

125 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinohoff.

Midwest Independent Transmission System Operator, Docket No. ER08-394-001
Inc.

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued October 20, 2008)

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1. On March 26, 2008, the Commission conditionally accepted the Midwest Independent Transmission System Operator, Inc.’s (Midwest ISO) proposed tariff

revisions to its Open Access Transmission and Energy Markets Tariff (TEMT)¹ to revise its interim Module E (Resource Adequacy)² to comprehensively address long-term resource adequacy requirements.³ In this order, we grant in part and deny in part requests for rehearing of the March 26 Order. In an order issued concurrently with this order, we conditionally accept the Midwest ISO's 60-day compliance filing subject to further compliance.

I. Background

A. History

2. When the Commission conditionally approved the TEMT, on August 6, 2004, it approved the proposed Module E of the TEMT as a "short-term transition mechanism" to help ensure reliability throughout the Midwest ISO footprint, but directed the Midwest ISO to work toward a long-term resource adequacy plan through its stakeholder process.⁴

3. In compliance with that directive, on October 5, 2004, the Midwest ISO filed a proposal to develop a permanent resource adequacy plan by early June 2006.⁵ The Commission accepted the Midwest ISO's proposal to file a long-term resource adequacy plan by June 6, 2006, and confirmed that the then-existing Module E was a reasonable and appropriate interim plan, while a long-term approach was still in development.⁶

4. On June 6, 2006, the Midwest ISO filed a proposal for a two-phased approach to implement a permanent resource adequacy plan. In Phase I, the Midwest ISO proposed

¹ Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1.

² Module E contains the resource adequacy provisions of the TEMT.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 (2008) (March 26 Order).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 421, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *order on reh'g*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisc. Pub. Power Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007). The Midwest ISO's energy markets commenced on April 1, 2005.

⁵ Midwest ISO October 5, 2004 Compliance Filing, Docket Nos. ER04-691-007 and EL04-104-006, at 31.

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,043 at P 107.

to integrate short-term contingency reserves and regulation into the energy markets. In Phase II, the Midwest ISO proposed to integrate, over the long-term, shortage pricing into the energy markets. The Commission accepted the Midwest ISO's two-phased approach, accepting the Midwest ISO's commitment to file Phase I in the fall of 2006 and Phase II in 2007, but also required the Midwest ISO to file a detailed timetable for implementation of its plan.⁷

5. On February 15, 2007, the Midwest ISO filed Phase I, a proposal for an ancillary services market to facilitate the sale and purchase of contingency reserves and regulation. The Commission accepted the Midwest ISO's resource adequacy implementation plan and directed the Midwest ISO to file Phase II, a permanent long-term resource adequacy proposal, by December 2007.⁸

B. March 26 Order and Requests for Rehearing

6. In the March 26 Order, the Commission conditionally accepted Phase II of the Midwest ISO's permanent resource adequacy program, subject to completion of certain provisions that were still under consideration by stakeholders, and ordered compliance filings. The Commission noted that the proposed long-term resource adequacy provisions were an important step in establishing the framework for efficient and reliable energy and reserves markets in the future. The Commission also recognized that the Organization of Midwest ISO States (OMS) and stakeholders were actively involved in developing the proposal.

7. Requests for rehearing of the March 26 Order were filed by: the Illinois Commerce Commission (Illinois Commission); Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPSC/UPPCO); Dairyland Power Cooperative (Dairyland); the Midwest ISO; American Municipal Power - Ohio, Inc. (AMP-Ohio); Midwest Transmission-Dependent Utilities (Midwest TDUs); Illinois Municipal Electric Agency (Illinois Municipal); Dynegy Power Marketing (Dynegy); Integrys Energy Services (Integrys); Strategic Energy, LLC (Strategic Energy); the Detroit Edison Company (Detroit Edison); Illinois Industrial Energy Consumers (Illinois Industrial); Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (Hoosier & Southern Illinois); the Coalition of Midwest Transmission Customers (CMTC); and Reliant Energy, Inc. (Reliant). Hoosier & Southern Illinois filed an answer to the Midwest ISO's rehearing request.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,292, at P 13 (2006).

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311, at P 138, *order on reh'g*, 120 FERC ¶ 61,202 (2007) (Guidance Order).

II. Procedural Matters

8. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2008), prohibits an answer to a request for rehearing. Consequently, we will not accept the answer of Hoosier & Southern Illinois.

III. Substantive Matters

A. Capacity Resources

1. March 26 Order

9. In the March 26 Order, we rejected the designation of power purchase contracts as Capacity Resources without prejudice to the Midwest ISO filing a revised proposal that provides a verification of resources. The Commission noted that the designation of power purchase agreements as Network Resources in Order Nos. 890 and 890-A⁹ had no bearing on whether these resources would qualify as Capacity Resources.¹⁰ Similarly, the Commission found that the Midwest ISO had not shown that seller's choice contracts were equivalent to Capacity Resources, and required the filing of a revised proposal. The Commission found that the requirement that Capacity Resources are deliverable based on a Midwest ISO deliverability analysis is reasonable, and that an ongoing analysis of deliverability, after the resource has been initially determined to be deliverable, is also reasonable.

2. Requests for Rehearing

10. On rehearing, Illinois Municipal faults the Commission for rejecting power purchase agreements as Capacity Resources, stating the rejection cannot be squared with other Commission statements in the March 26 Order demonstrating the importance of power purchase agreements to the proposed resource adequacy program. Illinois Municipal also claims that Order Nos. 890 and 890-A are neutral as to whether Network Resources qualify as Capacity Resources and argues that the Commission ignored the issue of what types of power purchase agreements qualify, irrespective of verification requirements. Illinois Municipal notes that the Midwest ISO has verification

⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 1474-83 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

¹⁰ Capacity Resources are the resources and External Resources that are available to meet peak load demand, including generation resources, liquidated damages contracts, and demand response resources. Third Revised Sheet No. 54.

requirements for power purchase agreements, citing to information required from on-system Network Resources.

11. Illinois Municipal explains that a power purchase agreement for capacity may not provide for a load-serving entity's (LSE) peak demands. Illinois Municipal therefore requests that the Commission clarify that the Commission's statement in the March 26 Order that the annual capability demonstration show that the *resource* can meet the peak demand needs of an LSE was really intended to show the *LSE* can meet its peak demand needs. Illinois Municipal argues the risk that power purchase agreements will not qualify as Capacity Resources cannot be permitted and runs against the Commission's claim that the Midwest ISO proposal will not impose unnecessarily high costs on market participants.

12. AMP-Ohio claims that the Commission erred in not approving power purchase agreements with liquidated damages provisions as Capacity Resources, noting that these contracts stem from the Commission's requirements concerning the qualifications for Network Resources. AMP-Ohio asserts that the same reliability-based principles that apply to liquidated damages contracts that constitute Network Resources should apply to the designation of liquidated damages contracts as Capacity Resources. AMP-Ohio further explains that the Commission's disallowing these agreements from qualifying as Capacity Resources would present a hardship for LSEs that rely on the agreements, and would require those LSEs to replace the agreements with different Capacity Resources, resulting in significantly elevated power costs.

13. According to AMP-Ohio, sufficient protections exist to allow liquidated damages contracts to constitute Capacity Resources. AMP-Ohio notes that unit power purchases are subject to the availability of the identified generator from which they are sourced. AMP-Ohio further notes that firm system purchases are backed by the seller's reserves, and that Order No. 890 mandates that liquidated damages contracts can only qualify as Capacity Resources if they contain provisions obligating the supplier to reimburse the buyer for additional costs of any replacement power.

14. Hoosier & Southern Illinois argue that Module E is not just and reasonable without a provision permitting LSEs to use slice-of-system contracts as Capacity Resources on the same terms that large, vertically-integrated utilities use their fleets to serve retail customers. Hoosier & Southern Illinois claim that without the provision for such agreements, it is difficult to see how a utility that is a full or partial requirements customer of another entity could comply with its resource adequacy obligation. Hoosier & Southern Illinois assert that the Commission imposed undue prejudice and disadvantage on smaller utilities by preventing them from utilizing as Capacity Resources the same fleets of generating resources that larger utilities are permitted to use.

15. The Midwest TDUs fault the Commission for failing to address their argument that firm system purchases must be accounted for in a manner that recognizes these

purchases are already backed by the seller's reserves, rather than treated as generation resources that are subject to contingencies and thus require reserves. Accordingly, the Midwest TDUs argue that the most appropriate way to treat firm system purchases for reserve adequacy purposes is to add the purchases to the seller's load and deduct them from the buyer's load. The Midwest TDUs note that the Midwest ISO proposal foreclosed purchase contracts sourced from a range of internal Midwest ISO generation and nothing in the March 26 Order compels the Midwest ISO to reverse its refusal to recognize internally-sourced firm system purchase agreements.

16. The Midwest TDUs further note that even if the Midwest ISO permitted firm system purchase agreements that are sourced, on a verified basis, from the seller's system of resources to be counted as Capacity Resources, the March 26 Order would not obligate the Midwest ISO to properly account for the reserves built into the system purchase agreement. The Midwest TDUs assert that this would cause the buyer to be required to carry a second set of reserves, in contravention of prior Commission directives.¹¹ The Midwest TDUs consider such a result contrary to the Commission's policy of promoting long-term contracts and request that the Commission reaffirm its prior directives.

17. The Midwest TDUs explain that system power purchases differ from seller's choice contracts because the latter are not backed by any particular, identifiable generation.¹² The Midwest TDUs also state that their proposed approach, under which system purchases come with reserves,¹³ is reflected in the Commission's regulations on reporting reliability data in the calculation of peak load. The Midwest TDUs contend that the Midwest ISO's treatment of off-system system purchases must also fully account for the reserves the buyer already pays the seller to carry to support the firmness of the purchase.

18. Noting that the Midwest ISO proposal did not indicate whether purchases sourced from a specified off-system resource qualify as a Capacity Resource, the Midwest TDUs request rehearing on the Commission's failure to require the Midwest ISO to allow verified external unit purchases to be counted as Capacity Resources.

¹¹ *Citing Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,285 at P 319 ("We agree with commenters that both the buyer and seller should not have to bear redundant responsibilities for reserves.").

