125 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER08-394-003

ORDER CONDITIONALLY ACCEPTING FINANCIAL SETTLEMENT PROVISIONS

(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 revisions to its Open Access Transmission and Energy Markets Tariff (TEMT)[1] to revise its interim Module E[2] to comprehensively address long-term resource adequacy requirements and ordered compliance filings.[3] The Commission noted that the Midwest ISO had not yet finished developing its financial settlement/enforcement provisions (financial settlement provisions), and would continue to develop those provisions through stakeholder discussions. On June 25, 2008, the Midwest ISO submitted, in response to the March 26 Order, a compliance filing containing its proposed financial settlement provisions. As discussed below, we conditionally accept the Midwest ISO's proposed financial settlement provisions subject to further compliance.

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[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).

I. Background

A. History of this Proceeding

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. On October 5, 2004, the Midwest ISO made a compliance filing proposing 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 submitted a compliance filing to the Commission proposing a two-phased approach to implement a permanent resource adequacy plan. In Phase I, the Midwest ISO proposed to integrate short-term contingency reserves and regulation into the energy markets. In Phase II, the Midwest ISO proposed to undertake a long-term integration of shortage pricing with the energy market. The Commission accepted the Midwest ISO's two-phase 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 facilitating the sale and purchase of operating reserves. The Commission accepted the Midwest ISO's resource adequacy implementation plan and directed the

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[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.

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

Midwest ISO to file Phase II, a permanent long-term resource adequacy proposal, by December 2007.[8]

B. March 26 Order and Compliance Filing

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 financial settlement 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. On June 25, 2008, the Midwest ISO submitted, in response to the March 26 Order, a compliance filing containing its proposed financial settlement provisions.

C. Summary of the Midwest ISO Proposal

8. The Midwest ISO proposes to hold a voluntary capacity auction each month to allow load serving entities (LSEs) that have insufficient capacity for the month to satisfy their resource adequacy requirements with planning resources from market participants that have excess planning resources. Under the proposal, the Midwest ISO would administer each month's auction five days prior to the start of the month. The Midwest ISO believes that the voluntary capacity auction would allow LSEs that are deficient to cure their deficiencies and thereby avoid financial penalties.

9. The Midwest ISO proposes to assess a financial settlement charge on LSEs that are deficient in meeting their resource adequacy requirements (i.e., those LSEs that were unable to meet their resource adequacy requirements through either bilateral contracting or by acquiring capacity in the voluntary auction). Under the proposal, the financial settlement charge is based upon the annual cost of new entry (CONE), i.e., the capital, operating, and other costs that would be incurred to develop a capacity resource in the Midwest ISO. The Midwest ISO proposes an initial CONE value of $80,000/MW-month, which would be applied monthly for each month that an LSE is deficient. The Midwest ISO also proposes to re-evaluate the CONE value annually so that it best reflects current market conditions.

[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).

10. The Midwest ISO proposes to distribute financial settlement charge revenues to: (1) LSEs that have met or exceeded their resource adequacy requirements during the following month; and (2) to suppliers that have participated in the immediately preceding voluntary capacity auction. Under the Midwest ISO's proposal, suppliers that do not clear in the voluntary capacity auction will be selected in least cost order up to the amount needed to fully satisfy any aggregate LSE deficiency for the month. These suppliers would be paid on an as-offered basis. Any remaining financial settlement charge revenues would be distributed to qualifying LSEs on a *pro rata* basis, based upon MWs of peak load of LSEs in the applicable planning reserve zone. The Midwest ISO states that these revenue distribution procedures will provide an economic incentive for participation in the voluntary capacity auction.

11. The Midwest ISO proposes to make all actions of market participants making resource adequacy bids or offers subject to the provisions of Module D.[9] The Midwest ISO states that although stakeholders generally support the implementation of a financial settlement charge to ensure reliability and adequate capacity in the Midwest ISO, several aspects of the proposal remain points of contention, including the calculation and monthly application of the financial settlement charge, the method of revenue distribution, and the need for the monthly voluntary capacity auctions.

II. <u>Notices and Responsive Pleadings</u>

12. Notice of the Midwest ISO's June 25, 2008 filing was published in the *Federal Register*, 73 Fed. Reg. 40,571 (2008), with interventions and protests due on or before August 1, 2008.[10]

13. Motions to intervene and comments were filed by: Bear Energy LP, BE KJ LLC, and J.P. Morgan Ventures Energy Corporation (Bear & JP Morgan); Duke Energy Corporation (Duke); and the Midwest ISO's Independent Market Monitor, David Patton (Independent Market Monitor). A notice of intervention and comments were filed by the Wisconsin Public Service Commission (Wisconsin Commission).

14. Comments and protests on the compliance filing were filed by: Alliant Energy Corporate Services, Inc. (Alliant); Ameren Services Company (Ameren); American Municipal Power – Ohio, Inc. (AMP-Ohio); Calpine Corporation (Calpine); the Coalition of Midwest Transmission Customers (CMTC); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); Consumers Energy

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[9] Module D contains the market monitoring and mitigation measures of the TEMT.

[10] *See* Notice of Extension of Time, Docket No. ER08-394-003 (July 11, 2008).

Company (Consumers Energy); The Detroit Edison Company (Detroit Edison); Dynegy Power Marketing, Inc. (Dynegy); Exelon Corporation, Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc. (collectively, Joint Commenters); FirstEnergy Service Company (FirstEnergy); the Illinois Commerce Commission (Illinois Commission); the Illinois Municipal Electric Agency (Illinois Municipal); Indianapolis Power & Light Company (IPL); Integrys Energy Services, Inc. (Integrys); Michigan Public Power Agency (Michigan Public Power); Midwest Industrial Customers (Midwest Industrial); Midwest Transmission-Dependent Utilities (Midwest TDUs)[11]; Missouri Public Service Commission (Missouri Commission); Northern Indiana Public Service Company (Northern Indiana); the OMS; Reliant Energy, Inc. (Reliant); Wisconsin Electric Power Company (Wisconsin Electric); Wisconsin Public Service Corporation and Upper Peninsula Power Company (WPSC/UPPCO).

15. Answers were filed by the CMTC, Hoosier & Southern Illinois, and the Midwest ISO.

III. Procedural Matters

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

17. 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 will accept the answers of the CMTC, Hoosier & Southern Illinois, and the Midwest ISO because they have provided information that assisted us in our decision-making process.

IV. Substantive Matters

A. Monthly Voluntary Capacity Auctions

1. Midwest ISO Proposal

18. The Midwest ISO proposes to hold a voluntary capacity auction each month to allow LSEs to satisfy their resource adequacy plans with planning resources from market participants that have excess planning resources. The Midwest ISO's proposed auction would be voluntary for both buyers and sellers of capacity. The Midwest ISO states that the auction is not intended to replace bilateral transactions between entities, but instead to facilitate and supplement such transactions. Under the proposal, the voluntary auction for

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[11] Midwest TDUs filed an errata to their protest on August 5, 2008.

each month will be conducted by the Midwest ISO five days prior to the first day of the month. The Midwest ISO will post on its website after the auction the following: the amount of capacity bids from LSEs seeking to purchase planning resources; the amount of planning reserve offers; the cleared amount of planning resources; and the auction clearing price. The Midwest ISO states that it will withhold the names of the entities that participated in the auction.

2. **Auction Format and Procedures**

a. **Comments**

i. **Auction Format**

19. Several entities argue that a voluntary auction is unnecessary or request that the Commission clarify that the voluntary auction will not lead to a mandatory auction in the future. OMS argues that the Midwest ISO proposes an unnecessary auction process that too closely resembles a Regional Transmission Organization-run (RTO-run) centralized capacity market, and the Commission should reject the proposal. IPL asserts that the Commission should clarify that the voluntary capacity market should not be viewed as pre-ordaining an eventual move to a mandatory formalized capacity market. OMS also argues that the high level of the financial settlement charges for deficiencies, in conjunction with the Midwest ISO's proposal to redistribute residual deficiency charge revenues only to those entities in the voluntary auction, effectively forces participation in the auction, making participation in the auction involuntary or perhaps even encouraging excessive, inefficient construction.

20. OMS asserts that it desires a bulletin board and opposes a centralized, Midwest ISO-operated capacity market. Industrial Customers assert that voluntary auctions are unnecessary and wasteful of resources and the electronic bulletin board approach would be more effective. Industrial Customers note that the bulletin board concept originated from OMS, was accepted by the Midwest ISO and filed by the Midwest ISO in its initial proposal, and approved and endorsed by FERC. Industrial Customers contend that a web-based bulletin board would provide easy access and price discovery, along with the opportunity to match willing buyers and willing sellers without the significant and expensive undertaking accompanying voluntary auctions.

21. OMS argues that the Midwest ISO has failed to provide any cost-benefit analysis of its proposed voluntary capacity auction. Midwest TDUs contend that before implementing the voluntary auction the Commission should follow the advice of the recent RTO rulemaking comments of the Transmission Access Policy Study Group (TAPS) that urged the Commission to require RTOs "to assess the [costs and benefits] of new initiatives or major rule changes *before* undertaking them, taking into account both

RTO costs and costs to market participants, to track the actual costs and benefits of such implementation, and to be accountable for their projections."[12]

22. Other commenters support the Midwest ISO's proposed voluntary auctions. AMP-Ohio supports the Midwest ISO's decision to address resource adequacy issues through the creation of a voluntary capacity auction in lieu of the mandatory auctions administered by some RTOs. Northern Indiana asserts that a voluntary capacity auction will assist small LSEs that may need only small amounts of capacity to fulfill their planning reserve requirements. Northern Indiana argues that such entities may find it difficult to procure less than block amounts of capacity in the bilateral capacity market and thus could turn to the auction for their requirements. The Independent Market Monitor contends that holding a voluntary auction immediately prior to each month will provide suppliers with excess unsold capacity and LSEs in need of capacity an efficient means to transact. The Independent Market Monitor argues that the auction will provide transparency to the market by establishing spot prices for capacity and will facilitate monitoring of the capacity market by publicizing the offers of the suppliers in the voluntary auction and allowing the Independent Market Monitor to easily identify suppliers physically withholding capacity from the market.

23. Several commenters assert that the Midwest ISO should administer a mandatory capacity auction or should change features of the voluntary auction. WPSC/UPPCO believe that a mandatory auction ensures that sellers do not withhold capacity in anticipation of realizing higher deficiency charge payments.

24. Constellation argues that the Midwest ISO should be required to utilize a downward-sloping demand curve, which is vastly superior to Midwest ISO's proposed flat administrative penalty, and will best eliminate volatility and encourage the development of new generation. Constellation contends that an administrative penalty will set a proxy price cap for capacity and create a capacity market similar to the vertical-curve capacity market used by the New York ISO prior to the implementation of its downward-sloping demand curve capacity construct. Constellation states that the New York ISO moved to the downward-sloping demand curve capacity construct after the New York Public Service Commission found that the New York ISO's deficiency penalty approach to a capacity market was fundamentally flawed, creating a "boom" or "bust" situation.

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[12] Midwest TDUs Comments at 10, *citing* Transmission Access Policy Study Group April 21, 2008 Comments, Docket No. RM07-19-000.

ii. Effect on Bilateral Markets

25. CMTC argues that the Midwest ISO's proposal will interfere with the operation of functioning bilateral capacity markets in the region. OMS argues that the proposed auction, though nominally a voluntary one, invites sellers to offer prices that approach the CONE. OMS contends that, according to various stakeholders, in other RTOs this kind of market construct has led to high capacity prices, controversial results, and ongoing litigation due to legal ambiguities.

iii. Ability to Sell Capacity Bilaterally after the Auction

26. Reliant argues that, consistent with the concept of a voluntary auction, section 69.3.9.a.i of the proposed tariff should be clarified to state that capacity associated with uncleared offers in the voluntary capacity auction may be sold bilaterally after the auction, and does not need to be held unsold until the Midwest ISO satisfies the aggregate of any capacity deficiencies. CMTC explains that if a planning resource chooses to participate in the auction, but does not clear, the resource is subsequently foreclosed from making any next-month sale of capacity or energy associated with its offer until no sooner than the first business day of the subsequent month.

