provisions to deal with inefficient scheduling of market participants with expanded congestion cost hedges, a number of minor changes and corrections to the tariff, and the inclusion of further details in the TEMT rather than in the Midwest ISO's business practices manuals. The Midwest ISO requests that the Commission waive the 60-day prior notice requirement of section 205 of the Federal Power Act<sup>2</sup> and allow an effective date of April 1, 2005 for the revised tariff sheets.

4. On June 15, 2005, the IMM made a compliance filing to address Compliance Order III's requirements that the IMM: (1) clarify the terms "units" and "resources" in the proposal for a safety-net plan for day-ahead mitigation; (2) illustrate how the IMM will determine the universe of generators subject to the safety-net mitigation within a Broad Constrained Area (BCA); and (3) file a mitigation plan for patterns of inefficient scheduling by market participants with expanded congestion cost hedges.

## **II. Notice, Interventions and Protests**

5. Notice of the Midwest ISO's filing was published in the *Federal Register*, 70 Fed. Reg. 36,137 (2005), with interventions and protests due on or before July 5, 2005. The Midwest Transmission Dependent Utilities (Midwest TDUs)<sup>3</sup> and Manitoba Hydro filed protests. Detroit Edison Company (Detroit Edison) filed comments.

6. Notice of the IMM's filing was published in the *Federal Register*, 70 Fed. Reg. 36,931 (2005), with interventions and protests due on or before July 6, 2005. WPS Resources Corporation (WPS Resources), Cinergy Services, Inc. (Cinergy), Wisconsin Electric Power Company (Wisconsin Electric) and Detroit Edison filed comments.

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<sup>2</sup> 16 U.S.C. § 824d(d) (2000).

<sup>3</sup> The Midwest TDUs are: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities and Wisconsin Public Power, Inc.

### **III. Discussion**

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

7. The Midwest ISO requests that the Commission waive the 60-day prior notice requirement contained in section 205 of the Federal Power Act,<sup>4</sup> and allow its compliance filing to become effective as of April 1, 2005. The Midwest ISO states that there is good cause to grant the waiver because the filing of its revised tariff sheets is being made in accordance with the timeline the Commission established in Compliance Order III, and a waiver is necessary to ensure that the compliance requirements match the Midwest ISO's energy market start-up date of April 1, 2005. However, consistent with past Commission practice, waiver of the prior notice requirement is not necessary when compliance filings are accepted.<sup>5</sup>

#### **B. FTRs for System Purchase Contracts**

##### **1. Background**

8. The Midwest ISO states that it revised section 43.2.4 of the TEMT to state that “[f]or those arrangements involving system purchase contracts, the contracting party supplying the Energy shall be the Market Participant responsible for nominating and holding FTRs and for paying all congestion costs associated with the system purchase contract.”<sup>6</sup> The TEMT II Rehearing Order had erroneously referred to the seller of transmission service, rather than the seller of energy, but Compliance Order III corrected this and directed the Midwest ISO to file revised tariff sheets accordingly.

##### **2. Protests and Comments**

9. The Midwest TDUs state that although they strongly support the revision to section 43.2.4 of the TEMT, they desire additional language to allow for alternate arrangements that parties to system power contracts may agree to. They would like to add to the end of the new language, “unless the parties to the system purchase contract jointly inform the Transmission Provider that such treatment is not necessary.” The

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<sup>4</sup> 16 U.S.C. § 824d(d) (2000).

<sup>5</sup> See *Great Lakes Gas Transmission Limited Partnership*, 57 FERC ¶ 61,357 (1991).

<sup>6</sup> TEMT, Module C, section 43.2.4, Second Substitute Revised Sheet No. 613A.

Midwest TDUs state that this addition will make it explicit that the parties to a system purchase may preserve alternate arrangements that they have agreed to.

