105 FERC ¶ 61,145

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER03-1118-000

ORDER GRANTING MOTION TO WITHDRAW FILING
AND PROVIDING GUIDANCE

(Issued October 29, 2003)

1. On July 25, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a proposed Open Access Transmission and Energy Markets Tariff (TEMT) pursuant to Section 205 of the Federal Power Act, containing the terms and conditions necessary to implement Midwest ISO's Day-Ahead Energy Market, Real-Time Energy Market and Financial Transmission Rights (FTRs) markets on March 31, 2004. The Midwest ISO states that its filing will comply with a February 24, 2003 declaratory order, which approved or conditionally approved general principles for these markets. In response to the comments on, and protests to, its filing, the Midwest ISO filed an Answer that sought guidance on two issues identified as critical – control area operations and the appropriate treatment of grandfathered agreements – as well as several other significant issues.

2. On October 17, 2003, the Midwest ISO filed a motion to withdraw the Midwest ISO's filing. The Midwest ISO acknowledges protestors' concerns that the proposed TEMT does not contain key elements, including: (1) procedures for nomination and distribution of Financial Transmission Rights; (2) an Independent Market Monitoring and Market Mitigation module; or (3) a resource adequacy requirement proposal. The Midwest ISO also notes stakeholders' concern that efforts to develop an energy market may compromise the Midwest ISO's ability to address reliability issues. The motion stated, however, that the Midwest ISO continued to seek "any and all guidance the

Commission can give the Midwest ISO and its stakeholders on the matters presented in the July 25th Filing."[1]

3. In this order, we will accept the Midwest ISO's motion to withdraw its filing and provide the guidance that it requests on some of its specific proposals. We expect that our guidance (in this order and in the companion orders we will issue today in Docket Nos. ER03-323-001 et al.) will better enable the Midwest ISO to prepare and file a complete version of the TEMT, or any similar proposal, including all provisions that are to take effect on the same day, pursuant to Section 205 of the Federal Power Act.[2] We will require the Midwest ISO to propose a timeline for doing so. In our acceptance of the withdrawal motion, we also want to give full effect to a companion stakeholder resolution which urged the Midwest ISO staff "to continue to expeditiously resolve all reliability and market issues." In that regard, we reaffirm our commitment to expedited decisionmaking on the many issues involved so that the implementation of the markets by the Midwest ISO can proceed confidently. This order benefits customers by ensuring that planned reliability measures are in place prior to the start of the energy markets, and by permitting the Midwest ISO to work on a complete market rules proposal in a collaborative manner with stakeholders and Commission staff.

I. Background

4. In an order dated December 20, 2001 (December 20 Order),[3] the Commission found that the Midwest ISO's proposal to become a Regional Transmission Organization (RTO) satisfied the requirements of Order No. 2000,[4] and thus granted the Midwest ISO RTO status. The Commission also determined that the Midwest ISO's proposal for congestion management was a reasonable initial approach to managing congestion and satisfied the requirements of Order No. 2000 for Day 1 operation of an RTO. It directed

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[1] Motion to Withdraw Without Prejudice the July 25 Energy Markets Tariff Filing (Motion to Withdraw) at 5.

[2] As this order provides guidance only and the matters discussed are subject to further proceedings, this order is advisory in nature and not subject to rehearing. Parties may revisit any issue de novo after Midwest ISO refiles an energy markets tariff.

[3] Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001), reh'g denied, 103 FERC ¶ 61,169 (2003) (collectively, Declaratory Order).

[4] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Feb. 25, 2000), FERC Stats & Regs. ¶ 31,092 (2000), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

the Midwest ISO to coordinate its Day 2 congestion management efforts with the pending rulemaking on Standard Market Design. Additionally, the Commission found that the Midwest ISO's market monitoring plan generally satisfied the Order No. 2000 requirements, but required the Midwest ISO to file certain additional information for Commission review.

5. As directed in the December 20 Order, the Midwest ISO filed a proposed Market Monitoring Plan and Retention Agreement. Upon the Commission's acceptance of the documents, they were incorporated into Midwest ISO's open access transmission tariff (OATT) as Attachments S and S-1, respectively.[5] In a separate order, the Commission accepted, subject to modifications, the Midwest ISO's proposed Market Mitigation Measures as Attachment S-2 to the Midwest ISO OATT.[6] The Midwest ISO submitted proposed revisions to the Market Mitigation Measures in a filing dated April 15, 2003, and a technical conference was held on June 26, 2003. The Commission is issuing two companion orders concurrent with this order to address a compliance filing (Docket Nos. ER03-323-002 and ER03-323-003, 105 FERC ¶ 61,146 (2003)) and a number of requests for rehearing of the Commission's prior orders on the Midwest ISO's market power mitigation proposals (Docket Nos. ER03-323-001 and ER03-323-004, 105 FERC ¶ 61,147 (2003)).

6. To address the Commission's instruction that the Midwest ISO remain mindful of the proposed Standard Market Design in developing its Day 2 congestion management proposal, the Midwest ISO filed a Petition for Declaratory Order that sought the Commission's endorsement of the general approach represented in three proposed market rules (Market Rules). The Market Rules proposed in the filing would provide for: (1) a security-constrained, centralized bid-based scheduling and dispatch system (i.e., day-ahead and real-time market rules); (2) FTRs for hedging congestion costs (FTR Rules); and (3) market settlement rules.

7. The Commission affirmed the general direction of the Midwest ISO's energy markets proposals, reserving judgment on some issues and providing guidance on others as discussed below.[7] The Commission reaffirmed many of its conclusions on rehearing.[8]

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[5] See Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,237 (2002); Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,228 (2002).

[6] See Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,280 (2003).

[7] Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 (2003).

The Midwest ISO states that its July 25 filing was made in compliance with the Declaratory Order.

II. Open Access Transmission and Energy Markets Tariff

8. The Midwest ISO's July 25 filing proposes a revised electric tariff – the TEMT – to govern all services that the Midwest ISO provides.[9] The Midwest ISO states that it created this market design in collaboration with its stakeholders in order to comply with Order No. 2000's requirement that RTOs provide real-time energy imbalance service and a market-based mechanism for managing congestion. The TEMT proposes the terms and conditions necessary to implement three new energy markets: (1) day-ahead energy markets; (2) real-time energy markets; and (3) FTR markets.[10]

9. Module A of the TEMT includes all common tariff provisions, including a listing of defined terms used in the tariff and their meanings, provisions related to ancillary services, the open-access same-time information service (OASIS), reciprocity, creditworthiness and dispute resolution procedures. The Midwest ISO notes that the TEMT modifies the current OATT to provide separate provisions for billing transmission customers for transmission services and market participants for market services. This allows differentiation of creditworthiness determinations and billing and settlement practices for transmission customers and energy markets participants.

10. Module B of the TEMT includes provisions of the current OATT that govern the provision of transmission service under the tariff. The Midwest ISO states that selected provisions have been revised to include penalty provisions applicable to those instances in which a point-to-point transmission customer's net metered interchange exceeds its reserved capacity.

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[8] Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,210 (2003).

[9] The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. In turn, the TEMT defines "Transmission Provider" as the Midwest ISO or a successor organization. See Module A, Section 1.246, Original Sheet No. 99. We will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

[10] The Midwest ISO avers in its September 26, 2003 Answer, however, that it intends to propose a phased implementation process that would initiate a real-time energy market in May 2004 and a day-ahead market on November 1, 2004, gradually incorporating other market functions at intermediate stages.

