



2. Also on May 30, 2008, as amended on June 25, 2008, the Midwest ISO filed, on behalf of the signatory parties<sup>3</sup> to the 2006 CRSG Agreement, a Notice of Cancellation of the 2006 CRSG Agreement (Notice of Cancellation) in Docket No. ER08-1042-000.<sup>4</sup> For both filings, the Midwest ISO requested an effective date of September 9, 2008, the date that the Midwest ISO indicated that it would commence operating its Ancillary Services Market, or such other date as may be allowed by the Commission, to coincide with the start of the Ancillary Services Market. As discussed below, the Midwest ISO now projects that it will commence operating its Ancillary Services Market on January 6, 2009.<sup>5</sup> In this order, the Commission conditionally accepts the Amended CRSG

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<sup>3</sup> The Parties to the 2006 CRSG Agreement include: Alliant Energy Corporate Services, Inc. as agent for Interstate Power and Light Company and Wisconsin Power and Light Company; Ameren Services Company on behalf of Central Illinois Public Service Company; Central Illinois Light Company; Illinois Power Company, and Union Electric Company; Big Rivers Electric Corporation; City of Columbia, MO Water & Light Department; City of Springfield, Illinois, Office of Public Utilities; Consumers Energy Company; Detroit Edison; Duke Energy Shared Services, Inc., on behalf of Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc. as the Duke Energy Corporation Balancing Authority; Duke Energy Ohio, Inc., as a LSE; Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc., as a LSE; E.ON U.S. LLC, on behalf of Louisville Gas and Electric Company and Kentucky Utilities Company; East Kentucky Power Cooperative, Inc.; FirstEnergy Service Company, on behalf of The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, FirstEnergy Solutions, American Transmission Systems, Incorporated; Great River Energy, in its individual capacity and as a MAPP Member; Hoosier Energy Rural Electric Cooperative, Inc.; International Transmission Company and Michigan Electric Transmission Company, LLC, as joint operators of the Michigan Electric Coordinated Systems; Indianapolis Power & Light Company; Madison Gas and Electric Company; MAPP COR as agent for and on behalf of the members of the Mid-Continent Area Power Pool Generation Reserve Sharing Pool; Northern Indiana Public Service Company; Northern States Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas and Electric Company, Inc.; Upper Peninsula Power Company; Wisconsin Electric Power Company; and Wisconsin Public Service Corporation (Parties to the 2006 CRSG Agreement).

<sup>4</sup> The 2006 CRSG Agreement is designated as Midwest ISO Rate Schedule FERC No. 9.

<sup>5</sup> See Notice of the Midwest Independent Transmission System Operator, Inc. Regarding Commission Action, Docket Nos. ER07-1372-000, *et al.* (filed Nov. 3, 2008) at p 3.

Agreement for filing, subject to a compliance filing, and conditionally accepts the Notice of Cancellation, as discussed below.

## **I. Background**

3. On October 24, 2006, the Commission conditionally accepted (1) the currently effective 2006 CRSG Agreement, effective September 1, 2006 and (2) the Emergency Energy Schedule CR-1 attached to the 2006 CRSG Agreement, effective January 1, 2007.<sup>6</sup> The 2006 CRSG Agreement provides the members of the East Central Area Reliability (ECAR) and Mid-American Interconnected Network (MAIN) reserve sharing groups the opportunity to continue sharing contingency reserves<sup>7</sup> after 2006, when their respective pools ceased operation.<sup>8</sup> It further extends those benefits by integrating the

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<sup>6</sup> *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,092 (2006) (2006 CRSG Agreement). *See also* *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER06-1420-001 (December 21, 2006) (unpublished letter order); *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,269 (2007); and *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,166 (2008).

<sup>7</sup> Contingency reserves are comprised of a permissible mix of spinning and supplemental reserves and are necessary to provide the bulk power system with quick, deliverable electricity in the event of a reliability emergency. A reserve sharing group must maintain contingency reserves in an amount adequate to return its Area Control Error to zero within 15 minutes following a Reportable Disturbance. *See* NERC's Disturbance Control Standard, which is a measure of a Balancing Authority's ability to react to equipment forced outages and is addressed in NERC Standard BAL-002-0 – Disturbance Control Performance. NERC reliability standard BAL-002-0 also requires that each reserve sharing group maintain contingency reserves in an amount adequate to return its system to normal operating conditions following a disturbance. Contingency Reserves are defined as “[t]he provision of capacity deployed by the Balancing Authority to meet the Disturbance Control Standard and other NERC and Regional Reliability Organization contingency requirements.” *See* NERC website – Glossary of Terms (October 16, 2006), available at <http://www.nerc.com/sitemap.html>.