10. Manitoba Hydro protests the Midwest ISO's proposed revisions to section 43.2.4. Manitoba Hydro states that it does not object to the concept behind this revision, but it finds that the Midwest ISO lacks a proper definition of "system purchase contracts." Manitoba Hydro is concerned that its "system participation power sale agreements" may be included in the undefined term "system purchase contracts." Therefore, Manitoba Hydro would be the holder of the associated FTRs and the payer of all congestion costs associated with these contracts. Manitoba Hydro states that, as a Canadian entity participating in the Midwest ISO's energy markets, it does not receive FTRs from the Midwest ISO and the only way it could provide a congestion hedge would be through FTR purchases in an auction or the secondary market. Manitoba Hydro states that this would negatively impact existing long-term supply arrangements contained in its system participation power sales agreements. Manitoba Hydro states that its issues can be resolved by requiring the Midwest ISO to properly define the term "system purchase contracts."

### 3. Discussion

11. We decline to order the Midwest ISO to include the additional language that the Midwest TDUs propose for section 43.2.4. We find that the Midwest ISO has appropriately revised the tariff to state that the seller of energy is responsible for the congestion costs. The issue of alternative arrangements should have been raised on rehearing of Compliance Order III, not in this setting; the Midwest TDUs did not raise this argument in their request for rehearing of Compliance Order III.<sup>7</sup>

12. We agree with Manitoba Hydro that the tariff should define "system purchase contracts," so that section 43.2.4 will make clear that Manitoba Hydro's contractual relationships with United States entities through system participation power sale agreements are excluded. It is possible that using the undefined term "system purchase contracts" could extend the seller's obligation to hold FTRs and pay congestion costs to Manitoba Hydro's unique system participation power sale agreements. We understand Manitoba Hydro's unique position in the Midwest ISO as the only Canadian entity, and therefore, its need to maintain its current system participation power sale agreements without being required to hold FTRs or pay congestion charges. Therefore, we direct the

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<sup>7</sup> See *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,086 at P 20-22 (2005) (describing the single request for rehearing that addressed system purchase contracts).

Midwest ISO to make a further compliance filing that defines the term “system purchase contracts” in Module A, and capitalizes the term throughout the tariff, so that it will be clear that allowance is made for such contracts.

### **C. Safety-Net Mitigation Plan**

#### **1. Background**

13. Compliance Order III addressed the IMM’s January 7, 2005 compliance filing. In the filing, the IMM described its safety-net plan for day-ahead mitigation, and proposed to use that plan until an automated mitigation plan can be implemented in the longer term. The IMM also noted that a supplier could conceivably engage in economic withholding every other day or rotate the units that it withholds within the same electrical area to avoid being mitigated effectively in the day-ahead market.

14. That safety-net mitigation plan consisted of four parts. First, the IMM performs conduct tests for day-ahead generation offers once a day, after the day-ahead market closes. The Midwest ISO’s software compares day-ahead generation offers to the generators’ reference levels plus the applicable BCA or Narrow Constrained Area (NCA) threshold. Second, if any component of the day-ahead generation offer fails the conduct test for any generating resource located in an active BCA or NCA, the IMM performs an impact test to determine the effect of the generator’s behavior on the day-ahead market. Third, for those BCAs or NCAs where there is an impact greater than the applicable threshold, the generating resources will be identified for mitigation the following day and will be mitigated. Finally, if units owned or operated by the same supplier in the same BCA or NCA fail the conduct and impact tests after having previously failed both mitigation tests in the prior 90 days, the resources would be subject to mitigation for seven days, although they would have to fail the conduct test to actually be mitigated in the day-ahead market.

15. In Compliance Order III, the Commission directed the IMM to provide more information on the safety-net mitigation plan. Commenters asked about the use of the terms “units” and “resources” in the safety-net proposal, particularly regarding resources that fail the mitigation tests multiple times in a 90-day period, and the Commission asked for clarification. The Commission also asked for confirmation that mitigation would apply to all resources in the same BCA owned or operated by the same supplier.

16. The Commission also directed the IMM to provide a step-by-step illustration of how the IMM will determine the universe of generators subject to the safety-net mitigation plan in the same BCA, recognizing that the area of the BCA may shift without notice to the market participants.<sup>8</sup>

## **2. The Midwest ISO's and the IMM's Filings**

17. The Midwest ISO states that it has worked with the IMM to address the issues identified in Compliance Order III, and notes that the IMM has made a concurrent filing to address these issues.