11. Module D of the TEMT eventually will contain the market power mitigation provisions currently found in Attachments S and S-2 of the OATT. The Midwest ISO states that it has not included the Market Mitigation Measures currently on file as Attachment S-2 in order to limit confusion and to allow full adjudication of the issues surrounding the filing of these measures. The Midwest ISO commits to include the Market Mitigation Measures in the TEMT prior to the implementation of the energy markets.

12. The Midwest ISO has reserved Module E of the TEMT for provisions addressing generation resource adequacy. It states that the Midwest ISO Supply Adequacy Work Group is currently addressing issues to the development of resource adequacy provisions, pursuant to the Commission's instructions in the Declaratory Order. The Midwest ISO states that it expects to file Module E with the Commission in May 2004.

III. Notice of Filing and Responsive Pleadings

13. Notice of the July 25 filing was published in the Federal Register, with protests, comments and interventions due August 15, 2003.[11] The Commission later extended the deadline for filing responsive pleadings to September 15, 2003. The parties listed in Appendix A filed notices of interventions, protests, and comments, as detailed below. Parties including Basin, Coalition of MTC and WPS Companies also included motions for procedural relief such as summary disposition or hearing. Detroit Edison included various requests for clarification with its comments, and asks the Commission to instruct the Midwest ISO to provide that clarification. Midwest TDUs filed a response to some comments. The Midwest ISO filed an Answer to the protests and comments on September 26, 2003. Hoosier, WPS Companies, WEPCO, Coalition of MTC, MISO TOs and Midwest TDUs filed responses to the Answer, and Cinergy filed a motion to defer consideration.

A. The Midwest ISO's Answer

14. The Midwest ISO's Answer describes potential revisions to the timeline for its implementation of the energy markets proposed in the TEMT. The Midwest ISO states that it believes that a transitional approach to energy markets will more effectively support system reliability than the plan that it proposed in its initial filing, and that it and its stakeholders have discussed modifying the timing of the implementation of the energy markets. In its Answer, the Midwest ISO proposes to open the real-time energy market in May 2004, followed by the day-ahead market on November 1, 2004.

[11] 67 Fed. Reg. 46,599 (2003).

15. In addition, the Midwest ISO's Answer seeks Commission guidance on two critical issues: (1) treatment of grandfathered contracts executed prior to September 1998; and (2) the Midwest ISO's plans to address operational responsibilities and authorities between itself and control area operators. The Midwest ISO states that Commission guidance on these issues, and others, will greatly facilitate ongoing stakeholder discussion.

B. The Midwest ISO's Motion to Withdraw

16. On October 17, 2003, following a meeting of the Midwest ISO Board of Directors, the Midwest ISO filed a Motion to Withdraw the July 25 TEMT filing. The Midwest ISO acknowledges protestors' concerns that the TEMT does not contain key elements, including: (1) procedures for nomination and distribution of FTRs; (2) an Independent Market Monitoring and Market Mitigation module; or (3) a resource adequacy requirement proposal. The Midwest ISO also notes stakeholders' concern that efforts to develop an energy market may compromise the Midwest ISO's ability to address reliability issues.

17. The Midwest ISO Advisory Committee, by a vote of 16.5 to 5.5, passed a resolution at its October 15, 2003 meeting that asked the Midwest ISO to request withdrawal of the TEMT and continue to work on its energy markets proposals. Next, the Advisory Committee unanimously passed a motion stating: "The stakeholders encourage the [Midwest ISO] staff to continue to expeditiously resolve all reliability and market issues." The Midwest ISO Board authorized the request to withdraw the TEMT filing at its October 16, 2003 meeting, but instructed counsel to ask the Commission to provide "any and all guidance the Commission can give the Midwest ISO and its stakeholders on the matters presented in the July 25th filing."[12] Additionally, the Advisory Committee resolution, which the Midwest ISO appends to the Motion, indicates that the Midwest ISO "should consider refiling a comprehensive, detailed, fully functional Day Two Market tariff after appropriate review by and consultation with the Advisory Committee," after the Midwest ISO has completed intermediate reliability-related tasks.

C. Answers to the Midwest ISO's Motion to Withdraw

18. The Midwest TDUs, together with Coalition MTC, Citizens Utility Board, Consumers, Great River/Dairyland, Illinois Municipal, WEPCO, Wisconsin Entities and WPS Resources (collectively, Joint Respondents), filed a response supporting the Motion

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[12] Motion to Withdraw at 5.

to Withdraw and request for Commission guidance.[13] Joint Respondents agree that it is in the Midwest ISO's best interests to withdraw the TEMT filing. They further state that withdrawal presents an opportunity to break the litigation cycle that developed from the Midwest ISO's original filing. They caution, however, that providing substantive written guidance on matters in dispute will fail to break the litigation cycle.

19. Michigan Agencies filed a timely response in support of the Motion to Withdraw. They urge the Commission, however, not to provide guidance on the substance of the TEMT filing. Michigan Agencies argue that the Commission does not have a record to inform it of the specific nature and needs of each such contract. They also caution that providing guidance at this point could derail Michigan Municipal Power Agency's application to join the Midwest ISO.

20. Exelon filed a timely answer in favor of rejecting the Motion to Withdraw that asks the Commission to decide whether or not the rates, terms and conditions of the TEMT are just and reasonable. Exelon complains that the Midwest ISO has several times pushed back the start of market operations, and that allowing withdrawal will create more uncertainty as to when energy markets will be implemented in the Midwest.

21. Crescent Moon filed, one day out of time, an answer urging the Commission to grant the Motion to Withdraw and terminate the proceeding, but decline to provide the guidance that the Midwest ISO has requested. Crescent Moon argues that the Midwest ISO's request for guidance indirectly asks the Commission to determine that the provisions of the July 25 filing are just and reasonable. Crescent Moon also believes that the request for guidance is tantamount to a declaratory order request.

IV. Discussion

A. Motion to Withdraw

22. The Commission appreciates the concerns of many commenters and protestors that many interrelated provisions of the TEMT cannot be fully evaluated until a complete version of the TEMT, or any similar proposal, including all provisions that are to take effect on the same date, has been filed pursuant to Section 205 of the Federal Power Act. We will therefore grant the Midwest ISO's motion to withdraw its filing and provide guidance on further developing an energy markets tariff for future resubmission. Our companion orders concerning the Midwest ISO's Market Mitigation Measures will provide similar guidance, also with the goal of enabling the Midwest ISO to file a

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[13] The Municipal Energy Agency of Nebraska, which has not formally intervened in this docket, also supports the response. See Response of Midwest TDUs, et al., at 1.

comprehensive, revised energy markets proposal. The Commission anticipates that these three orders, taken together, will provide the Midwest ISO with the guidance it needs to fully develop its proposals and to submit a revised, comprehensive energy markets proposal (Market Rules Refiling), as envisioned in the Midwest ISO Advisory Board's resolution. The Commission will provide a full opportunity to protest and comment on any such filing.

23. In addition to providing guidance, the Commission also will require the Midwest ISO to prepare and file, for informational purposes, a revised timeline for implementing its markets and reliability measures.

B. Critical Issues Identified in the Midwest ISO's Answer

1. Control Area Responsibilities

a. The Midwest ISO's Proposal

24. The Midwest ISO states that it must coordinate closely with all market participants, especially control area operators, to successfully conduct the energy markets while carrying out its operational responsibilities. In addition, the Midwest ISO explains that it is responsible for effective coordination procedures with all of the control area operators in the transmission provider's region. Module C of the TEMT proposes a revised allocation of functions between the Midwest ISO and the control area operators in the transmission provider's region, pursuant to which the Midwest ISO will assume some functions that control area operators historically have performed. The Midwest ISO believes that the revised separation of functions and responsibilities is necessary to enable it to meet its fiduciary obligations as an RTO.