27. AMP-Ohio expresses concern that the Midwest ISO does not address whether or not generators that offer into the auction but do not clear are obligated to contract with the Midwest ISO to cover deficiencies. AMP-Ohio argues that if a supplier faced such an obligation, none of the proposed tariff provisions address what would happen if a supplier submitted a bid that did not clear and subsequently sold capacity outside the Midwest ISO footprint prior to the Midwest ISO awarding the generator a capacity deficiency contract.

iv. Other Auction Issues

28. Exelon asserts that the timeline for the conduct of the auction and the communication of the auction results to market participants should be more explicit. Exelon states that the filing only generally addresses when the Midwest ISO will clear the auction and inform participants as to whether their bids and offers were accepted.

29. Ameren contends that the deadlines for the auction procedures should be revised. Ameren explains that the Midwest ISO proposes that offers and bids be submitted into the auction seven business days before the resource plan deadline. Ameren argues that it is not necessary for market participants to submit offers and bids six days before they are needed, and the use of a one-day deadline will protect LSEs in retail choice states from being exposed to deficiency charges because of events such as load switching that are beyond their knowledge and control. Ameren also contends that it is not clear whether,

upon submittal, such offers and bids may be revised if market participants continue to enter into bilateral transactions.

30. Ameren contends that the Midwest ISO should clarify what it will post after an auction. Ameren argues that it is unclear whether the Midwest ISO will post aggregate amounts or the amounts of individual bids and offers (with the names of the bidders and offers masked). Ameren also states that it is unclear what units will be reflected in the posting.

31. Based on the deadlines, Alliant interprets the proposed tariff language to mean that a planning resource is not "committed" until it is included in a resource plan, the deadline for which occurs after the voluntary auction. Alliant contends that if this is the case, all planning resources are available to participate in the voluntary auction, potentially leading to a full-blown capacity market that could impede existing and future bilateral capacity markets. Alliant believes that the voluntary auction should be limited to excess capacity only. Alliant recommends that the process include a preliminary resource plan filing deadline, prior to the timing for planning resource offers and the voluntary auction, that would require LSEs to identify capacity that is already committed to serving load and meeting planning reserve requirements.

b. **Midwest ISO Answer**

32. The Midwest ISO states that the voluntary capacity auction represents a reasonable compromise position between those stakeholders that opposed any type of capacity auctions and those that advocated mandatory capacity auctions, as further evidenced by the diversity of comments submitted in this proceeding. The Midwest ISO contends that the proposed voluntary capacity auction provisions have been carefully drafted to minimize the potential for gaming opportunities, such as the unjust withholding of planning resources. For example, section 69.3.9.a.i provides that a potential seller of capacity will not receive the auction clearing price (or its offer, in the event that financial settlement charges are implemented and it is a least cost supplier), if it withholds capacity from the voluntary capacity auction. Instead, such a potential supplier of capacity will receive nothing unless the supplier also happens to be an LSE, in which case it will merely receive a *pro rata* share of the financial settlement charges that are collected and are not paid to suppliers participating in the voluntary auction. The Midwest ISO believes that this procedure provides a strong economic incentive for parties to not withhold capacity. Moreover, the Independent Market Monitor indicated in its comments that it will monitor for potential withholding of capacity and believes that the subject proposal will allow it to easily identify suppliers that are physically withholding capacity from the market.

33. The Midwest ISO disagrees with CMTC's contention that using a single clearing price for the cost of capacity will increase the costs of capacity to consumers. The Midwest ISO states that the Commission has repeatedly held that a "paid as offer"

program for energy will result in higher, not lower, energy prices because studies have demonstrated that parties are less likely to bid their marginal costs if they are only paid for at their offer price.

34. Midwest ISO clarifies that a party is free to engage in bilateral contracting for resources that did not clear in the voluntary capacity auction, provided that such party notifies the Midwest ISO in writing, after the results of the voluntary capacity auction have been posted, that it does not want the capacity that it offered into the voluntary capacity auction to be eligible to be procured with financial settlement charge revenues in accordance with proposed section 69.3.9a.i. This clarification would effectively enable a party that did not clear its offer in the voluntary capacity auction the option to promptly engage in bilateral transactions for the excess capacity, if it wished. To the extent that the existing tariff language may be unclear regarding such actions, the Midwest ISO is willing to propose clarifying tariff language in a compliance filing regarding offers that do not clear in the voluntary capacity auction.

35. The Midwest ISO states that it has reviewed the timing recommendations proposed by Reliant, Exelon and Ameren and believes that such implementation details (e.g., the time of day when an offer may be made) should properly be included in the Business Practices Manuals that are currently being developed, rather than the tariff. The Midwest ISO agrees to provide such clarifications in the Business Practices Manuals. The Midwest also clarifies that it intends to publicly post individual resource adequacy bids and offer amounts, without revealing the names of the specific participants.

c. <u>Commission Determination</u>

36. We will accept the Midwest ISO's proposal for monthly voluntary auctions to procure needed capacity. The voluntary auction process will afford LSEs with an additional mechanism to procure needed capacity and increase transparency in the procurement of capacity.

37. We consider a voluntary auction superior to a bulletin board. Some market participants may be unable to contract for resources, as explained by commenters, and these parties therefore need another option to obtain resources. A voluntary capacity auction provides a meaningful alternative for these market participants by providing a single-step process for obtaining resources. In contrast, the purpose of a bulletin board is to facilitate bilateral transactions and therefore does not address the needs of market participants that are unable to contract for resources.

38. In response to parties that express concern that the voluntary auction pre-ordains a mandatory capacity market, we do not consider the voluntary auction to necessarily lead to a mandatory auction. Our acceptance of the proposed voluntary auction is based solely

on the reasonableness of the auction mechanism in providing a useful alternative option for obtaining capacity in the Midwest ISO.[13]

39. We reject arguments that a mandatory auction or a mandatory centralized capacity market is necessary to ensure resource adequacy. Well-structured financial settlement provisions can create appropriate incentives for LSEs to invest in and contract for sufficient capacity to meet their resource adequacy needs. Therefore, we will not require the Midwest ISO to adopt a capacity market with a downward-sloping demand curve in the mold of PJM and the New York ISO.

40. With respect to intervenors' requests that the Midwest ISO conduct a cost-benefit study prior to implementing the voluntary auction, we do not believe such a study is necessary. We find that the voluntary auction is a reasonable alternative means for market participants to obtain adequate resources and will benefit customers. We expect that the costs of the auction will be minimal, based on the Midwest ISO's representations, and will not require the development of major systems or software. For these reasons, we will not require further analysis.

41. We also reject arguments that the voluntary auctions will disrupt bilateral capacity markets or that the auctions should be conducted on a pay-as-bid basis. The auctions will function as a separate forum (in addition to bilateral trades) allowing for capacity price discovery and facilitating capacity contracts. Also, as Northern Indiana correctly states, the voluntary capacity auction will assist small LSEs, who might find it difficult to procure less than the block amounts of capacity available in the bilateral capacity market, to procure incremental amounts of capacity. Concerning the pay-as-bid versus market clearing auctions, we agree with the Midwest ISO that a pay-as-bid auction would likely result in higher, not lower, capacity prices because parties would be far less likely to bid their marginal costs if they are only paid at their offer price.

42. Regarding intervenors' concerns that capacity associated with offers in the voluntary capacity auction may be sold bilaterally after the auction, we accept the Midwest ISO's proposal to allow for this activity, and we require the Midwest ISO to submit proposed tariff provisions in a compliance filing within 30 days of the date of this order.

[13] We disagree with OMS' statement that residual financial settlement charge revenues are distributed only to entities participating in the voluntary auction. Proposed section 69.3.9.a.ii indicates that financial settlement charge revenues are allocated to LSEs that meet or exceed their resource adequacy requirements. Proposed Original Sheet No. 850A.

43. We consider it reasonable, and responsive to the concerns of commenters, for the Midwest ISO to incorporate time frames and other implementation procedures for the auction in its Business Practices Manuals.

44. In response to concerns raised by Alliant, we expect that the resources offered into the voluntary auction will be resources that have capacity that is not otherwise committed as a resource. Therefore, we do not expect that all capacity would be eligible to participate and we do not agree with Alliant's characterization of all capacity being uncommitted prior to the submittal of the Resource Plan. Inasmuch as we expect that the Midwest ISO will be evaluating whether resources are being committed to more than one LSE,[14] we do not see the need for additional procedures identifying committed capacity.

3. Resource Eligibility

a. Midwest ISO Proposal

45. The Midwest ISO proposes a number of eligibility requirements for resources offering into the voluntary auction. The Midwest ISO proposes to require planning resources to be universally deliverable, qualify as planning resources pursuant to the requirements of section 69.2, and not have been otherwise committed to meet capacity requirements under the tariff or under a third-party tariff.

b. Comments

46. Bear & JP Morgan note that while the Midwest ISO proposal requires that planning resources offering in the auction must be universally deliverable across the transmission provider region, the proposal does not define the term "universally deliverable" or specify tests or metrics to measure whether resources are universally deliverable. Bear & JP Morgan also assert that the proposal does not address what would happen if an area became import-constrained so that few resources could be considered universally deliverable. Calpine asserts that it expects the universal deliverability requirement will limit the ability of suppliers to participate in the auctions, thereby restricting supply and giving certain suppliers market power.

47. FirstEnergy objects to the universal deliverability requirement since the Midwest ISO only requires capacity resources participating in the auction to be universally deliverable, as opposed to being deliverable to a specific planning reserve zone. FirstEnergy notes that distorted projections of zonal resource adequacy will occur if

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[14] Section 69 of the tariff specifies that the Midwest ISO will administer a title tracking tool that tracks the transfer of rights to capacity resources and load modifying resources. *See* third revised sheet no. 812.

universal deliverability is assumed for resource transactions where deliverability is not feasible. FirstEnergy recommends that the Midwest ISO recognize the potential problems of having adequate deliverable power supply to meet customer demand, as identified in the ten-year forward look in the loss of load expectation study,[15] and develop a plan to address these issues on a continual and ongoing basis.

48. WPSC/UPPCO argue that the Midwest ISO has not addressed how external resources can participate in the auction and the constraints or limitations of additional requirements that might be placed on external resources for participation in the auction.

49. CMTC argues that the Midwest ISO's voluntary capacity auction is flawed because it fails to reasonably accommodate demand response resources.

c. Midwest ISO Answer

50. The Midwest ISO states that load modifying resources should qualify as planning resources and, thus, it is in the process of developing appropriate Business Practices Manuals to address how it can determine the deliverability of load modifying resources.

d. Commission Determination

51. We interpret the universal deliverability requirement to mean that planning resources that wish to offer capacity in the auction must meet the same aggregate deliverability requirements[16] specified in section 69.2.1.2.b that are applicable to all capacity resources whether or not they participate in the auction, and that by meeting these requirements, planning resources are considered to be universally deliverable across the transmission provider system. In response to Bear & JP Morgan, we do not expect the scenario they describe of few resources being considered universally deliverable to occur because the aggregate deliverability analysis does not assess local constraints. In response to Calpine, inasmuch as the deliverability requirement for the auction is the same deliverability test for capacity resources, we do not expect that the universal deliverability standard will reduce the number of capacity resources eligible to participate in the auction.

52. We recognize that the assumption that these resources are universally deliverable -- in the absence of any analysis of local constraints -- is of concern to FirstEnergy. We

[15] The loss of load no greater than 0.1 day in one year, which equals the sum of the loss of load probability for the integrated daily peak hour for each day of the year.

[16] "Aggregate deliverability" refers to the deliverability of the aggregate resources of network customers to the aggregate of network load.

note that the Commission is requiring further analysis of this issue in the order on the Midwest ISO's 60-day compliance filing.[17] Therefore, while we find the proposed deliverability requirement to be reasonable for planning resources offering into the auction since it is the same aggregate deliverability requirement applicable to all capacity resources, our acceptance of this provision is conditional on the Commission's determinations on zonal and aggregate deliverability.