18. The Midwest ISO filed a revised section 65.2.2 to reflect additional clarifying language on the safety-net mitigation plan, as directed by the Commission. The additional language states that until automatic mitigation procedures are implemented, to avoid the one-day delay in mitigation the IMM will employ the following procedures: (1) resources with day-ahead offers that exceed the conduct threshold in an active NCA or BCA will be tested for impact; (2) if the conduct test results in impacts that exceed the impact thresholds for an operating day, all resources owned by the same supplier in the same NCA or BCA will be considered for mitigation in the day-ahead market for the following day; (3) when the day-ahead market is run for the following day, if the generation resources submit offers that exceed conduct thresholds, the Midwest ISO shall prospectively substitute a default offer to replace the offer submitted by the generation resource; (4) if the same supplier submits day-ahead generation offers that exceed both the conduct and impact thresholds for the same BCA or NCA within the next 90 days, the supplier's generation resources in that BCA will be considered for mitigation in the day-ahead market for the following seven days.

19. In its filing, the IMM clarifies that it uses the terms "unit" and "resources" interchangeably. It also clarifies the Commission's understanding that mitigation would apply to all resources in the same BCA owned or operated by the same supplier. The IMM further clarifies that if any of these units fail the mitigation tests a second time within 90 days for the same BCA (*i.e.*, the same transmission constraint), the mitigation would be extended for seven days. The IMM notes that, by definition, a resource in a BCA has a significant effect on a flowgate – that is, the absolute value of the generation resource's generation shift factor is greater than the constraint generation shift factor cutoff.

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<sup>8</sup> Compliance Order III at P 83.

20. The IMM also responds to the Commission's request that it provide a step-by step illustration of how it will determine what generators are subject to the safety-net mitigation plan in the same BCA, in light of the fact that the area subject to BCA mitigation may shift without notice to market participants.<sup>9</sup> The IMM states that:

- In an operating day, a constraint is binding in the day-ahead market (Constraint A);
- Assume that ten resources owned by Utility X are in the BCA because they have generation shift factors less than -0.06 for this constraint;
- Further, assume that two of the ten resources fail the mitigation conduct test, and have an impact on prices that exceeds the impact test threshold;
- All ten resources will be subject to mitigation on the day following the operating day in question if they fail the conduct test on that following day (Utility X would be notified of any resources that are potentially subject to mitigation); and
- For the next 90 days, if any resources owned or operated by the same supplier fail the conduct and impact mitigation tests for the same BCA (*i.e.*, associated with the same transmission constraint), each of the supplier's resources in the BCA will be subject to mitigation during the next seven days on days that the resource fails the conduct test.

However, the IMM clarifies that this process is specific to a supplier and BCA. The mitigation is not extended to seven days if a different supplier fails the mitigation tests for this BCA, or if the same supplier fails the mitigation thresholds for a different BCA, even if it does so with the same resource.<sup>10</sup>

### 3. Comments

21. Detroit Edison argues that the IMM's filing does not satisfy the requirements of Compliance Order III. Detroit Edison explains that the Commission recognized that the

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<sup>9</sup> See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 at P 83 (2004), *order on reh'g*, 111 FERC ¶ 61,053 (2005), *reh'g denied*, 112 FERC ¶ 61,086 (2005).

<sup>10</sup> The same resource can be in many different BCAs, since each BCA is associated with an individual transmission constraint.

area subject to BCA mitigation shifts without notice to market participants, and so the Commission was unclear how the IMM proposes to determine the universe of generators subject to the safety-net mitigation plan when those generators are in the same BCA. Detroit Edison notes that the IMM only states that “the same resource can be in many different BCAs since each BCA is associated with an individual transmission constraint.”<sup>11</sup>

22. Detroit Edison states that the IMM’s omission of information required by the Commission heightens Detroit Edison’s concerns about the safety-net mitigation plan and the automated mitigation plans the IMM and the Midwest ISO are developing. Detroit Edison asserts that the fact that BCAs are not defined before the IMM undertakes day-ahead mitigation could lead to the imposition of severe penalties on an ongoing and indefinite basis. Detroit Edison further asserts that the IMM’s disregard for the likely effects of its plan demonstrates its willingness to be so aggressive in the mitigation of market-clearing prices that the term “market-clearing prices” will lose its meaning, especially as the IMM and the Midwest ISO move to implement automatic mitigation procedures. Detroit Edison is concerned that prices will be insufficient to attract new generation or maintain existing capacity, and, therefore, reliability will suffer. It adds that this threat is exacerbated by the lack of a meaningful, permanent resource adequacy requirement.