¹² The Midwest TDUs also note that Order No. 890 recognizes the distinction between these types of contracts.

¹³ According to the Midwest TDUs, a 100 MW firm system purchase should be counted as a 115 MW Capacity Resource for which the seller is required to carry 15 percent reserves.

3. Commission Determination

19. We affirm our determination in the March 26 Order that a power purchase agreement must be backed by resources that can be verified in order to meet the definition of a Capacity Resource. We find it reasonable to require power purchase agreements to demonstrate the same resource capabilities that other resources must demonstrate under the resource adequacy plan. By themselves, power purchase agreements with liquidated damages provisions of the make-whole payment type do not meet this requirement. Such a requirement only addresses which party to a contract is liable for payments if supplies are not delivered,¹⁴ whereas the purpose of the resource adequacy plan is to ensure that enough MWs are available to be delivered in peak conditions – as is required of all other resources. A financial payment is not a demonstration of resource availability under peak demand conditions. We find that a plan based on purchase agreements that cannot meet the peak needs of LSEs is, as Illinois Municipal admits, an unworkable plan.

20. The Midwest ISO resource adequacy proposal designated a new type of resource, a Capacity Resource, as eligible to meet the requirements of its resource adequacy plan. Capacity Resources differ from Network Resources. We find this distinction reasonable inasmuch as it ensures that capacity and planning resources participating in the resource adequacy program can fulfill their required function in the resource adequacy program.

21. In the March 26 Order, we found that the Midwest ISO justified its requirement that on-system resources be designated individually as on-system Network Resources in compliance with Order Nos. 890 and 890-A. We affirm our determination in the March 26 Order that the requirements for Capacity Resources are different from the requirements for Network Resources because they serve a different resource adequacy function and that Order Nos. 890 and 890-A do not address Capacity Resources. In the March 26 Order, we found that the appropriate method for determining if seller's choice or system purchase contracts can fulfill the requirements of Capacity Resources in the resource adequacy program is by verifying the capacity backing the agreements for resources internal and external to the Midwest ISO.

22. Therefore, with respect to slice-of-system and seller's choice contracts, we clarify that if resources backing the purchase agreements can be verified, these agreements are suitable to be considered the equivalent of Capacity Resources. To the extent that the Midwest ISO can verify that portions of resources are available for the peak demands of

¹⁴ See March 26 Order, 122 FERC ¶ 61,283 at P 267 (stating that the make whole provision obligates the supplier, in the case of interruption for reasons other than *force majeure*, to make the aggrieved buyer *financially* whole by reimbursing the buyer for monetary loss).

smaller utilities, slice-of-system resources should be eligible to be Capacity Resources. We further clarify that the capacity verification applies to both on-system and off-system resources. We note that, in the compliance order being issued concurrently with this order (Compliance Order), the Commission is accepting the Midwest ISO's proposal to qualify slice-of-system agreements as Capacity Resources.¹⁵

23. With respect to the Midwest TDUs' assertion that the Midwest ISO proposal forecloses purchase contracts sourced from a range of internal Midwest ISO generation, we note that we are conditionally accepting in the Compliance Order¹⁶ Midwest ISO's revised proposal to include these agreements in its list of agreements qualifying as Capacity Resources. While we recognize that the Midwest ISO proposal deletes the earlier tariff language referring to these arrangements in the interim resource adequacy program, the proposal language in revised section 69.2.1.2.e accommodates system purchase contracts.

24. Regarding Midwest TDUs' concern about accounting for seller's reserves, the Midwest ISO explains that these reserves are already incorporated into the resource adequacy program, as discussed in the Compliance Order.¹⁷ We also note that verified purchases sourced from a specified off-system Capacity Resource qualify as Capacity Resources, as discussed in the Compliance Order.¹⁸

B. Deliverability

1. Requests for Rehearing

25. On rehearing, AMP-Ohio asserts that it is unclear whether the Commission, in the March 26 Order, deemed inappropriate the Midwest ISO's current practice of designating Capacity Resources. With respect to deliverability, AMP-Ohio describes the Midwest ISO's current practice of determining deliverability of Capacity Resources as first applying an aggregate deliverability test and then, provided that the source passes this test, allowing the source to serve as a Capacity Resource for any load in the Midwest ISO. AMP-Ohio argues that the Commission should not impose more stringent standards and procedures than are required to achieve long-term reliability goals and that drawing a distinction between a Network Resource and a Capacity Resource confuses generation

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 at, P 162 (2008) (Compliance Order).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

availability and transmission system deliverability. AMP-Ohio contends that a Commission finding drawing such a distinction could potentially impose significant burdens on LSEs since they would be required to purchase two sets of resources to cover their loads

26. The Midwest TDUs argue that a Network Resource should not lose its Capacity Resource status on the ground that it has come to lack deliverability over the Midwest ISO transmission system.¹⁹ The Midwest TDUs further argue that the Midwest ISO should not shift to the network customer the responsibility for delivering that resource's Capacity Resource value over the transmission system, and that the Midwest ISO should instead guarantee that a Capacity Resource will remain qualified to have its capacity value delivered to its load. The Midwest TDUs assert that this requirement means the Network Resource must be understood to have met any deliverability test for Capacity Resource status.

27. The Midwest TDUs argue that if the Commission allows Network Resources to lose their Capacity Resource status on such grounds, it would abrogate a number of principles, including: (1) the planning obligations in Attachment FF and section 28.2 of the Midwest ISO tariff to provide the Network Customer with Network Integration Transmission Service and to cause to be constructed and placed into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve Native load; (2) section 217(b) of the Federal Power Act to enable load-serving entities to secure and maintain feasible firm transmission rights on a long-term basis and to maintain the deliverability of existing Network Resources; (3) Commission precedent supporting the notion that the transmission provider is expected to include all long-term customers in its long-term planning; and (4) contract law requirements that the Midwest ISO be responsible for performing its obligations and not be allowed to shift to counter-parties the consequences of failure to perform.

28. The Midwest TDUs request the following specific clarifications: (1) that existing Designated Network Resources meet the deliverability test for accreditation as Capacity Resources for the remainder of their designations; (2) that once External Resources qualify as Designated Network Resources, they will not be disqualified as Capacity Resources due to inadequate deliverability over the Midwest ISO system; and (3) that firm transmission service from the resource to the LSE's load suffices to obviate any deliverability test for Capacity Resource qualification.

¹⁹ As support for their position, the Midwest TDUs cite to statements in Order No. 890 that a customer should receive a guarantee of service that matches what it has contracted to pay for. Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1232.

29. Hoosier & Southern Illinois also cite to the requirements of section 28.2 and argue that the Midwest ISO must fulfill these requirements. Hoosier & Southern Illinois dispute the Commission's statement in the March 26 Order relieving the Midwest ISO of its responsibilities.²⁰ Hoosier & Southern Illinois argue that firm transmission customers should pay the Midwest ISO to perform the function of transmission planning so that they can plan to continue to maintain sufficient resources to serve their retail loads in the future. For these reasons, Hoosier & Southern Illinois request the Commission direct the Midwest ISO to maintain and expand its transmission system to maintain the deliverability of Capacity Resources. Hoosier & Southern Illinois assert that once a resource meets the deliverability and other tests required for designation as a Network Resource, the party designating that resource should not be subject to losing the ability to count the capacity of the resource toward its resource adequacy obligation.

30. Illinois Municipal asserts that the Commission erred in the March 26 Order to the extent that it did not require the Midwest ISO to maintain firm transmission for internal generation or External Resources, because such a finding is contrary to Order No. 890 and section 28.2 of the Midwest ISO tariff. Illinois Municipal also requests that the Commission clarify that neither the March 26 Order nor the resource adequacy program will change the Midwest ISO's fundamental responsibilities to ensure the deliverability of resources.

31. AMP-Ohio also argues that existing resources should not be precluded from requesting firm network service in order to serve a particular load as a Network Resource. AMP-Ohio asserts that section 69.2.1.4.d limits the authority of Network Resources that existed before the Midwest ISO market began and that did not pass the transitional aggregate deliverability test to apply for firm network service to serve a load for periods beyond their initial confirmed designation as a Network Resource. AMP-Ohio explains that while a new resource that fails the aggregate deliverability test could apply for sink-specific deliverability, an existing resource would be barred from applying for sink-specific deliverability and the LSE would be obligated to install substantial upgrades. AMP-Ohio requests clarification of this provision and requests that existing resources be given comparable rights to new resources to apply for and obtain sink-specific deliverability if the existing resource does not qualify as generally deliverable.

²⁰ March 26 Order, 122 FERC ¶ 61,283 at P 280 (“We do not consider it reasonable for the Midwest ISO to guarantee that resources determined to be deliverable to load in past analyses will always be deliverable to load in the future.”).

2. Commission Determination

32. We deny rehearing on the reasonableness of the deliverability requirements. We consider it reasonable for the Midwest ISO to determine if Capacity Resources can actually be delivered to load during peak conditions.

33. As an initial matter, we note that deliverability analyses are a typical requirement of resource adequacy programs.²¹ The purpose of these analyses is to determine if Capacity Resources are deliverable to load in peak demand conditions. As the Midwest ISO explained in its testimony, the deliverability evaluation ensures that during a peak load event a given resource will be able to reliably deliver energy to loads.²² These deliverability requirements go beyond simply verifying the availability of generation.

34. We do not consider the Midwest ISO to be responsible for guaranteeing that Capacity Resources remain deliverable, as several parties contend. As the Commission explained in the March 26 Order, Order Nos. 890 and 890-A made clear that the Network Resource designation had no bearing on whether resources would qualify as Capacity Resources.²³ While we recognize that the Midwest ISO has the obligation to facilitate generation interconnections and expansion planning, it cannot force utilities to build capacity. The Midwest ISO therefore cannot be required to build sufficient transmission capacity to ensure deliverability of all resources for their useful life. Section 28.2 of the Midwest ISO tariff, cited by parties, refers to the planning, operating and maintenance obligations of the Midwest ISO and does not encompass an expansion building requirement to ensure the deliverability of Capacity Resources.