25. Currently, the Midwest ISO serves primarily as a central point for transmission scheduling; it also coordinates planned outages, issues Transmission Loading Relief procedures, and directs emergency response. The Midwest ISO proposes that its operational responsibilities under the TEMT include: (1) coordinating the actions of control area operators in the transmission provider's region; (2) ensuring short-term reliability; (3) establishing and coordinating consistent facility outage and maintenance schedules; (4) declaring and responding to emergency conditions; (5) ensuring adequate ancillary services are provided; and (6) coordinating with control area operators that are located outside the transmission provider's region. It proposes that the control area operators within its region will be responsible for: (1) implementing financially binding dispatch instructions from the Midwest ISO; (2) following specified Good Utility Practices; (3) procuring, or arranging for procurement of, ancillary services; (4) applying a common generator resource control scheme in their control areas; (5) coordinating with load-serving entities in their control areas to provide load forecasts; (6) assisting the

Midwest ISO in responding to emergency conditions; and (7) receiving energy market schedules from the Midwest ISO.

26. In accordance with Commission regulations requiring that an RTO maintain the short-term reliability of the transmission provider region, the Midwest ISO proposes to: (1) receive, confirm and implement interchange schedules; (2) redispatch generation if necessary for reliability; (3) have authority to approve or disapprove scheduled generation and transmission facility outages; and (4) coordinate with neighboring reliability areas to ensure that reliable, non-discriminatory and efficiently priced transmission service is provided. The Midwest ISO believes that a regional energy market can ensure reliability more efficiently and effectively than control area operators, because control area operators have access to data pertaining to only a portion of the RTO.

27. With regard to coordinating generation outage and maintenance schedules, the Midwest ISO proposes to: (1) coordinate all generation maintenance and generation planned outages; (2) identify opportunities for rescheduling such outages to enhance reliability; and (3) document outages.

28. The proposed Module C provides the Midwest ISO with authority to declare and respond to emergency conditions. Specifically, the Midwest ISO proposes to be responsible for: (1) determining and declaring that an emergency condition exists; (2) directing and coordinating arrangements to respond to emergency conditions; (3) coordinating with market participants regarding emergency conditions; (4) administering emergency procedures; (5) issuing emergency procedures when supply exceeds load; and (6) implementing load shedding procedures in accordance with Attachment Q.[14]

29. The Midwest ISO proposes to be responsible for coordinating the provision of ancillary services. This responsibility will include: (1) serving the energy purchase and ancillary services requirements of market participants under ordinary circumstances; (2) providing direction to control area operators regarding the procurement of spinning and non-spinning reserves; (3) receiving information from market participants that are capable of providing regulation, spinning and non-spinning reserves; and (4) allocating and reserving “regulation up” capacity.[15]

[14] Attachment Q incorporates by reference the North American Electric Reliability Council Transmission Loading Relief Procedures.

[15] Regulation Up is defined as “Regulation Reserves that have the capability to increase output in response to a regulating control signal.” Module A, Section 1.208, Original Sheet No. 87.

30. Finally, the Midwest ISO proposes to coordinate with neighboring control areas. Module C provides that the Midwest ISO will: (1) direct and coordinate with neighboring control areas during emergency conditions; (2) provide reliability information to neighboring control areas; (3) confirm external bilateral transaction schedule requests with neighboring control areas; and (4) enter into agreements with neighboring control areas for regulation services. The Midwest ISO states that it is negotiating a joint operating agreement with PJM to respond to seams issues, as directed by the Commission.[16] It also has entered into a joint relationship with TVA and PJM to address regional issues.

b. Intervenors' Comments

31. Cinergy, MISO TOs and Xcel argue that the Midwest ISO is not authorized to act as a control area, at least not until NERC certification. They argue that the Midwest ISO has prematurely taken on a number of control area functions. They claim that control areas should answer to NERC and regional reliability councils, not to the Midwest ISO (or the Commission). MISO TOs claim further that the Commission does not have the authority under the Federal Power Act to accept provisions for non-Commission jurisdictional services, such as those provided by control areas. Cinergy argues that most, if not all, control area obligations should be the subject of bilateral agreements between the control areas and the Midwest ISO, perhaps even a comprehensive "pro forma" control area agreement.

32. The Midwest ISO answers that under Appendix E of the Transmission Owner Agreement, it has the authority to regulate control area operations in the manner proposed and that this is indeed its responsibility. Appendix E gives the Midwest ISO "functional control of the Transmission System [and responsibility] for the security of the Transmission System."

33. EPSA, Exelon, and PSEG argue that the Commission has to establish a date certain for consolidation of the control areas under the Midwest ISO. EPSA requests a technical conference on the subject. WPS states that the Midwest ISO functions already fulfill the definition of a control area operator and should be acknowledged as such. The Wisconsin Commission requests that the Commission clarify whether or not the Midwest ISO will be a control area operator after market start-up.

34. The Midwest ISO answers that it does not intend the TEMT filing to be "the endpoint in the development of tariff or related language concerning Control Area operations or reliability." Instead, it intends the proposed Reliability Charter process to

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[16] See Alliance Companies, et al., 103 FERC ¶ 61,274 (2003).

be a collaborative venue for further development of certain uniform control area requirements.

35. A number of other operational and financial issues were raised. Several intervenors were concerned that control areas that currently have waivers of Commission standard of conduct rules would be subject to restructuring under the new tariff. The Midwest ISO answers that the waivers will be honored.

36. A number of intervenors point to tariff language that is not sufficiently clear about the nature and extent of control area responsibilities. Cinergy, Consumers, Dynegy, MISO TOs and WEPCO cite rules for load shedding; actions under emergency conditions; whether certain data (e.g., availability) should be provided to the control area, the Midwest ISO or both; and responsibility for short-term reliability. Cinergy and MISO TOs express concern that while the TEMT provides limited liability for transmission providers and transmission owners, it does not do so for control area operators.

37. ATC/ITC/METC, MISO TOs, TRANSLink, and Midwest TDUs are concerned that the new control area responsibilities will result in the favoring of the control area operators' own assets and will have a number of cost implications, including insufficient compensation for new investments (e.g., real-time metering on customer request) and cost shifting.. This could occur in part due to overlapping Midwest ISO and non-Midwest ISO assets under one control area.

38. Some intervenors claim that the current design of control area operations could have adverse effects on system reliability. WPS states that this results from the Midwest ISO taking exclusive control of some but not all key control area functions. For example, control area operators who now calculate Net Scheduled Interchange (NSI) will have to take the Midwest ISO's NSI calculation as a given.

39. Finally, for control areas on the boundaries of the Midwest ISO system, such as Otter Tail, overlaps with non-Midwest ISO entities and dynamic scheduling with non-Midwest ISO control areas have established contractual and operational relationships that could be adversely affected under the TEMT rules.

c. Discussion

40. Since the inception of the Midwest ISO in 1998, the Commission has spoken to the need for the Midwest ISO to ensure that market operations are both reliable and efficient. The Midwest ISO's authority to require operational changes by control areas was the subject of several of those Orders.