23. Detroit Edison notes that the Court of Appeals shares these concerns, as the Commission acknowledged in Compliance Order III<sup>12</sup> and subsequently.<sup>13</sup> Detroit Edison asserts that BCAs are not structural market distortions; therefore, it is not appropriate to apply automatic mitigation in those areas.

24. However, if the Commission finds that the continued application of the safety-net mitigation plan is appropriate for BCAs, Detroit Edison asks that the Commission address its concerns by shortening the period during which the IMM screens for multiple violations of its conduct and impact tests from 90 to 30 days. In addition, Detroit Edison requests that the Commission clarify that conduct and impact test violations resulting from improperly set reference levels cannot trigger the safety-net mitigation plan.

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<sup>11</sup> Compliance Filing of the IMM at 4 (June 15, 2005).

<sup>12</sup> See Compliance Order I at P 78 (citing *Edison Mission Energy, Inc. v. FERC*, 394 F.3d 964, 969 (D.C. Cir. 2005)).

<sup>13</sup> *New York Independent System Operator, Inc.*, 111 FERC ¶ 61,399 at P 7 (2005) (citing *Edison Mission Energy, Inc. v. FERC*, 394 F.3d 964, 969 (D.C. Cir. 2005)).

#### 4. Discussion

25. We have evaluated the IMM's explanation of how mitigation is applied to multiple generators within the same BCA, when BCAs are not fixed in nature. We agree that the appropriate focus is upon units that affect the same flowgate. However, we believe the tariff is not sufficiently clear about how mitigation is to be applied to units in the same BCA and could lead to mitigation on an on-going basis even when a BCA is not active. We clarify that the interim mitigation specified in sections 65.2.2.f.ii - .iv should only be considered when there is an active BCA (meaning, when the constraint is active and other conditions are present that cause an active BCA to be, in effect, associated with that flowgate). Thus, we direct the Midwest ISO to insert the word "active" before the word "BCA" in section 65.2.2.f.ii. The Midwest ISO must also revise section 65.2.2.f.iv to read as follows:<sup>14</sup>

iv. If the same supplier submits any Day-Ahead Generation Offers that exceed both the conduct thresholds and impact thresholds for the same NCA or active BCA within the next 90 days, the supplier's Generation resources in that NCA or active BCA will be considered for mitigation in the Day-Ahead Energy Market for the following seven (7) days.

We believe that the infrequent nature of active BCAs should prevent either on-going over-mitigation or market-clearing prices losing their meaning, as Detroit Edison fears. In response to Detroit Edison's other concern, we clarify that should a 90-day mitigation watch be applied solely due to improperly-set reference levels, then once the reference levels are determined to be in error, the watch period for interim mitigation would be terminated.

26. We accept the IMM's clarification that mitigation will be applied to all units under common ownership or control in the BCA, but we note that this also applies to those within the same NCA (as specified in the tariff). The IMM's example provides that an individual resource associated with a supplier that has failed the conduct and impact tests on one or more units (and is under a 90-day watch) would be subject to mitigation if that resource fails the conduct test. However, we do not believe the wording in the tariff is

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<sup>14</sup> This adds the term active in reference to the BCA, and also adds the second reference to the NCA, which appears to have been inadvertently left off.

sufficiently clear, as it may be read that every resource associated with that supplier would be mitigated if any one of the resources failed the conduct test.<sup>15</sup> Thus we will require the Midwest ISO to add the following language to section 65.2.2.f:

iii. When the Day-Ahead Energy Market is run for the following day, if a Generation Resource identified in (ii) submits a Day-Ahead Generation Offer that exceeds its conduct threshold, the Transmission Provider shall prospectively substitute a Default Offer for that Offer submitted by the Generation Resource.

And we will require the following in section 65.2.2.f.v:

v. In any of these seven (7) days, if a Generation Resource identified in (iv) submits Day-Ahead Generation Offer(s) that exceeds the conduct threshold, the Transmission Provider shall prospectively substitute a Default Offer for such Offer submitted for that Generation Resource.