35. We interpret section 69.2.1.4.e as qualifying a Capacity Resource if the LSE has obtained firm transmission service from the resource to the load and that qualification does not depend on meeting the other deliverability provisions. We base our interpretation on the Midwest ISO's explanation that this section specifically provides that local capacity resources²⁴ can qualify as Capacity Resources.²⁵ Since the Midwest

²¹ See, for example, the CAISO deliverability requirements, *Calif. Indep. System Operator, Inc.*, 116 FERC ¶ 61,274, at n.523 (2005).

²² Robinson Aff. at P 31.

²³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1584 (“However, the purpose of the *pro forma* OATT is to provide nondiscriminatory transmission access, not to enforce generation adequacy requirements.”).

²⁴ Local capacity resources are resources that are deliverable to certain loads but not throughout the Midwest ISO region.

²⁵ Robinson Aff. at P 32.

ISO explanation states that section 69.2.1.4.e was written to address the deliverability of resources tested at the start of the energy market, and the section also provides that such resources can qualify as Capacity Resources, we conclude that the provision applies to existing resources and that such resources can continue to apply for local Capacity Resource status.

C. External Resources

1. Request for Rehearing

36. On rehearing, Dairyland asserts that the Commission did not address its arguments on External Resources in the March 26 Order and contends that External Resources are not treated comparably to internal resources under the Midwest ISO's resource adequacy program.²⁶ Dairyland cites the Midwest ISO's proposal to exclude External Resources if they can be interrupted for reasons of *force majeure* and if they may be recalled by external entities, whereas purchase power agreements can be Capacity Resources if deliveries may be interrupted for reasons of *force majeure*. Dairyland also notes that there is a discrepancy as to whether the requirement to submit generator availability data applies to External Resources and seeks clarification from the Midwest ISO on this issue. Dairyland further argues that it is not clear whether LSEs using External Resources face a transmission capability requirement.

2. Commission Determination

37. The March 26 Order did not address the comparability of External Resources and therefore we grant rehearing on this issue. We clarify that the Midwest ISO does not exclude External Resources from being designated as Capacity Resources if deliveries may be interrupted for reasons of *force majeure*. The provision governing the designation of External Resources, section 69.2.1.3, makes no mention of such exclusion.

38. With respect to the exclusion of External Resources that can be recalled by external entities, the Midwest ISO's May 27, 2008 compliance filing (Compliance Filing) states that External Resources cannot have capacity committed for sale to third-party load and must be available to meet the LSE's load on a non-interruptible basis.²⁷ We consider this requirement to be comparable to the requirement imposed on other resources. For example, power purchase agreements cannot be designated Capacity Resources if there

²⁶ External Resources are resources outside of the Midwest ISO. Internal resources are market participants in the Midwest ISO.

²⁷ Midwest ISO May 27, 2008 Compliance Filing, Docket No. ER08-394-002; Midwest ISO FERC Electric Tariff, Third Revised Volume No. 1, Proposed Fourth Revised Sheet No. 820.

are any provisions, other than *force majeure*, permitting the seller to interrupt deliveries. We consider such a restriction to be reasonable since Capacity Resources must be available to meet peak demand requirements and this restriction ensures that the resources designated as Capacity Resources will perform as expected.

39. With respect to generator availability, we find that the Midwest ISO proposal requires both external and internal resources to provide generator availability data and therefore treats them comparably. As for transmission capability, the Midwest ISO proposal requires market participants designating External Resources as Capacity Resources to demonstrate that they have sufficient firm transmission service to deliver the capacity to the Midwest ISO and that they have obtained firm transmission service to the LSE in the Midwest ISO. Market participants with internal resources must be deliverable to the LSE load in the Midwest ISO. The deliverability of any Capacity Resources – internal or external – within the Midwest ISO will be determined by system impact studies that consider the deliverability of aggregate resources to aggregate load. Based on our review of these transmission requirements, we consider the treatment of external and internal resources to be comparable and reasonable. Both types of resources have the same requirements for transmission capability within the Midwest ISO and we consider the firm transmission requirement for transmission capacity outside the Midwest ISO to be reasonable.

D. Interaction of Resource Adequacy Program and Ancillary Services Market and Need for Capacity Markets

1. March 26 Order

40. In the March 26 Order, the Commission determined that the scarcity pricing provisions of the Midwest ISO's proposed ancillary services market would reduce free-rider and investment incentive issues faced by other RTOs that have tighter caps or lower scarcity pricing values, because a state or LSE that fails to procure sufficient resources to meet its needs would face scarcity pricing if not enough operating reserves were available. The Commission required the Midwest ISO to explain the inter-relationships between the ancillary services market, scarcity pricing and the long-term resource adequacy program, and their impact on market efficiency and reliability.

41. Noting the Midwest ISO will have to perform functions similar to those required in capacity markets, including determining capacity obligations, monitoring compliance and assessing penalties to deficient LSEs, the Commission did not require the Midwest ISO to establish a centralized capacity market.

2. Requests for Rehearing

42. On rehearing, the Illinois Commission argues that the Midwest ISO proposal to impose administratively-determined mandatory reserve margin requirements is

inconsistent with the Midwest ISO's long-standing commitment and the Commission's endorsement of a market-based resource adequacy plan that is predicated on the price of energy reflecting all costs associated with resource adequacy requirements. The Illinois Commission also asserts that the Midwest ISO has abandoned its commitment to design a proposal in which the costs of maintaining resource adequacy will be co-optimized with the determination of energy and ancillary services prices. The Illinois Commission contends that the Midwest ISO's proposal is not consistent with Commission guidance on the relationship between Midwest ISO's ancillary services market in Phase I and the long-term integration of shortage pricing in Phase II and the function of the energy market in sending the correct financial incentives.

43. According to the Illinois Commission, the most efficient, least-cost and simplest way to ensure long-term resource adequacy in regional markets is to utilize and build on the energy and ancillary services market price-clearing mechanism. The Illinois Commission also argues that the correct energy price signals are equally important in assisting market participants to make future investment decisions since they improve the quality of investment decisions and reduce the costs associated with risks. The Illinois Commission states that transparent prices provide the best opportunity to assist market participants in making both short- and long-term decisions. For these reasons, the Illinois Commission endorses a comprehensive market design that provides economic incentives for generator entry, improvements to generator availability, expansion of price-responsive demand, improved demand response programs, transmission expansion and improved transmission efficiency through reductions in transmission congestion.

44. The Illinois Commission requests clarification on several points. The Illinois Commission asks the Commission to clarify how the proposed Module E framework will promote long-term resource adequacy. The Illinois Commission asserts that the reserve margin requirement is arbitrary and removes the market-based price signals necessary for efficient long-term entry of capacity and that new capacity cannot be created within the 30-day forward framework. The Illinois Commission also seeks clarification of how the resource adequacy framework will promote efficient markets. The Illinois Commission argues that a mandatory reserve margin establishes incentives for excess supply-side capacity that dampens price signals and that the Commission has chosen to disregard the positive effects of scarcity pricing. The Illinois Commission also asks the Commission to clarify whether it intends to hold the Midwest ISO to its obligation to undertake a long-term integration of shortage pricing in Phase II.

45. Integrys contends that without a forward capacity market or other process to send proper price signals to encourage the development of generation prior to the time of shortage, resource adequacy is not assured and the Midwest ISO proposal is incomplete. In addition, Integrys claims that the Midwest ISO proposal will leave responsibility for long-term resource adequacy solely to the states, resulting in a patchwork of requirements, seams, and the potential for free-riders. Integrys argues that it is necessary

to address resource adequacy over the longer term so that new capacity can be built in anticipation of need. Integrys believes that a workable forward capacity market is the solution. The Illinois Commission faults the Midwest ISO for developing a resource adequacy program that lacks any market-based features for procuring and deploying resources such as those developed in the ancillary services market.

46. Dynegy asserts that the Midwest ISO should not be permitted to rely on price-capped markets to send signals sufficient to incent LSEs to procure resources in forward markets, and for this reason the Commission should direct the Midwest ISO to develop a forward planning requirement like the PJM requirement with a three-year planning horizon. Dynegy also recommends that the Commission direct the Midwest ISO to revise Module E to procure capacity farther in advance so that it does not rely on short-term tools to manage capacity deficiencies. Dynegy argues that the fact that the Midwest ISO resource adequacy program differs from the PJM framework moves the Midwest ISO and PJM markets further apart from a joint and common market and increases the potential for RTO shopping.

47. WPSC/UPPCO recommend that the Commission reconsider its ruling on capacity markets after: (1) it evaluates the resource adequacy financial settlement/enforcement provisions, to be filed by June 25, 2008, and ensures there are proper procedures and incentives to ensure resource adequacy is comparable with the procedures used in other RTO capacity markets;²⁸ and (2) it evaluates the relationship between the ancillary services market scarcity pricing provisions and resource adequacy.²⁹ WPSC/UPPCO assert that based on these submissions, the resolution of the capacity market issue in the March 26 Order was premature, arbitrary, capricious and unreasonable. WPSC/UPPCO also argue that the \$1,000/MWh price cap is too low and is not likely to be reached in practice and presents evidence that energy-only prices significantly higher than \$10,000/MWh are needed to encourage construction of gas turbine capacity and other, more capital-intensive, resources. WPSC/UPPCO contend that a capacity market would provide transparency, efficiency, price stability, predictability and proper compensation. WPSC/UPPCO claim that the price transparency of a capacity market would facilitate bilateral contracting, deter the exercise of monopoly power and afford regulators the ability to make informed, forward-looking assessments as to the convergence of price trends and the forecast cost of new capacity.

²⁸ This information was required in the March 26 Order, 122 FERC ¶ 61,283 at P 376.

²⁹ *Id.* P 386.

3. Commission Determination

48. We will deny the Illinois Commission's request for rehearing. We understand the Illinois Commission's concern to be that the Midwest ISO resource adequacy program should build on the ancillary services market mechanisms, such as scarcity pricing, and that the resource adequacy program's mandatory and administrative features for planning margin requirements fail to provide the proper financial incentives necessary to ensure economic efficiency. We consider it reasonable for a long-term resource adequacy program to include long-term resource planning, and to encourage bilateral contracting for capacity with incentives, such as the financial settlement charge, as part of a long-term resource adequacy program. While the Illinois Commission considers an approach that relies primarily on market price-clearing mechanisms to be the least-cost or simplest strategy, we believe the Midwest ISO has designed a reasonable program.

