

128 FERC ¶ 61,052  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System  
Operator, Inc.

Docket Nos. ER08-1055-002  
ER08-1055-003

ORDER DENYING REHEARING AND CONDITIONALLY ACCEPTING  
COMPLIANCE FILING, SUBJECT TO A FURTHER COMPLIANCE FILING

(Issued July 16, 2009)

1. On January 21, 2009, in Docket No. ER08-1055-002, Xcel Energy Services Inc., on behalf of itself and the NSP Companies<sup>1</sup> (collectively, Xcel Energy), filed a request for rehearing of the Commission's December 18, 2008 order.<sup>2</sup> Xcel Energy requests rehearing of the December 18 Order's requirement that the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) revise its proposed Amended and Restated Midwest Contingency Reserve Sharing Group Agreement (Amended CRSG Agreement) to maintain the minimum contingency reserve level of 2,250 MW and the allocations of those reserves as they were under the 2006 Midwest Contingency Reserve Sharing Group Agreement (2006 CRSG Agreement). As explained below, we deny Xcel Energy's request for rehearing.
2. On January 22, 2009, in Docket No. ER08-1055-003, the Midwest ISO submitted a compliance filing pursuant to the December 18 Order.<sup>3</sup> As explained below, we

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<sup>1</sup> The NSP Companies are Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,323 (2008) (December 18 Order).

<sup>3</sup> The Midwest ISO submitted the compliance filing as a party and as agent for and on behalf of Big Rivers Electric Corporation; Dairyland Power Cooperative; East Kentucky Power Cooperative, Inc.; E.ON U.S. LLC, on behalf of Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, E.ON); Lincoln

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conditionally accept the compliance filing, to be effective January 6, 2009, as requested, subject to a further compliance filing.

### **Rehearing Concerning Minimum Contingency Reserve Level**

#### **December 18 Order**

3. On May 30, 2008, as supplemented,<sup>4</sup> the Midwest ISO, under section 205 of the Federal Power Act,<sup>5</sup> filed the Amended CRSG Agreement to replace the existing 2006 CRSG Agreement.<sup>6</sup> In pertinent part, the Midwest ISO proposed to reduce the Midwest CRSG's minimum contingency reserve level from 2,250 MW to 1,500 MW. In so doing, the Midwest ISO noted that the North American Electric Reliability Corporation (NERC) reliability standard BAL-002-0 requires that each reserve sharing group maintain contingency reserves in an amount adequate to return its system to normal operating conditions following a disturbance. The minimum level of contingency reserves is 100 percent of the reserve sharing group's largest single contingency. The Midwest ISO stated that the Amended CRSG Agreement identified the largest single contingency as 1,500 MW. The Midwest ISO proposed to allocate this contingency reserve level of 1,500 MW by assigning 750 MW to the Midwest ISO Balancing Authority and 750 MW to the remaining parties (External Entities), to be allocated among themselves based upon their load ratio share of the coincident peak load of the External Entities at the time of the maximum peak load of the Midwest ISO CRSG Region.<sup>7</sup> The Midwest ISO's filing also

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Electric System; Manitoba Hydro; MidAmerican Energy Company; Muscatine Power and Water; Nebraska Public Power District; Omaha Public Power District; and Western Area Power Administration.

<sup>4</sup> On August 6, 2008, August 15, 2008 and September 9, 2008, the Midwest ISO submitted additional information in response to a deficiency letter.

<sup>5</sup> 16 U.S.C. § 824d (2006).

<sup>6</sup> Also on May 30, 2008, as amended on June 25, 2008, in Docket No. ER08-1042-000, the Midwest ISO filed a notice of cancellation of the existing 2006 CRSG Agreement which the December 18 Order conditionally accepted. The notice of cancellation of the 2006 CRSG Agreement became effective on January 6, 2009. *See* the Midwest ISO's February 6, 2009 informational filing in Docket No. ER08-1042-000.