We will require the Midwest ISO to make a compliance filing within 30 days of the date of this order that will incorporate these changes into the TEMT.

#### **D. Patterns of Inefficient Scheduling**

##### **1. Background**

27. The TEMT II Order provided an expanded congestion cost hedge for entities located in an NCA. It also required penalties for parties receiving the expanded congestion cost hedge, in cases where those parties deviate from day-ahead scheduling, as a means to prevent them from over-scheduling in the day-ahead market to create congestion (while being fully hedged against that congestion) and then changing their positions in real time. The TEMT II Rehearing Order eliminated the penalty because it was too restrictive of efficient changes in the day-ahead schedule, and required the IMM to file a monitoring plan for patterns of inefficient scheduling and associated mitigation measures, such as the refund of congestion relief payments.<sup>16</sup>

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<sup>15</sup> The current tariff wording would mean that each unit would have a default bid replace its bid even if that particular unit had not bid more than its reference price plus the applicable conduct threshold.

<sup>16</sup> TEMT II Rehearing Order at P 116.

28. In its January filing, the IMM proposed screens to determine whether the total day-ahead schedules of the holders of transitional congestion hedges exceed the physical import capability of the NCA. These screens would help the IMM determine whether such parties will receive a windfall, and whether the uplift paid by others will be inflated.

29. In Compliance Order III, the Commission stated its concern that holders of congestion relief hedges, without limits or costs, would have an incentive to nominate the full hedge on all transmission paths, even when they know they will not use the full hedge. Doing so results in obtaining revenues from energy sold into the real-time market.<sup>17</sup> Thus, the Commission directed the IMM to file a monitoring plan for patterns of inefficient scheduling, and ordered the Midwest ISO to file conforming tariff sheets on inefficient scheduling and aggregate day-ahead scheduling.

## **2. The Midwest ISO's and the IMM's Filings**

30. The IMM and the Midwest ISO filed revised sections 53.1 and 53.3.c to address inefficient scheduling. Under this new plan, inefficient schedules – which are defined as schedules that exceed the total physical import capability into the NCA, or exceed the quantity of economic imports needed to serve the market participant's load – are referred to the Commission. Imports needed to serve load are defined as instances when the day-ahead scheduled import is greater than 110 percent of the actual load minus the market participant's economic generation inside the NCA.

31. To address the Commission's concerns about over-scheduling, the proposed screens identify any day-ahead schedules into the constrained areas that are greater than the amount that would be economic to serve the market participant's native load. Specifically, the screen will identify instances when the day-ahead scheduled import is greater than 110 percent of the actual load minus the market participant's economic generation inside the constrained area. The IMM clarifies that a generator within the constrained area will be considered economic if its revenues at the applicable locational marginal price are equal to or greater than its total operating costs as determined by its reference levels. It adds that the ten percent threshold on the market participant's actual load is an appropriate means to account for load forecast errors and operational risks faced by the participant.

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<sup>17</sup> Compliance Order III at P 91.

### 3. Comments

32. WEPCO is concerned that the IMM's proposed screens are too broad. Specifically, WEPCO notes that not all market participants in an NCA use expanded congestion cost hedges, and it is also concerned that the IMM's proposal will apply to all schedules. WEPCO asserts that market participants that do not participate in the Commission's expanded congestion cost hedge program should not be required to adhere to its market monitoring rules. WEPCO thus requests that the Commission direct the IMM to clarify that its proposal with respect to NCAs only applies to those schedules using the expanded congestion cost hedge alternative.

33. Cinergy supports the IMM's proposal to use a ten percent bandwidth for its screen to determine when participants are scheduling more energy into constrained areas than is economic to serve the participant's native load. Cinergy argues that the screen allows for reasonable forecasting error consistent with similar allowances made for energy imbalances under the open-access transmission tariff. Cinergy also states that this bandwidth would be a useful measure to limit the potential harm that otherwise will flow from expanded congestion cost hedges. Finally, Cinergy notes that, although it supports this aspect of the IMM's proposal, it retains its right to challenge the legality of the expanded hedge.