53. We agree with WPSC/UPPCO that the Midwest ISO should address how external resources can participate in the auction and the constraints or limitations of additional requirements that might be placed on external resources for participation in the auction. We instruct the Midwest ISO to clarify this issue in a compliance filing to be submitted within 30 days of the date of this order.

54. With respect to CMTC's argument that the Midwest ISO's voluntary capacity auction fails to reasonably accommodate demand response resources, we accept the Midwest ISO's commitment to develop appropriate Business Practices Manuals to address how it can determine the deliverability of load modifying resources and we require the Midwest ISO to explain, in a compliance filing to be submitted within 30 days of the date of this order, how it will determine the deliverability of load modifying resources.

B. Financial Assessments to Deficient LSEs

1. Midwest ISO Proposal

55. The Midwest ISO believes that the best way to assess financial settlements at a predictable level is to base the calculation on the projected annualized investment costs of acquiring new generation resources within the Midwest ISO region. Under the Midwest ISO's proposal, the initial CONE value of $80,000/MW-month would be applied for each month's deficiency. The Midwest ISO states that this initial CONE value is based upon the work conducted by the Independent Market Monitor regarding the annual capital, operating and other costs that would be incurred to develop a capacity resource in the Midwest ISO region.[18]

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[17] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61062, at P 162 (2008) (Compliance Order).

[18] *See* Midwest ISO Filing, Robinson Aff. at P 32 (noting that the IMM's 2007 Midwest ISO State of the Market Report indicated that the $80,000 MW value is the estimated annual cost of a new combustion turbine peaking unit).

56. The Midwest ISO states that, after careful consideration and consultation with the Independent Market Monitor, the Midwest ISO has determined that there is no need at this time to use a multiple of the annual CONE to calculate financial settlement charges. The Midwest ISO recognizes that the size of the CONE could result in significant financial consequences for any LSE that is capacity deficient following the Commission's approval of the financial settlement provisions. The Midwest ISO states that it will work with stakeholders to discuss whether to modify its credit policies to address these new liabilities.

2. Calculation of Cost of New Entry

a. Midwest ISO Proposal

57. The Midwest ISO proposes an initial CONE value of $80,000/MW-month. The Midwest ISO also proposes that the CONE be re-evaluated and potentially recalculated periodically to ensure that its value sends the correct pricing signals. The Midwest ISO states that other RTOs that have employed CONE values have determined that changed circumstances in the electricity industry have made earlier CONE values less representative of the true costs of developing a capacity resource. For example, the Midwest ISO notes that on January 30, 2008, PJM Interconnection, L.L.C. requested that the CONE value that it had been using for its centralized, locational mandatory capacity market had been overtaken by rising construction costs. Midwest ISO states that an outdated CONE value that does not reflect the current costs associated with capacity resources would not send the correct market signals to LSEs. Thus, the Midwest ISO proposes to annually adjust the CONE value, based upon analysis developed in concert with the Independent Market Monitor.

b. Comments

i. Initial CONE Value

58. The Independent Market Monitor explains that the Midwest ISO has proposed to use the CONE for a peaking resource that is included in the 2007 State of the Market Report ($80,000/ MW-year) and supports the use of this value based on information developed by the Energy Information Administration regarding the typical costs of investment in new generation resources.

59. Ameren, Illinois Municipal and AMP-Ohio argue that the Midwest ISO has not explained adequately how it derived the CONE value of $80,000/MW-month. Ameren asserts that the Midwest ISO's explanation that the calculation was reached based upon the work conducted by the Independent Market Monitor regarding the capital and operating costs that would be incurred to develop a capacity resource in the Midwest ISO region is insufficient. Calpine requests additional information regarding the input data, the methodology, and the assumptions that the Independent Market Monitor used to

arrive at the initial CONE of $80,000/MW-month and the process that the Midwest ISO and the Independent Market Monitor will use to annually update the CONE. Bear & JP Morgan state that they do not necessarily agree or disagree with the proposed initial CONE, but contend that additional support including documentation illustrating the Independent Market Monitor's calculations is necessary to determine whether the figure is just and reasonable.

60. Constellation argues that the Independent Market Monitor's gross CONE value is significantly lower than the gross CONE recently established in the other eastern RTOs. Constellation notes that PJM sought to raise its initial gross CONE values to roughly $105,000/MW. Constellation asserts that independent studies have validated the fact that new entrants face rising construction costs, which may not have been apparent at the time the information was gathered for purposes of the Midwest ISO 2007 State of the Market Report. Constellation contends that the gross CONE value should be re-examined to ensure that it accurately reflects future anticipated development costs within the Midwest ISO footprint.

61. AMP-Ohio asserts that the Midwest ISO should account for anticipated net revenue arising from the sale of capacity, energy or ancillary services in calculating the CONE.

62. Calpine supports the use of an annualized gross CONE charge as a benchmark for pricing capacity and as a penalty for deficient LSEs. Calpine also supports the Midwest ISO's proposal to recalculate this amount annually.

ii. <u>Adjustments to the CONE Value</u>

63. The Independent Market Monitor states that costs of investment in new generation have been rising and that it will be important to revise the CONE value over time to accurately reflect current investment costs.

64. Several entities seek increased clarity as to how the CONE will be adjusted annually. Bear & JP Morgan contend that the proposed criteria for updating CONE are too general and could permit significant variation in the CONE from year to year. Bear & JP Morgan argue that the updating process could undermine the confidence of market participants in the capacity markets, since LSEs would lack the ability to quantify their risks of becoming capacity deficient in future years, and deter market participants from assuming the obligations of LSEs.

65. WPSC/UPPCO and AMP-Ohio also seek to remove uncertainty as to the annual adjustment of the CONE and recommend that the Commission direct the Midwest ISO to adjust the CONE value only once every three years to promote stability in the resource adequacy program.

66. CMTC asserts that the Commission should require the Midwest ISO to modify its tariff to clarify inconsistencies regarding the process for setting CONE levels in the future. CMTC explains that Mr. Robinson testifies that the initial $80,000/MW-month CONE value obtained from the Independent Market Monitor reflects the projected annualized investment costs (i.e., no operating and maintenance costs) of a new peaking generator; however, CMTC believes that the Midwest ISO's proposed tariff language suggests that future CONE values will be calculated differently, and would include fuel as well as operational and maintenance expenses. CMTC contends that if the proposed CONE value is intended to reflect investment costs, there is no reason to include operational costs such as fuel and maintenance.

67. AMP-Ohio and Illinois Municipal state that they assume that the Midwest ISO intends to make an FPA section 205 filing any time it proposes to change the value of CONE, but the Midwest ISO makes no explicit statement one way or the other. Midwest TDUs argue that the Commission should make clear that each filing proposing to change the CONE value will be an FPA section 205 filing, and not merely an informational filing.

68. Illinois Municipal contends that the Commission and customers are entitled to know how the Midwest ISO will re-calculate the CONE and what factors it will consider. AMP-Ohio argues that the proposed language does not specify how or if stakeholders will have the opportunity to contribute to or participate in the annual recalculation. To prevent future disagreements between the Midwest ISO and stakeholders, Duke states that stakeholders be allowed to participate in the development of the elements and calculation process used by the Midwest ISO to determine the monthly financial settlement charge. Reliant argues that the Midwest ISO should be required to revise the proposed tariff provisions to describe with particularity the manner in which the updated CONE value will be calculated each year.

iii. <u>Other Issues Concerning the Midwest ISO's Calculation of CONE</u>

69. IPL understands that the current installed capacity price in the bilateral market is roughly $24,000/MW-year or $2,334/MW-month. IPL states that the proposed $80,000/MW-month CONE may drive the bilateral market toward that benchmark without compensatory benefit.

c. <u>Midwest ISO Answer</u>

70. The Midwest ISO agrees with commenters that advocate that the CONE should be modified to reflect changing market conditions. According to the Midwest ISO, section 69.3.8 provides that the Midwest ISO and the Independent Market Monitor will annually be involved in establishing the CONE for the subsequent planning year. The Midwest ISO states that stakeholders will be welcome to provide information and analysis on the

subject CONE variables to assist the development of the CONE. In addition, the Midwest ISO notes that stakeholders will be able to present documentary evidence regarding what they believe the CONE value should be.

71. Midwest ISO states that it will file the CONE value with the Commission under FPA section 205. Thus, stakeholders will have the opportunity, in addition to providing comments before the filing is made through the normal stakeholder process, to file comments regarding the recalculated CONE value with the Commission, as in any FPA section 205 proceeding.

72. The Midwest ISO disagrees with a three-year lag in adjusting CONE and states that it believes that a financial settlement penalty based upon the cost of new entry should be based as closely as possible upon current market conditions that reflect the most recent CONE information that is available.

73. The Midwest ISO explains that, unlike other RTOs that use the CONE as a proxy for the value of capacity within the region, the Midwest ISO's CONE value establishes a financial settlement charge to encourage LSEs to comply with Module E. Thus, the CONE is intended to reflect the cost of constructing new capacity resources within the Midwest ISO region, rather than the net value of a capacity resource, which would likely include consideration of revenues from capacity, energy or ancillary services sales. The Midwest ISO states that if the Commission believes that the cost of constructing a new capacity resource should not include the estimated costs of fuel, one of the factors listed in section 69.3.8.b.1, then the Midwest ISO would be willing to delete this factor in a required compliance filing.

d. Commission Determination

74. We agree with intervenors that the Midwest ISO's filing does not provide adequate information for the Commission to determine the reasonableness of the proposed initial CONE figure. We require the Midwest ISO to further justify the calculation in the compliance filing to be submitted within 30 days of the date of this order. The Midwest ISO should provide additional information including a detailed description of the process for determining the CONE value, the input data, and the assumptions used to derive the CONE value. The Midwest ISO should also compare the methodology it proposes with the methodology of other RTOs, such as PJM.

75. We believe that the Midwest ISO has provided sufficient information in its answer to address concerns regarding how the CONE will be modified to reflect changing market conditions. Stakeholders will both have the chance to provide input to the Midwest ISO during the development of the updated CONE, and to comment on the updated CONE in response to the Midwest ISO's section 205 filing.

76. We disagree with commenters' suggestion that a three-year lag in adjusting CONE would be preferable to an annual update as the Midwest ISO proposes. The deficiency charge based on CONE should reflect the current cost of new entry in order to provide the proper incentive for LSEs to contract for capacity. Consequently, we conclude that an annual update of the CONE value would help ensure a better incentive.

3. Settlement of Monthly Deficiencies

a. Comments

i. Application of CONE

77. Several commenters assert that the financial assessments are excessive or that the application of an annual CONE to multiple months' deficiencies is not just and reasonable. OMS contends that the sequential, cumulative application of an annual revenue requirement each month is not the correct price signal and that the CONE and multiplier must be more complex and recognize: the individual risk periods, the cumulative monthly effects, and logical avoidance behaviors. OMS argues that it is not clear what the Midwest ISO means by "sending correct price signals," because the Midwest ISO has proposed a deficiency charge that, on an annual basis, is twelve times the value determined by the Independent Market Monitor to represent the cost of new entry of a particular resource type. Illinois Municipal also argues that there is no basis for charging deficient LSEs the yearly deficiency charge for one month's deficiency. CMTC argues that setting the financial settlement charge at lower levels, as supported by stakeholders (i.e., at a multiple of the monthly CONE value during the summer), provides the same type of incentive for LSEs and would result in LSEs voluntarily contracting for capacity, presuming capacity is available. AMP-Ohio contends that the Midwest ISO's proposal to charge LSEs 12 times the cost of new entry bears no relationship to accurate price signals. AMP-Ohio contends that the Midwest ISO's proposal contains no analysis of why a penalty of 12 times the annual CONE is necessary to prevent LSEs from relying on the financial settlement charge and why, for example, a penalty of two times the annual cost of new entry could not have achieved the same objective.