49. We do not find that planning margins and bilateral contracting will be a detriment to price signals or efficiency. We expect that market participants will rely on energy market and ancillary services market prices for making decisions on their resource plans and the terms of their bilateral contracts and therefore prices will play a significant role in the development of new resources.

50. We also do not consider scarcity pricing and resource adequacy requirements to be at odds with each other. On the contrary, these two market features should reinforce each other since both scarcity pricing and financial settlement provisions in the resource adequacy program create incentives for market participants to contract for reserves and capacity-type resources, and thereby avoid higher prices and financial settlement charges.

51. In light of this framework, we understand the concern of the Illinois Commission to be that the resource adequacy program results in too much contracting, to the detriment of market efficiency and resource diversity. As an initial matter, we do not believe the Midwest ISO's program will lead to excessive contracting. Also, given that the Midwest ISO is generally resource adequate and will be for several years into the future³⁰ we do not see any basis for concluding that a large number of market participants will have to contract for resources because their planning reserve margins are inadequate. Therefore, given that it is unlikely that there will be excessive contracting for resources, and that the price signals in the reserves market enhance market efficiency, we do not expect that the resource adequacy program will harm market efficiency. We also do not consider the Midwest ISO framework to be detrimental to resource diversity since the Midwest ISO has provided a number of ways for market participants to contract for demand resources. Therefore LSEs can also contract with demand resources to meet their resource adequacy requirements.

³⁰ *Id.* P 8, n.9.

52. While the Illinois Commission considers the reserve margin criteria to be arbitrary, we find the one day in 10 year loss of load expectation basis for determining the reserve margin to be reasonable because it is based on reliability standards traditionally used in the industry. Further, while a smaller set of resources or less MW capacity may provide resource adequacy more efficiently, that efficiency would come at the risk of reducing reliability and we do not consider such a risk to be reasonable.

53. In contrast to the concerns of the Illinois Commission, Integrys, Dynegy and WPSC/UPPCO argue that the Midwest ISO proposal will result in insufficient resources, even with the reserve margin requirements, and that this insufficiency will not be discovered until it is too late for obtaining or developing Capacity Resources, resulting in scarcity pricing. We will deny rehearing on this issue. As the Commission explained in the March 26 Order, the likelihood of scarcity pricing in the Midwest ISO is reduced by the adequacy of planning resources that are expected to remain adequate beyond 2010. Inasmuch as the reserve margin criteria are the same criteria used by state programs that have resulted in the resource adequacy requirements currently in place, we expect these reserve margin criteria in the Midwest ISO proposal will limit the need to invoke scarcity pricing. In recognition of the importance of maintaining efficiency and reliability, even in the current circumstance of resource adequacy, the Commission has also requested further analysis of the resource adequacy program, scarcity pricing and the ancillary services market.³¹ We consider these Commission findings and actions sufficient for ensuring the Midwest ISO long-term resource adequacy program is and remains just and reasonable, and we do not find the need to require a mandatory capacity market.³²

54. Nor do we find the need to require a capacity market in the Midwest ISO with the same features as the PJM forward planning market. We expect that the combination of scarcity pricing and resource adequacy contracting requirements will provide sufficient resources in the Midwest ISO. We have no basis to conclude that these market features will provide less of an incentive for resources to participate in the Midwest ISO resource adequacy program instead of participating in the PJM market. Rather, we expect that Midwest ISO market participants that must contract for additional resources will have to provide sufficient compensation to resources that can participate in the PJM forward market, and therefore the contracting process will provide a basis to reasonably balance resources between the two markets.

³¹ *Id.* P 386.

³² We also do not expect that free-rider concerns will be likely to develop since states with insufficient resources will face scarcity pricing, and thereby will have an incentive to manage resource adequacy. March 26 Order, 122 FERC ¶ 61,283 at P 93.

55. WPSC/UPPCO argue that we should reconsider our determination on capacity markets after a review of the financial settlement provisions and an evaluation of forthcoming Midwest ISO explanations. We deny rehearing. We affirm our finding that the Midwest ISO proposal provides appropriate incentives for new resources and bilateral contracting in addition to providing clear price signals for sellers and buyers, as discussed above, and therefore we decline to revisit our determination that a capacity market is unnecessary for the Midwest ISO's resource adequacy program.

E. Load Modifying Resources

1. March 26 Order

56. In the March 26 Order, the Commission accepted the inclusion of behind-the-meter generation as Load Modifying Resources (LMRs). The Midwest ISO calculates the resource adequacy requirement for LSEs with behind-the-meter generation based on the forecast LSE requirement net of demand resources and behind-the-meter generation. The Commission requested that the Midwest ISO clarify whether it intends to require demand resources to reduce load by a pre-specified amount equal to the targeted MW level at which the demand resource is qualified or if market participants can specify a targeted load reduction level when they receive notice from the Midwest ISO to participate in an emergency. The Commission also stated that it would not delay consideration of the LMR provisions until the Commission has made a determination on the Emergency Demand Response (EDR) proposal in Docket No. ER08-404. The Commission also indicated its expectation that the ongoing compliance process in both proceedings would allow commenters and the Commission to address all aspects of these proceedings in a manner that ensures due process and full consideration of all issues.

2. Requests for Rehearing

57. Dairyland argues that the netting of behind-the-meter generation is based on the unfounded assumption that locating generation behind the meter eliminates the need for an LSE to secure planning reserves associated with that generation. Dairyland asserts that the disparate treatment for behind-the-meter generation compared to generation that is not behind the meter is unduly discriminatory. Dairyland explains that an LSE with 80 MW of generation and load would have to obtain another 12 MW of resources to meet its resource adequacy requirement, whereas an LSE with 80 MW of behind-the-meter generation would not be required to secure any planning reserves.

58. Reliant objects to the netting provision since it results in LSEs that rely upon behind-the-meter generation having to secure fewer Capacity Resources than other LSEs having the same load requirements without behind-the-meter generation. Reliant argues that the March 26 Order did not review or explain whether this differing treatment is justified.

59. The CMTC faults the Commission for not addressing and harmonizing the proposed treatment of demand response resources under Module E with the proposed treatment of demand response resources under the EDR proposal in Docket No. ER08-404. The CMTC asserts that rehearing is warranted to postpone the compliance stage until after the Commission harmonizes Module E and Schedule 30 penalties by directing specific language that avoids penalty duplication. The CMTC notes that the Commission accepted the Midwest ISO's proposed penalties under Schedule 30 without discussing the fact that these penalties may be duplicative of penalties assessed under Module E.

60. The CMTC asserts that the appropriate effective date for the penalties applicable to LMRs is June 1, 2009, noting that this is the date the Midwest ISO indicated it would implement the penalty provisions.³³ The CMTC states that the Midwest ISO has yet to define its compliance and performance provisions for LMRs. The CMTC claims that LMRs are placed at a disadvantage vis-à-vis generation resources if LMR penalties are effective prior to the effectiveness of comparable penalties on generation resources and that this disadvantage constitutes undue discrimination. The CMTC contends that there is no basis for discriminatory treatment and disagrees with the Commission's finding that the provisions need to be put into effect as soon as possible to manage emergencies and short-term reliability³⁴ since these issues are being considered in Docket No. ER08-404 and are irrelevant to undue discrimination in this proceeding. The CMTC requests that the Commission clarify that, in accepting these penalty provisions, it accepted the Midwest ISO's stated intention to make the LMR penalty provisions effective on June 1, 2009.

61. Detroit Edison requests that the Commission direct the Midwest ISO to provide an explanation of the relationship between Schedule 30 and Module E. Detroit Edison also urges the Commission to direct the Midwest ISO to explain: (1) how the Midwest ISO will distinguish between and prioritize demand resources under Schedule 30 and Module E for curtailment purposes; (2) how the Midwest ISO will handle compensation for demand resources; and (3) how the Midwest ISO will reconcile the disparate penalty provisions for non-compliance under Schedule 30 and Module E. Detroit Edison asserts that the Midwest ISO should be required to explain why commercial demand resources should not be interrupted prior to "reliability" driven demand resources, particularly those developed under existing retail tariff. Detroit Edison argues that not interrupting commercial demand resources first in an emergency may reduce the number of customers willing to participate in reliability driven retail demand response programs.

³³ Robinson Aff. at 49.

³⁴ March 26 Order, 122 FERC ¶ 61,283 at P 354.

62. The Illinois Commission requests clarification that Demand Resources are only obligated to be *available* to be interrupted during emergencies and are not obligated to be interrupted during emergencies. The Illinois Commission contends that it is discriminatory, vis-à-vis generation resources, to obligate Demand Resources to be interrupted. The Illinois Commission notes that generation resources are not required to offer at any price whereas Demand Resources obligated to curtail in emergencies are required to offer at whatever price prevails during an emergency.

63. Illinois Industrial requests clarification that the Commission intended to require the Midwest ISO to modify its proposed tariff language to make clear that demand resources are permitted to curtail down to a firm net level instead of being required to curtail demand by a prescribed level of MWs. Illinois Industrial asserts that failure to grant the requested clarification could make it impractical or uneconomic for existing end-use customers participating in the Midwest ISO demand response program to continue their participation.

3. Commission Determination

64. We agree that LSEs should have resources equal to the planning reserve margin requirement, thereby ensuring reliability during peak load conditions. Therefore, the appropriate measure of resource adequacy for LSEs with behind-the-meter generation should be equal to the LSE forecast load requirement plus the planning reserve margin requirement. Therefore, an LSE with a forecast load of 100 MW and a 15 percent planning reserve margin should have either Capacity Resources or LMRs (demand resources and behind-the-meter generation), or a combination of these resources, equal to 115 MW. We agree with the requests for rehearing that the proposed treatment for LSEs with LMRs, allowing these LSEs to subtract LMRs from load, would result in these LSEs having fewer resources available during emergencies to the detriment of reliability and would not be comparable to the treatment of other resources. We also note that, under the Midwest ISO's resource adequacy program, the Midwest ISO has responsibility for calculating the resource adequacy requirements for LSEs based on the applicable planning reserve margin. For these reasons, we find the Midwest ISO's proposal to net behind-the-meter resources against forecast load requirements to be unjust and unreasonable, grant rehearing and require the Midwest ISO to revise section 69.2.2 of its tariff accordingly in a compliance filing to be submitted within 30 days of the date of this order.