34. WPS Resources supports the implementation of a monitoring plan to ensure that inefficient scheduling does not occur with the expanded congestion cost hedge granted to certain market participants. However, it adds that the IMM's proposal lacks sufficient detail to determine whether it will deter inefficient scheduling without rendering the expanded hedges unusable. WPS Resources offers examples of a lack of information about the IMM's proposal: (1) the definition of economic generation and corresponding reference levels for the generator, respectively; (2) the definition of economic generation does not consider whether the unit is economic compared to units located within or outside the NCA, and, therefore, does not address circumstances where it may be more efficient to import energy rather than generate it with units in the NCA; (3) the proposal does not distinguish between day-ahead scheduled imports for which the expanded hedge applies and other day-ahead imports where the hedge does not apply; (4) it is unclear whether the expanded hedge applies to generating units individually or units in the aggregate; (5) it is unclear whether the proposal distinguishes between participant generation that is physically available and generation in an outage; (6) the proposal does not address the treatment of legacy take-or-pay contracts that have the expanded hedge protection; (7) it is unclear whether the IMM will compare the entire LMP or only the energy component to the units operating costs to conclude the unit is economic. Absent this information, WPS Resources states that it cannot properly evaluate whether the compliance filing addresses the Commission's scheduling concerns regarding the

expanded hedges. However, WPS Resources states that it is willing to work with the IMM to develop additional detail needed to implement the IMM's proposal.

#### **4. Discussion**

35. The proposed tariff language on inefficient scheduling in section 53.1 of the tariff clearly limits the monitoring to those with expanded congestion cost hedges, and thus we do not share Wisconsin Electric's and WPS Resources' concerns that the rules are ambiguous in this regard.

36. However, we agree with WPS Resources that the IMM's proposed monitoring plan for inefficient scheduling by parties with expanded congestion cost hedges is not clear. The objective of such screening is to determine whether market participants holding expanded congestion cost hedges are over-scheduling into the NCA on a day-ahead basis and thereby obtaining revenues from energy sold back into the real-time market rather than serving actual load. We agree with the concept of a ten percent bandwidth for deviations to account for forecast errors and other factors. But we are concerned that the proposed screen will determine that over-scheduling has occurred, when in fact it has not. The proposed screen will find over-scheduling in any instance in which day-ahead imports appear to be greater than a measure of real-time economic imports into the NCA (real-time load minus economic generation at real-time spot prices). Moreover, we are not convinced that the screen is accurate in terms of its assumptions about the real-time dispatch (*e.g.*, WPS Resources' concern about other economic generation outside the NCA that can be imported), nor about how forward energy contract terms might affect the analysis of economic imports in particular hours (*e.g.*, WPS Resources' concern about take-or-pay contracts). The proposed screen could therefore result in referrals to the Commission that would require additional facts and analysis, creating delay and uncertainty.

37. A method that relies partly on data submitted by the parties using the hedge will provide sufficient information on the scheduling practices, both on the source and sink sides of the expanded congestion hedge, to simplify any subsequent inquiry. Therefore, we will require that the Midwest ISO modify the tariff to provide that parties with contracts with expanded congestion cost hedges report to the IMM the metered real-time injections associated with their owned or contracted generators on the source side of the expanded congestion hedge. In addition, the tariff must provide that the IMM will then compare those with injections specified in the day-ahead import schedules for the hedges submitted by the parties, taking into account the allowance for a ten percent deviation. The IMM should also compare the scheduled day-ahead load and real-time metered load for the market participant, to examine any deviations between day-ahead and real-time. If those exist, the IMM should examine whether schedule changes on the sink side of the hedge are related to the use of the transmission right (*e.g.*, a party could maintain the

import schedule in real time but curtail its own real-time load to accrue congestion relief payments while reselling the imported power; although such a game is unlikely, such analysis is needed for completeness). The tariff must provide that, for any data submitted by the parties being monitored, the IMM should verify with the Midwest ISO that these submitted measurements are accurate. It must also provide in the tariff the process under which it will report to the Commission any findings of inefficient scheduling by holders of expanded congestion costs beyond the ten percent threshold. In addition, the Midwest ISO must ensure that the numbering of its tariff is correct on Sheet No. 716.<sup>18</sup>

## **E. Miscellaneous Tariff Revisions**

### **1. Background**

38. The Midwest ISO also filed revised tariff sheets to address errors highlighted in Compliance Order III. A revised section 38.1.1 was filed to correct section numbering problems associated with a revision to section 38.1.1.j. A revised section 38.2.6.c.ii was filed to clarify any ambiguities regarding load shedding prior to the operating day in conjunction with the balancing authorities and transmission operators. As revised in section 38.2.6.c.ii, market participants who are load-serving entities will work with the balancing authorities and transmission operators to prepare to implement load shedding prior to the operating day.