<sup>8</sup> The current regional reliability organizations operating in the region are ReliabilityFirst Corporation (Reliability First) and the Midwest Reliability Organization, Inc. (Midwest Reliability). Reliability First is composed of the former ECAR and MAIN reliability councils that were operating in the Midwest. Midwest Reliability was formed from the other former reliability council operating in that area, the Mid-Continent Area Power Pool (MAPP). Reliability First decided in mid-2005 not to administer a reserve

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reserves of the MAPP region and creating a common set of protocols to govern the practices and procedures used by Balancing Authorities when providing, or calling for, contingency reserves. By combining the previously-mentioned three reserve sharing groups, the 2006 CRSG Agreement provides individual Balancing Authorities the opportunity to meet the minimum reserve requirements of NERC Standard BAL-002-0 with less capacity held in reserve, which, in turn, provides additional capacity that can be offered into the Midwest ISO's day-ahead and real-time energy markets.<sup>9</sup>

4. The 2006 CRSG Agreement establishes a minimum level of reserves of 2,250 MW to maintain reliability during the recovery from a sudden loss of supply contingency. Specifically, activation of reserves is based on tiered groups. Parties that were members of the same reserve sharing group prior to the effective date of the 2006 CRSG Agreement are considered "first-tier" and those that were in different groups are considered "second-tier." For example, a Balancing Authority in ECAR will be considered first-tier to another Balancing Authority in ECAR, but second tier to a Balancing Authority in MAIN. Under the 2006 CRSG Agreement, the Balancing Authority experiencing a resource loss attempts to meet the loss by utilizing its own contingency reserves. If the Balancing Authority's own spinning reserves cannot meet the resource loss, the Automatic Reserve Sharing System first utilizes spinning reserves within the Balancing Authority's first-tier group. If the reserves supplied by the first-tier group cannot meet the resource loss, then the Automatic Reserve Sharing System utilizes the spinning reserves in the second-tier group. Finally, supplemental reserves – anything beyond spinning reserves – of the first-tier group followed by the second are activated if further response is needed.

5. In the 2006 CRSG Agreement, the parties allocated reserve obligations based on a ratio of the reserve obligation (150 percent of the largest single contingency or 2,250 MW) to the total contingency reserve required in 2006 among all the Midwest CRSG

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sharing pool after December 31, 2006. As a result, the former ECAR members were forced to decide whether to form or join another reserve sharing group or to meet their contingency reserve requirement on an individual basis. Former MAIN members were faced with a similar decision when a large member of that group announced it would withdraw from the MAIN reserve sharing group at the end of 2006, when the contract for the administration of the relevant MAIN agreement was expiring.

<sup>9</sup> In addition to BAL-002-0, another Commission approved reliability standard TOP-002 requires that the reserves be deliverable (TOP-002, R7 states that "Each Balancing Authority shall plan to meet capacity and energy reserve requirements, including the deliverability/capability for any single Contingency.")

Parties. Using this approach, each Midwest CRSG Party's obligation was approximately 60 percent of the previous allocation in its respective reserve sharing group.<sup>10</sup>

6. Pursuant to section 4.2.3, the 2006 CRSG Agreement terminates automatically when the Midwest ISO begins to operate as a NERC certified Balancing Authority and the obligation to carry reserves shifts from the current multiple Balancing Authorities in the Midwest ISO footprint to the new Midwest ISO Balancing Authority.<sup>11</sup> The first phase in this transition occurred on February 25, 2008, when the Commission conditionally accepted the Midwest ISO's Ancillary Services Market.<sup>12</sup>

7. Pursuant to section 5.3 of the 2006 CRSG Agreement, the Midwest ISO and Parties to the 2006 CRSG Agreement began meeting in January 2007 to develop a successor contingency reserve sharing arrangement that would enable the parties to continue to receive the benefits obtained in the 2006 CRSG Agreement after the start of the Midwest ISO Ancillary Services Market. The Amended CRSG Agreement submitted with this filing is the result of that negotiation process.

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<sup>10</sup> The previous amount of reserves held by these parties in their respective reserve sharing groups was 3,719 MW.

<sup>11</sup> Although the Ancillary Services Market and the Amended CRSG Agreement both pertain to contingency reserves, they are different. The Ancillary Services Market is a market mechanism for procuring contingency reserves, as well as regulating reserves, and will operate in the Midwest ISO's market footprint. Through the Ancillary Services Market, the Midwest ISO will define reserve zones and determine minimum reserve requirements within each zone on a daily basis and communicate these requirements to market participants at least 48 hours in advance. In contrast, the Amended CRSG Agreement manages the sharing of contingency reserves (but not regulating reserves) among the Midwest ISO and eleven external entities, thereby allowing these entities to satisfy NERC Reliability Standard BAL-002. These external entities will not be dispatched as part of the Midwest ISO's Ancillary Services Market. The Amended CRSG Agreement will dictate a minimum amount that the Midwest ISO must procure through the Ancillary Services Market for its market footprint. We note that the Commission is issuing, concurrently with this order, an order on the Ancillary Services Market in Docket No. ER07-1372-002, *et al.*, *Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,318 (2008).