<sup>7</sup> *See* the Midwest ISO's May 30, 2008 Transmittal Letter, Docket No. ER08-1055-000, at 7 & n.8 (citing section 1.4 of the Operating Protocols). The Amended CRSG Agreement provides that contingency reserves are to be set forth in accordance with the Operating Protocols. *See* section 2.1.2 of the Amended CRSG Agreement. As

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included, for informational purposes, the protocols for the allocation of the contingency reserve requirement.<sup>8</sup>

4. The Midwest ISO also stated that the Amended CRSG Agreement complied with existing NERC and regional reliability requirements by meeting the six NERC criteria for reserve sharing groups.<sup>9</sup>

5. In the December 18 Order, the Commission noted that it had reviewed a detailed deliverability study submitted in the Midwest ISO's data response. The Commission found that for winter and summer periods, the deliverability tests under the proposed minimum contingency reserve of 1,500 MW failed due to transmission constraints. Consequently, the reserves that the Midwest ISO planned to deploy under the Amended CRSG Agreement would be unable to reach parts of the system under certain contingencies. In addition, the Commission noted that the base case provided by the Midwest ISO already contained transmission limit violations, which further called into question the deliverability of the 1,500 MW. Thus, the Commission found that the Midwest ISO's proposal to reduce its reserve amount to 1,500 MW failed to satisfy the deliverability requirements of the Amended CRSG Agreement and NERC reliability standard TOP-002, R7.<sup>10</sup> Moreover, the Commission expressed concern that, with the reduced amount of reserves, the Midwest ISO will likely violate the NERC reliability standards with respect to the Disturbance Recovery Criterion and the Disturbance Control Standard and that the Midwest ISO could be exposed to a penalty of up to \$1 million per day per violation.

6. The Commission conditionally accepted the Amended CRSG Agreement for filing, effective January 6, 2009, and directed the Midwest ISO to revise the Amended CRSG Agreement to maintain the minimum contingency reserve level of 2,250 MW and the allocations of those reserves under the 2006 CRSG Agreement that the Midwest ISO concluded was deliverable. The Commission also stated that it would entertain a future filing under section 205 of the Federal Power Act if the Midwest ISO chooses to provide

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noted in the Midwest ISO's May 30, 2008 transmittal letter, the Midwest ISO reflected its proposed allocations of contingency reserves in the Operating Protocols; it did not reflect those allocations in the Amended CRSG Agreement.

<sup>8</sup> Midwest ISO's May 30, 2008 Transmittal Letter, Docket No. ER08-1055-000, at 11-12.

<sup>9</sup> December 18 Order, 125 FERC ¶ 61,323 at P 27-29.

<sup>10</sup> *Id.* P 31.

a revised minimum contingency reserve level and an allocation that satisfies the deliverability requirements under the Amended CRSG Agreement and NERC reliability requirements.<sup>11</sup>

**Request for Rehearing, Docket No. ER08-1055-002**

7. Xcel Energy contends that the December 18 Order drew incorrect conclusions from the deliverability analysis submitted by the Midwest ISO, on behalf of the Midwest Contingency Reserve Sharing Group (CRSG), in this proceeding and should not have directed modifications to a voluntary, multi-party agreement.

8. Xcel Energy argues that the Midwest CRSG's transmission reliability margin (TRM) study was properly performed. As an attachment to its request for rehearing, it provides an affidavit<sup>12</sup> explaining the TRM study methodology in more detail. According to Xcel Energy, the Midwest ISO properly performed studies to calculate TRM values on flowgates to determine the deliverability of reserves to be deployed under the Amended CRSG Agreement. Xcel Energy states that it is its understanding that these studies were submitted to the Commission in response to the July 30, 2008 deficiency letter and it notes that this same methodology was submitted by the Midwest CRSG in Docket No. ER06-1420-000 (the 2006 CRSG Agreement proceeding) and accepted by the Commission.<sup>13</sup>

9. Xcel Energy contends that the Commission's analysis of the deliverability studies was flawed. According to Xcel Energy, the allocation of TRM is used to establish a deduction from the Total Transfer Capability of the transmission elements. Xcel Energy states that the TRM study was intended only for the purpose of establishing a set of flow distribution impacts used to evaluate potential activations of contingency reserves. Therefore, the primary relevant factor to the TRM evaluation is the topology of the grid model and not the flow levels on the transmission lines or flowgates. This is because the TRM studies, as explained in Dr. Zhu's affidavit, are intended to capture a change in flows related to the simulated contingency reserve activation. Once the flow changes are evaluated, the TRM values are established. With the TRM values in place, the Midwest ISO then operates the transmission system in a manner to ensure that any reserve activation's marginal impact on the grid elements can be accommodated. Xcel

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<sup>11</sup> *Id.* P 31-33.

<sup>12</sup> Xcel Energy's Request for Rehearing, Att. 1 (affidavit of Dr. Kun Zhu).

<sup>13</sup> See *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,166 (2008) (Order Accepting Informational Filings).