39. The Midwest ISO responded to a Commission directive to report on the development of software modifications for market enhancements for a market participant's default purchase quantity under section 39.2.2.b.i. The Midwest ISO states that its resources have been focused on ensuring a smooth market start and that this has resulted in a deferral of what the Midwest ISO characterizes as "market enhancements." The Midwest ISO states that it has been working to prioritize market and system enhancements based on input from market participants, and that it will work with stakeholders to determine the priority of this issue.

40. Compliance Order III directed the Midwest ISO to respond to a list of clarification requests Cinergy made earlier in the proceeding, which remained unresolved from the TEMT II Rehearing Order.<sup>19</sup> The Midwest ISO responded to those requests in its transmittal letter and submitted clarifying language for its business practices manuals.

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<sup>18</sup> The Midwest ISO has added a section (b), and renumbered the section that follows from (h) to (c).

<sup>19</sup> See Compliance Order III at P 146; TEMT II Rehearing Order at P 525.

The Midwest ISO also submitted revised tariff sheets where, it states, it found Cinergy's suggested edits appropriate.<sup>20</sup>

41. The Midwest ISO revised section 38.2.5.h to clarify that the Midwest ISO may not reschedule generator planned outages if doing so would contravene applicable laws, regulations, court or agency orders. This clarifying language was added as a new subsection 38.2.5.h.vi.

## 2. Discussion

42. The Midwest ISO's tariff revisions generally clarify the responsibilities and requirements for itself and for its market participants. We accept that the Midwest ISO has sufficiently revised section 38.1.1 to correct the sub-section lettering errors.<sup>21</sup> We find that the Midwest ISO has also sufficiently responded to a Commission directive in Compliance Order III to revise and clarify its tariff in connection with Cinergy's list of outstanding clarifications and tariff revisions.

43. We accept that the Midwest ISO will work with stakeholders on priorities, including those related to demand bid default purchase quantities in section 39.2.2.b.i, and we accept the Midwest ISO's pledge to inform the Commission of the status of market enhancement issues and find that it has fulfilled its compliance obligation regarding section 39.2.2.b.i.. Accommodating standing orders in a market participant's default purchase quantity will require stakeholder-funded software enhancements. The Midwest ISO states that it will gauge stakeholder interest in this feature and in all other market enhancement issues on an ongoing basis.<sup>22</sup> We add that no comments were received in opposition to this approach.

## F. Business Practices Manuals

### 1. Background

44. The Midwest ISO states that it reviewed its business practices manuals, and the tariffs of other regional transmission organizations, to determine the appropriate level of

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<sup>20</sup> See Midwest ISO Transmittal Letter at 5-7 (June 14, 2005).

<sup>21</sup> See *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,289 (2005).

<sup>22</sup> See Midwest ISO Transmittal Letter at 5 (June 14, 2005).

detail to include in its tariff in response to compliance obligations outstanding since the TEMT II Rehearing Order. The Midwest ISO determined that further details were required in its tariff to clarify the requirements affecting rates, terms, and conditions for market participants. To clarify the requirements of becoming and operating as a market participant, the Midwest ISO expanded the details of several subsections of section 38. With these tariff changes, the Midwest ISO states that the TEMT is as detailed as the other Commission-approved tariffs.

45. The Midwest ISO also filed the details of its LMP formulas in the TEMT, as opposed to its business practices manuals. The LMP formula details are filed as a new Attachment DD to the TEMT.

