

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER06-1552-001

ORDER ON REHEARING

(Issued May 21, 2007)

1. Indianapolis Power & Light Company (IPL) and Ameren Services Company (Ameren) filed requests for rehearing of the Commission's December 22 Order¹ that conditionally accepted Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT or tariff). In this order, we will deny IPL's and Ameren's requests for rehearing, as discussed below.

I. Background

2. The December 22 Order conditionally accepted Midwest ISO's proposed section 40.3.5 of the TEMT, which provides a price volatility make-whole payment (PV MWP) to certain generation resources when the real-time locational marginal price (LMP) is insufficient to cover their real-time incremental energy costs. The December 22 Order also conditionally accepted proposed section 33.8 of the TEMT, to clarify the circumstances under which Midwest ISO can manually redispatch generation resources, equitably compensate manually redispatched generation resources, and ensure adequate cost recovery.

A. Requests for Rehearing and Responsive Pleadings

3. Ameren contends that Midwest ISO should be required to allocate PV MWP costs to only real-time load and not to day-ahead load as well. Ameren also argues that

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325 (2006) (December 22 Order).

Midwest ISO should use Ameren's reference level proposal instead of the proposed offer fixity and offer continuity eligibility criteria to prevent potential gaming activities. Additionally, Ameren requests that the Commission expand its PV MWP reporting requirements, including directing Midwest ISO to submit reports on a quarterly basis.

4. IPL argues that PV MWP costs should be directly assigned to parties deemed to have caused the PV MWP costs to be incurred. IPL also requests that costs be assigned only to parties participating in the market at the time in which PV MWP costs are incurred.

5. Midwest ISO submitted answers to Ameren's and IPL's requests. Ameren and IPL submitted answers in response to Midwest ISO's answers.

II. Discussion

A. Procedural Matters

6. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits an answer to a request for rehearing. We will therefore reject Midwest ISO's answers and the answers of Ameren and IPL.

B. PV MWP Cost Allocation

7. The December 22 Order approved allocating PV MWP costs "to all Market Participants *pro-rata*, based on their Load Ratio Share across the Transmission Provider Region" in tariff section 40.3.5.9, but required Midwest ISO either to explain how the proposed language allocates costs to all market participants transacting in the market, cleared either day-ahead or real-time, and not on Schedule 10 billing determinants, or to specify the mechanics of the cost allocation in section 40.3.5.9.²

1. Requests for Rehearing

8. While IPL agrees that Schedule 10 billing determinants should not be used, IPL requests that the Commission find that PV MWP costs should be directly assigned to those parties that cause PV MWP costs to be incurred. IPL contends that, similar to the PV MWP, real-time Revenue Sufficiency Guarantee (RSG) payments produce

² *Id.* at P 66. Midwest ISO responded to the December 22 Order's cost allocation request in its compliance filing submitted on January 23, 2007, as amended on January 24, 2007, in Docket No. ER06-1552-002.

generalized market benefits, yet RSG costs are directly assigned on a cost causation basis.³ IPL adds that Midwest ISO's argument that it would be difficult to identify the parties causing PV MWPs suggests that such parties could be identified albeit with additional effort. Since Midwest ISO indicated that the PV MWP software is still under development, IPL concludes that Midwest ISO has an opportunity to directly allocate PV MWP costs. However, in the event that the Commission does not clarify that PV MWP costs should be allocated directly to the cost causers, IPL requests that the Commission at least clarify that PV MWP charges should be assessed only to parties that participate in the market at the time in question, similar to day-ahead RSG charges that are assigned to market participants scheduled to purchase any energy in the day-ahead market.⁴

9. Ameren argues that the Commission erred in finding that PV MWP costs should be allocated on a load ratio share basis rather than on the same basis as real-time RSG costs. Ameren disagrees with the Commission's finding that the Midwest ISO proposal was not "designed solely, or even primarily, to reduce RSG costs,"⁵ and argues that the PV MWP proposal was submitted to reduce real-time price volatility, real-time RSG charges, and inefficient dispatch.⁶ Ameren also disagrees that all load benefits, because day-ahead load is not exposed to real-time RSG charges and the benefits of greater flexibility.⁷ Thus, Ameren asserts that the costs of the PV MWP should be allocated only to real-time load and not to day-ahead load, because only real-time load benefits from the PV MWP. Ameren concludes that allocating PV MWP costs on a load ratio share basis is unjust and unreasonable, because it is inconsistent with fundamental principles of cost causation.