<sup>12</sup> *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 (2008).

## II. Amended CRSG Agreement

8. The Amended CRSG Agreement establishes the Contingency Reserves Committee, which will have the authority to make decisions and take action under the Restated Agreement. That committee's duties include reviewing membership applications, evaluating parties' performance during activation of reserves, making sure the group policies are consistent with current NERC and regional reliability standards, and establishing technical requirements and operating protocols. The Amended CRSG Agreement provides for the Contingency Reserves Committee to delegate certain duties to the group administrator (the Midwest ISO will continue to act in this capacity under the new agreement), such as the procurement, maintenance and monitoring of hardware and software of the Automatic Reserve Sharing System.
9. Article VIII contains the method for allocating each Midwest CRSG Party's share of the group obligation to provide contingency reserves, and the daily allocation as calculated by the Group Administrator. Deliverability studies must comply with all applicable Ancillary Services Market Tariff and reliability requirements, and resources used as contingency reserves must meet certain criteria. Article VIII also provides a mechanism for the group to audit the performance of individual parties.
10. Article IX provides that the Contingency Reserves Committee may adopt an administrative charge and performance penalties as financial enforcement mechanisms if the need arises. No such charges or penalties were implemented under the 2006 CRSG Agreement and none are proposed at this time. Article XI obligates the Midwest CRSG Parties to share the costs of the CRSG, and Article XII sets forth the invoicing and payment terms. Disputes are handled under the dispute resolution provisions found in Article XVII. Section 17.10.5 states, however, that the dispute resolution provisions of the Restated Agreement shall not restrict a Midwest CRSG Party's right to file a complaint with the Commission under the Federal Power Act.
11. As will be discussed in greater detail later in this order, Midwest ISO states that the Amended CRSG Agreement complies with existing NERC and regional reliability requirements by meeting the six NERC criteria for reserve sharing groups. With regard to Requirement 2.5 of BAL-002-0 for contingency reserve policies, and limitations on the amount of interruptible load, the Midwest CRSG Parties have provided in the Amended CRSG Agreement and Operating Protocols the necessary criteria for demand resources to qualify as contingency reserve resources. Operating Protocol 1.8 provides that Midwest CRSG Parties may use demand resources if they meet the minimum requirements of NERC standards, any applicable regional reliability requirement, and any requirements found in an applicable tariff. Thus, the Amended CRSG Agreement itself creates no additional requirements that would discourage the participation of demand resources, but acknowledges those that exist to satisfy reliability standards and state law. The CRSG Operating Protocols require only that controllable load resources be "removed from the

system for the amount designated as Contingency Reserves within the Disturbance Recovery Period following the contingency event.”<sup>13</sup>

12. The Midwest ISO requested an effective date of September 9, 2008, the date that the Midwest ISO indicated that it would commence operating its Ancillary Services Market, or such other date as may be allowed by the Commission, to coincide with the start of the Ancillary Services Market.

### **III. Notices of Filings and Responsive Pleadings**

13. Notice of the Midwest ISO’s Amended CRSG Agreement filing in Docket No. ER08-1055-000 was published in the *Federal Register*, 73 Fed. Reg. 33,075 (2008), with comments, interventions and protests due on or before June 20, 2008. Ameren Services Company (Ameren),<sup>14</sup> Wisconsin Electric Power Company, and Exelon Corporation filed timely motions to intervene. Xcel Energy Services, Inc. (Xcel),<sup>15</sup> Detroit Edison Company (Detroit Edison) and Consumers Energy Company (Consumers) filed motions to intervene out-of-time.

14. Duke Energy Corporation (Duke Energy)<sup>16</sup> filed a timely motion to intervene and supporting comments. E.ON U.S., LLC (E.ON)<sup>17</sup> filed a timely motion to intervene and limited protest.

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<sup>13</sup> Demand resources located within the Midwest ISO will participate as resources available to the Midwest ISO under the Restated Agreement because they are allowed to submit offers in the Energy and Operating Reserve Market.

<sup>14</sup> Ameren filed on behalf of Central Illinois Light Company; Central Illinois Public Service Company; Illinois Power Company; Union Electric Company; Ameren Energy Marketing Company; and Ameren Energy Generating Company.

<sup>15</sup> Xcel filed on behalf of Northern States Power Company and Northern States Power Corporation.