78. The OMS states that PJM's Reliability Pricing Model (RPM) uses an annual Net CONE approach, which subtracts from the annual gross CONE a value representing the sum over a year of the energy and ancillary services market revenues expected to be earned by a specific representative generation unit type. The OMS explains that PJM's annual gross CONE equals $72,207 and annual Net CONE equals $58,839 ($72,207-13,368). The OMS points out that the Midwest ISO specifically rejects use of the Net CONE concept, stating that "in calculating the CONE, the [Midwest ISO] and the Independent Market Monitor shall not consider the anticipated net revenue from the sale

of capacity, [e]nergy or [a]ncillary [s]ervices."[19] OMS argues that the highest clearing price *possible* in the PJM RPM auction design for one megawatt of unforced capacity is 1.5 times annual Net CONE, which equals roughly $88,259/MW-year.

79. The OMS asserts that in the five RPM auctions held so far, the clearing price for the unconstrained portion of the PJM area ranged from $14,892/MW-year to $63,615.15/MW-year. The OMS explains that the highest clearing price possible in the PJM RPM auction design for one MW of unforced capacity is 1.5 times annual Net CONE. In dollars, that equals roughly $88,259/MW-year ($58,839 times 1.5). The OMS argues that, in contrast, for an annual one MW capacity deficiency, the Midwest ISO is proposing to charge 12 times the annual gross CONE. The OMS argues that the price signal that would be sent by the Midwest ISO's proposed $80,000/MW-month gross CONE penalty charge would allow resource sellers to exercise their market power in an attempt to charge LSEs that are forced to buy in the auction up to $960,000/MW annually for capacity.

80. The Independent Market Monitor argues that by establishing deficiency charges equal to the annual cost of new entry that would be charged to any LSE found to be deficient in a single month, the LSEs will now have adequate incentives to plan for their resource adequacy needs ahead of time and make purchases of capacity, when necessary, to satisfy these needs. In particular, the Independent Market Monitor supports the proposed application of CONE because LSEs are not likely to be deficient in multiple months, since the requirements for each month are based on the forecasted load for that month. The Independent Market Monitor concludes that the requirements will be highest in the month that includes the forecasted peak load for the year.

81. Duke agrees with the Midwest ISO's proposed application of CONE and asserts that the CONE value is high enough to create the correct incentives for LSEs, so that they will acquire the capacity required under the Midwest ISO's resource adequacy requirements. Consumers Energy also supports the Midwest ISO's proposed application of CONE, arguing that by setting the proposed CONE value at $80,000/MW-month and making it an annualized CONE value applied monthly instead of a normalized amount, the Midwest ISO's proposal will provide sufficient incentives for LSEs to ensure they have adequate resources to meet their load obligations.

82. Northern Indiana seeks clarification as to whether the CONE will be applied monthly and, if so, whether the CONE will be converted to a MW-month value. Northern Indiana argues that if the latter approach is taken, the proposed CONE becomes $6,667/MW-month (or $219/MW-day), which Northern Indiana believes more closely corresponds with CONE values used in other RTOs, particularly PJM.

[19] OMS Comments at 9.

83. Wisconsin Electric expresses concern that if it experiences a forced outage in the five days between the voluntary auction and beginning of the resource adequacy requirement, it would be assessed a deficiency charge.

ii. Effectiveness of Financial Penalties in Assuring Long-Term Resource Adequacy

84. WPSC/UPPCO argue that the financial settlement provisions fail to promote long-term resource adequacy by settling deficiencies only on a month-ahead basis. WPSC/UPPCO contend that in a capacity-short environment, capacity will not be available for the voluntary auction and the deficiency charge will not immediately result in new construction or maintain reliability.

85. Calpine argues that the proposed enforcement provisions, which it states are voluntary and effectively allow an LSE to choose between satisfying its resource adequacy requirements and paying a deficiency charge, will not ensure that LSEs will procure adequate capacity, particularly when it is needed most (i.e., during peak periods when capacity prices are highest). Calpine also contends that the Midwest ISO's short-term capacity approach, which relies on monthly capacity determinations without any requirements for long-term forward contracting, does not provide a mechanism to send appropriate pricing signals to encourage new generation, transmission solutions, or large-scale demand response, or provide new or existing generators any assurance that capacity revenues will be adequate to recover their costs.

iii. Other Deficiency Settlement Options

86. Several entities discuss alternatives to the financial settlements proposed by the Midwest ISO. Northern Indiana explains that the Midwest ISO's transmittal letter aptly describes the three proposals sponsored by various stakeholders in the stakeholder discussions. Two of these proposals, one sponsored by Duke Energy and Integrys, and one sponsored by Dynegy and FirstEnergy, provided for capacity auctions, voluntary and mandatory, respectively, which would establish an auction clearing price. Northern Indiana states that the third proposal, sponsored by OMS, was administrative in nature, assessing upon deficient load serving entities a fixed and known financial penalty. OMS clarifies that in the stakeholder meetings OMS proposed to calculate the monthly deficiency charge by multiplying one-twelfth of the annual CONE value by a specified monthly CONE multiplier and the number of deficient MWs.

87. Midwest TDUs argue that Midwest ISO paid no apparent heed to OMS' proposal that monthly deficiency charges, which are assessed for each MW-month of deficiency, be set based on the monthly fraction of the annual CONE. Midwest TDUs contend that the Midwest ISO's proposed charge is structured such that it is far higher than is needed to accomplish the purpose of properly encouraging adequate reserves by penalizing capacity deficiencies and will constrain market participants to be overly conservative in

holding onto their capacity resources instead of offering them for sale, and therefore will overly tighten capacity markets and prevent efficient resource allocations. Midwest TDUs assert that the purpose of discouraging deficiencies by charging the annual CONE is met once the annual CONE is applied as a charge for the first deficient month and that continuing to hit the deficient customer that heavily becomes unduly punitive. Midwest TDUs suggest as an alternative that if an LSE is deficient during one of the four summer months (June-September) that begin a planning year, then for the deficiency's first month, the deficiency charge would be the annual CONE, i.e., twelve times the monthly CONE, just as in the Midwest ISO's filing, but for subsequent months in the same planning year up to the same MW deficiency level, the charge would be the monthly CONE, i.e., one-twelfth the annual CONE. Midwest TDUs propose that if the deficiency began after the summer ended, the same declining charge structure would apply, but the first month's charge would be a smaller multiple of the monthly CONE.

88. Alliant argues that an alternative to applying the full annualized CONE value of $80,000/MW-month basis would be to apply seasonal multipliers to the flat monthly value of $6,667/MW-month. Ameren Services agrees that the deficiency charge should be higher in the summer months when capacity prices tend to be highest but contends that the proposed use of an $80,000/MW-month deficiency charge to be applied in each month of the year may result in excessive charges, especially during the off-peak months.

89. Industrial Customers agree that a normalized monthly CONE value may be insufficient but express concern that a penalty as high as that proposed by Midwest ISO will interfere with competitive bilateral transactions. Industrial Customers suggest that the Midwest ISO consider, among other things, seasonal variation in the penalties whereby deficient LSEs are faced with higher penalties in the summer months than in other months.

iv. Other Issues

90. Duke explains that under the proposal, following the voluntary capacity auction, the Midwest ISO states it "will settle . . . by charging LSEs with cleared [resource adequacy bids] based upon the [auction clearing price] for such month," while in subsequent sections, the Midwest ISO refers to "market participants" as the entities submitting resource adequacy bids.[20] Duke argues that based on the varied terms used to identify the entity submitting the bid, it is unclear whether the Midwest ISO is contemplating only settling directly with the individual LSEs or through a possible mediator, like the LSE's market participant. Duke requests that the Midwest ISO clarify with whom it will settle.

[20] Duke Comments at 8.

91. Dynegy and Integrys assert that the proposal does not address what happens in the event that there is insufficient capacity remaining in the voluntary auction forum to fully cover the LSE deficiencies. Integrys suggests language providing that if insufficient capacity exists in the auction, the LSEs whose bids are not satisfied should be charged the highest offer price and the LSE should not be deemed non-compliant. Integrys asks for clarity as to what the auction clearing price would be if the capacity offers made in the auction were inadequate to fully cover LSEs and whether those LSEs not receiving capacity would be deemed deficient. Integrys argues that if there is insufficient capacity available, the auction clearing price should be set by the highest offer price. Integrys also asserts that if there is not enough capacity offered into the auction, an LSE with a capacity deficiency should not be deemed deficient. Integrys asserts that if insufficient capacity exists in the post-deadline settlement process, all LSEs with deficiencies should be charged the highest offer price of any offers remaining in the post-deadline queue. Integrys states that if there are no remaining offers in the post-deadline queue, then an LSE with deficiencies should pay the highest offer price of the pre-deadline auction. Integrys reasons that it is not logical to charge any LSE the substantial CONE penalty when it is impossible for all LSEs to satisfy their requirements simultaneously. Ameren asserts that the voluntary nature of the auction procedures raises several questions, such as what happens if the LSE bids exceed the offers made by suppliers in the auction process. Ameren asks whether the LSEs participating in the auction would be subject to the deficiency charges or other penalties or charges even if they attempted to obtain planning resources through the auction in accordance with the auction rules. Ameren contends that it may be warranted for the TEMT to include a provision for such a circumstance permitting LSEs to procure planning reserves from a supplier after the auction, but prior to the deficiency determination. Ameren questions what happens if the Midwest ISO needs or wants to acquire capacity through the auction to settle for deficient market participants, and there are insufficient offers but there is capacity in the market that has not been offered.

b. Midwest ISO Answer

92. The Midwest ISO asserts that it established the CONE based upon historical evidence that peak demand in the Midwest ISO's region has always occurred during the summer season, though in the northwestern portion of its footprint the winter season is critical as well. The Midwest ISO states that the $80,000/MW-month CONE value was established to ensure that LSEs would not benefit from only designating planning resources during the off-peak months (when demand is relatively lighter and thus prices are lower) and paying the financial settlement charge during the summer season months, when capacity is most required. The Midwest ISO explains that the CONE value represents the annual cost of owning and operating a typical generation unit, even though it will be assessed for each of the months that an LSE is deficient.

93. According to the Midwest ISO, the CONE value was not designed to represent the current cost of capacity and thus a downward-sloping demand curve for capacity, such as that used by RTOs that use the CONE value as a proxy for the value of capacity, would not be appropriate. The Midwest ISO also contends that it has made it clear that it is not proposing to administer a mandatory capacity market.

94. The Midwest ISO states that it carefully considered the merits of assessing a lower CONE during months when capacity was not in high demand through implementation of a CONE multiplier. Instead, the Midwest ISO states that it is establishing a CONE value aligned with many elements of the OMS proposal to provide a strong incentive for LSEs to meet their capacity obligations.

95. The Midwest ISO states that section 69.3.5.d addresses the situation when offers are insufficient to meet the resource adequacy bids of LSEs, where the auction clearing price will reflect the marginal resource adequacy bid. The Midwest ISO asserts that an LSE may be capacity deficient (and be responsible for financial settlement charges) even if it has more planning resources than its expected peak demand, provided that it does not also have sufficient planning resources to cover its planning reserve margin.

c. <u>Commission Determination</u>

96. We recognize commenters' concerns that if the market is capacity short, the monthly settlement and deficiency charges will not immediately result in new construction nor maintain resource adequacy. We disagree, however, with arguments that the month-ahead settlement and enforcement provisions thus will fail to promote long-term resource adequacy. We find that properly-structured financial assessments will, over the long-term, create appropriate incentives for LSEs to obtain adequate capacity in order to avoid deficiency charges.

97. We accept the Midwest ISO's proposal to use the CONE as a basis for the deficiency charge but reject the Midwest ISO's proposal to charge the annual CONE for each month's deficiency. We conclude that the Midwest ISO has not shown this value to be just and reasonable when applied on a monthly basis and that the deficiency charges would be excessive if applied to an LSE with deficiencies in multiple months.

98. We agree with the Midwest ISO that the financial assessment should create adequate incentives for LSEs to build or contract for additional capacity and should not provide an LSE an incentive to be deficient rather than obtaining the needed capacity. However, the capacity deficiency charges should not be excessive, thereby creating an incentive for overbuilding capacity for fear of facing unduly high deficiency charges, which may be in part due to the incorrect estimation of load or forced outages. We also note that the Midwest ISO has adopted scarcity pricing, which would create further incentives for LSEs to be resource adequate.