65. We also grant rehearing with respect to the potential for duplicative LMR and EDR penalties. For LMRs that have also registered as EDRs and have offered demand reductions per the requirements of Schedule 30, both LMR and EDR penalties would be assessed in the event the market participant did not reduce demand. We require the Midwest ISO to revise the penalty provision in section 69.2.2.3 to exempt market participants from a double penalty in the event they are already paying a penalty under Schedule 30 for a failure to reduce demand. The revised provisions should also state that

the penalty provisions applicable to LMRs will become effective June 1, 2009, consistent with the intent of the Midwest ISO in the testimony submitted with its proposal. We require the Midwest ISO to submit revised tariff language in a compliance filing to be submitted within 30 days of the date of this order.

66. With the exception of the penalty provisions, we do not see the need for additional changes in tariff provisions for LMRs and EDRs. Nor will we require further explanations of the Midwest ISO on the interaction between the EDR program and the resource adequacy plan. The Midwest ISO has explained those programs sufficiently in the stakeholder discussions and in its filings, including the recent compliance filing submitted on May 27, 2008 and the compliance filing in the EDR docket, and we have provided further clarification in our orders.³⁵ We find no implications of whether or not a market participant decides to participate in the EDR program for its rights under the LMR program, as we have stated in the EDR proceeding.³⁶ With respect to compensation, those LMRs that are registered as EDRs will be compensated per the terms of Schedule 30. Those LMRs not registered as EDRs will be paid the LMP in the day-ahead and real-time energy market, as specified in section 69.2.2.1.a.ix.

67. In response to CMTC's concern regarding the effective date for the penalties applicable to LMRs, we note that the Commission addressed this issue in a Letter Order in Docket No. ER08-965-000.³⁷ The Letter Order accepted the Midwest ISO's proposal, supported by CMTC, to change the effective date of certain tariff provisions applicable to LMRs to March 1, 2009.

68. We consider the curtailment issue raised by Detroit Edison to be beyond the scope of this proceeding, and we deny rehearing. We encourage Detroit Edison to discuss with stakeholders its concerns regarding the interruption priorities of retail demand resource products and demand resources participating directly in the Midwest ISO's markets.

69. We clarify for the Illinois Commission that the Demand Resource interruption obligation applies to Demand Resources for which the market participant has voluntarily requested qualification as LMRs, as specified in section 69.2.2.1.a of Module E. The full text of the obligation provision for these resources in section 69.2.2.1.a.ix states:

³⁵ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,070 (2008) (EDR Order).

³⁶ *Id.* P 103 ("The EDR program is voluntary and the Load Modifying Resources program is voluntary.").

³⁷ *Midwest Indep. Transmission Sys. Operator*, Docket No. ER08-965-000 (Jul. 8, 2008) (unpublished letter order).

Demand Resources offered into the [d]ay-[a]head and/or [r]eal-time [e]nergy [m]arkets as price sensitive bids are obligated to be interrupted during an Emergency pursuant to the Transmission Provider Emergency Operating Procedures regardless of the projected or actual [r]eal-[t]ime [e]nergy [m]arket [l]ocational marginal price].

70. According to the Transmission Provider Emergency Operating Procedures, an emergency begins after all Emergency and non-Emergency Capacity has been committed. Therefore, if a Demand Resource has made an offer in the day-ahead or real-time market and an Energy Emergency Alert Level 1 emergency is declared, it will be committed, irrespective of the price that it bid, to reduce demand, and the Demand Resource is obligated to reduce demand. Because generation resources are subject to the same commitments, i.e., to the extent generation resources have offered to supply energy and an emergency is declared, they must provide energy irrespective of the real-time LMP, we do not consider this provision to be discriminatory.

71. With respect to the clarification request of Illinois Industrial, the Commission asked for clarification in the March 26 Order on whether demand resources are to reduce load by a pre-specified amount or to reduce load to a targeted MW level. The Midwest ISO clarifies in its Compliance Filing that LMRs have the option of either reducing load by a pre-specified amount equal to the targeted MW level at which the LMR is qualified or specifying a load reduction to a firm service level.³⁸

F. Sufficiency of the Midwest ISO Proposal

1. March 26 Order

72. In the March 26 Order, the Commission declined to reject the Midwest ISO's proposal as incomplete. The Commission explained that it did not require completed financial settlement/enforcement provisions to make a determination as to the justness and reasonableness of the filed elements of the Midwest ISO's resource adequacy proposal. The Commission found that the major features of the Midwest ISO resource adequacy program would be detailed with enough specificity for parties to make an informed evaluation of the proposed financial settlement provisions when they are filed. The Commission directed the Midwest ISO to file financial settlement/enforcement provisions, whether a stakeholder consensus is achieved or not, no later than June 25, 2008. The Commission found that any deficiency determinations will be made well after the financial settlement provisions are accepted by the Commission and therefore market participants will know the rate charged for transactions.

³⁸ Midwest ISO May 27, 2008 Compliance Filing at 21.

73. The Commission also considered the compliance process to be sufficient to address issues in this proceeding and therefore it did not require additional hearing procedures. The Commission also did not find a need to suspend the effectiveness of the filing since the resource plan is forward looking and the plan does not have rate provisions.

2. Requests for Rehearing

74. Illinois Municipal asserts that the Commission's acceptance of an incomplete filing prior to review of yet-to-be filed components exposes customers to unjust and unreasonable rates, terms and conditions of service. Illinois Municipal notes that LSEs will not have information on what qualifies as a resource until May 25, 2008 at the earliest and they will not have reasonable time to obtain qualified resources before June 2009. Illinois Municipal contends that customers do not know the cost of the resource adequacy program and the Commission has provided no means whereby they can recover the monies they will have to pay out should they have legitimate objections to the program. Illinois Municipal also claims that the Commission was in error for finding a program to be just and reasonable no matter the cost without the need for a hearing or a suspension of the program.

75. According to Illinois Municipal, the Midwest ISO fails to provide necessary detail as to how the proposed tariff provisions would work. Illinois Municipal asserts that the Commission provides no reason for concluding that the Midwest ISO has met its burden under section 205. For these reasons, Illinois Municipal recommends that the Commission reject the Midwest ISO's proposal without prejudice to the filing of the required compliance filings and permit the proposal to go into effect only after it has grounds for finding that all elements are just and reasonable. In the alternative, Illinois Municipal recommends the Commission grant rehearing and suspend the effectiveness of the tariff provisions and allow them to go into effect after hearing and refund provisions are put into effect.

76. Midwest TDUs argue on rehearing that the Commission erred in refusing to suspend the Midwest ISO's filing. Midwest TDUs assert that a nominal suspension would preserve the Commission's remedial authority under section 205 of the FPA and avoid the need for Midwest TDUs to file section 206 complaints in the future. Midwest TDUs contend that the upcoming compliance filings in this proceeding may reveal problems that are best addressed within the context of the section 205 proceeding.

3. Commission Determination

77. We find no basis to reject the resource adequacy program as deficient, nor do we find a basis for suspending the program while a hearing is held. As we explained in the March 26 Order, there are a number of important issues that must be resolved in order to develop a resource adequacy program. We found that this is the appropriate proceeding

to make those determinations and that the provisions could be evaluated with the information available. The Commission considered the compliance process to be sufficient to address issues in this proceeding and therefore it did not require additional hearing procedures. The arguments raised on rehearing do not persuade us to revisit our determinations on these matters.

78. The fact that further details must be developed and reviewed before a program commences, particularly for a program that does not begin until June 2009, does not warrant rejection of the entire resource adequacy proposal. There is no basis to conclude there will not be sufficient time between the submittal of the compliance filings in May and June of 2008, the issuance of Commission orders on these filings, and the start of the planning year in June 2009 for market participants to have the detail necessary to make informed decisions on obtaining resources and ensure that they avoid the financial settlement provisions that become effective in June 2009.

79. We will deny Midwest TDUs' request for rehearing on the issue of suspension. The Midwest TDUs' concern that upcoming compliance filings may reveal problems is speculative. If, once the resource adequacy program goes into effect, the Midwest TDUs believe that rates are unjust and unreasonable, they can file a complaint under section 206 of the FPA at that time. We also note that, to the extent future compliance filings raise problems, as Midwest TDUs suggest, Midwest TDUs may raise their concerns with respect to each filing in protests.

G. Load Forecasting

1. March 26 Order

80. In the March 26 Order, the Commission accepted a provision that makes LSEs responsible for load forecasts. The Commission required the Midwest ISO to review the load forecasting process in other RTOs and ISOs with retail choice states, assess alternatives to the load forecasting processes raised by commenters, and provide modifications in a compliance filing.

81. The Commission accepted the Midwest ISO's definition of the term "statistically significant," provided in its answer, as the rejection of the null hypothesis that the actual load falls within the expected load plus or minus two standard deviations, and required the Midwest ISO to propose this definition in a compliance filing.

2. Requests for Rehearing

82. Reliant faults the Commission for accepting a forecasting process that relies upon estimates prepared by individual LSEs because Reliant believes these entities will have the opportunity and incentive to under-forecast their load. Reliant notes that other RTOs rely on a uniform forecasting methodology and states that the Midwest ISO could learn

from their experience. Reliant asserts that the monitoring role for the Midwest ISO does not provide sufficient oversight of load forecasting and the Midwest ISO's direct involvement in forecast preparation is necessary to ensure that the forecasts are prepared in a standardized, non-discriminatory manner. Accordingly, Reliant recommends that the Midwest ISO adopt a pro-active, collaborative role in preparing load forecasts with the local balancing authorities and engaging LSEs where appropriate to ensure the LSE forecasts adequately meet Midwest ISO reliability needs.

83. Strategic asserts that the Commission should have supported requiring the distribution company, rather than the LSE, to make the load forecast. Strategic avers that distribution companies make these forecasts and a retail marketer forecast would be duplicative, speculative and not accurate for a reliability purpose. Strategic also notes that forecasting load is difficult since retail customers in retail competition states contract with retail suppliers, switch suppliers or return to the utility frequently and on no specific time schedule. Strategic also contends that the Commission erred when it deferred substantive changes to the compliance phase.