<sup>16</sup> Duke Energy filed on behalf of Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; and Duke Energy Kentucky, Inc.; and Duke Energy Shared Service, Inc.

<sup>17</sup> E.ON filed on behalf of its public utility subsidiaries Louisville Gas and Electric Company and Kentucky Utilities Company.

15. Duke Energy, Xcel, and the Midwest ISO filed answers to E.ON's protest.
16. Notice of the Midwest ISO's Notice of Cancellation filing in Docket No. ER08-1042-000 was published in the *Federal Register*, 73 Fed. Reg. 33,075 (2008), with comments, interventions and protests due on or before June 20, 2008. Duke Energy and Ameren filed timely motions to intervene. Xcel and Consumers filed motions to intervene out-of-time.
17. On July 30, 2008, the Midwest ISO's proposed Amended CRSG Agreement and Notice of Cancellation filings were found to be deficient and additional information was required (data request). The data request directed the Midwest ISO to provide information relating to the proposed reserve sharing group contingency reserve requirement of 1,500 MW (versus 2,250 MW in the 2006 CRSG Agreement) and the implementation of the Amended CRSG Agreement.
18. On August 6, 2008, the Midwest ISO filed its response (August 6 Response). On August 15, 2008 and September 9, 2008, the Midwest ISO filed supplemental data to its August 6 Response.
19. Notice of the Midwest ISO's August 6 Response was published in the *Federal Register*, 73 Fed. Reg. 49,179 (2008), with motions to intervene or protests due on or before August 15, 2008. MAPPCOR, on behalf of the Mid-Continent Area Power Pool Generation Reserves Sharing Pool, filed a timely motion to intervene and comments. E.ON filed supplemental comments and Kentucky Municipal Power Agency filed a timely motion to intervene to the August 15, 2008 Response.
20. Notice of the Midwest ISO's September 9 supplemental filing was published in the *Federal Register*, 73 Fed. Reg. 64,610 (2008), with motions to intervene or protests due on or before October 2, 2008. None were filed.
21. On August 26, 2008, the Midwest ISO informed the Commission that it would delay the start of the Ancillary Services Market and requested that the Commission defer action in the present proceedings, among other Ancillary Services Market-related proceedings, which resulted in the deferral of the proposed effective date of the Amended CRSG Agreement.
22. On November 3, 2008, the Midwest ISO informed the Commission that the Ancillary Services Market would commence on January 6, 2009.<sup>18</sup>

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<sup>18</sup> See Notice of the Midwest Independent Transmission System Operator, Inc. Regarding Commission Action, Docket No. ER07-1372, *et al.* (filed Nov. 3, 2008).



#### **IV. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which they intervened.

24. We will grant Xcel's, Detroit Edison's and Consumers' motions to intervene out-of-time, given their interest in these proceedings, the early stage of these proceedings, and the absence of undue prejudice or delay.

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 unless otherwise ordered by the decisional authority. We will accept the answers of Duke Energy, Xcel, and the Midwest ISO because they have provided information that assisted us in our decision-making process.

#### **V. Discussion**

##### **A. Contingency Reserves, Activation, and Deliverability**

##### **1. Midwest ISO's Proposal**

26. The Midwest ISO notes that the 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 states that the Amended CRSG Agreement identifies the largest single contingency as 1,500 MW. In the proposed Amended CRSG Agreement, the Midwest ISO proposes 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>19</sup> The proposed Amended CRSG Agreement also permits any party to make extra supplemental contingency reserves available to other CRSG parties if the normal contingency reserves of 1,500 MW are fully deployed.

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<sup>19</sup> See Tab A which specifies the minimum level of contingency reserves that each member was required to carry during 2006 and 2007, and the minimum level for that member under the Restated Agreement when the Midwest ISO Ancillary Service Market begins operation. Also see Operating Protocol 1.4. The Midwest ISO states that The maximum peak load occurred at 1600 hours, July 31, 2006.

27. Under the Amended CRSG Agreement, if the request for assistance is below the Disturbance Control Standard reportable level, the Midwest ISO states that the Balancing Authority experiencing the resource loss will first attempt to meet the loss by utilizing its own contingency reserves.<sup>20</sup> If the Balancing Authority cannot meet the resource loss with its own reserves, then the Automatic Reserve Sharing System will utilize the reserves within the Balancing Authority's first-tier group.<sup>21</sup> If the first-tier group cannot provide the necessary reserves, the Midwest ISO states that the second-tier group will be called upon. If the Midwest ISO is not the requesting party, it will be called upon in the event the first tier group cannot respond sufficiently. If the Midwest ISO is the requesting party for a request below the Disturbance Control Standard level and has exhausted its reserves, both the MAPP and Kentucky resources will be viewed as a single tier two, and there is no tier three.