10. Ameren disagrees with the Commission's finding that protesters did "not propose a method for identifying the specific sources of price volatility that cause inflexible real time offers, which in turn cause the need for the PV MWP."⁸ Ameren contends that

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108 at P 84, *order on reh'g*, 117 FERC ¶ 61,113 at P 117 (2006).

⁴ *See* section 39.3.1.c of the TEMT.

⁵ December 22 Order at P 64.

⁶ *Citing* Gardner Affidavit at 4-5 and Doying Affidavit at 3-4.

⁷ December 22 Order at P 64.

⁸ *Id.* at P 65.

protestors do not have the burden to develop an alternate proposal, because Midwest ISO, as the applicant, has the burden to demonstrate that the PV MWP proposal is just and reasonable.

2. Commission Determination

11. We will deny the requests for rehearing. Under section 205 of the Federal Power Act (FPA),⁹ the Commission is obligated to review Midwest ISO's proposal to determine whether it is just and reasonable and not unduly discriminatory or preferential. We find that the cost of the PV MWP program is properly recovered from all market participants transacting in the market, cleared either real-time or day-ahead.

12. While we recognized in the December 22 Order at P 64 that the PV MWP may result in lower RSG payments,¹⁰ we disagreed with the argument that the PV MWP was designed primarily for this purpose. Without the proposed program, the presence of price volatility and the potential for not recovering one's costs create incentives for parties to either offer inflexibly in the real-time market or avoid the real-time market altogether. Both reactions (*i.e.*, offering inflexibly or avoiding the real-time market) further reduce the amount of generation available for Midwest ISO to resolve congestion and contribute to yet more price volatility. By compensating generators for their incremental energy costs, the PV MWP program provides an incentive for generators to offer more flexibly in the real-time market or consider transacting in the real-time market, which will in turn increase available generation to resolve congestion, reduce real-time price volatility and allow Midwest ISO to better manage frequency fluctuations (thereby increasing

⁹ 16 U.S.C. § 824d (2000).

¹⁰ See section 40.3.3.a.ii of the TEMT. In general, the tariff allocates real-time RSG charges based on load deviations (the difference between real-time metered load and load scheduled day-ahead); import schedule deviations (the difference between real-time and day-ahead scheduled load quantities); export schedule deviations (the difference between real-time and day-ahead scheduled generation output); and various differences pertaining to injections of energy by generation resources. Thus, under the tariff, real-time RSG costs are allocated to load and generation resources.

reliability).¹¹ Given these generalized market benefits, we disagree that PV MWP costs should be directly-assigned to parties that may experience reductions in their real-time RSG payments.¹²

13. We find that allocating PV MWP costs only to real-time load, as Ameren proposes, would be contrary to the PV MWP's goal of promoting more flexible real-time offers and inconsistent with cost causation principles. Under such alternative cost allocation, for generators that offer flexibly with respect to their ramp rates and the spreads between their economic minimum and economic maximum levels and are more likely to be dispatched in real-time, their loads are exposed to the associated "real-time" PV MWP costs. Meanwhile, for generators that offer inflexibly to avoid real-time output that differs from their day-ahead committed schedules and are not dispatched in the real-time market, their loads avoid any associated "real-time" PV MWP costs, even though the inflexible real-time offers of their generators contributed to price volatility.¹³ Thus, we find that allocating PV MWP costs to day-ahead load (as well as to real-time load) is consistent with cost causation principles, because all generation, including capacity scheduled in the day-ahead market, can offer inflexibly in the real-time market, thus contributing to price volatility. Furthermore, we believe that allocating PV MWP costs only to real-time load, as requested, would undermine the ability of the PV MWP to address real-time price volatility by assigning PV MWP costs only to the load of flexibly-offered generators and creating a potential incentive for generators to offer inflexibly in the real-time market.¹⁴

14. We also find that PV MWP costs should not be directly assigned. As explained in the December 22 Order, real-time price volatility arises from the total ramp rate restrictions across the real-time market and not the behavior of select generating units.

¹¹ *Id.*

¹² With regard to IPL's request that PV MWP costs be assigned only to generation resources participating in the market at the time in question, we note that Midwest ISO's proposed revisions to section 40.3.5.9 in Docket No. ER06-1552-002, which we conditionally accept in an order issued concurrent with this order, clarify that PV MWP payments will be assessed on an hourly basis.

¹³ *Id.* at P 5, 37.

¹⁴ We note that this cost allocation could also discourage generation resources from making offers in the real-time market.