Energy maintains that this operational control is performed through the security constrained economic dispatch performed by the Midwest ISO.

10. Xcel Energy further contends that the Midwest CRSG TRM analysis is not intended to guarantee that the Midwest ISO will operate the market or transmission system without recognition of transmission flow limits or binding constraints. Otherwise, such an implication would suggest that the Midwest ISO market could never operate reliably during the presence of congestion on the grid. The reliability of the grid is managed through the proper calculation of the impact on the transmission system of reserve activation and the preservation of the TRM during the enforcement of the binding constraints. The binding constraint process uses a combination of market redispatch and transmission loading relief to unload the transmission system before an event occurs that may require the deployment of contingency reserves. For these reasons, Xcel Energy contends that the Commission incorrectly interpreted the Midwest CRSG deliverability analysis and subsequently drew an incorrect conclusion regarding the requirement to maintain the 2006 CRSG Agreement contingency reserve levels.

11. In addition, Xcel Energy argues that the December 18 Order's finding that the Midwest ISO "will likely violate" the requirements of R4 and R5 of BAL-002-0 is speculative and not supported by the record. It argues that there have been no hearings and that the December 18 Order pointed to no evidence that the Midwest CRSG parties have violated, or will violate, any reliability standards. Moreover, it argues that NERC, as the Electric Reliability Organization, and the appropriate regional reliability organizations are responsible for ensuring that balancing authorities comply with reliability standards. Xcel Energy further states that the Amended CRSG Agreement proposes a level of contingency reserves consistent with the NERC minimum requirement of 100 percent of the most severe contingency.

12. Xcel Energy further asserts that the Midwest ISO will carry additional contingency reserves while the ancillary services markets are in operation. Xcel Energy states that, as the balancing authority, the Midwest ISO planned to carry an additional 750 MW of reserves. Thus, the total amount of contingency reserves carried by the parties to the Amended CRSG Agreement was expected to be at least 2,250 MW. Xcel Energy states that the Amended CRSG Agreement principally is a financial instrument that allocates approximately 1,500 MW of contingency reserves among the parties. It does not account for the additional 750 MW of reserves carried by the Midwest ISO during operation of the ancillary services markets. According to Xcel Energy, operation of the ancillary services markets (and the Midwest ISO's contingency reserve obligation in its Business Practice Manuals) combined with participation in the Amended CRSG Agreement assures that each of the parties will maintain reliable operation of the transmission system.

13. Further, Xcel Energy argues that the Commission should not unilaterally direct revisions to an agreement that has been the subject of an arduous stakeholder process among many parties. It states that the Amended CRSG Agreement is the result of a comprehensive process among many participants, and balances the competing interests of those CRSG members and constituents.

### **Commission Determination**

14. We deny Xcel Energy's rehearing request. We disagree with Xcel Energy's argument that the Commission, in the December 18 Order, drew incorrect conclusions in reaching its determination. Simply stated, the Commission reached the correct conclusion based on the methodology used by the Midwest ISO and the data supplied by the Midwest ISO.<sup>14</sup> Xcel Energy has not shown otherwise. Relying on the information provided by Midwest ISO in its filing and in its response to the deficiency letter, the Commission correctly determined that the Midwest ISO had failed to show that its proposed contingency reserve level of 1,500 MW is deliverable. In fact, the Commission found that for winter and summer periods the deliverability tests under the proposed minimum contingency reserve of 1,500 MW failed due to transmission constraints.<sup>15</sup>

15. We do not dispute Xcel Energy's assertion that the Midwest CRSG's TRM study was properly performed. Nor do we dispute Xcel Energy's assertion that the same methodology was submitted in the 2006 CRSG Agreement proceeding. We do, however, disagree with Xcel Energy that the Commission's analysis of the deliverability studies was flawed. Significantly, neither the Midwest ISO nor Xcel Energy has demonstrated, using the data provided in this proceeding, that the 1,500 MW contingency reserve is deliverable. Rather, Xcel Energy argues that if the TRM study followed the correct methodology then the contingency reserve level of 1,500 MW must be deliverable. However, the data provided by the Midwest ISO in its initial filing and in response to the Commission's deficiency letter are crucial in determining whether the 1,500 MW is

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<sup>14</sup> December 18 Order, 125 FERC ¶ 61,323 at P 31-33. Further, in a July 30, 2008 deficiency letter in this proceeding, the Midwest ISO was directed to show that the proposed level of contingency reserves was deliverable consistent with the requirements of the Amended CRSG Agreement. Specifically, the deficiency letter directed Midwest ISO to provide an analysis of deliverability with an explanation as to why each participating entity in the Amended CRSG Agreement concludes that its contingency reserves will be deliverable. The information provided by the Midwest ISO failed to demonstrate that the contingency reserves were deliverable. *See* Midwest ISO Supplemental Data in response Data Request No. 5 (September 9, 2008).