28. If the request for assistance is at or above the DCS reportable event, the Amended CRSG Agreement provides for reserves to be deployed in the following order: spinning reserves of the contingent system; supplemental reserves of the contingent system, if selected by the contingent system; extra supplemental reserves of the contingent system, if selected by the contingent system; the available spinning reserves of the CRSG, on a pro-rata basis; the available supplemental reserves of the CRSG, on a pro-rata basis; and the offered extra supplemental reserves of the CRSG, on a pro-rata basis.

29. Finally, the Midwest ISO states that the Amended CRSG Agreement complies with existing NERC and regional reliability requirements by meeting the six NERC criteria for reserve sharing groups.<sup>22</sup> Specifically, the Midwest ISO notes that Operating

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<sup>20</sup> The reportable disturbance level means that a party may, but is not required to, request assistance for a contingency below 850 MW. For a contingency at or above the 850 MW level, a party failing to request assistance must meet the DCS or it will be measured as a single Balancing Authority, and assessed a deficiency requirement by NERC to increase its reserves, as if it were not a member of a reserve sharing group.

<sup>21</sup> Midwest ISO identifies the tiers as the Midwest ISO Tier (all 24 Balancing Authorities operating in the present Midwest ISO energy market); the Kentucky Tier (the three ECAR Balancing Authorities); and the MAPP Tier (eight MAPP Balancing Authorities).

<sup>22</sup> The six NERC criteria under Requirement 2 of BAL-002-0 are: (1) a minimum reserve requirement for the group; (2) an allocation of that reserve requirement among members; (3) a permissible mix of operating reserves (spinning and supplemental reserves) that may be included in the contingency reserve; (4) procedures for applying contingency reserves in practice; (5) limitations, if any, on the amount of interruptible load that may be included; and (6) rules to ensure that the same portion of resource

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Protocol 1.7 of the Amended CRSG Agreement establishes a minimum spinning reserve requirement of 40 percent of contingency reserves.

## 2. Comments

30. Duke Energy supports the Amended CRSG Agreement's allocation for the reserve requirement of 1,500 MW by assigning 750 MW to the Midwest ISO Balancing Authority and 750 MW to the External Entities.

## 3. Determination

31. We conditionally accept, subject to modification, the Amended CRSG Agreement, as discussed below. Article 2.1.4 of the Amended CRSG Agreement requires that:

Each Party shall ensure that their contingency resources are deliverable through applicable arrangements established as defined in the Operating Protocols.

In response to staff's data request, the Midwest ISO submitted a detailed deliverability study.<sup>23</sup> After reviewing the study, we find 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>24</sup> Consequently, the reserves that the Midwest ISO plans

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capacity shall not be counted more than once as a contingency reserve by multiple Balancing Authorities.

<sup>23</sup> The submitted deliverability study was intended to demonstrate the requirements of Article 2.1.4 of the Amended CRSG Agreement as well as NERC reliability standard TOP-002, R7. That NERC reliability standard states that "Each Balancing Authority shall plan to meet capacity and energy reserve requirements, including the deliverability/capability for any single Contingency."

<sup>24</sup> For example, in the summer period for the loss of the Havana W to Cuba line and the Cuba to MonBlv W line located in Illinois, the 138 kV line from Havana E to Ipava shows a flow of 328 MW, which is 119 percent of its rated capacity. Similarly, for the loss of the Kincaid to Latha line and the Pawnee to Kincaid line also located in Illinois, the 138 kV to 345 kV transformer for Lansvlam to Lanvlam shows a flow of 316 MW, or 102 percent of its rated capacity. The results also indicated that for the loss of Kinca to Pawnee 345 kV line, Latham 138 to 345 kV transformer, Latham to Latha 345 kV line, Kinca to Latha 345 kV line and Ponti to Latha 345 kV line, the 345 kV to 138 kV transformer for Lansvlam to Lanvlam shows a flow of 325 MW, or 105 percent of its rated capacity.

to deploy under the Amended CRSG Agreement would be unable to reach parts of the system under certain contingencies. In addition, we note that the base case provided by the Midwest ISO already contains transmission limit violations, which further calls into question the deliverability of the 1,500 MW. For example, the flowgate Mid870 has a base case flow of 323 MW, or 130 percent of its rated capacity. Thus, we find that the Midwest ISO's proposal to reduce its reserve amount to 1,500 MW fails to satisfy the deliverability requirements of the Amended CRSG Agreement.<sup>25</sup>

32. Moreover, we are concerned that, with the reduced amount of reserves, the Midwest ISO will likely violate the requirements R4 and R5 of BAL-002.<sup>26</sup> Specifically, we are concerned that the Midwest ISO will not be able to bring its Area Control Error (ACE) to zero or to the pre-disturbance level within 15 minutes as per the requirements of R4.1 and R4.2 of BAL-002-0 and will expose itself to a penalty of up to a \$1 million per day per violation.