No party has proposed a method for identifying the specific parties that cause real-time price volatility.¹⁵ Moreover, as Midwest ISO has argued, even if such parties could be readily identified, not all activities that may cause price volatility necessarily involve misbehavior.¹⁶ Thus, we will not require that PV MWP costs be directly assigned.¹⁷

C. PV MWP Eligibility

15. The December 22 Order approved Midwest ISO's proposal to require generation resources to meet all applicable offer fixity, offer flexibility, performance, and offer continuity eligibility criteria in order to receive PV MWPs.¹⁸ The offer flexibility and performance eligibility criteria are designed to encourage generators to provide flexible dispatch ranges and ramp rates in their real-time offers and to ensure that generators comply with dispatch instructions.¹⁹ The offer fixity and offer continuity eligibility criteria are intended to limit the risk of anti-competitive conduct that might otherwise improperly create windfall PV MWPs. Specifically, the offer fixity eligibility criteria require unchanged offer data as compared to day-ahead offers (in the case of day-ahead committed generators) or compared to specific hours (in the case of real-time must-run units).²⁰ The offer continuity eligibility criteria make generators ineligible for the PV MWP for an hour and all subsequent hours in an operating day, if they do not meet any applicable eligibility criteria in one interval of an hour.²¹

¹⁵ *Id.* at P 65.

¹⁶ *See Id.* at P 62.

¹⁷ Notwithstanding the above, we will direct Midwest ISO to further explore possible alternative mechanisms that may more closely track cost causation when assigning PV MWP charges as part of its report due within 12 months of the effective date of the PV MWP.

¹⁸ *Id.* at P 39; *see Id.* at P 7-10.

¹⁹ *Id.* at P 8.

²⁰ *Id.* at P 7.

²¹ *Id.* at P 9.

1. Requests for Rehearing

16. Ameren argues that the offer fixity and offer continuity eligibility criteria proposed by Midwest ISO make generators ineligible for the PV MWP based on their physical operating characteristics (in the absence of any showing that the generator has acted improperly). Because such generators may be found ineligible for the PV MWP, Ameren claims that the PV MWP may fail to adequately protect market participants and consumers by maintaining the incentive to offer inflexibly. Thus, Ameren concludes that the offer fixity and offer continuity eligibility criteria should be rejected, because they are inconsistent with the Commission's prior policy rejecting overly-restrictive mitigation measures.

17. As an alternative to Midwest ISO's proposed offer fixity and offer continuity eligibility criteria, Ameren suggests that generators should receive the PV MWP "based on their individual reference levels rather than on the price amounts reflected in their offers." Such a compensation mechanism, Ameren argues, would avoid penalizing generators based on their operational limitations and discourage the same type of gaming behavior that the offer fixity and offer continuity eligibility requirements are intended to deter. Ameren contends that, if Midwest ISO cannot affirmatively demonstrate that the use of reference levels would be insufficient to deter and detect gaming behavior, Midwest ISO should be compelled to adopt Ameren's alternative proposal or implement other, less restrictive anti-gaming alternatives to the proposed eligibility criteria.

2. Commission Determination

18. In the December 22 Order the Commission stated that the proposed eligibility criteria are necessary to address the numerous ways that market participants could potentially game the PV MWP process. We do not believe that the Independent Market Monitor's (IMM) market monitoring and mitigation tools alone are sufficient to prevent gaming of the PV MWP (and thus have required the eligibility criteria).²² However, the Commission also required Midwest ISO to file a report within 12 months of the effective date of the PV MWP to address, among other things, concerns that the eligibility criteria could render some generation resources ineligible for the PV MWP due to their physical operating characteristics. Furthermore, the Commission's decision to allow Midwest ISO to gain operational experience with the PV MWP program before attempting to expand

²² *Id.* at P 43.

the program to accommodate the various operational limitations of some units represents reasoned decision-making.²³ Thus, we disagree with Ameren's argument that the PV MWP eligibility criteria are overly restrictive or constitute over-mitigation.

19. While Ameren asserts that its reference level proposal improves and/or clarifies the TEMT, the Commission, as noted in *City of Bethany v. FERC*,²⁴ is not obligated to adopt Ameren's preferred alternative. Pursuant to section 205 of the FPA, the Commission is obligated to review Midwest ISO's proposed provisions to ensure that they are just and reasonable and not unduly discriminatory or preferential. After examining Midwest ISO's proposed PV MWP eligibility criteria, the December 22 Order found that the proposal was just and reasonable and not unduly discriminatory or preferential.²⁵

D. PV MWP Reporting Requirements

20. The December 22 Order required Midwest ISO to submit a report, no later than one year from the effective date of the PV MWP program. In the informational report, Midwest ISO was required to discuss the effectiveness of the PV MWP program, identify any problems, and address other issues identified by the Commission including intervenor concerns.²⁶

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21. Ameren suggests that Midwest ISO be required to submit an analysis three months after the start-up of the PV MWP program that examines the extent to which the PV MWP program has increased flexible offers and that addresses Ameren's argument that application of its reference level alternative proposal would be sufficient to deter gaming behavior. To ensure that the least restrictive anti-gaming provisions are in place, Ameren argues that Midwest ISO should be compelled to revise its anti-gaming provisions to

²³ *Id.* at P 38.