84. The Midwest TDUs object to the requirement that LSEs forecast their load using the appropriate commercial node designations. The Midwest TDUs assert that no purpose is served by testing the accuracy of an LSE's forecast for a subset of its load. The Midwest TDUs also argue that load forecast error on a commercial node basis would unduly expose TDUs with small loads split among multiple commercial nodes to adverse consequences for forecast error. The Midwest TDUs recommend deletion of the commercial node designation and request clarification that forecast error will be evaluated on the basis of total load and not on a commercial node basis.

85. Integrys faults the Commission for accepting the Midwest ISO's proposed definition of statistical significance, explaining that certain forecasting methods, such as historical load profiles adjusted for temperature, do not give rise to a conventional standard error of the estimate or a standard deviation. Integrys further argues that a load forecast that is statistically significant should not mean "guilty as charged" but should only be an indication that additional scrutiny and explanation are warranted. Finally, Integrys recommends that the forecast process be included in the tariff and not the Business Practices Manual due to the substantive nature of this determination.

86. The Illinois Commission requests clarification that the Commission intends for the Midwest ISO to take the price of energy into account in the load forecasting process.

3. Commission Determination

87. We affirm our determination in the March 26 Order that LSEs, including retail choice providers, are to be responsible for load forecasts, and we deny requests for rehearing on this issue. We find it reasonable that the entity responsible for the resource plan – and responsible for paying penalties in the event of resource insufficiency – is also

responsible for the load forecast basis of the resource plan, and that entity is appropriately the LSE. For this reason, we find this requirement appropriate even if the LSE is a retail choice provider and not a typical distribution company utility.

88. We consider the accuracy evaluation by the Midwest ISO to be sufficient to ensure that the LSE forecasts are reliable, and we expect this process will result in greater uniformity of forecasting techniques and assumptions among LSEs. We disagree with Reliant's characterization of the accuracy evaluation as monitoring. The Midwest ISO forecast evaluation will be conducted monthly, and therefore there will be frequent discussions between LSEs and the Midwest ISO throughout the year. We consider this process to be more akin to a collaborative process than a simple monitoring exercise.³⁹ Since the LSE is the entity responsible for the resource plan, we do not consider it appropriate to make another entity, such as an electric distribution company, responsible for the load forecast basis for the resource plan. We note that the Midwest ISO proposal allows retail choice LSEs to collaborate with electric distribution companies and providers of last resort, as discussed in the Compliance Order, and therefore retail choice providers will have access to all the knowledge and expertise they need to develop forecasts.

89. We find nothing improper in our decision in the March 26 Order to accept the Midwest ISO's proposal that the LSE be responsible for forecasts and to require further analysis of alternatives. The Commission required LSEs to be responsible for load forecasts and therefore further assessments of alternatives will only impact the forecasting procedures applicable to LSEs that are responsible for their forecasts, and will not change the determination made in the March 26 Order.

90. In response to the Midwest TDUs, we will not require the Midwest ISO to delete the requirement that load forecasts use the commercial node designation. Contrary to the assertion of the Midwest TDUs, there is no adverse consequence of load forecast error, including load forecasts at individual commercial node locations. Rather, as discussed above, the forecast accuracy evaluation is a collaborative effort by the LSE and the Midwest ISO and does not result in penalties for forecast error. Hence, this provision does not result in harm to the Midwest TDUs. Furthermore, we expect that this information will have value in determining the need to revise planning zones to address regional congestion issues⁴⁰ and therefore will assist the Midwest ISO in regional planning.

³⁹ We note that the Midwest ISO will be referring documentation related to under-forecasts to the IMM, after it has completed its evaluation and determines that the matter needs further investigation. *See* Midwest ISO July 2, 2008 Answer at 21.

⁴⁰ March 26 Order, 122 FERC ¶ 61,283 at P 161

91. All forecasts can be measured for forecast error, even “historical” forecasts that forecast an historical load profile adjusted for temperature, and two standard deviations is a widely-accepted measure of statistical significance for forecast error. Accordingly, we do not see the need for another definition of statistical significance and we deny rehearing on this issue. We see no need to address Integrys’ concern that forecast error carries an implication of guilt, since the Midwest ISO recognizes that load forecasts are just estimates and that most load forecasts are made on a 50/50 probability basis, which means that half the time the load will be less than the forecast and half the time the load will exceed the forecast, and has indicated that it intends to be flexible in its implementation of LSE forecast requirements.⁴¹

92. We will not require the forecast process, as Integrys describes it, be included in the tariff and will deny rehearing on this issue. The forecast “process” amounts to the LSE making a load requirement forecast, the Midwest ISO reviewing the results, and discussions between the LSE and the Midwest ISO. Those steps are already detailed in section 69.3.4 and we see no need for further detail.

93. We clarify for the Illinois Commission that LSE load forecasts should take into account all relevant weather and market factors, including price trends.

H. Capability Demonstration

94. In the March 26 Order, the Commission considered an annual test reasonable to ensure resources can perform in peak demand periods. The Commission also recognized the three-month testing period proposed by the Midwest ISO was designed to obtain timely information without disrupting resources during peak demand periods.

1. Request for Rehearing

95. Detroit Edison contends that there is no evidence that a March-May testing period is needed to prevent the disruption of generating units during peak periods and asserts that the Commission’s decision fails to consider the substantial cost burdens and inefficiencies from this requirement. Detroit Edison also faults the Commission for failing to explain why testing practices in use today that allow for testing at any time during the year are not sufficient.

2. Commission Determination

96. We grant Detroit Edison’s request for rehearing on this issue. We agree that an annual test, undertaken at any point during a year, should suffice to accurately demonstrate the capability of a capacity resource. We note the Commission is accepting

⁴¹ Midwest ISO July 2, 2008 Answer at 18.

a revised provision in the Compliance Order that allows for the demonstration of capability no later than three months before the planning year,⁴² thereby allowing for testing throughout the year.

I. Pseudo-Tied Load

97. In the March 26 Order, the Commission directed the Midwest ISO to clarify the criteria for designating pseudo-tied resources as a Capacity Resource in its compliance filing. The Midwest TDUs request clarification that the Commission's compliance requirement applies to pseudo-tied *load*, and not resources. The Midwest TDUs explain that their comments were directed to pseudo-tied load.⁴³ We clarify that the Midwest ISO is to clarify its criteria for designating pseudo-tied *load* as a Capacity Resource.

J. The Commission's Review Authority

1. March 26 Order

98. Under the Midwest ISO's proposal, the Midwest ISO establishes a planning reserve margin for each LSE. The proposal allows states to establish planning reserve margins for LSEs that may either be higher or lower than the planning reserve margins that the Midwest ISO would otherwise calculate for LSEs. In the March 26 Order, the Commission found that elements of the Midwest ISO's resource adequacy proposal affect matters within its jurisdiction under sections 201, 205, and 206 of the FPA and that the Midwest ISO's proposal is consistent with its precedent in other regions.⁴⁴ The Commission further found that the Midwest ISO's proposal does not conflict with the provisions of 215 of the FPA.⁴⁵

2. Requests for Rehearing

99. On rehearing, WPSC/UPPCO argue that the Commission should have relied on its section 215 authority instead of its section 201, 205 and 206 authority to establish and

⁴² Proposed First Revised Sheet No. 818.01.

⁴³ March 26 Order, 122 FERC ¶ 61,283 at P 432. Specifically, the Midwest TDUs seek confirmation of the inapplicability of the resource adequacy requirements to Midwest TDU member Missouri Joint Municipal Electric Utility Commission load (included in the Missouri Public Energy Pool) that is pseudo-tied out of the Midwest ISO Balancing Authority Area and subject to SPP's resource adequacy requirements.

⁴⁴ March 26 Order, 122 FERC ¶ 61,283 at P 55-57.

⁴⁵ 16 U.S.C. § 824o (2006); March 26 Order, 122 FERC ¶ 61,283 at P 58.

enforce reserve planning margins. WPSC/UPPCO assert that the Commission and the Electric Reliability Organization (ERO) have authority under section 215 to set and monitor resource adequacy standards and that those standards should apply to all electric utilities and non-jurisdictional entities in the region “as necessary to provide for the reliable operation of the bulk power system.”⁴⁶ WPSC/UPPCO are concerned that the March 26 Order’s reliance on FPA section 201, 205, and 206 authority may not be comprehensively applicable to all Midwest ISO market participants as is the Commission’s section 215 authority.

100. WPSC/UPPCO assert that the ERO should be the sole entity responsible for resource adequacy since its only responsibility is the reliability of the bulk power system and the Midwest ISO has no delegated authority under section 215. WPSC/UPPCO argue that assigning authority over resource adequacy standards to both the ERO and the Midwest ISO “crowds the field and creates duplication of responsibility.” WPSC/UPPCO further assert that giving the Midwest ISO the authority to establish reserve margins may expose load-serving entities to inconsistent or contradictory requirements and create confusion, complexity, and delay that will eventually undermine the resource adequacy effort. WPSC/UPPCO state that the Midwest ISO need only have “complementary” authority to enforce the ERO-determined resource adequacy standards and reserve margins.

101. The Illinois Commission asserts that the reserve margin requirement is not necessary and that the proper role for the Midwest ISO reserve margin requirement is to ensure that all load in the Midwest ISO balancing authority area can be reliably served. Ensuring that each LSE is able to serve its load reliably is the responsibility of state regulators, according to the Illinois Commission. The Illinois Commission asks the Commission to clarify why resource adequacy should be pursued by usurping state regulatory authority over LSEs when it could be achieved through Commission-jurisdictional wholesale market design.

102. WPSC/UPPCO argue that the Midwest ISO’s having reserve margin responsibility blurs the line between the transmission and generation functions created by Order No. 888 and subsequent orders. WPSC/UPPCO believe that, given its Order No. 890 planning authority and the March 26 Order’s delegation of resource adequacy authority, the Midwest ISO will assume much more extensive authority than contemplated by Order Nos. 888 and 2000. WPSC/UPPCO also note that the Midwest ISO, as the transmission operator, may be inclined to “prefer transmission solutions to generation solutions and [Midwest ISO’s] assessment of reserve capacity could be influenced by its transmission orientation.”⁴⁷ WPSC/UPPCO assert that the assignment

⁴⁶ 16 U.S.C. § 824o(a)(3).