33. Accordingly, we conditionally accept the Amended CRSG Agreement, as modified herein, to be effective January 6, 2009, subject to the Midwest ISO submitting a compliance filing within 30 days of the date of this order to revise this 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>27</sup> We 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.

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<sup>25</sup> See Article 2.1.4 of the Amended CRSG Agreement.

<sup>26</sup> NERC Reliability Standards, BAL-002, R4 states that a "Reserve Sharing Group shall meet the Disturbance Recovery Criterion within the Disturbance Recovery Period for 100 percent of Reportable Disturbances." Moreover, BAL-002, R5 states that "each Reserve Sharing Group shall comply with DCS [Disturbance Control Standard]."

<sup>27</sup> See Midwest ISO's informational filing dated August 24, 2007 in Docket No. ER06-1420-003 at page 6. The Commission accepted the informational filing in *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,166 (2008). A requirement to have more reserves leads to higher amount of reserves locally and results in less reliance on import over the interfaces that tend to get congested with ensuing deliverability problems.

## **B. Contingency Reserves Settlements and Charges**

### **1. Midwest ISO's Proposal**

34. The proposed Schedule CR-1 establishes the price, terms and conditions for supplying energy and makes a distinction between External Entities and the Midwest ISO. For energy received by an External Entity that is requesting Contingency Reserves Activation (i.e., a Contingent Party) and where such reserves are provided by another External Entity, section 2.1 requires the payment of the greater of \$100/MWH or 110 percent of the verifiable cost of the resource(s) providing the energy. If such reserves are supplied from the Midwest ISO Energy and Operating Reserve Markets, section 2.2 requires the payment of the locational marginal price (LMP) at the commercial node supplying the energy, and section 2.2.1 imposes an additional charge of \$50/MWH for such energy supplied to External Entities, to discourage inappropriate reliance on emergency energy.

35. For energy received by or on behalf of the Midwest ISO's market participants, section 3.1 requires that External Entities be paid the greater of the hourly LMP plus \$50 at the interface at which the energy enters the Midwest ISO Energy and Operating Reserve Market or 110 percent of the verifiable cost of the resource(s) used to provide such service.

### **2. Comment**

36. Duke Energy supports the price terms of Schedule CR-1. Duke Energy supports Midwest ISO's assertion that the Amended CRSG Agreement seeks to provide emergency energy at reasonable prices, but also seeks to discourage a Balancing Authority that may be operating at a high marginal cost from relying on emergency energy as a lower cost option.

### **3. Commission Determination**

37. We find that the proposed provisions in the Amended CRSG Agreement, which are unopposed, are just and reasonable as they appropriately take into account the changes that will occur with the start of the operation of the Midwest ISO's Ancillary Services Market and when the Midwest ISO's commencement of operating as a single Balancing Authority. However, we direct the Midwest ISO, in the compliance filing to be submitted within 30 days of the date of this order, to correct the language in section 3.1 of Schedule CR-1 to properly indicate what External Entities will be paid. The proposed Schedule CR-1, section 3.1 states: "External Entities shall be paid: (i) the greater of the hourly LMP plus \$50 at the interface at which the energy enters the Midwest ISO Energy and Operating Reserve Market or (ii) 110% of the verifiable cost of the resource(s) used to provide such service." We direct the Midwest ISO to change this language to state: "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% of the verifiable cost of the resource(s) used to provide such service.” Alternatively, the Midwest ISO may explain what is intended by its proposed language.

**C. Termination Provision**

**1. Midwest ISO’s Proposal**

38. The Midwest ISO proposes that under revised section 4.2.3, the Amended CRSG Agreement terminates on its own terms at midnight, December 31, 2009, unless the Contingency Reserves Committee votes to extend that date.

**2. Comment and Protest**

39. In supporting comments, Duke Energy asserts that the Midwest CRSG stakeholders discussed at length the issues surrounding a termination date and agreed by a majority vote that a sunset date was necessary. Duke Energy believes that Midwest ISO’s upcoming Ancillary Services Market will likely serve the needs of the Midwest ISO internal participants with regard to the procurement and management of the necessary Midwest ISO contingency reserves. Duke Energy states that the benefits of the Amended CRSG Agreement to the Midwest ISO internal participants may be diminished once the Midwest ISO Ancillary Services Market becomes operational.