41. In the Order of September 16, 1998, we noted that "[t]he threshold question is: how much control does the ISO need over generation in order to provide reliable, non-

discriminatory transmission service? In particular, should the ISO have additional authority over the balancing functions that the Applicants propose would continue to be performed by the current control areas?"[17] To reflect that concern, the approval of the proposed division of responsibilities between the Midwest ISO and the control areas was made conditional on the filing, no later than sixty days prior to the Transfer Date, of a detailed summary of the Midwest ISO's operating and emergency procedures, and an 18 month assessment of the competitive and reliability effects of continuing the multiple control area operation. The Commission further noted that although it anticipated that the ISO would follow the transmission owners' current procedures and practices, "the ISO must have the flexibility to seek to revise existing procedures and practices to ensure reliability and nondiscrimination in the provision of transmission and ancillary services." This Order thus clearly spoke to possible changes in control area operations under Midwest ISO direction.[18]

42. The Commission again noted its concern about the Midwest ISO-control area relationship in the Declaratory Order of February 24, 2003, where we said that we expected that the number of control areas in the Midwest could be "significantly reduced, or other measures might be adopted to address any problems identified."[19] Under that Order, the Midwest ISO was instructed to file its one year "assessment of any efficiency and independence issues created by the continuation of the 40 Control Area structure, an analysis of merging control area functions in part or all of the Midwest ISO (and thus reducing the number of control areas), a recommendation to the Commission for consolidating Control Areas and the timeframe for such operational integration should the analysis support such an outcome." Again, this requirement speaks both to functions and operations, as consolidation of control areas with different operations would require changing those operations even if the control area remained only under the functional control of the Midwest ISO.

43. In its Answer, the Midwest ISO asserts that the Midwest ISO Transmission Owner Agreement gives it the responsibility to regulate control area operations. The

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[17] Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 at 62,159 (1998), order on reh'g, 85 FERC ¶ 61,372 (1998).

[18] In disagreements, the ISO's determination was to prevail subject to the outcome of any ADR proceedings. The ISO was further instructed that "If the ongoing monitoring program determines that the split of functions creates a competitive or reliability problem that affects the ISO's ability to provide reliable, non-discriminatory transmission service, which the ISO cannot resolve, the ISO must report this problem immediately to the Commission and other appropriate regulatory authorities."

[19] Order on Petition for Declaratory Order, February 24, 2003.

Commission agrees with the Midwest ISO that the Transmission Owner Agreement affords the Midwest ISO significant latitude on functional control over these operations. As such, we disagree with commenters such as Cinergy that the Midwest ISO proposes "to depart from the negotiated terms upon which Cinergy voluntarily agreed to join the RTO."[20]

44. Article Three of the Midwest ISO Transmission Owner Agreement provides that "each of the [Transmission] Owners authorizes the Midwest ISO to exercise functional control over the operation of the Transmission System as necessary to effectuate transmission transactions administered by the Midwest ISO," consistent with applicable regulations and reliability guidelines. The question is not whether the Midwest ISO may assert such authority, but whether doing so is consistent with the terms of the Transmission Owner Agreement in light of applicable regulations. The Commission specifically requires RTOs, including the Midwest ISO, to have operational authority over all transmission facilities under their control.[21] Order No. 2000 granted RTOs flexibility to decide how to exercise this operational control, and to "decide on the combination of direct and functional control that works best for its circumstances."[22] We find the Midwest ISO's proposal is consistent with the Transmission Owner Agreement in light of Order No. 2000.

45. The Midwest ISO emphasizes in its Answer that in light of the proposed implementation of energy markets, its responsibilities for maintaining system reliability require control areas to cooperate on a new level. We observe that Article 3 of the Midwest ISO Transmission Owner Agreement assigns the Midwest ISO "responsibility for the reliability of the Transmission System in connection with its rights, powers, and obligations under this Agreement." Further, the Commission's regulations require an RTO to "have exclusive authority for maintaining the short-term reliability of the grid that it operates." The Midwest ISO's proposal therefore appears to be motivated by its responsibility to maintain system reliability.

46. Given the large number of control areas in the Midwest ISO footprint, the variation in how those control areas are operated, and the fact that the traditional control

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[20] Protest of Cinergy Services, Inc. at 32.

[21] 18 C.F.R. § 35.34(j)(3)(i) (2003).

[22] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,090 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Feb. 25, 2000), FERC Stats & Regs. ¶ 31,092 (2000), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

area concept does not always map consistently into the functions required in the restructured electricity markets, the Midwest ISO should adopt the recent NERC classification of NERC service functions as a method of organizing future discussions of the allocation of responsibilities for reliable market and power system operations. Those categories are: Reliability Authority, Balancing Authority, Interchange Authority, Transmission Service Provider, Transmission Owner, Transmission Operator, Market Operator, and Planning Authority. The Midwest ISO should state clearly the current responsibilities under each of these categories and the proposed changes in those responsibilities. That is, under this approach, each current entity with functional and operational responsibility would be mapped into existing or revised functions under these service headings. For example, a significant change proposed in the July 25th Tariff filing is the shift in certain Balancing Authority responsibilities from the control area operators to the Midwest ISO.

47. We note the concern of the OMS and other stakeholders that the State Estimator being implemented by the Midwest ISO meet certain performance metrics prior to market start-up. We will continue to monitor progress with regard to the State Estimator and other market and system operational elements. To the extent that it is not already being done, we agree with the OMS that Midwest ISO should prepare a backup plan for market pricing and system operations in periods when the State Estimator fails or provides poor quality data.

48. In summary, we support the Midwest ISO's efforts to develop system operations functions and capabilities that are necessary for the implementation of a reliable and efficient regional power market, as well as providing the basis for extension of that market into ancillary services. While control area operators currently play an integral role in maintaining short-term reliability, given the regional nature of the grid, it is important for an entity that covers a wider region such as the Midwest ISO to have the operational authority necessary to prevent disturbances in one area from spreading to others. To successfully and reliably operate a centralized, bid-based dispatch market, the Midwest ISO must have the ability to direct the actions of control areas through financially binding LMPs along with penalties for excessive deviations from dispatch instructions. Such transparent pricing through the balancing market provides important information about regional system conditions to market participants, who are able to take actions to support grid security. This basic responsibility should be the starting point for discussion in the proposed Reliability Charter.

49. The Commission is concerned that the Midwest ISO have the ability to perform all of the functions needed to reliably operate a centralized bid-based dispatch market over its entire footprint. We have not needed to address this concern in the other bid-based markets we have approved because the transmission provider in each of those markets was already a control operator that performed all of the functions. Our concern is deepened by the fact that part of the Midwest ISO region was the setting for the recent

power blackout. At the initiation of its Reliability Charter collaborative process, we advise the Midwest ISO to state clearly which functions must be under its exclusive direction to ensure that reliability is maintained. We encourage Midwest ISO to seek the advice of NERC as well as other ISOs and RTOs regarding this determination. How those functions are carried out by Midwest ISO should be addressed in the Reliability Charter process.

50. In recognition of the high importance of the various undertakings at the Midwest ISO that address regional reliability, we will direct that the Midwest ISO file for informational purposes an update on progress in this area, three months from the date of this Order. The report should include a detailed description of the then-current and proposed allocation of responsibilities between the Midwest ISO and the control areas and the status of the capabilities of each entity to perform its proposed responsibilities. Additionally, we will require the Midwest ISO to include dates for addressing reliability measures, including completion of the Reliability Charter, when it files the timeline required by this order for market implementation. Moreover, as expressed in our Declaratory Order, we support consolidation of control area operations and have requested an evaluation of progress towards this goal within one year of Day 2 market start-up.[23]

51. On the other issues, the Midwest ISO has stated that it did not intend to modify the Commission's standards of conduct provisions for utilities that currently have waivers in the TEMT. We are encouraged that the Midwest ISO has offered to clarify this issue in the filing of the revised tariff.