⁴⁷ WPSC Request for Rehearing at 10.

of such extensive authority to a single entity should be a subject of concern because the risk is created that monolithic, top down solutions will be imposed on an industry which developed and provided substantial consumer benefits through a decentralized model and which looked to competition and a competitive market to spur future innovation and to improve the matching of consumer needs and utility services.

103. WPSC/UPPCO also argue that the March 26 Order did not discuss its reasons for assigning authority to the Midwest ISO to set, monitor, and enforce resource adequacy standards. WPSC/UPPCO take issue with the Commission's finding that the Midwest ISO's proposal represents a significant improvement over the status quo, that there is currently no process within the Midwest ISO for assessing resource adequacy on a regional basis, and that all LSEs within the Midwest ISO region will be subject to a binding resource adequacy requirement. WPSC/UPPCO also note that the Midwest Planning Reserve Sharing Group (PRSG) was established to determine reserve margins.

104. WPSC/UPPCO further note that the Module E filing letter contains the representation that the Midwest ISO will coordinate with the ERO. However, WPSC/UPPCO assert that neither the filing letter nor the tariff provides any detail on how this coordination will be achieved.

3. Commission Determination

105. We deny WPSC/UPPCO's request for rehearing. We find that it is appropriate to approve the Midwest ISO's resource adequacy proposal under our section 201, 205, and 206 authority. As a preliminary matter, we note that the Midwest ISO filed its proposal pursuant to section 205 of the FPA. Further, as we explained in the March 26 Order, the Commission has an independent obligation under sections 201, 205, and 206 of the FPA to consider whether practices affecting jurisdictional transactions result in rates, terms, or conditions that are unjust, unreasonable, or unduly discriminatory. The Midwest ISO's resource adequacy proposal affects matters within our rate jurisdiction and we thus reject WPSC/UPPCO's arguments.⁴⁸ WPSC/UPPCO argue that it is inappropriate to rely on

⁴⁸ This is consistent with the Commission's precedent in other regions. *See, e.g., ISO New England, Inc.*, 119 FERC ¶ 61,161, *reh'g denied*, 121 FERC ¶ 61,125, at P 26 (2007) (“[T]he FPA confers upon the Commission the responsibility for ensuring that transmission and wholesale power sales rates and charges, including any rule, regulation, practice or contract affecting them, are just and reasonable and not unduly discriminatory or preferential . . . given that the [installed capacity requirement] is one of the principal determinants of the price of capacity, review of the determination of the [installed capacity requirement] rests with the Commission.”); *see also Calif. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh'g*, 119 FERC ¶ 61,076, at P 540 (2007) (“We find that the adequacy of resources can have a significant effect on wholesale rates and services and therefore is subject to Commission jurisdiction.”).

our rate authority to approve the Midwest ISO's proposal because, according to WPSC/UPPCO, our rate authority may not be as comprehensively applicable to all Midwest ISO market participants as is the Commission's section 215 authority. We reiterate, as we found in the March 26 Order, that the Midwest ISO's proposal, as approved under our rate authority, adequately addresses the resource adequacy requirements for the Midwest ISO region.

106. In response to the Illinois Commission's arguments that the reserve margin requirement is not necessary and intrudes on the states' regulatory authority over LSEs, as we explained in the March 26 Order, we generally accept the role for state regulatory authorities in resource adequacy requirements set forth in the Midwest ISO's proposal. The proposal allows states to establish planning reserve margins for LSEs in states that may either be higher or lower than the planning reserve margins that the Midwest ISO would otherwise calculate for LSEs. We further explained, however, that the role for state authorities cannot undercut this Commission's authority to review resource adequacy and reserve margins that affect matters within our jurisdiction, i.e., provisions that affect our authority under sections 201, 205, and 206 of the FPA to ensure that the provisions of the tariff will result in just and reasonable and not unduly discriminatory or preferential rates.

107. WPSC/UPPCO also express concern about a possible future conflict if the ERO develops reliability standards under section 215. We do not find, and WPSC/UPPCO do not cite to, any existing conflicts between reliability standards. Thus, we find WPSC/UPPCO's arguments speculative. If any such conflict arises in the future, WPSC/UPPCO may renew their concerns at that time.

108. In response to WPSC/UPPCO's argument that the March 26 Order gave the Midwest ISO more authority than contemplated by Order Nos. 888 and 2000, we note that these orders did not address transmission providers' or regional transmission organizations' authority with respect to resource adequacy. In addition, the March 26 Order did not give the Midwest ISO unqualified authority to set and enforce resource adequacy requirements. To the contrary, the March 26 Order explicitly noted that this authority is shared with the states and that states may choose lower or higher planning margins than those adopted by the Midwest ISO.

109. With regard to WPSC/UPPCO's assertion that the Midwest ISO may favor transmission solutions to generation solutions and that its assessment of reserve capacity could be influenced by its transmission orientation, we find this argument speculative. Further, we note that the Midwest ISO is subject to Order No. 890's requirements that its transmission planning process be open and transparent on both a local and regional level.

110. In response to WPSC/UPPCO's assertion that the Commission has not discussed its reasons for assigning authority to the Midwest ISO to set, monitor and enforce resource adequacy standards, we note that in a series of orders the Commission directed

the Midwest ISO to establish a resource adequacy plan.⁴⁹ The Midwest ISO is the regional transmission provider and operates the regional energy markets, and we find that the Midwest ISO's proposal facilitates coordination of resource adequacy standards on a regional basis. The PRSG, in which participation is voluntary, does not address resource adequacy standards for the entire Midwest ISO footprint. Under the Midwest ISO's proposal, all LSEs participating within the Midwest ISO's markets will be subject to a binding resource adequacy requirement, enforceable through financial settlement provisions.

111. We also reject WPSC/UPPCO's arguments that the Midwest ISO should provide further details at this time on how it will coordinate with the ERO. We expect that the Midwest ISO will coordinate with the ERO on many aspects of resource adequacy. To the extent that insufficient coordination with the ERO leads to the establishment of conflicting standards, the WPSC/UPPCO can raise its concern at that time.

K. Evaluation of Resource Plans—Outages

112. In the March 26 Order, the Commission found that the Midwest ISO's proposal did not indicate how planned and forced outages will be addressed in its evaluation of LSE resource plans. The Commission directed the Midwest ISO to detail its forecast process in the Business Practices Manuals.⁵⁰

1. Requests for Rehearing

113. The Midwest TDUs argue that the Commission erred in the March 26 Order by not directing the Midwest ISO to include its treatment of outages in the tariff, instead of the Business Practices Manuals. The Midwest TDUs argue that the treatment of outages when determining resource adequacy could have significant financial effects, which would affect rates so outage provisions properly belong in the tariff.

114. Integrys argues that the Commission erred in not requiring the Midwest ISO to modify the definition of Planning Reserve Margin in Module E to account for forced outage rates in the same way as Capacity Resources. Integrys proposed to modify section

⁴⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 397, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *order on reh'g*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisc. Pub. Power Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

⁵⁰ We also agree with Duke/FirstEnergy that the Midwest ISO needs to reconcile the definition of Demand, which is specified in MWh, with the definition of load, which is specified in MW. We direct this clarification in the compliance filing to be made within 60 days of the date of this order.

69.1.5.e to add to the end of that section the following: “The Planning Reserve Margin for an LSE will be adjusted downward by subtracting the weighted average Unforced Capacity rating of all the generators in the region for which the Planning Reserve Margin is determined.” Integrys argues that the above-referenced language is critical to ensure that the effect of outage rates is not counted twice and so must be included in the tariff.

2. Commission Determination

115. We affirm our decision that treatment of outages is appropriate for the Business Practices Manuals.⁵¹ We consider it reasonable for the details of outages to be listed in the Business Practices Manuals and commenters have not presented a linkage between the detailed procedures to account for outages and the rates, terms and conditions that would warrant inclusion in the tariff. Provisions related to calculating the planning reserve margin using unforced capacity are explained in the tariff with a reasonable amount of detail and those are the aspects that will directly impact the calculation of rates.

116. We note that Module E, as revised in the Compliance Filing, does not contain a section 69.1.5.e. Thus, Integrys’ request is moot. We note further that in the Compliance Order we are directing other revisions that should address the concern about “double-counting” capacity resources and the Midwest ISO has filed additional language to clarify the calculation of the planning reserve margin.⁵²

L. Must Offer Requirement

117. In the March 26 Order, the Commission considered it reasonable to credit each Capacity Resource at its Unforced Capacity⁵³ basis and also found it reasonable for the Midwest ISO to extrapolate this to the must-offer requirement. The Commission accordingly directed the Midwest ISO to clarify that the offer required of Capacity Resources applies to their Unforced Capacity, and not to their Installed Capacity.⁵⁴

⁵¹ *Id.* P 141.

⁵² Original Sheet No. 810.01.

⁵³ Unforced Capacity is the amount of statistically-dependable capacity assigned to a Capacity Resource after accounting for that resource’s equivalent forced outage rate by applying the [Equivalent Forced Outage Rate (EFORD)] metric, as defined in the NERC Generation Availability Data System. Third Revised Sheet No. 138.

⁵⁴ March 26 Order, 122 FERC ¶ 61,283 at P 202.

1. Request for Clarification

118. In its request for clarification, the Midwest ISO explains that because the system planning reserve margin and individual Capacity Resource EFORD values are based on Installed Capacity, i.e., maximum capacity, it is not appropriate for Capacity Resources to only be required to offer at their Unforced Capacity level. The Midwest ISO explains that if a Capacity Resource were only required to offer at its Unforced Capacity level, then the difference between its Installed Capacity level and its EFORD adjusted Unforced Capacity value could be sold firm, off-system. The Midwest ISO asserts that this would negatively affect system reliability and be inconsistent with the original planning reserve margin determination. The Midwest ISO requests that the Commission clarify that the March 26 Order did not permit entities to submit the Unforced Capacity of a generation resource but rather required entities to offer the Installed Capacity of a Capacity Resource into the pre-day-ahead, day-ahead and RAC process. Integrys believes that the Commission inadvertently reversed the labels “Unforced Capacity” and “Installed Capacity” in the March 26 Order. Integrys asserts that the entire unit, i.e., the Installed Capacity, must be offered in to get the full net effect of the Unforced Capacity.