46. The Midwest ISO filed the details of its metering standards that affect cost responsibility and the terms and conditions of service in section 38.2.5.e. The Midwest ISO states that this section now includes the minimum metering standards that each market participant must meet to ensure that the Midwest ISO has the quality of metering data it needs to reliably and efficiently operate the energy markets.

47. The Midwest ISO also stated that it has revised its business practices manual for the energy market by stating that if a firm point-to-point transmission service entitlement includes rollover rights that do not have to be exercised prior to the cut-off date for inclusion of transmission service in the annual FTR allocation, the market participant with the entitlement may nominate and receive FTRs in the allocation process as if the rollover right had been exercised. Further, in the transmission service registration process, market participants are required to identify transmission service with rollover rights. The termination date for such service will be adjusted to a date specified by the market participant, but no longer than the end of the annual allocation period. However, if the rollover right is not exercised, the corresponding FTRs are cancelled. The cancellation may be done by allocating to the market participant FTRs equal in megawatts to those allocated, but in the opposite direction.

## **2. Protests and Comments**

48. The Midwest TDUs express concerns about the Midwest ISO's proposed revisions to its business practices manuals governing FTR rollover rights. The Midwest TDUs' concern is that the language appears to limit its application to customers taking firm point-to-point transmission service under the open-access transmission tariff. They assert that this provision should apply also to network transmission customers and customers taking service under grandfathered agreements so that it encompasses all transmission users with rollover rights.

49. The Midwest TDUs also argue that the means and timing of canceling FTRs is unclear. They assert that canceling FTRs should leave the transmission user in the same position as if it had never obtained the FTRs for the period after its original rights terminated. The Midwest TDUs find the proposed language to mean that the Midwest ISO can allocate FTRs in the opposite direction, which might leave the market participant in a worse-off position than cancellation would. The Midwest TDUs explain that this is because the Midwest ISO may not have sufficient revenues to fully fund the FTRs originally awarded. To avoid this, the Midwest ISO should be required to actually cancel the FTRs in lieu of assigning counter-flow FTRs. They further assert that the cancellation should take effect only upon the expiration of the original reservation.

### 3. Discussion

50. We find that the Midwest ISO's proposed tariff revisions satisfy the directives of the TEMT II Rehearing Order, and we accept them.<sup>23</sup> In particular, the Midwest ISO has clarified its tariff regarding market participant obligations. In addition, the Midwest ISO has included formulas used to calculate LMPs with sufficient detail<sup>24</sup> and in accordance with prior Commission directives.<sup>25</sup>

51. The Midwest TDUs' request that the Commission order the Midwest ISO to revise its business practices manual for the energy market is outside the scope of this proceeding, and we therefore deny it. While the Midwest ISO's business practices manuals implicate the Commission's jurisdiction, as recognized in the TEMT II Order,<sup>26</sup> the terms that the Midwest TDUs discuss in their protest do not significantly affect the rates, terms, and conditions for service, and need not be included in the tariff.<sup>27</sup> There is sufficient information in the tariff to enable a market participant to discern its obligations,

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<sup>23</sup> See TEMT II Rehearing Order at P 557-64.

<sup>24</sup> See 18 C.F.R. § 35.1 (2005).

<sup>25</sup> See TEMT II Rehearing Order at P 560.

<sup>26</sup> See TEMT II Order at P 656.

<sup>27</sup> "The statutory directive [of FPA section 205] must reasonably be read to require the recitation of only those practices that affect rates and services significantly, that are *realistically* susceptible of speculation, and that are not so generally understood as to render recitation superfluous . . . ." *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

and the Midwest TDUs do not argue otherwise. We add that the Midwest ISO remains obligated to update and maintain the business practices manuals to facilitate efficient energy markets.<sup>28</sup> Furthermore, the Midwest TDUs have multiple venues in which to raise their revision suggestions, including the Market Practices Subcommittee and the Tariff Working Group.

The Commission orders:

(A) The Midwest ISO's compliance filing is hereby conditionally accepted in part and rejected in part.

(B) The IMM's compliance filing is hereby accepted in part and rejected in part, as described in the body of this order.

(C) The Midwest ISO is required to make a compliance filing within 30 days of the date of this order that will incorporate into the TEMT the changes described in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>28</sup> See TEMT, Module C, section 38.1.5, Second Revised Sheet No. 357.