52. We will not address here the remaining issues intervenors have raised; however, these issues should be addressed during the collaborative process on reliability and subsequently in the next version of the tariff if necessary. The issues to be addressed include: (1) clarification in the tariff obligations for the Midwest ISO and control areas; (2) discussion of liability issues for control area operators; (3) discussion of any cost shifting and compensation that will occur under new control area responsibilities or opportunities for favoring the control area operator's own generation; (4) analysis of potential adverse impacts on reliability resulting from the shift in responsibilities and new cost obligations, and corrective measures that can be taken; and (5) resolution of seams issues, if any, that result from changes in control area responsibilities.

[23] Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 at P 42 (2003).

2. Pre-OATT Grandfathered Agreements

a. The Midwest ISO's Proposal

53. The Midwest ISO estimates that when the energy markets first begin operation, there will be 309 agreements that were executed prior to the issuance of Order No. 888 (grandfathered agreements) in effect within the Midwest ISO Region.[24] Midwest ISO estimates in its answer that such contracts affect about 40 percent of the peak capacity of the grid in the Midwest ISO.[25] Midwest ISO states that these agreements are diverse and include agreements for: 1) point-to-point or network transmission service; 2) interchange and interconnection in exchange for energy services; 3) full or partial requirements service; 4) "reciprocal use" where parties provide access to each other's system, often for exchanges in-kind and/or for set rates. The Midwest ISO states that it does not propose to alter these grandfathered agreements. However, to avoid negative reliability impacts, cross subsidization between grandfathered agreement customers and other customers, and large inefficiencies in its new markets, Midwest ISO proposes to require that parties to grandfathered agreements conform to the bilateral scheduling requirements of the Midwest ISO Tariff and pay the costs associated with the submitted schedules. These costs include congestion costs, marginal losses, Schedule 17 charges to recover the costs of administering the energy markets, and real-time LMP imbalances.

54. In its TEMT filing, the Midwest ISO proposes treatment of grandfathered agreements that generally assigns congestion costs to the party that is responsible for scheduling transactions under the contract. The Midwest ISO's proposal has two exceptions to this rule: (1) for transmission-only contracts, the Midwest ISO proposes to hold the seller responsible for congestion costs regardless of which party is responsible for scheduling transactions; and (2) for partial or full requirements contracts where the buyer is responsible for scheduling but is not a Commission-jurisdictional entity, the Midwest ISO proposes to hold the seller responsible for congestion charges. The Midwest ISO proposes that in exchange for these obligations, and in addition to receiving the benefits of operating in an LMP-based market, the party to grandfathered agreements responsible for paying congestion will have an opportunity to nominate and receive FTRs based on the grandfathered agreements. The Midwest ISO proposes to charge all parties

[24] In its Answer, the Midwest ISO states that it has examined 395 contracts and believes that 309 will be in effect in the Midwest ISO Region at the time of market start-up.

[25] The Midwest ISO was able to estimate megawatt usage amounts for 145 of the grandfathered contracts. The cumulative amount for these contracts, 20 gigawatts, represents over 20 percent of the Midwest ISO's grid capability. The Midwest ISO extrapolated from the 145 contracts, representing less than half of the total 309 contracts, to arrive at the 40 percent figure.

receiving FTRs, including parties scheduling for grandfathered agreements, the cost of administering the FTR markets (Schedule 16 charges).

55. In its Answer, the Midwest ISO proposes to amend its filing to allow for parties to negotiate the issue of which party has responsibility for congestion and other market-related charges. The Midwest ISO states that the proposal contained in its filing would be the default proposal should parties to a grandfathered agreement not be able to resolve the issue.

56. The Midwest ISO argues that its proposal is equitable because: (1) it is not abrogating any contract rights between the commodity sellers and their customers; (2) there will be no change from the current arrangements regarding the burdens on parties to economically dispatch their units; and (3) the parties allocated FTRs will be the same parties that have responsibility for congestion management costs, so the Midwest ISO is assigning responsibility for congestion simultaneous with assigning an effective means for handling such risks. Finally, the Midwest ISO states that the Commission should clarify that "prudently incurred cost associated with these [grandfathered contracts] should be recoverable.[26]

b. Intervenors' Comments

57. The OMS is primarily concerned with the "significant" change regarding grandfathered agreements that was introduced for the first time by the Midwest ISO in its TEMT filing and was not discussed in the stakeholder process. The Midwest ISO previously represented that it would not alter such agreements. The OMS recognizes that the issues surrounding grandfathered agreements will not be "finalized today, but will need to be further addressed in the development of the energy market and the initial allocation of FTRs to ensure those holding [grandfathered agreements] or LSEs are not harmed relative to their risk profile." The OMS, as well as most intervenors in the proceeding, requests that the Commission allow time to address this issue through the stakeholder process.

58. The Midwest ISO Transmission Owners state that the Midwest ISO's proposal would either abrogate the grandfathered contracts by changing the economics of those contracts or illegally trap costs between the transmission owner and the contract. The Midwest ISO Transmission Owners state that the Midwest ISO has not filed required cost data to support the substantial rate increase that the proposal would create in the grandfathered contracts. Further, they state that cost causation principles require rejection of the proposal because the grandfathered contracts neither contemplated nor do

[26] Affidavit of Ronald R. McNamara in Support of Midwest ISO Answer, Att. B, at 24.

they require energy markets or a TEMT to be effectuated. The Midwest ISO Transmission Owners maintain that to the extent these contracts have been accepted by the Commission, the Commission cannot abrogate them unless it makes a finding supported by substantial evidence that the contracts are unjust and unreasonable. To the extent these contracts have non-jurisdictional parties, the Commission cannot enforce a change to a non-jurisdictional agreement. Finally, in support of rejection of the provisions, The Midwest ISO Transmission Owners state that the provisions directly contravene the Agreement, which provides: (1) that the pricing structures and revenue streams related to grandfathered agreements will not be disrupted; (2) that except by mutual agreement of the parties to the Grandfathered Agreement, the Midwest ISO shall not collect or distribute any revenues for transmission service related to such agreements during the Transition Period; and (3) that "Grandfathered Agreements shall not be abrogated or modified by this Agreement." The Midwest ISO Transmission Owners request that the Commission order the Midwest ISO to go through a "true" stakeholder process on this issue and try to reach as broad a consensus as possible.

59. Cinergy states that neither the Midwest ISO nor anyone else has crafted a means for integrating grandfathered agreements into the market in a way that holds all parties to those transactions harmless by preserving the benefits of their bargains. Cinergy continues that resolution of issues related to grandfathered agreements is inextricably linked to the resolution of FTR allocation and until a mechanism is devised to hold parties to grandfathered agreements harmless from congestion costs it believes that market implementation is premature. Midwest TDUs, Basin, WPS and others argue that Midwest ISO's proposal abrogates the grandfathered agreements because it seeks to alter losses, scheduling and deviation settlement through a generic proceeding. They state that these aspects of the grandfathered agreements should remain intact, subject to particularized agreement-changing proceedings that respect the sanctity of contracts for which unilateral regulatory change was not part of the deal.

c. Discussion

60. The issues of how to handle grandfathered contracts in the development of the Midwest ISO's energy and FTR markets is a difficult one. The Midwest ISO raises the important question of whether reliability problems will result if grandfathered contracts are exempt from the market. Other parties have raised serious questions about whether the Midwest ISO's proposal would abrogate contracts. We note that in other markets, capacity is reserved for potential grandfathered contract use, but at times the grandfathered contract rights holders do not ultimately use that capacity.[27] This unused

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[27] See California Independent System Operator Corporation, 104 FERC ¶ 61,062 at P 37-41 (2003).

capacity or "phantom congestion" arises because later scheduling times are permitted for grandfathered contracts. Our preference is that "phantom congestion" should be overcome to the extent possible in a way that is consistent with contractual rights. Understanding what rights grandfathered contracts convey and the impact the contracts might have on the proposed markets is essential to develop a fair resolution of the grandfathering issue. We expect that the Midwest ISO will seek input from grandfathered contract holders and the OMS in addressing this issue. We also expect that the Midwest ISO will work to resolve the issue of FTR allocation in tandem with the issue of treatment of grandfathered contracts, as the two issues are linked.