99. We also agree with the OMS and other intervenors that the monthly deficiency charge should recognize the different supply-demand situations in different months of the year, the cumulative monthly effects of the penalties, and the incentives to contract and build capacity. If an LSE had a constant load profile and was inadequate for six months, it would pay six times the annual CONE for every MWh of its deficiency. Clearly, this would give a strong incentive for the LSE to contract or build capacity, and possibly overbuild to avoid the risk of inaccurate load forecasts or generation outages. On the other hand, if an LSE had a peak load during one month corresponding to the Midwest ISO's peak load, its deficiency could cause resource adequacy problems in the Midwest ISO footprint. Applying only the annual CONE as a deficiency charge could create an incentive for the LSE to risk being inadequate in order to avoid the costs of building or procuring capacity.

100. For these reasons, we reject the Midwest ISO's proposal to assess the full annual CONE value for each month's deficiency and direct the Midwest ISO to propose more granular monthly deficiency charges that are tailored to deter deficiencies without being excessive on a monthly or cumulative basis. We direct the Midwest ISO to consider whether the monthly deficiency charges proposed by the OMS[21] or the Midwest TDUs[22] achieve these objectives.

101. We reject commenters' claims that the Midwest ISO should net revenues associated with energy and ancillary services sales against the gross CONE value in determining the financial settlement charge. The Midwest ISO states that the CONE value is used as the basis for calculating the deficiency charges assessed to deficient LSEs. On the other hand, we note that the Net Cone calculations adopted by other RTOs involve calculating the value of capacity or the appropriate price to compensate generation selling capacity into the market. The Midwest ISO's use of the CONE is therefore more limited, to serve as a penalty to encourage LSEs to contract for adequate capacity, and the gross CONE calculation is a reasonable basis for determining deficiency charges in the Midwest ISO.

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[21] OMS proposes the application of seasonal multipliers (1.5x for October through May, 2x for June and September, and 3x for July and August) to a monthly-derived CONE.

[22] Midwest TDUs recommend that if an LSE is deficient during one of the four summer months (June-September) that begin a planning year, then for the first deficient month the deficiency charge should be the annual CONE, as proposed by the Midwest ISO, but the charge should be the monthly CONE for subsequent months in the same planning year up to the same MW deficiency level.

102. We require the Midwest ISO to clarify for Wisconsin Electric the application of the deficiency charge in the event that the market participant has a forced outage in the five days between the voluntary auction and the beginning of the resource adequacy requirement. We require the Midwest ISO to include this clarification in the compliance filing to be submitted within 30 days of the date of this order.

103. In response to Duke's argument that it is unclear whether the Midwest ISO is contemplating only settling directly with the individual LSEs or through a possible mediator, like the LSE's market participant, we consider the proposed tariff to be clear that settlement of the voluntary auction bids will be with LSEs, not with market participants. Inasmuch as the proposed provisions on Original Sheet No. 845 and 846 refer to both offers and bids, it is appropriate that these provisions reference market participants, and therefore we do not see a need for further tariff revisions.

104. We believe that the Midwest ISO's explanation that the auction clearing price will reflect the marginal resource adequacy bid in the circumstance where there is insufficient capacity in the voluntary auction to fully cover the LSE deficiencies is responsive to commenters' requests for clarification. We disagree with intervenors' reasoning that it is not logical to charge any LSE the financial deficiency charge when the situation is such that it is impossible for all LSEs to satisfy their requirements simultaneously. We note that the voluntary auction is a last-resort measure one-month ahead to procure incremental amounts of capacity, if available. This voluntary auction should not be misconstrued as a substitute for the need of LSEs to arrange for long-term capacity. If an LSE does not procure capacity in the auction or bilaterally, we conclude that it would be reasonable to assess a deficiency charge on the LSE for the reasons discussed below.[23]

4. Impact of the Financial Settlement Charge on Retail Choice Loads

a. Comments

105. Ameren notes that Illinois has a seven-day direct access service request process that allows retail customers to switch electric suppliers upon seven days notice. Ameren faults the Midwest ISO proposal for failing to demonstrate how LSEs that are Providers of Last Resort in retail choice states will not be forced to pay excess costs because of load switching. Ameren notes that retail suppliers will not include load in their forecasts for any months after the expiration of their contract and therefore this load may not be accounted for if no other supplier has signed a contract to serve this load. Ameren also explains that the Provider of Last Resort may not have sufficient time to contract for any

[23] *See infra*, section C (Financial Assessments to Deficient LSEs).

load with retail supplier expirations, and therefore will not have time to develop a forecast.

106. For these reasons, Ameren urges the Midwest ISO to specify how it will coordinate with LSEs in these circumstances. Ameren recommends that the Midwest ISO coordinate with Local Balancing Authorities to compare forecasts and ensure that any unaccounted-for load that cannot be properly identified is included in the auction, along with rules for determining responsibility for acquiring additional resources.

107. FirstEnergy argues that unanticipated load switching will lead to forecast error and compromise resource adequacy since competitive retail LSEs are not likely to report load and secure resources until the load is contractually committed and the Providers of Last Resort will not know that the competitive load is being added to their service obligation until after it has been transferred. FirstEnergy recommends a centrally-administered market as a solution, or, as a short-term alternative, that the electric distribution company be required to provide forecasts on behalf of competitive retail suppliers in their areas since they are best placed to provide the most accurate forecast that avoids underestimation.[24]

108. FirstEnergy also recommends that capacity resource obligations be allocated to the respective LSEs. FirstEnergy faults the Midwest ISO proposal for lacking provisions to reallocate resource adequacy obligations among retail suppliers that gain or lose customers between the date the Midwest ISO verifies resource adequacy requirements and the operating month. FirstEnergy considers such reallocation provisions necessary to avoid cross-subsidization of LSEs gaining load at the expense of LSEs losing load yet paying for capacity as if they still served it, and to avoid gaming. Accordingly, FirstEnergy recommends that the TEMT and Business Practices Manuals be revised to provide for retroactive reallocation and financial settlement of resource adequacy obligations among suppliers in regions with retail competition. FirstEnergy concludes by stating that the Midwest ISO does not understand how its proposal puts retail suppliers making accurate forecasts at a disadvantage vis-à-vis retail suppliers that under-forecast.

109. Joint Commenters express similar concerns and recommend that the tariff establish how retail load switching will be accommodated within the resource adequacy construct. Joint Commenters also assert that more clarity is needed on how the LSE load forecast is to be calculated and the Midwest ISO's role in the calculation.

[24] FirstEnergy believes the best long-term solution is for the Midwest ISO to perform the forecasts itself based on LSE inputs.

b. Midwest ISO Answer

110. The Midwest ISO states that deficient LSEs should be responsible for the financial settlement charge. The Midwest ISO explains that it is mindful of the rights of states within its region to exercise their jurisdiction with regard to supply adequacy issues, and indicates that this provision is an example of such deference. The Midwest ISO states that it anticipates that state commissions in retail choice states will work with their electric distribution companies, retail choice providers and Providers of Last Resort to develop consistent state provisions to assist the affected LSEs in dealing with retail load switching and LSE under-forecasting errors, in order to facilitate compliance with Module E. The Midwest ISO indicates that it is willing to work with the states, OMS and other stakeholders to further address issues related to retail load switching.

c. Commission Determination

111. Commenters raise concerns they have expressed in other proceedings in this docket.[25] The Commission has found that since the LSE is responsible for achieving resource adequacy, and is therefore responsible for its planning reserve margin, it is appropriate that the LSE be responsible for its load forecast.[26] The Commission has acknowledged that electric distribution companies and providers of last resort have expertise in load forecasting that would be of benefit in the development of load forecasting for load served by retail choice providers, and therefore has found it reasonable that LSEs have the option to coordinate with these entities in developing their forecast, while keeping the LSE responsible for the forecast.

112. The Commission has also found it reasonable that the Midwest ISO be a facilitator of forecasts, thereby facilitating the development of uniform estimation techniques.[27] The Commission has also stated its expectation that the Midwest ISO's ongoing evaluation of forecast accuracy will identify any missing loads. In light of the importance of load forecasting in determining the planning resource requirements and ultimately resource adequacy, the Commission has required the Midwest ISO and the Independent Market Monitor to submit an informational filing one year after the start of the permanent resource adequacy program that assesses the accuracy of the forecasts, the impact of the load forecasts on the adequacy of resources, and whether a more centralized forecasting process would be more appropriate. The Midwest ISO and Independent

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[25] Compliance Order, 125 FERC ¶ 61062, at P 96-105 (2008).

[26] March 26 Order, 122 FERC ¶ 61,283 at P 139.

[27] Compliance Order, 125 FERC ¶ 61,062, at P 110 (2008).

Market Monitor are also required to include an assessment of the impact of load switching on forecast accuracy.[28]

113. We do not consider it necessary to make the Midwest ISO responsible for reallocating resource obligations and resettling financial obligations among retail suppliers who gain or lose customers. As discussed above, the Commission expects that the coordination of load forecasting among entities with expertise and knowledge will identify missing loads, and the Midwest ISO will evaluate the effectiveness of the load forecasting process after the first year of the resource plan.

114. Regarding intervenors' concerns that the Midwest ISO's proposed auction procedures may not be appropriate or workable for LSEs that are located in a retail choice states, we believe the Midwest ISO's response is sufficient to address these concerns. We agree with the Midwest ISO that state commissions in retail choice states should work with their electric distribution companies, retail choice providers, and Providers of Last Resort to develop provisions to assist the affected LSEs in dealing with retail load switching. We believe that between these actions taken by the states, and the Midwest ISO's offer to work with the states, the OMS and other stakeholders to further address issues related to retail load switching, that issues related to retail choice states should be largely mitigated. However, if these issues do materialize despite actions taken by the states and the Midwest ISO, we would expect the Midwest ISO to propose additional processes to address such issues.

5. <u>Credit Policy</u>

115. As described in Attachment L of the TEMT, the Midwest ISO's credit policy requires market participants to demonstrate their ability to meet the Midwest ISO's credit standards in order to transact in its markets. The credit policy sets requirements for the establishment and maintenance of credit and sets the forms of security deemed acceptable in the event the market participant does not satisfy the financial requirements to establish unsecured credit to cover its financial exposure.

116. Bear & JP Morgan recommend that the Commission require the Midwest ISO to clarify its credit policy to ensure that potential deficiency payments are appropriately reflected in the credit requirements of market participants. Reliant also requests greater detail on credit requirements.

117. The Midwest ISO responds in its answer that, following Commission approval of the financial settlement provisions, the Midwest ISO will work with its stakeholders to discuss modifications to the Midwest ISO's credit policies.

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[28] Compliance Order, 125 FERC ¶ 61,062, at P 111 (2008).

118. We find the Midwest ISO's commitment to discuss potential modifications to its credit policy with stakeholders to be responsive to the concerns of parties.

C. Financial Assessments Revenue Distribution

1. Midwest ISO Proposal

119. The Midwest ISO proposes to distribute financial settlement charge revenues to: (1) LSEs that have met or exceeded their resource adequacy requirements during the following month; and (2) to suppliers that have participated in the immediately preceding voluntary capacity auction. Under section 69.3.9.a.i of the proposed tariff, suppliers that do not clear in the voluntary capacity auction will be selected in least cost order up to the amount needed to fully satisfy any aggregate LSE deficiency for the month. This section provides for these suppliers to be paid on an as-offered basis, and states that planning reserve offers cannot be changed after the closing of the auction for each month. Section 69.3.9.a.ii of the proposed tariff provides that any remaining financial settlement charge revenues would be distributed to qualifying LSEs on a *pro rata* basis, based upon MWs of peak load of LSEs in the applicable planning reserve zone. The Midwest ISO believes that these revenue distribution procedures will provide an economic incentive for participation in the voluntary capacity auction.

2. Comments

120. OMS argues that the Midwest ISO's proposal inappropriately links the auction mechanism to the distribution of deficiency charge revenue. OMS expresses concern that if there are any LSEs that exceed their resource adequacy requirements, then the Midwest ISO's resource adequacy program will have cleared more MWs than the market-wide reliability requirement. OMS' second concern is that the proposal could, under section 69.3.9.a.i, result in a distribution of financial settlement charge revenues to generators whose offers were above the auction clearing price, even if there was no net deficiency or if less expensive sources were available. OMS contends that the Midwest ISO should be required to explain and clarify the rationale for its proposed penalty revenue distribution approach.