<sup>15</sup> *See* December 18 Order, 125 FERC ¶ 61,323 at P 31 & n.24.

deliverable. The Commission analyzed the methodology *and the data* submitted by the Midwest ISO in this proceeding, and properly concluded that the Midwest ISO has failed to show that the 1,500 MW was deliverable. Xcel Energy has made no attempt to demonstrate otherwise and its failure to address the actual data submitted in this proceeding is fatal to its rehearing request.

16. Because the Midwest ISO did not demonstrate that the 1,500 MW was deliverable, the Commission conditionally accepted the Amended CRSG Agreement subject to the Midwest ISO submitting a compliance filing to revise the agreement to maintain the minimum contingency reserve level of 2,250 MW, which had previously been found to be deliverable by the Commission.<sup>16</sup> In that previous proceeding (Docket No. ER06-1420-000), the Commission accepted the Midwest ISO's proposal to reduce its contingency reserve from 3,719 MW to 2,250 MW because the Midwest ISO provided a deliverability study, including supporting data, showing that the 2,250 MW was deliverable consistent with Article 2.1.4 of the Amended CRSG Agreement as well as NERC reliability standard TOP-002, R7.<sup>17</sup> In making the use of the 2,250 MW a condition of its acceptance of the Amended CRSG Agreement, the Commission also indicated that it "will entertain a future FPA section 205 filing if the Midwest ISO chooses to provide a revised minimum contingency reserve level and an allocation that satisfies the deliverability requirements under the Amended CRSG Agreement and NERC reliability requirements."<sup>18</sup>

17. We also disagree with Xcel Energy that the Commission rejected the proposed 1,500 MW reserve level because the Midwest CRSG parties may violate a reliability standard. In the December 18 Order, the Commission merely expressed its concern that, with the reduced amount of reserves, the Midwest ISO will likely violate NERC requirements.<sup>19</sup> To clarify our previous order, the Commission's determination to reject the 1,500 MW contingency reserve level was based solely on its finding that the Midwest ISO had failed to demonstrate that that level of reserves satisfied the deliverability requirement of the Amended CRSG Agreement and NERC reliability standard TOP-002, R7.

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<sup>16</sup> *Id.* P 33.

<sup>17</sup> *Id.* P 31.

<sup>18</sup> *Id.* P 32.

<sup>19</sup> *Id.* P 32.

18. Finally, we disagree with Xcel Energy that the Commission should not have revised the Amended CRSG Agreement because it was the subject of an arduous stakeholder process.<sup>20</sup> The Commission analyzed the record as a whole in this proceeding and properly concluded that the Midwest ISO had failed to provide adequate evidence to support that the 1,500 MW was deliverable.

### **Compliance Filing, Docket No. ER08-1055-003**

#### **December 18 Order**

19. The December 18 Order directed the Midwest ISO “to revise [the CRSG] agreement to maintain the minimum contingency reserve level of 2,250 MW and the allocations of those reserves under the 2006 CRSG Agreement that the Midwest ISO concluded was deliverable.”<sup>21</sup> Additionally, the December 18 Order directed the Midwest ISO to correct an error in the wording of Section 3.1 of Schedule CR-1.<sup>22</sup>

#### **Compliance Filing**

20. The Midwest ISO revises Article VIII (Contingency Reserves Requirements and Obligations), § 8.1.1 of the Amended CRSG Agreement to provide that the initial contingency reserve obligation of the Midwest CRSG shall be 2,250 MW and to provide that the total contingency reserve obligation “may be amended by the [Contingency Reserve Committee], and this Agreement shall be amended and re-filed accordingly.”<sup>23</sup> The Midwest ISO explains that this revision is “to clarify that the [Contingency Reserve Committee] may amend the Contingency Reserves Obligation in the future through a filing with the Commission.”<sup>24</sup> The Midwest ISO also submits, for informational

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<sup>20</sup> *Public Service Commission of Wisconsin v. FERC*, 545 F.3d 1058, 1062-65 (D.C. Cir. 2008) (finding that, while the Commission may give weight to negotiated stakeholder process, it must make its own independent assessment that the policy is just and reasonable).