2. Commission Determination

119. We will grant the Midwest ISO’s request for clarification regarding the must-offer requirement. We agree with the Midwest ISO’s concern that, if a Capacity Resource is only required to offer at its Unforced Capacity level, then any of its remaining capacity could be sold off-system, thus subverting the intent of the planning reserve margin. For example, the difference between Installed Capacity and Unforced Capacity could be sold to another RTO as a designated resource. In effect, the Midwest ISO would then not have the planning reserve margin it calculated and this would be detrimental to system reliability. The Midwest ISO has clarified that it will base system planning reserve margin values and individual Capacity Resource EFORD values on the Installed Capacity value of resources, and therefore, offer requirements based on the Installed Capacity value are reasonable.⁵⁵ However, we note that the Midwest ISO has not defined the term “Installed Capacity” in Module A of its tariff and it uses this term in lieu of the defined term “Unforced Capacity” in its request for clarification. We also note that the Midwest ISO based its compliance filing on the Commission’s March 26 directives, which are herein revised. Therefore, we direct the Midwest ISO to clarify that its must-offer requirement in Module E is a must-offer requirement based on “Installed Capacity” and to provide a definition for “Installed Capacity” in Module A in a compliance filing to be submitted within 30 days of the date of this order.

⁵⁵ Midwest ISO April 25, 2008 Request for Clarification, Docket No. ER08-394-001 at 3.

M. Reporting Requirements**1. Request for Rehearing**

120. On rehearing, Hoosier & Southern Illinois assert that the Commission failed to clarify that the Midwest ISO should not submit resource adequacy information to the state for entities not subject to state jurisdiction. Hoosier & Southern Illinois therefore restate their request that the word “applicable” be inserted between “with” and “state,” in section 69.2.1, the parenthetical “(in the case of an LSE subject to rate regulation by a state regulatory authority)” be added in section 69, and the words “state jurisdictional” be inserted between “each” and “LSE” in section 69.3.2.

2. Commission Determination

121. We grant the rehearing request of Hoosier & Southern Illinois and clarify that the Midwest ISO should not submit resource adequacy information to the state for entities not subject to state jurisdiction. We find that the language suggested by Hoosier & Southern Illinois will add appropriate clarity to the tariff regarding disclosure of information. Therefore, we direct the Midwest ISO to make revisions to its tariff in sections 69, 69.2.1, and 69.3.2 to reflect the additional language suggested by Hoosier & Southern Illinois in a compliance filing to be filed within 30 days of the date of this order.

The Commission orders:

(A) The requests for rehearing are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to submit compliance filings, within 30 days and 60 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Wellinghoff dissenting in part with a separate statement attached.

Commissioner Moeller not participating

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER08-394-001

(Issued October 20, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

The Commission previously accepted as just and reasonable Midwest ISO's proposal for the netting of Load Modifying Resources (LMR) from a load-serving entity's (LSE) load forecast before determining the LSE's resource adequacy requirements.¹ Unfortunately, the majority reverses that decision in today's order. The majority provides no evidentiary or policy basis for that change, nor does the majority confront the fact that its action is inconsistent with our approval of similar provisions for other RTOs. In addition, I am concerned that the majority's action discourages investment in tools and resources, such as advanced metering and distributed generation, which are important to developing the demand side of organized wholesale electric markets. For these reasons, I dissent in part from today's order.

Module E of the Midwest ISO Tariff establishes the procedures for determining each LSE's resource adequacy requirement. Toward that end, Module E distinguishes between Capacity Resources and LMRs. On one hand, Midwest ISO defines Capacity Resources to include generation resources, power purchase agreements, and demand response resources (DRR).² On the other hand, LMRs include Behind-the-Meter Generation (BTMG)³ and Demand Resources (DR).⁴ It is important to recognize that under Midwest ISO's tariff structure, a DRR (a subset of Capacity Resources) is fundamentally different from a DR (a subset of LMRs). Indeed, Module E requires a resource that can reduce load to choose between being a DRR and a DR.

Prior to the Commission's initial order in this proceeding, Dairyland and Reliant argued that it was inappropriate for Midwest ISO to net BTMG from an LSE's load forecast before determining that LSE's resource adequacy requirement. They contended that netting BTMG would not be comparable to the treatment applied to other generation resources. They also argued that netting of BTMG would result in LSEs having fewer resources available during an emergency to the detriment of reliability.⁵ In our previous order, we considered and rejected

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at P 96 (2008).

² Substitute Third Revised Sheet No. 54.

³ BTMG serve load located behind a pricing node during emergencies and are not included in Midwest ISO's dispatch instructions. Substitute First Revised Sheet No. 51 B.

⁴ DR include interruptible load, direct control load management, or other resources that can reduce load during emergencies. Third Revised Sheet No. 65.

⁵ Dairyland and Reliant did not express similar concerns with respect to DR.

Dairyland's and Reliant's arguments. In fact, we directed Midwest ISO to clarify that Module E does not require a reserve margin for LMRs.

On rehearing, Dairyland and Reliant make no new arguments. Despite this fact, the majority now adopts Dairyland's and Reliant's arguments, and finds Midwest ISO's netting of LMRs – including both BTMG and DR – to be unjust and unreasonable.

The majority makes several errors in reaching this conclusion. First, the majority errs in concluding that netting of LMRs is unjust and unreasonable because it is not comparable to Midwest ISO's treatment of Capacity Resources. By definition, the function and characteristics of LMRs are fundamentally different from those of Capacity Resources. LMRs, including BTMG and DR, have very specific and limited functions under Midwest ISO's tariff structure. Unlike Capacity Resources, BTMG and DR are not subject to the Must Offer obligation to submit an offer to sell energy in the Day-Ahead Market.⁶ In further contrast to the demand-side component of Capacity Resources (DRRs), LMRs are not price-responsive demand.⁷ LMRs' only obligation is to be available to reduce load during emergencies. Because Capacity Resources and LMRs serve different functions under Midwest ISO's tariff structure, the same treatment of these resources in terms of netting is not appropriate.

Second, the majority provides no basis for its apparent belief that netting LMRs will result in inadequate planning reserves. Module E, including its provisions for netting of LMRs, was the product of extensive stakeholder involvement over a period of years.⁸ Module E is a complex set of mandatory requirements and procedures for determining planning reserves adequate to meet load requirements in Midwest ISO on an aggregate or system-wide basis. While it is literally correct to state that Midwest ISO will have fewer reserves if LMRs are netted (*i.e.*, no reserve margin is applied to LMRs), it does not follow that Module E and its netting provision will result in inadequate resources to the detriment of reliability. The question presented here is not simply about having more or "less" planning reserves, as the majority suggests, but whether including the netting of LMRs in Module E will result in inadequate planning reserves to satisfy the Loss of Load Expectation equal to one day in ten years. The majority fails to explain its reasoning on that question.

Third, the majority's action is inconsistent with the deference to states that we have shown regarding other features of Module E. Module E allows states to establish planning reserve margins that differ from the planning reserve margin that Midwest ISO would otherwise calculate. Some parties opposed giving states that option, arguing that allowing states to set lower planning reserve margins would be detrimental to reliability.⁹ If the majority were to

⁶ Affidavit of Michael Robinson at P 29 and Affidavit of Richard Doying at P 9.

⁷ Fifth Revised Sheet No. 826.

⁸ Affidavit of Michael Robinson at P 5-15.

⁹ These parties also argued that different planning reserve margins would create a "free rider" problem. While recognizing that potential, the Commission stated that a "free rider" problem was unlikely to occur because states have a strong incentive to not undermine reliability and the existence of an ancillary services market.

apply the same rationale it uses to find the netting of LMRs to be unjust and unreasonable, it should also require a uniform planning reserve margin across the Midwest ISO because both the netting of LMRs and allowing a state to establish a lower planning reserve margin will result in an LSE being required to procure fewer planning reserves. However, we appropriately approved this feature of Module E,¹⁰ and today's order does not change that result. We based our decision to allow states to establish a different planning reserve margin on two primary considerations: Midwest ISO's proposal was a significant improvement over the *status quo*, and it was consistent with the flexible approach to resource adequacy that we articulated in approving CAISO's resource adequacy proposal.¹¹ Similar considerations should apply here with respect to the netting of LMRs as a feature of Module E.

Fourth, the majority's action conflicts with our approval of similar provisions for other RTOs. For example, ISO-NE nets a demand resource from the load forecast if the demand resource does not qualify for or participate in the Forward Capacity Auction, or if it participates but does not clear.¹² The majority fails to meaningfully distinguish the netting aspect of Midwest ISO's resource adequacy proposal from such previous Commission approvals.

Lastly, I am concerned that the majority's action discourages investment in LMRs. LMRs provide Midwest ISO with additional, cost-effective flexibility during emergencies. The value of LMRs in the resource adequacy program stems from avoiding the cost of acquiring Capacity Resources. If the LSE does not receive any value for LMRs, the LSE has no incentive to provide this functionality. It is noteworthy that the Ohio Commission raises a similar concern regarding price-responsive demand.¹³ Midwest ISO has committed to evaluate its resource adequacy program more comprehensively to ensure equitable treatment of all loads.¹⁴ I urge the Midwest ISO and its stakeholders to continue to seek appropriate mechanisms to recognize the value of LMRs and price-responsive demand. I take this opportunity to encourage Midwest ISO and its stakeholders to also evaluate whether the resource adequacy program reflects the full value of BTMG.

For these reasons, I respectfully dissent in part from today's order.

Jon Wellinghoff
Commissioner

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at P 90-95 (2008).

¹¹ *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 at P 1117 (2006).

¹² ISO-NE Market Rule 1, Section III,12,8 (a) and (b).

¹³ Public Utilities Commission of Ohio June 17, 2008 Comments at 5.

¹⁴ Midwest ISO May 27, 2008 Transmittal Letter at 18, n.100.