121. WPSC/UPPCO argue that there is a misallocation of financial settlement charge revenues, and that it is not clear why these revenues are to be distributed to LSEs that have merely satisfied their resource adequacy requirements on a *pro rata* basis. Alliant states that it sees no reason, other than simplicity, for distributing the financial settlement charge revenues to LSEs based on peak load. Alliant argues that the Midwest ISO's proposal would provide a financial benefit to entities that merely met their resource adequacy requirements, rather than providing the financial benefit to those entities that exceeded their resource adequacy requirements.

122. Midwest TDUs contend that the Midwest ISO's proposed revenue distribution should be changed so that deficiency payments are not transferred to capacity holders who offer into the auction at too high a price to have their resources clear in the auction. Midwest TDUs state that holders of saleable excess capacity will know that if they wait for the auction, they will have an opportunity to receive dollars not only if they sell in the auction to buyers who thereby avoid a deficiency, but also by not selling in the auction and thereby receiving, off the top of the deficiency revenue distribution, whatever price they named in the auction.

123. Industrial Customers argue that the Midwest ISO's proposed approach for distributing financial settlement charges revenue is unreasonable because there is no reasonable basis for paying LSEs that only just meet their stated planning reserve requirements. Industrial Customers contend that distributing financial settlement charges revenue based on the *pro rata* share of an LSE's load in a planning reserve zone will bias the revenue distribution to LSEs that have larger loads, even though the amount of capacity in excess of stated planning reserve requirements may be less for the LSEs with larger loads than ones with smaller loads, and, therefore, may not warrant such a payment. Industrial Customers suggest that it would be more equitable and reasonable to identify each LSE's contribution to the excess capacity in a planning zone, and then distribute the revenues accordingly.

124. Duke asserts that the financial settlement charge revenues should be distributed across all eligible LSEs in the entire Midwest ISO footprint because the planning reserves benefit the entire Midwest ISO footprint, and the reliability effects of any curtailment will not necessarily be limited to the zone where there was a deficiency.

125. AMP-Ohio states that the Midwest ISO should address what happens if the deficiency charges do not generate sufficient revenue to pay for the deficient capacity.

126. Wisconsin Electric requests clarification on whether the revenue distribution *pro rata* allocation is based on annual peak load for a month or the year.

3. Midwest ISO Answer

127. The Midwest ISO acknowledges that several parties raise issues with regard to the distribution of financial settlement charge revenues, and the Midwest ISO provides further explanation of the proposed distribution provisions. Following the auction, the Midwest ISO states that it will use the revenues from the deficiency charges, which were levied upon LSEs for failure to meet their resource adequacy requirements, to procure capacity to cover those deficiencies. The Midwest ISO will start by procuring capacity at the lowest offer price from those planning reserve offers that were not cleared in the voluntary capacity auction and the Midwest ISO will continue to obtain capacity at least cost until all the deficiencies have been satisfied. If there is additional financial settlement charge revenue remaining after this process is complete, the Midwest ISO

states that it will then distribute that revenue on a *pro rata* basis to those LSEs that met or exceeded their resource adequacy requirements in the applicable planning reserve zones.

128. The Midwest ISO asserts that the revenue distribution provisions in section 69.3.9 are designed to encourage parties that are long in capacity to participate in the voluntary auction in order to have an increased opportunity to be compensated at what the parties consider to be market prices. The Midwest ISO contends that parties will have a strong economic disincentive to withhold capacity from the voluntary auction because they will only have the opportunity to receive a *pro rata* share of financial settlement charges if they elect not to participate in the voluntary capacity auction and they are LSEs as well. The Midwest ISO believes that if all parties with excess planning resources can be encouraged to participate in the voluntary capacity auction, it is less likely that any LSEs will be deficient and liable for financial settlement charges.

129. If financial settlement charges are incurred, the Midwest ISO believes that it is equitable for all LSEs that have met their obligations in the applicable zones to share revenues on a *pro rata* basis, rather than on the basis of how much excess capacity they may have. The Midwest ISO concludes that this allocation mechanism is also consistent with the current involuntary load shedding protocols in the Midwest ISO: if the Midwest ISO has to move to involuntary load shedding, it will be accomplished on a *pro rata* basis. The Midwest ISO states that it intentionally designed the proposed tariff to provide for financial settlement charges to be allocated to all LSEs that have met their resource adequacy obligations, in order to discourage potential capacity withholding. The Midwest ISO disagrees with Alliant's argument that only the LSEs that brought excess reserves to the market should be compensated, since they can participate in the voluntary capacity auction. The Midwest ISO concludes that it would be wrong for the Commission to reward such an entity that had excess planning resources by allocating financial settlement charges on any basis other than on a *pro rata* basis, as this would financially encourage parties to withhold capacity from the voluntary capacity auction.

130. The Midwest ISO notes that AMP-Ohio is concerned that the Midwest ISO has not addressed what will occur in the event that the deficiency charges do not generate enough revenue to pay for the deficient capacity and that Duke requests that the Midwest ISO clarify with whom it will settle following the auction. The Midwest ISO explains that in accordance with proposed section 69.3.5.c, a planning reserve offer price cannot exceed the CONE, and thus there is no support for AMP-Ohio's assertion that the deficiency charge may generate less revenue than the planning reserve offer. The Midwest ISO explains that proposed section 69.3.5.e clarifies Duke's concern by providing that, as part of the voluntary capacity auction, the Midwest ISO will provide credits to the market participants that submitted successful offers.

4. Commission Determination

131. We agree with the Midwest ISO that it is appropriate to distribute financial settlement charge revenue to all LSEs that have met their obligations on a *pro rata* basis (based on MWs of peak load), rather than on the basis of how much excess capacity they may have. As described by the Midwest ISO, if the revenue was distributed back to LSEs on the basis of excess capacity, this would create an incentive for LSEs to not offer or contract with other LSEs who might be short, and thereby receive the deficiency revenue. Furthermore, if these LSEs with excess planning resources had offered them in the auction, it would be less likely other LSEs would have been deficient.

132. We agree with commenters that the Midwest ISO's proposal to use the financial settlement charges to procure extra capacity from sellers not selected in the voluntary auction is inappropriate. The Midwest ISO describes its capacity auction as voluntary and its approach to the capacity requirements as consisting of only financial settlements. However, the proposal to use the financial settlement revenues to procure capacity from resources participating in the capacity auction to cover deficiencies is inconsistent with this approach. The Midwest ISO has not provided a rationale for its proposal to procure capacity on behalf of deficient LSEs. By refunding the deficiency revenue to LSEs on a *pro rata* basis, available capacity resources would have an incentive to bilaterally contract or bid into the auction and be accepted. Accordingly, we reject the Midwest ISO's proposal to procure additional capacity resources from resources not selected in the voluntary auction and direct the Midwest ISO to allocate deficiency revenues to the LSEs fulfilling their capacity obligations.[29]

133. With regard to the OMS' concern with LSEs clearing more megawatts than the market-wide reliability requirement, we find that the Midwest ISO's proposal, as modified herein, provides an incentive for any LSEs with excess resources to offer those resources, thereby matching available resources with deficient loads. We find this approach reasonable since it provides a means to reduce the excess in planning resources, if such an excess exists.

134. Addressing Duke's concerns, we interpret section 69.3.6.a.ii to mean that all LSEs that met or exceeded their resource adequacy requirements, over the entire Midwest ISO footprint, will receive a distribution of financial settlement charge revenues. We interpret the phrase "met or exceeded their [resource adequacy requirements] in the applicable [p]lanning [r]eserve [z]one" to mean that the determination of whether an LSE has met or exceeded its resource adequacy requirements will be based on a zonal determination of

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[29] We note that since we are rejecting the Midwest ISO's proposal to procure capacity, we will not address AMP-Ohio's concerns with respect to this provision.

resource adequacy. We require the Midwest ISO to confirm this interpretation in the compliance filing to be submitted within 30 days of the date of this order.

135. We require the Midwest ISO to clarify for Wisconsin Electric whether the term "peak load" referenced in section 69.3.9 refers to the peak load during the month or during the year in the compliance filing to be submitted within 30 days of the date of this order.

D. Market Power

1. March 26 Order

136. In the March 26 Order, the Commission noted that several commenters expressed concern that the Midwest ISO's resource adequacy program lacked protections against the exercise of market power in the bilateral capacity market. The Commission found that the issue of market power needed further evaluation and directed the Midwest ISO and the Independent Market Monitor to evaluate the potential for the exercise of market power in the capacity market. The Commission also required the Midwest ISO and the Independent Market Monitor to state to what extent, if any, the proposed mitigation scheme should be revised as part of the Midwest ISO's 180-day compliance filing.[30]

2. Midwest ISO Proposal

137. The Midwest ISO addresses market power in section 69.3.5.h of the proposed tariff, which states:

> All actions of [m]arket [p]articipants making [resource adequacy bids or offers] shall be subject to the provisions of Module D. The [t]ransmission [p]rovider will report any potential exercise of market power by LSEs or by [m]arket [p]articipants in the voluntary capacity auction procedures to the [Independent Market Monitor].

3. Comments

a. Market Power Monitoring and Mitigation

138. Several parties argue that the Midwest ISO has failed to comply with the Commission's directives in the March 26 Order concerning the potential for market power. Illinois Municipal argues that the Midwest ISO has failed to address the Commission's directive in the March 26 Order that the Midwest ISO examine the

[30] March 26 Order, 122 FERC ¶ 61,283 at P 390.

potential for market power abuse. The OMS and the Illinois Commission believe that the Midwest ISO's proposal dodges the issue of market power and fails to discuss the Midwest ISO's efforts with the Independent Market Monitor to evaluate the potential for the exercise of market power in the bilateral market. The OMS and the Illinois Commission urge the Commission to require the Midwest ISO to work with the Independent Market Monitor to evaluate the potential for market power in the resource adequacy plan and to address any revisions to its mitigation plan.

139. The OMS and the Illinois Commission request that the Commission direct the Midwest ISO to provide a market power study, as was, according to these parties, required by the March 26 Order. According to the OMS and the Illinois Commission, applying requirements for planning reserve margins to the historically concentrated capacity markets could create problems for LSEs who may be forced to accept unreasonable offers for capacity in order to meet their planning reserve margin requirements.

140. CMTC and Midwest Industrial argue that the Midwest ISO's proposal fails to provide meaningful market monitoring and mitigation measures. CMTC notes that under the proposal, the only limit on offers into the auction is that the offers cannot exceed the proposed CONE value of $80,000/MW-month. CMTC asserts that the proposed tariff does not identify if, or how, the Independent Market Monitor will assess whether a market participant has market power or is exercising market power in a particular auction. Midwest Industrial argues that, under the proposed auction process, a high concentration of capacity among sellers would go unnoticed, thereby raising prices.

141. Bear & JP Morgan note that the Midwest ISO's proposal fails to specify any potential remedy against auction participants that attempt to exercise market power. Bear & JP Morgan request that the Commission direct the Midwest ISO to file revisions to the proposed tariff that appropriately protect against the exercise of market power in the auctions.

142. The Independent Market Monitor states that market monitoring will be facilitated by the Midwest ISO's proposal and that market manipulation is unlikely but not impossible. The Independent Market Monitor notes that all resource adequacy requirements apply market-wide, which means suppliers throughout the Midwest ISO region will compete to sell capacity in the Midwest. This competition over the broad Midwest region should, according to the Independent Market Monitor produce efficient prices for capacity. The Independent Market Monitor notes that it has not performed a rigorous market power analysis of the market. The Independent Market Monitor states that, because it believes market abuse is unlikely, it has not advised the Midwest ISO that additional market power mitigation measures are necessary at this time. The Independent Market Monitor states that it will monitor the capacity market closely and will inform the Commission and the Midwest ISO if it determines that mitigation measures or other market changes are necessary to ensure an efficient market. The Independent Market

Monitor also notes that it will have the information needed to effectively monitor the resource adequacy market available to it.

b. Proposed Section 69.3.5.h

143. The OMS, the Illinois Commission, and AMP-Ohio assert that the sole mention of market power issues in the proposal, in section 69.3.5.h, is insufficient and fails to take the issue of market power seriously. Bear & JP Morgan assert that the section does not explain the procedure by which the Midwest ISO identifies potential market power in the voluntary capacity auctions or provide guidance on what constitutes a potential exercise of market power in the auctions. AMP-Ohio argues that this section relies simply on existing market monitoring provisions and fails to consider the possibility of market power abuse in the entirely new context of voluntary capacity auctions. Bear & JP Morgan also argue that proposed section 69.3.5.h does not clarify how Module D applies to the proposed voluntary auctions.