C. Guidance on Other Significant Issues

1. Security-Constrained Unit Commitment in the Day-Ahead Market

a. The Midwest ISO's Proposal

61. The Midwest ISO proposes to clear bids and offers submitted into the Day-Ahead Energy Market using a security-constrained unit commitment (SCUC) dispatch process. It says that when it filed its Petition for Declaratory Order in December 2002, it did not anticipate that it could have a SCUC process ready for the planned start of the energy markets on December 1, 2003. Now, however, the Midwest ISO states that it is appropriate to design the energy markets on the basis of a day-ahead market that is cleared with a SCUC process because: (1) it is closer to being able to start with a SCUC process than it was a year ago; and (2) it is preferable to clear the day-ahead markets in this fashion.

62. The Midwest ISO states that shifting to a SCUC process will allow it to develop day-ahead schedules with the total least-cost resource commitments as it accounts for startup and no-load costs. The Midwest ISO says that it prefers SCUC to SCED because: (1) the SCED process does not account for start-up and no-load costs, or for certain physical limitations of the units to determine which units will turn on or off; and (2) the SCED process assumes that the units have been committed by market participants and dispatches those units based on the incremental energy offer curves submitted in offers and bid-in demand. The Midwest ISO also notes that clearing the Day-Ahead Market with a SCUC process will be consistent with the day-ahead markets operated by PJM, New York ISO and ISO New England.

b. Intervenors' Comments

63. Most intervenors, including the OMS, support the Midwest ISO's decision to implement the SCUC rather than the SCED on day-ahead market start-up. There is general agreement that this improves the incentives for supply to offer into the day-ahead

market. However, Dynegy, First Energy and Reliant are concerned that without a resource adequacy market, with its attendant requirement that capacity resources offer into the day-ahead market, there may still be inadequate incentives for supply to offer a day ahead.

64. Other intervenors focus on the day-ahead scheduling process. In the TEMT, the Midwest ISO made the deadline for bid submission earlier in the day (9:00 a.m. EST) because of the time needed to solve the SCUC model and prepare day-ahead schedules. Detroit Edison and WEPCO request that this deadline is brought up to 12:00 noon, to coincide with the PJM day-ahead market. The Midwest ISO answers that it recognizes the problem and will work to bring the deadline back to at least 11 a.m. EST.

65. In its Answer, the Midwest ISO further states that under its proposed phased implementation plan, the implementation of the day-ahead market will be postponed until November 1, 2004. Options for day-ahead scheduling to support the real-time market are under consideration, including keeping the current day-ahead deadlines for submission of bilateral transaction schedules, running the RAC process earlier in the day to support reliability preparation and possibly making the RAC mandatory.

c. Discussion

66. We commend the Midwest ISO for its decision to include the SCUC at the start of the day-ahead market. This step clearly improves the efficiency of the day-ahead market clearing, assists in market power mitigation, and may also improve the incentive to participate in that market. However, we encourage the Midwest ISO to move the bidding deadline to 11 a.m. EST as soon as possible.

2. Penalty for Inadequate Point-to-Point Service

a. The Midwest ISO's Proposal

67. The Midwest ISO states that it has revised Sections 13.7 and 14.5 of Module B of the TEMT to include penalty provisions applicable to those instances in which a point-to-point transmission customer's net metered interchange exceeds its reserved capacity. In this situation, Midwest ISO states that the transmission customer will be charged a penalty equal to 200 percent of the transmission service charge for the amount in excess of the transmission customer's reservation.

68. The testimony of Mark J. Volpe further explains that the penalty is modeled after the current penalty applicable in instances when a transmission customer's energy schedules exceed its reserved capacity. Mr. Volpe states that the penalty is intended to create a financial incentive for point-to-point transmission customers to pay their fair

share of the embedded costs of the transmission facilities under functional control of the Midwest ISO.

b. Intervenors' Comments

69. WPS Companies and Crescent Moon object to Section 13.7 of Module B that proposes penalties for customers whose energy purchases exceed their transmission reservations. Both emphasize that such penalties are inconsistent with the LMP market design. For example, they point out that under the LMP market design, the Midwest ISO will not dispatch generation based on reservations. Instead, the system will be dispatched based on the least-cost supply able to serve demand.

c. Discussion

70. We agree with the Midwest ISO that transmission customers should pay a fair share of the embedded costs of the transmission facilities under functional control of the Midwest ISO. However, we do not agree that the proposed penalty appropriately accomplishes this goal. Transmission usage decisions should be based on the market value of the power at specific times and locations, i.e., the LMPs. The share of embedded costs a transmission customer bears should determine its entitlement to congestion rights, not influence transmission usage. Efficient usage decisions would be discouraged if penalties were added to efficient market-clearing prices as proposed in Section 13.7 of Module B.

3. Safety-Net Bid Cap and Scarcity Pricing Mechanism

a. The Midwest ISO's Proposal

71. The Midwest ISO proposes to impose a bid cap of $5,000 per MW to act as a "safety cap" in the Day-Ahead and Real-Time energy markets. The testimony of Ronald R. McNamara, which the Midwest ISO submits in support of its filing, explains that because the Midwest market does not have a resource adequacy requirement, generation units that run infrequently will not be able to receive an additional revenue stream needed to cover their fixed costs by providing capacity on a daily basis. Instead, Dr. McNamara explains, such units will need to be able to recover their fixed and variable costs over a potentially limited number of hours during the year.

72. In addition, the Midwest ISO proposes a scarcity pricing mechanism for the Day-Ahead and Real-Time markets. In the Day-Ahead market, when the Midwest ISO cannot achieve energy balance, it will reduce proportionately bids until balance is achieved and the Day-Ahead market is cleared in the SCUC process. Day-Ahead LMPs will be set at the bid cap ($5,000 per MWh) in this phase. In the Real-Time market, during emergency pricing (EEA Level 2 and 3 events), offer prices for Operating Reserve Capacity

segments dispatched will be replaced with the offer cap price. In addition, LMPs will be set at the offer cap in Step 4 (final phase) of the Real-Time market clearing process to achieve energy balance.

b. Intervenors' Comments

73. The proposed $5,000 per MWh safety-net bid cap did not receive widespread support among intervenors although some supported the concept, or at least, found the concept acceptable for a limited period until a resource adequacy program is in place. The various positions generally reflected intervenors' different views on the role of a safety-net bid cap—a market power mitigation tool, a substitute for demand response, and/or a mechanism to permit cost-recovery until a resource adequacy program is included in the market design. Cinergy, for example, views the cap primarily as a mitigation tool and believes no cap is needed, but would be willing to accept the $5,000 per MWh cap as a three-year compromise. FirstEnergy and NiSource Co. would reject the proposal because there is no factual basis for considering its merits, and FirstEnergy raises concerns that a cap might interfere with cost recovery, especially since a resource adequacy plan is not yet available. In contrast, Detroit Edison believes the cap is reasonable since there is no resource adequacy program, and EPSA also finds it acceptable as a short-term measure. Some who favor the concept, however, would recommend a lower $1,000 per MWh safety-net bid cap as prevails in PJM, New York, and New England to avoid creating seams issues. For example, PSEG, the Midwest TDUs, the MISO TOs, and Consumers would favor the lower value. Wisconsin Entities would favor an even lower bid cap of $500 per MWh as sufficient to recover costs in the Wisconsin market.