²⁴ 727 F.2d 1131, 1136 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917 (1984) (utility need only establish that its proposed rate design is reasonable, not that it is superior to alternatives); *accord OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995).

²⁵ December 22 Order at P 37.

²⁶ *Id.* at P 42.

adopt Ameren's reference level alternative if Midwest ISO's report cannot affirmatively demonstrate that the adoption of Ameren's alternative proposal would be inadequate to address gaming activities.

22. Ameren also expresses concern that Midwest ISO may submit a vaguely worded report stating that, while Ameren's reference level alternative or other less-restrictive anti-gaming mechanisms may address some forms of gaming, the more restrictive eligibility criteria are still necessary to protect against unanticipated forms of gaming. Ameren contends that, consistent with the Commission's policy against excessive mitigation, the Commission should not allow such a speculative approach, and that Midwest ISO and the IMM already have sufficient tools to protect against gaming activity.

23. Furthermore, Ameren argues that the report required by the December 22 Order is contrary to the Commission's obligation to ensure that the PV MWP is just and reasonable. Instead, Ameren suggests that Midwest ISO should be required to submit reports every three months after the PV MWP program commences. Ameren contends that use of a quarterly reporting period provides sufficient time for market participants to adjust their bidding behavior, allows Midwest ISO to collect appropriate data, and is consistent with the Commission's previous use of quarterly reports to monitor other market power mitigation measures.²⁷ Additionally, Ameren asserts that a shorter reporting interval would provide more current information, prevent the institutionalization of the offer fixity and offer continuity eligibility criteria, and allow prompt modification of the PV MWP program if the eligibility requirements create disincentives to submit flexible offers or do not adequately protect market participants.

24. In addition to the information required by the December 22 Order, Ameren suggests that any PV MWP reports should include additional information, including: (1) the changes to the flexibility of day-ahead offers and any resultant impact on the divergence between day-ahead and real-time prices; (2) the costs to implement the PV MWP compared to the benefits to the market, such as the amounts saved by reduced real-time LMP volatility and RSG costs; (3) the reasons derated units should be ineligible for the PV MWP if they change their offers in real-time and how this requirement affects reliability; and (4) the redistribution of costs in the market that may be caused by the PV MWP.

²⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,157, at P 219-21, 230-31 (2004) (BCA Order).

2. Commission Determination

25. We will deny Ameren's request that Midwest ISO be required to submit a report three months after the start of the PV MWP. In the December 22 Order, we found that a 60-day trial period provides insufficient time to test and evaluate the PV MWP procedure.²⁸ We do not believe that Ameren has provided a compelling reason that an extra 30 days, *i.e.*, a 90-day reporting period, is sufficient. We also will not require Midwest ISO to submit a report regarding Ameren's reference level alternative, because we believe that Midwest ISO's eligibility criteria are just and reasonable.

26. We agree with Midwest ISO that quarterly reports are not necessary in this case.²⁹ We find that 90 days is not sufficient time to see market participants adapt their behavior to the PV MWP program.³⁰ In the December 22 Order, we directed Midwest ISO instead to submit a single comprehensive report (to avoid potential over-reporting) to evaluate the effectiveness of the PV MWP program and identify potential improvements to the PV MWP program.³¹ However, if Midwest ISO determines in the interim that there are modifications that would improve the PV MWP program, we encourage Midwest ISO to file such modifications with the Commission, pursuant to section 205 of the FPA.

27. The December 22 Order sets forth certain information that Midwest ISO must include in its report, and that should prevent a vague report. Furthermore, we will also direct Midwest ISO to work through the stakeholder process to generate the report and to decide what additional information, if any, should be included. We find that the stakeholder process will provide ample opportunities for Ameren to request that additional information be included in the report.

²⁸ December 22 Order at P 41.

²⁹ We find that the PV MWP eligibility criteria appropriately address potential gaming of the PV MWP. Thus, we do not believe that over-mitigation risks comparable to those identified in the BCA Order, *see supra* note 27, exist in this case to necessitate a more frequent reporting interval.

³⁰ December 22 Order at P 41.

³¹ *Id.* at P 42.

The Commission orders:

Ameren's and IPL's requests for rehearing are hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.