144. Ameren asserts that the Midwest ISO's proposal does not explain what role, if any, the Independent Market Monitor will have in the financial settlement and auction processes, and that the Midwest ISO should clearly set out this information in its tariff. Ameren believes that proposed section 69.3.5.h is inadequate to define the scope of the Independent Market Monitor's authority and what action(s) the Independent Market Monitor may take to address potential problems that are reported to it. Ameren lists several issues that the Midwest ISO's proposal does not address: (1) whether market participants can be found to have engaged in economic withholding, since the auction is strictly voluntary; (2) what authority the Independent Market Monitor has to monitor against economic withholding; and (3) whether the Independent Market Monitor has any authority to monitor for the potential exercise of market power or take action absent a report from a third party.

145. CMTC asserts that proposed section 69.3.5.h suggests that the Midwest ISO, rather than the Independent Market Monitor, will assess the existence and exercise of market power and then report it to the Independent Market Monitor. CMTC argues that the Independent Market Monitor's role is diminished under the proposal and that the Independent Market Monitor will have insufficient authority to mitigate market power.

c. Market Manipulation in the Voluntary Capacity Auctions

146. Illinois Municipal, AMP-Ohio, Bear & JP Morgan, and Midwest Industrial contend that the Midwest ISO's proposal fails to guard against market manipulation or the exercise of market power in the auctions. AMP-Ohio asserts that the absence of any discussion of market power or of the mitigation of potential market power in the auctions is made more egregious because of the Commission's explicit directive in the March 26

Order to the Midwest ISO to address the issue.[31] Bear & JP Morgan contend that safeguards are necessary to ensure that the market sends a proper price signal to developers of new generation resources.

147. CMTC states that the Commission traditionally allows entities to sell at market-based rates based upon either a showing that the seller and its affiliates lack or have mitigated market power, or that the market is competitive. CMTC alleges that neither of these bases has been met here because there is no evidence the voluntary auctions will be competitive and the Midwest ISO has proposed no specific mitigation measures to protect sellers from exercising market power in the auctions. CMTC therefore asserts that the Commission cannot approve the use of market-based offers into the auctions.

148. AMP-Ohio asserts that under the proposed auction process, sellers could artificially drive up the auction clearing price by making above-market offers. AMP-Ohio notes that even if high bids do not clear in the auction, they could still be selected for use by the Midwest ISO to meet reliability requirements if an LSE is deficient. AMP-Ohio also expresses concern that market power in the monthly auctions could damage the competitiveness of bilateral contracts because market participants will look to the auction clearing price as a reference point for the value of capacity in the Midwest ISO. AMP-Ohio requests that the Commission require the Midwest ISO to fully evaluate market power issues in its proposed auctions and, in conjunction with the Independent Market Monitor, consider appropriate mitigation measures.

149. Midwest Industrial contends that the $80,000/MW-month price cap would likely encourage suppliers to physically withhold capacity from the bilateral market solely to participate in the auction, thereby disrupting the market that the voluntary auction is meant to facilitate.

4. Midwest ISO Answer

150. The Midwest ISO states in its answer that it will continue to work with the Independent Market Monitor to analyze the potential impact of the exercise of market power through Module E. The Midwest ISO contends that it has analyzed the potential for the exercise of market power and designed Module E to minimize market power concerns. The Midwest ISO believes that the distribution of financial settlement charges, for example, provides a clear financial incentive for market participants with surplus capacity to participate in the auction so that their capacity may be acquired at market prices if financial settlement charges are collected. The Midwest ISO also asserts that distributing excess financial settlement charge revenues to all LSEs that have met their resource adequacy obligations provides another incentive to discourage parties from

[31] *Citing* March 26 Order, 122 FERC ¶ 61,283 at P 390.

withholding capacity in hopes of collecting a greater proportion of financial settlement charge revenue.

5. **Commission Determination**

151. We will not require the Midwest ISO to conduct a market power study. We note that the Independent Market Monitor's analysis indicates that because all resource adequacy requirements apply market-wide in the Midwest ISO, suppliers throughout the Midwest ISO region (and those in adjacent regions) must compete to sell capacity in the Midwest, which should produce efficient prices for capacity. Moreover, we are rejecting the Midwest ISO's proposal to utilize the financial settlement charges to procure extra capacity from sellers not selected in the voluntary auction. Also, we are rejecting the Midwest ISO's proposal to apply an annual CONE on a monthly basis and directing the Midwest ISO to assess a monthly-derived CONE.

152. Considering that the Independent Market Monitor's assessment indicates a resource adequacy program characterized by many suppliers competing to participate as resources,[32] and also considering the other changes cited above, we do not find a market power study to be necessary. We believe that an exercise of market power will be unlikely, particularly since the Independent Market Monitor will be monitoring for such activity. In the event that the Independent Market Monitor detects a possible exercise of market power, we expect the Independent Market Monitor to report such activity to the Commission so that the Commission may take appropriate enforcement action.

153. We reject commenters' arguments that the Midwest ISO's proposal does not provide adequate safeguards to protect against the exercise of market power. We find that section 69.3.5.h, in light of the Independent Market Monitor's findings, is sufficient to prevent the exercise of market power.

154. As discussed above, we reject the proposed CONE of $80,000/MW-month as excessive. We also reject the Midwest ISO's proposal to utilize the financial settlement charges to procure extra capacity from sellers not selected in the voluntary auction as unreasonable. Consequently, arguments raised by commenters that the high value of the CONE will create incentives for physical and/or economic withholding in the voluntary capacity auctions are moot. Additionally, commenters' concerns that the use of financial settlement charge revenues to procure extra capacity from sellers not selected in the voluntary auction will create incentives for sellers to engage in economic withholding, with the intention of selling their extra capacity after the auction, are also moot.

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[32] Contrary to the assertion of the OMS and the Illinois Commission, we find no basis in the IMM's assessment or in any other information in the record to conclude that the Midwest ISO capacity markets have been historically concentrated.

Commenters may renew these arguments, if they are still applicable, once the Midwest ISO proposes a revised CONE value, and the Commission will re-evaluate these concerns at that time.

155. In response to concerns that the Midwest ISO's proposal does not adequately explain the role of the Independent Market Monitor with respect to market power monitoring and mitigation, we agree that proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor's role. We require the Independent Market Monitor to explain in general terms how it intends to monitor market power in the voluntary capacity auctions and describe – without disclosing specific triggers – under what conditions it would report to the Commission that further modifications are necessary. We also require the Independent Market Monitor to specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what additional mitigation measures might look like. We require the Independent Market Monitor to include this information in a compliance filing to be submitted within 30 days of the date of this order.[33]

156. In response to Ameren's request for further information on the Independent Market Monitor's role in mitigation, we clarify that it is the Commission that has the authority to determine and order mitigation based upon reports provided by the Independent Market Monitor. Ameren also states that the proposal does not address whether the Independent Market Monitor has any authority to monitor for the potential exercise of market power or take action absent a report from a third party. We note that Module D authorizes the Independent Market Monitor to monitor the market and report any potential exercise of market power to us, and that no third-party report is needed.[34] The Midwest ISO's proposed section 69.3.5.h provides that all actions of market participants making resource adequacy bids or offers shall be subject to the provisions of Module D. Thus, under the Midwest ISO's proposal, the Independent Market Monitor will monitor for the potential exercise of market power and may "take action" by

[33] With respect to the requirement that the IMM explain under what conditions it would report to the Commission that further actions are necessary, whether additional mitigation measures are needed, and what additional mitigation measures might look like, Midwest ISO is referred to our Final Rule amending 18 C.F.R. Part 35, Wholesale Competition in Regions with Organized Electric Markets, 125 FERC ¶ 61,071 (2008), issued contemporaneously with this order. The Final Rule prescribes the manner in which an RTO or ISO is to amend its OATT so as to incorporate protocols governing the referral to the Commission of perceived market design flaws and recommended tariff changes.

[34] Third Revised Sheet No. 702.

reporting potential market power abuse to the Commission absent a report from a third party.

157. In response to CMTC's assertion that the Commission cannot approve the use of market-based offers into the auctions, as an initial matter, we note that for a public utility seller to participate in the voluntary auctions, it would have to have received market-based rate authorization for sales of capacity and energy. Thus, the Commission would already have found that such a seller and its affiliates lack or have mitigated market power. Further, we note that the Independent Market Monitor will be monitoring and taking action if an exercise of market power is found in the procurement of capacity in the Midwest ISO. We therefore find it unnecessary and redundant for a seller offering capacity into the voluntary auctions to have to make a showing that it and its affiliates lack or have mitigated market power. Additionally, we note that the capacity auctions themselves are entirely voluntary and no buyer is compelled to purchase capacity from a seller through the auction.

158. In response to AMP-Ohio's concern that market power in the auctions could damage the competitiveness of bilateral contracts, we note that this concern is speculative and contrary to the Independent Market Monitor's finding that the exercise of market power in the auctions is unlikely. As explained above, we do not see any basis for the assertion that sellers will exercise market power in the auctions, and if the exercise of market power occurs, the Independent Market Monitor retains its obligation under Module D to report it to the Commission.

E. Business Practices Manuals Issues

1. March 26 Order

159. In the March 26 Order, the Commission noted that the Midwest ISO was continuing to develop its Business Practices Manuals and encouraged the Midwest ISO to do so.[35] The Commission stated that it was sympathetic to commenters' concerns that they needed to be able to review the Business Practices Manuals to have a complete understanding of their responsibilities and obligations under the resource adequacy proposal. The Commission directed the Midwest ISO to make its Business Practices Manuals publicly available as part of its financial settlement provisions filing. The Commission also required the Midwest ISO to file, following discussions with stakeholders regarding the Business Practices Manuals, any provisions that are determined to significantly affect any rates, terms or conditions of service in its tariff rather than in its Business Practices Manuals.

[35] March 26 Order, 122 FERC ¶ 61,283 at P 400.

2. Midwest ISO Filing

160. The Midwest ISO states that, in accordance with the March 26 Order, it conducted a series of stakeholder discussions on March 17, 2008, April 23, 2008, May 7, 2008, May 21, 2008 and June 23, 2008 to discuss improvements to its Business Practices Manuals to reflect the requirements of the March 26 Order. The Midwest ISO notes that it has made interim versions of these revised Business Practices Manuals publicly available on its website throughout the process and posted the most recent version on June 25, 2008. The Midwest ISO believes that these practices will assist the stakeholders in understanding Module E and allow stakeholders to anticipate their resource adequacy requirements in a more complete fashion.

3. Comments

161. Hoosier & Southern Illinois and Midwest TDUs argue that the minimum MW requirements for planning zones, specified in the Midwest ISO's draft Business Practices Manuals, should be included in the tariff since this provision implicates a rate paid by market participants for resource deficiencies.

162. The Midwest TDUs assert that provisions ensuring proper resource adequacy treatment of system purchase agreements must be included in the tariff because accreditation of the reserves associated with firm system purchases is a practice that significantly affects rates, terms or condition of service. The Missouri Commission also requests that the Midwest ISO include clear language in the tariff and Business Practices Manuals on the treatment of system firm purchase agreements.

163. The Midwest TDUs recommend that the must-offer tariff provisions be revised to incorporate language from the draft Business Practices Manuals, including language proposed by the Midwest TDUs that must-offer requirements respect contractual limitations in power purchase agreements and reference the full operable capacity of the resource.