74. Crescent Moon comments that the emergency conditions have not been sufficiently defined, and that the conditions under which the Midwest ISO can declare an emergency should be clearly laid out in the tariff.

c. Discussion

75. The safety-net bid cap needs to be evaluated with respect to how it affects mitigation and scarcity pricing, as well as how it relates to other Midwest ISO market design features and with the practices of other spot markets in the Eastern Interconnection – New York, New England, and PJM.

76. We agree with Dr. McNamara that it is appropriate to set a safety-net bid cap at the "all-in" cost per megawatt of a peaking facility, given that the Midwest ISO has no resource adequacy mechanism in place at this time. However, we will require that the Midwest ISO provide evidence to support its proposed $5,000 per MWh safety-net bid cap. The proposed safety-net bid cap is higher than that approved for other spot markets in the Eastern Interconnection – New York, New England, and PJM, for which the

Commission has approved a $1,000 per MWh safety net bid cap. In New York and New England, the $1,000 cap was chosen because the Commission had previously authorized the cap for PJM, and it did not want to create a "seams" issue by authorizing a different value without a compelling reason. The cap for PJM served initially as a backstop for demand response, and market participants raised no objections at the time it was authorized. By allowing a safety-net bid cap at a higher level in the Midwest ISO than in the other markets, there may be seams issues that arise. However, we believe the proposed cap is acceptable in a market that is currently resource adequate, where generators are subject to conduct and impact tests under specified conditions, but where capacity markets do not provide revenue options as in the East. Any seam that develops from the differing levels of safety-net bid caps could be resolved with a re-examination of the bid cap as circumstances change.

77. Similar to the Midwest ISO's proposal, the safety-net bid caps in New York and New England are also used to set a real-time scarcity price when defined scarcity conditions prevail. For example, when load and reliability requirements cannot be fully satisfied in the real-time market, market-clearing real-time prices are administratively set at the safety-net level in those markets.

78. We agree with the Midwest ISO's proposal that the scarcity pricing mechanism should apply both to the Day Ahead Market and the Real Time Market.

79. Finally, we note that the TEMT, as filed, did not describe the conditions under which the Midwest ISO can call an emergency condition. Therefore, it is unclear what the conditions would be to set prices at the $5,000 per MWh under the proposed scarcity pricing mechanism. These conditions, along with evidentiary support for the proposed $5,000 per MWh safety-net bid cap, should be laid out in the Midwest ISO's Market Rules Refiling, in order to provide the Commission and parties with a fully detailed understanding of the conditions under which the scarcity pricing mechanism may apply. We reiterate that we are particularly concerned that the markets provide "adequate incentives to attract and retain needed investment as well as rates that are not excessive."[28] We direct the Midwest ISO to provide a quantitative evidentiary basis for its safety-net bid cap that satisfies this objective.

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[28] Reliant Energy Mid-Atlantic Power Holdings, LLC v. PJM Interconnection, L.L.C., 104 FERC ¶ 61,040 at P 38 (2003).

4. Reliability Assessment Commitment Process

a. The Midwest ISO's Proposal

80. The Midwest ISO proposes to allow market participants to change the quantities set in the day-ahead or bilateral transaction schedules at any time after the close of the day-ahead scheduling and bidding deadline, but before thirty minutes prior to each dispatch hour during the operating day. It adds that market participants will remain financially liable for the commitments made in the day-ahead market.

81. The Midwest ISO further proposes to conduct a Reliability Assessment Commitment (RAC) process each day to ensure that: (1) sufficient resources, beyond those committed in the day-ahead schedule, are available and online to meet load during the operating day; and (2) sufficient reserve requirements are set aside. The Midwest ISO states that after publishing the day-ahead schedule and day-ahead LMPs, it will post the most recent load forecast for the operating day. During the RAC process, it will accept no-load and startup offers.

82. The Midwest ISO believes that the RAC process will minimize the total commitment costs of procuring resources to meet 100 percent of the procurement target. It states that the RAC process will consider start-up and no-load offers, account for constraints on the transmission system and respect the physical characteristics of each resource. The RAC process will not consider energy offers; resources committed in the RAC process will be required to submit an energy offer in the real-time energy market. Finally, the Midwest ISO states that payment for start-up and no-load amounts committed through the RAC process will be recovered from market participants whose actual metered load exceeds the day-ahead schedule in the amount of the deviation on an hourly basis. To the extent that no-load and startup offers are not met by the deviations from the day-ahead schedule, all market participants will be charged their share of those amounts based on their share of the total transmission provider metered load for the applicable hour of the operating day.

b. Intervenors' Comments

83. AMP-Ohio argues that although TEMT Section 40.3.5 states that market participants that can do load following will not be assessed costs associated with RAC, no details are provided. AMP-Ohio is concerned that dynamic schedules may inappropriately incur extra charges.

84. Several intervenors are concerned that the RAC process will be conducted on the basis of inaccurate scheduling or forecast data. AMP-Ohio is concerned that the Midwest ISO will not account for units that are self-scheduled or committed to load following. Dynegy is concerned that although the RAC is conducted several hours after load

forecasts are due for the day-ahead market, updated load forecasts that could be used for the RAC will not be used, thus resulting in a possibility of excess commitment.

85. Midwest TDUs state that the RAC must be mandatory to support reliability. Dynegy asks for clarification about the voluntary nature of the RAC and the exact application of physical withholding penalties. In a similar vein, EPSA and Exelon question whether the RAC will distort incentives to participate in the day-ahead market and real-time market, perhaps leading to a lack of price convergence.

86. Several other issues were raised. WPS questioned whether RAC compensation for units that are committed in the RAC but then de-committed later is sufficient.

87. The Midwest ISO answers that the RAC is rightly a voluntary process. The Midwest ISO states that the market is intended to operate on the basis of proper price signals to incent appropriate behavior. The Midwest ISO believes that compensation through the RAC will be sufficient to elicit participation. It further requests direction from the Commission as to whether a voluntary RAC process is sufficient to ensure reliability in the context of an operational day-ahead market and real-time market.

c. Discussion

88. We agree that the RAC rules and procedures have to be structured correctly to enhance reliability and promote the efficiency of the reliability commitment. As currently designed, the RAC procedure in the TEMT is largely consistent with the equivalent procedures in every other operational ISO and RTO for ensuring that resources committed prior to real-time are sufficient to cover forecast load. While Midwest ISO characterizes the RAC as a voluntary commitment process, we note that the IMM and Midwest ISO plan to impose physical withholding penalties on those units that do not voluntarily offer into the RAC process that the IMM determines could be acting in an anti-competitive manner in an attempt to distort Real-Time Energy Market LMPs.[29] We consider the proposal a must-offer commitment, as we explain in the companion order on Mitigation Measures.[30] As we have stated in other orders, such a process is a

[29] See Docket Nos. ER03-323-001 and ER03-323-004, Joint Request For Clarification at 3, IMM Reply Comments at 6, Midwest ISO Comments at 12

[30] See Midwest Independent Transmission System Operator, Inc., October 29, 2003 Order on Rehearing and Technical Conference, Docket Nos. ER03-323-001 and ER03-323-004, 105 FERC ¶ 61,147 (2003) (being issued concurrently with this order).

call option on a supplier's capacity and therefore a capacity payment is appropriate in these circumstances.[31]

89. With respect to the provision in the proposed TEMT tariffs to net start up and no load costs of market revenues,[32] our guidance is that this provision is not appropriate. We have found that revenues by generators for sales in imbalance energy markets are intended to compensate generators for recovery of fixed costs.[33] While we have approved netting in other markets, those markets, unlike Midwest ISO, also have capacity markets. We would expect Midwest ISO would revise its proposal accordingly, without prejudice to resubmit upon implementation of a resource adequacy program.