40. In its limited protest, E.ON states that the expiration of the Amended CRSG Agreement in 2009 could have significant cost implications and perhaps reliability implications for transmission customers and end-use customers in the CRSG region. E.ON requests that the Commission condition its approval such that the Amended CRSG Agreement may not expire until December 31, 2015, or such other date as would provide sufficient time for the industry to clarify the role that reserve sharing agreements should play in maintaining regional reliability. E.ON asserts that the extended timing also would ensure that there is sufficient transition time so that expiration of the Amended CRSG Agreement: (1) will not adversely impact reliability, and (2) will not cause a substantially adverse financial impact on transmission customers and their end-user customers resulting from the CRSG members’ establishment of substitute groups or their individual acquisition or construction of replacement reserves and/or transmission.

**3. Answers**

41. Duke Energy notes that E.ON is a signatory to the Amended CRSG Agreement, and the signatories signed the agreement with the understanding that the agreement would terminate on December 31, 2009 unless the Contingency Reserves Committee votes to extend the agreement. Duke Energy asserts that it would be unjust to amend the termination provision after parties signed the agreement with the understanding that the

agreement would terminate at the end of 2009. Duke Energy states that E.ON fails to point out in its filing that the Amended CRSG Agreement provides a mechanism for extending the termination date. Duke Energy supports this provision because it permits the Contingency Reserves Committee to decide in the next year whether to extend the agreement, negotiate a new agreement, or otherwise take any steps needed to ensure reliability.

42. When Midwest ISO's Ancillary Services Market becomes operational, which is scheduled for January 6, 2009, Duke Energy also explains that the Midwest ISO internal parties will have a sufficient and cost effective mechanism to satisfy their reserve requirements. Duke Energy states that once the Ancillary Services Market is implemented, approximately 80 percent of the load that was served under the prior contingency reserve sharing group agreement will be within the Midwest ISO Balancing Authority footprint. This load is served by the Midwest ISO internal participants and will receive the benefits of the Ancillary Services Market. According to Duke Energy, the Midwest ISO stakeholders have spent millions of dollars to develop the Ancillary Services Market to enhance reserve sharing and reliability benefits for the internal Midwest ISO participants. Once the Ancillary Services Market is operational, Duke Energy asserts that the benefits of the Amended CRSG Agreement will diminish considerably. Duke Energy asserts that the period through the end of 2009 will provide an opportunity to assess any remaining value to the Amended CRSG Agreement, and whether some other form of agreement is appropriate.

43. In its answer, the Midwest ISO asserts that E.ON requests that the Commission substitute its judgment for that of the contracting parties with regard to the term of the agreement. Midwest ISO states that the termination, or sunset date, was negotiated among the Balancing Authorities and other stakeholders, and provides more than sufficient time for the start of the Ancillary Services Market, observation of the operation of the CRSG in that new environment, and further negotiations among the affected parties to the Amended CRSG Agreement.

44. Xcel answers that E.ON's request to change the sunset date of the Amended CRSG Agreement would strip its signatories of the flexibility to adjust the Amended CRSG Agreement once they have had sufficient time to evaluate the impact of the Ancillary Services Market, and it may result in the Commission's imposition of an economic obligation on the parties that is materially different from what the Amended CRSG Agreement's signatories contemplated when they negotiated and executed the Amended CRSG Agreement.

45. Xcel also notes that E.ON has previously chosen to withdraw from the Midwest ISO as a Transmission Owner and is not participating directly in the Ancillary Services Market, but it is asking the Commission to guarantee that it will continue to receive the benefits of lower reserve-sharing costs under an extended Amended CRSG Agreement,

even if Midwest ISO participants may be harmed by doing so. If E.ON does not participate in the Midwest ISO and does not directly bear the costs associated with the Ancillary Services Market, Xcel states that the Midwest ISO members that do support the Ancillary Services Market could be unjustly burdened by a later sunset date that limits the parties' options to implement more efficient reserve-sharing mechanisms in a timely manner.

#### **4. Commission Determination**

46. The proposed termination at the end of 2009 provides the parties with the necessary time to evaluate the Amended CRSG Agreement and potentially adjust the Amended CRSG Agreement once the parties have been able to evaluate the impact of the Ancillary Services Market and to determine if a new agreement is needed for sharing by the CRSG parties or if any other steps will be taken to ensure reliability. We accept the termination provision in section 4.2.3 that states that the Amended CRSG Agreement terminates on its own terms at midnight, December 31, 2009, unless the Contingency Reserves Committee votes to extend that date. Notwithstanding the above, we note that the Midwest ISO must file a notice of cancellation to effect such termination.