164. Hoosier & Southern Illinois assert that the method of calculating unforced capacity and the equivalent forced outage rate (EFORd) need to be included in the tariff if they significantly affect rates and service. Northern Indiana also argues that the EFORd is more properly included in the tariff.

165. Illinois Municipal notes that the standards and procedures for monthly auctions are yet to be made public in the Business Practices Manuals, as required by the tariff, and accordingly requests that those procedures be made available.

4. Midwest ISO Answer

166. The Midwest ISO answers Hoosier & Southern Illinois and the Midwest TDUs by stating its belief that details regarding the determination of reserve zones and the accreditation of the reserves associated with firm system purchases do not need to be included in the tariff. The Midwest ISO considers the calculation of unforced capacity and EFORd to be a technical issue that is most appropriately placed in the Business Practices Manuals.

5. Commission Determination

167. We consider a minimum MW specification for reserve zones to be a significant factor impacting the cost of resource deficiencies for LSEs. As explained in the Compliance Order, while there is one loss of load standard throughout the Midwest ISO, some regions may require additional resources to meet that standard due to congestion.[36] The specification of zones will directly impact the costs LSEs must incur in order to achieve resource adequacy and the major factors effectuating specifications of zones must therefore be in the tariff. We require the Midwest ISO to propose a planning zone minimum MW specification in a compliance filing to be submitted within 30 days of the date of this order.

168. Turning to accreditation of resources raised by the Midwest TDUs, we note that, in the order on the Midwest ISO's 60-day compliance filing, the Commission required that the calculation of the planning reserve margin for system purchase agreements and eligibility criteria for these agreements be specified in the tariff.[37] We encourage parties to discuss their concerns and the Commission will address the treatment of system purchase agreements in the resource adequacy program in its upcoming order on further compliance on the Midwest ISO's proposed tariff language.

169. With respect to the must-offer requirement tariff provisions raised by the Midwest TDUs, the Commission has addressed this issue in the order on the Midwest ISO's 60-day compliance filing.[38] In that order, the Commission found that the resource operational limitations in the provisions to be responsive to the concerns of Manitoba Hydro. The Commission also stated that it would not make contractual interpretations and noted that the Midwest ISO, because it has the responsibility for the contracts in question, can determine if their terms allow the resources to be eligible to be Capacity

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[36] Compliance Order, 125 FERC ¶ 61,062, at P 160 (2008).

[37] Compliance Order, 125 FERC ¶ 61,062, at P 63 (2008).

[38] *Id.* at P 59.

Resources. Accordingly, we do not find it appropriate to reference contractual limitations in tariff provisions and we find it appropriate that the Midwest ISO have the responsibility for determining the resource eligibility of these agreements.

170. Regarding the Midwest TDUs' recommendation that the Midwest ISO should revise its tariff to base the must-offer requirement on the capacity of the resource, and not the unit(s), we note that the Commission recently accepted the Midwest ISO's proposal to base the must-offer requirement on installed capacity and directed the Midwest ISO to define installed capacity.[39] We consider it premature to address the Midwest TDUs' request in this proceeding, and find that it is appropriate for the Midwest TDUs to raise their concerns in the proceeding addressing the new must-offer requirement.

171. We consider the TEMT definition of unforced capacity to be a sufficient description of the calculation, and we do not require further detail on seasonal calculations and maintenance schedules in the tariff. We note that the Commission has accepted a revised definition of unforced capacity that deletes reference to EFORd in the Compliance Order. Accordingly, we expect that the Midwest ISO will be revising its Business Practices Manuals to reflect these changes, and accordingly we will not require the calculation of EFORd in the tariff.

172. In response to concerns raised by several commenters, we expect that the Midwest ISO will be updating its Business Practices Manuals to incorporate the latest tariff changes.

F. Other Issues

1. Interaction between Ancillary Services Market, Scarcity Pricing, and Resource Adequacy Market

a. March 26 Order

173. The Commission required the Midwest ISO to explain the interrelationships between the ancillary services market, scarcity pricing[40] and the long-term resource

[39] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,061, at P 118 (2008) (Rehearing Order).

[40] The Midwest ISO proposes to adopt scarcity pricing in the day-ahead and real-time markets using a demand curve for operating reserves (and co-optimization between the energy and ancillary services prices). Scarcity pricing will be invoked based on the clearing prices established by demand curves when sufficient capacity is not available to meet operating reserve requirements. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 191-220 (2008).

adequacy program, and the impact of these interrelationships on market efficiency and reliability in the 180-day compliance filing.[41]

b. Midwest ISO Filing

174. The Midwest ISO states that it considers the resource adequacy program procedures to be consistent with products and services offered in the energy and ancillary services markets, and with scarcity pricing. The Midwest ISO asserts that the incentives facing market participants in the resource adequacy program and in the energy and ancillary services markets are aligned, thereby supporting efficient and reliable grid operation.

175. The Midwest ISO states that the security-constrained economic dispatch in the energy market ensures safe and reliable system operations every day and that the locational marginal prices (LMPs) provide accurate signals to generators and lay the foundation for resource adequacy since they reflect the value of the last MW of load served. The Midwest ISO contends that such price signals encourage generators to make their capacity available when needed and encourage investors to finance new generation, efficiency improvements and other demand-side measures.[42] Therefore spot markets, according to the Midwest ISO, play a pivotal role in assuring both short-term reliability and long-term resource adequacy.

176. The Midwest ISO asserts that prices that reflect the marginal value of energy or ancillary services at each location and point in time will lead to development of the economically efficient amount of generating capacity. The Midwest ISO explains that its simultaneously co-optimized energy and ancillary services markets will ensure that resources do not have a financial incentive to disregard the Midwest ISO's instructions, which will in turn significantly reduce the need for the Midwest ISO to employ sanctions and penalties to ensure that resources follow instructions and provide the requested amounts of energy and operating reserves.

177. The Midwest ISO states that in scarcity conditions, spot prices should be determined by the consumers' willingness to pay for energy. The Midwest ISO contends that relatively high spot prices will provide scarcity rents for resources and cost savings for price-responsive customers while efficiently directing the available energy to the end users that value it most highly. The Midwest ISO expects that the level of investment induced by scarcity pricing will approximate the level of resource adequacy for which

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[41] March 26 Order, 122 FERC ¶ 61,283 at P 386.

[42] The Midwest ISO states that expectations of future spot-market energy prices are an important driver influencing investment decisions.

consumers have indicated a willingness to pay, provided that the scarcity pricing mechanism allows spot prices to occasionally rise to levels reflecting actual shortage conditions. Without scarcity pricing, the Midwest ISO avers, some generators will not recover their fixed costs and investors will support a lower level of investment than that which satisfies the region's resource adequacy requirements.

c. Comments

178. While noting that the Midwest ISO explains the interrelationships between these programs, the OMS faults the Midwest ISO for failing to demonstrate the impact on market efficiency and reliability as required by the Commission in the March 26 Order. The OMS notes that the ancillary services market is not yet in effect but states that the Independent Market Monitor has explained that changes in Module E and the implementation of the ancillary services market with scarcity pricing will change financial incentives for new resources. The OMS therefore urges the Commission to require the Midwest ISO to provide the required analysis of the impact of the interrelationships between these market features.

179. The Illinois Commission applauds the Midwest ISO for its discussion of the interrelationships, noting that the Midwest ISO description represents the position of the Illinois Commission with respect to the proper relationship between resource adequacy and the Midwest ISO's co-optimized energy and ancillary services market design. However, the Illinois Commission asserts that the actual resource adequacy program neither bears a relationship to nor is coordinated with the energy and ancillary services market design.

180. The Illinois Commission also supports the Midwest ISO's intent to work with stakeholders to evaluate improvements in the design of its energy and ancillary services markets since it considers time and resources spent on these market elements to be more productive than continuing efforts to retool Module E and more likely to ensure cost-effective resource adequacy. The Illinois Commission appreciates the Midwest ISO's stated objective of attaining the optimal spot prices in the energy and ancillary services markets and of allowing scarcity pricing to occur when and if scarcity conditions arise. However, the Illinois Commission asserts that there is little tangible evidence that this is the resource adequacy objective that the Midwest ISO is pursuing.

181. WPSC/UPPCO note that spot prices must rise to very high levels in order to yield cost savings for price responsive customers who would be willing to voluntarily curtail their demand through price responsive demand programs and to yield sufficient scarcity rents to investors in order to recover capital costs in future resources. Citing to studies by Dr. William Hogan and the Electric Power Research Institute, WPSC/UPPCO assert that scarcity prices of at least $10,000/MWh for at least 10 hours/year is needed to induce future generation construction by investors and to induce voluntary load curtailment through price responsive demand programs. WPSC/UPPCO consider the $3,500/MWh

scarcity price level to be grossly inadequate to cover shortages in the energy market. For this reason, WPSC/UPPCO recommend that the Commission direct the Midwest ISO to address the scarcity pricing issue of the combined energy and ancillary services market comprehensively. WPSC/UPPCO contends it is imperative that the Midwest ISO spell out the details of the energy-only market that depends on a scarcity pricing mechanism to ride through periods of shortage situations.

d. Commission Determination

182. We find the Midwest ISO's explanation of the interrelationships between the ancillary services market, scarcity pricing and the long-term resource adequacy program and their impact on market efficiency and reliability to be responsive to the Commission's directive in the March 26 Order. We note that the comments reflect the same positions taken by these parties in their requests for rehearing of the March 26 Order and the Commission has responded to those arguments in the Rehearing Order.[43]

2. Other Issues

a. Comments

183. Commenters also raise miscellaneous issues pertaining to the resource adequacy program, such as the overall direction, purpose and reasonableness of the Midwest ISO resource adequacy program,[44] the need for refinements to certain resource adequacy provisions,[45] the need for better integration of the proposed provisions with the Capacity Tracking Tool,[46] seams issues,[47] and the need for annual reports and readiness evaluations.[48] Other parties request delay and also restate arguments previously raised regarding the effective date of Module E.[49] The Midwest ISO responds in its answer that the subject proceeding is not another venue for parties to challenge issues that should

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[43] Rehearing Order, 125 FERC ¶ 61,061 at P 48-55.

[44] FirstEnergy, Illinois Commission, Midwest Industrial, Integrys, WPSC/UPPCO, Calpine, Duke.

[45] Reliant, FirstEnergy, Alliant, WPSC/UPPCO, IPL, Duke.

[46] Reliant, Dynegy.

[47] Joint Commenters, Duke, FirstEnergy, WPSC/UPPCO.

[48] IPL, Duke, Alliant, Reliant.

[49] Illinois Commission, Wisconsin Electric, IPL.

have properly been raised in other proceedings, and recommends that the Commission reject attempts to expand the scope of this compliance proceeding. The Midwest ISO notes that the Commission did not provide in the March 26 Order for stakeholders to redress whichever resource adequacy-related issues they had raised previously or felt need further emphasis.

b. Commission Determination

184. We reject these arguments as beyond the scope of the issues raised by the Midwest ISO's June 25, 2008 compliance filing, which concerns the financial settlement provisions, whether certain matters should be included in the tariff or the Business Practices Manuals, and the interaction of the resource adequacy program and the ancillary services market. In any event, we note that the Commission has already addressed many of the issues noted above in the March 26 Order and is also addressing these issues in the Rehearing Order.[50] We encourage the Midwest ISO and stakeholders to continue their discussions on these issues. With regard to recommendations to delay the start of the resource adequacy program, we repeat the Commission's findings in the March 26 Order[51] and the Rehearing Order[52] that there is sufficient time between the submittal of the compliance filings, the Commission issuance of orders on these filings and the start of the planning year in June 2009 for market participants to obtain the details necessary to make informed decisions on obtaining resources and ensure that they avoid the financial settlement provisions.

The Commission orders:

(A) The Midwest ISO's proposed tariff provisions are hereby conditionally accepted for filing, to become effective March 1, 2009, as discussed in the body of this order.

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[50] Rehearing Order, 125 FERC ¶ 61,061 at P 48-55.

[51] March 26 Order, 122 FERC ¶ 61,283 at P 411-15.

[52] Rehearing Order, 125 FERC ¶61,061 at P 77.

(B) 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. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.