<sup>21</sup> December 18 Order, 125 FERC ¶ 61,323 at P 33.

<sup>22</sup> *Id.* P 37.

<sup>23</sup> The Midwest ISO indicates that its compliance filing “is being made under protest and without impairment or waiver of the right of any party in this Docket to file a request for rehearing.” Midwest ISO Compliance Filing Transmittal at 2.

<sup>24</sup> Midwest ISO Compliance Filing Transmittal at 3.

purposes only, a copy of the revised Operating Protocols illustrating changes made to the reserve allocation tables.<sup>25</sup>

21. The Midwest ISO also corrects Section 3.1 of Schedule CR-1 (Contingency Reserves Settlements and Charges), as required by the December 18 Order, to properly indicate what External Entities will be paid,<sup>26</sup> as follows:

External Entities shall be paid the greater of: (i) the hourly LMP plus \$50 at the interface at which the energy enters the Midwest ISO energy and Operating Reserve Market or (ii) 110 percent of the verifiable cost of the resource(s) used to provide such service.

22. The Midwest ISO requests that the revisions described above become effective January 6, 2009.

### **Notice of Filing and Responsive Pleadings**

23. Notice of the Midwest ISO's compliance filing was published in the *Federal Register*, 74 Fed. Reg. 6149 (2009), with comments due on or before February 12, 2009. E.ON filed supplemental comments and a limited protest. In response to E.ON's comments and limited protest, the Midwest ISO, on its own behalf, as a Balancing Authority member of the MCRSG, and not as the Administrator of the MCRSG,<sup>27</sup> filed a motion for leave to answer and answer. Duke Energy Corporation also filed a motion for leave to answer and answer.

24. E.ON states that the revisions to the contingency reserve minimum level and allocations were ordered as a component of the Midwest ISO's filed rates and that the appropriate placement of those components is not in the operational protocols, but in the Amended CRSG Agreement, which is on file with the Commission.<sup>28</sup>

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<sup>25</sup> The Midwest ISO notes that the CRSG intends to request at a later date the opportunity to meet with technical staff to review the development and application of TRM studies in the context of a reserve sharing group, so that if and when it becomes desirable to modify the Midwest CRSG reserve obligation via a section 205 filing, there will be a common understanding of those technical studies. Midwest ISO Compliance Filing Transmittal at 3, n.4.

<sup>26</sup> See December 18 Order, 125 FERC ¶ 61,323 at P 37.

<sup>27</sup> See Midwest ISO Answer at 4.

<sup>28</sup> E.ON also objects to the posture of the compliance filing being submitted

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## **Discussion**

### **Procedural Matters**

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

### **Substantive Matters**

26. We find that the Midwest ISO's compliance filing, as modified below, complies with the December 18 Order. The Midwest ISO complied with the December 18 Order by revising the Amended CRSG Agreement to correct Section 3.1 of Schedule CR-1 and to maintain the minimum contingency reserve level of 2,250 MW. However, we agree with E.ON that the Midwest ISO failed to revise the Amended CRSG Agreement to include the allocation of this reserve level. Therefore, we conditionally accept the Midwest ISO's compliance filing, to be effective January 6, 2009, as requested, subject to a further compliance filing. The Midwest ISO must make a compliance filing, within 30 days of the date of this order, revising the Amended CRSG Agreement to include the allocation of the minimum contingency reserve level.<sup>29</sup>

#### **The Commission orders:**

(A) Xcel Energy's request for rehearing is hereby denied, as discussed in the body of this order.

(B) The Midwest ISO's compliance filing is hereby conditionally accepted, to be effective January 6, 2009, as discussed in the body of this order.

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“under protest” and to the Midwest ISO's offer to meet with Commission technical staff to discuss its concerns about Commission staff's interpretation of TRM studies without the participation of all interested parties.

<sup>29</sup> The Midwest ISO's submittal of the compliance filing “under protest” is irrelevant because the Midwest ISO further states that “because the CRSG is complying with the higher reserve level required by the December 18 Order, the errors need not be addressed in this compliance filing.” Midwest ISO Compliance Filing Transmittal at 3, n.4. Also, if or when the CRSG requests a meeting with technical staff, the request will be dealt with pursuant to the Commission's rules and regulations.

(C) The Midwest ISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.