#### **D. Providing for the Possibility of a Reversion to pre-Ancillary Services Market Operations**

##### **1. Data Request and Response**

47. In the data request, the Midwest ISO was requested to explain how the Amended CRSG Agreement would function in the event that the Ancillary Services Market is suspended and the Midwest ISO reverts to pre-Ancillary Services Market operations.<sup>28</sup>

48. In its August 6 Response, the Midwest ISO acknowledges that if the existing 2006 CRSG Agreement were to be cancelled as originally requested there would be no Midwest ISO entity capable of providing or paying for shared reserves during that period. The Midwest ISO explains that External Balancing Authorities could continue to share reserves and settle transactions during a reversion, but the Midwest ISO and its local Balancing Authorities would have no existing mechanism to do so. For that reason, the Midwest ISO continues to request an effective date coincident with the start of the Ancillary Services Market, but further requests that the existing 2006 CRSG Agreement

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<sup>28</sup> The Reversion Plan is discussed in more detail in the Commission's initial order on the Midwest ISO's Ancillary Services Market proposal. *See Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,172 (2008).



be suspended, rather than cancelled, in Docket No. ER08-1042-000, until the end of the Ancillary Services Market reversion period. In the event of an Ancillary Services Market reversion to Energy Markets only, the parties propose to use 2006 CRSG Agreement to share reserves and settle their transactions. Once the reversion period has ended, the parties propose to share reserves and settle their transactions using the Amended CRSG Agreement to which the Midwest ISO is a signatory Balancing Authority.

## **2. Comments**

49. E.ON agrees with the Midwest ISO concerning the importance of having a contingency reserve sharing agreement in place on and after the start-up date for the Ancillary Services Market. Additionally, E.ON states that it seeks clarification regarding the reserve obligations in the event of a reversion to Day 2 operations and during restart of the Ancillary Services Market. E.ON supports the Midwest ISO's request for suspension rather than termination of the 2006 CRSG Agreement so that the 2006 CRSG Agreement could become effective in the event of a reversion, provided that the Commission holds that the parties' obligations to provide reserves during any reversion to Day 2 operations remain as set forth in the 2006 CRSG Agreement. Otherwise, E.ON states that it could face the practical challenges involved in meeting a new deliverable reserve obligation of 179 MW under the Amended CRSG Agreement at the commencement of the Ancillary Services Market, then 91 MW under the 2006 CRSG Agreement if the Ancillary Services Market is suspended and the 2006 CRSG Agreement is revived, and then back to 179 MW when the Ancillary Services Market restarts. If such switching between reserve obligations takes place, E.ON requests that, at a minimum, the Commission ensure that notices of the Ancillary Services Market suspension and restart be provided to parties in sufficient time to allow E.ON to meet its Balancing Authority responsibilities as well as the responsibilities of the CRSG Agreements.

50. E.ON also suggests that, as an alternative, the 2006 CRSG Agreement and its allocation of reserves could be left in place after the commencement of the Ancillary Services Market, to allow sufficient time for E.ON to complete deliverability studies for its contingency reserves obligation under the Amended CRSG Agreement. Additionally, E.ON states that sufficient notice of suspension of the Ancillary Services Market and any resulting changes in reserve allocation would allow for E.ON to coordinate any changes to the Transmission Reliability Margin on its transmission system with the Southwest Power Pool and with the Tennessee Valley Authority.

51. MAPPCCOR also requests at least conditional approval of the Amended CRSG Agreement to take effect to replace the 2006 CRSG Agreement. MAPPCCOR is concerned that participants in the Midwest CRSG may be left without a functioning reserves sharing group arrangement in place on the start-up date for the Ancillary Services Market since the Midwest ISO will begin to operate as a Balancing Authority

when the Ancillary Services Market commences, thereby causing the 2006 CRSG Agreement to terminate.

### 3. Commission Determination

52. As requested by the Midwest ISO, we will not cancel the 2006 CRSG Agreement effective January 6, 2009. Rather, because of the possibility of reversion, we will suspend the effectiveness of the 2006 CRSG Agreement from January 6, 2009, until the end of the Ancillary Services Market reversion period. If a reversion were to occur, the 2006 CRSG Agreement would thereafter be the effective agreement. If no reversion were to occur, the 2006 CRSG Agreement would thereby be cancelled effective January 6, 2009, and the Amended CRSG Agreement, as revised, would be in effect. We note that E.ON's requests are now moot given our requirements for the Amended CRSG Agreement. Moreover, we require the Midwest ISO to submit an informational filing in this proceeding, within 15 days of the end of the Ancillary Services Market reversion period, indicating whether the Notice of Cancellation became effective January 6, 2009.

#### The Commission orders:

(A) The Midwest ISO's Amended CRSG Agreement is hereby conditionally accepted for filing to be effective January 6, 2009, subject to a compliance filing, as discussed in the body of this order.

(B) The Midwest ISO's proposed Notice of Cancellation is hereby conditionally accepted, to be effective as discussed in the body of this order.

(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.

(D) The Midwest ISO is hereby directed to submit an informational filing, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.