90. It is our guidance that control areas should not be required to update their load forecasts again prior to the RAC. However, if it is not already planning to do so, the Midwest ISO should use its most recent next-day load forecast in conducting the RAC commitment.

91. We agree with AMP-Ohio that the rules for exempting market participants that do load following from RAC costs need to be clarified.

5. Penalties for Uninstructed Deviations

a. The Midwest ISO's Proposal

92. Procedures for settling deviations from the dispatch schedule are listed in Module C, Section 41.7.4.[34] After dispatch instructions, the applicable market participant's conduct will be subject to penalties for deviations outside two tolerance bands. Certified Intermittent Resources are exempt from any penalties, but only to the extent that deviations are beyond their control. Withdrawal deviations are exempt from penalties as well, but the amount of the difference must be corrected at the applicable ex post LMP.

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[31] See California Independent System Operator Corporation, Further Order on the California Comprehensive Market Redesign Proposal, October 28, 2003 Order, Docket No. ER02-1656-003 et al., 105 FERC ¶ 61,140 (2003).

[32] Module C, Section 40.3.5 (a), Original Sheet No. 389.

[33] See San Diego Gas & Electric Co, et al., 99 FERC ¶ 61,159 (2002).

[34] An uninstructed deviation is defined in the TEMT as a generation or demand response resource that fails to follow its schedule or dispatch instruction in real time. See Module A, Section 1.255, Original Sheet No. 102.

For all non-exempt resources that are instructed to inject energy, penalties will apply to deviations beyond the first tolerance band, as described below.

93. The first tolerance band consists of actual injections that are within plus or minus 5 percent of the dispatch instruction for that settlement interval. Market participants' injections within that range are not penalized. When actual injections are less than the dispatch instruction in real time, the market participant will pay the applicable LMP price to buy from the spot market to make up the difference.[35] When actual injections are greater than the dispatch instruction in real time, the market participant will be paid for the difference in a payment calculated by multiplying the ex post hourly LMP calculated for that dispatch interval by the difference between the scheduled and actual injection at that bus.[36]

94. The second tolerance band consists of actual injections that exceed 5 percent, but are within plus or minus 10 percent of the dispatch instruction for that settlement interval. The proposed penalty for this range is 20 percent of the applicable ex post LMP. Market participants with actual injections of less than the dispatched amount, will pay for the shortage in a charge equal to the product of 120 percent of the hourly ex post LMP calculated for that dispatch interval at the applicable market participant's bus and the difference between the scheduled injections and actual injections at that bus.[37] For injections that exceed the dispatch instruction outside the first tolerance band, but are within the second tolerance band, applicable market participants will be paid the product of 80 percent of the hourly ex post LMP calculated for that dispatch interval and the difference between the schedule and the actual injections.[38]

95. Beyond the second tolerance band, or greater than plus or minus 10 percent of the dispatch instruction, the proposed penalty is 40% of the applicable ex post LMP. Market participants whose injections are outside the second tolerance band are charged 140 percent of the hourly ex post LMP for that dispatch interval multiplied by the difference between scheduled and actual injections. However, the penalties cannot exceed $40/MWh above the hourly ex post LMP.[39] Market participants that inject more than 10

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[35] See Module A, Section 41.7.4 b(i), Original Sheet No. 433.

[36] See Module C, Section 41.7.4 c(i), Original Sheet No. 434.

[37] See Module C, Section 41.7.4 b(ii), Original Sheet No. 433.

[38] See Module C, Section 41.7.4 c(ii), Original Sheet No. 435.

[39] See Module C, Section 41.7.4 b(iii), Original Sheet No. 434.

percent above the dispatch instruction are paid 60 percent of the hourly ex post LMP for the difference at that dispatch interval.[40]

b. Intervenors' Comments

96. Numerous intervenors have concerns about the proposed penalties that can be summarized into the following broad issues: (1) relevant sections of the tariff appear to conflict or lack clarity; (2) alleged discriminatory provisions; (3) penalty exemptions; (4) definitions; and (5) lack of justification for the penalty provisions. Several intervenors request that the Commission reject the sections pertaining to uninstructed deviation penalties, or in the alternative require the Midwest ISO to replace these provisions with ones that contain more detail and clarity.

97. The Midwest ISO responds in its Answer that the uninstructed deviation provisions filed on July 25, 2003 were intended to discourage frequent and excessive deviations from dispatch instructions in an equitable fashion. It considered the comments filed in response to the July 25 filing, but ultimately concluded that Section 41.7.4 of the TEMT provides a good balance between competing interests and a necessary mechanism for ensuring reliability. Therefore, the Answer urges the Commission to accept Section 41.7.4, although it also anticipated that it may be necessary to reevaluate the penalties before a further market rules filing is made.

c. Discussion

98. In general we find the Midwest ISO's proposal to implement Uninstructed Deviation Penalties is an acceptable method to buttress the Midwest ISO's maintenance of system reliability. The Commission has approved similar penalties for the markets that NYISO and ISO-NE operate. We agree with the Midwest ISO that well-constructed penalties can help dissuade generators that may excessively deviate from dispatch instructions in real time. We further clarify that in a fully functioning energy market, the efficient price signals provided by LMPs should serve as the primary motivator for market participants to strictly adhere to their own dispatch instructions, but penalties may have a role as a support mechanism.

99. However, we agree with intervenors that the proposed sections lack clarity. The Midwest ISO should revise Sections 1.110 and 41.7.4 prior to re-filing them. We reserve judgment on the specifics of the sections, but note that future filings must include language that further defines the parameters of the tolerance bands, and the procedures and criteria for certifying intermittent resources. The Commission will review the proposed penalties further in the context of the Market Rules Refiling.

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[40] See Module C, Section 41.7.4 c(iii), Original Sheet No. 435.

6. Zonal versus Nodal Pricing

a. The Midwest ISO's Proposal

100. The Midwest ISO's transmittal letter states that Market Participants will be able to purchase energy in the Day-Ahead Energy Market at an aggregate level. Midwest ISO also states that the aggregations will be determined by the Market Participants and that Midwest ISO will maintain a list of these load aggregations, also called Load Zones.[41]

b. Intervenors' Comments

101. The OMS recommends that the Commission direct the Midwest ISO to require the use of nodal pricing (trading hubs as necessary) for open access states, unless individual state authority dictates otherwise. For non-open access states, the flexibility of zonal pricing or hubs should be allowed as provided in the TEMT.

102. The OMS states that the main complaint with the use of a zonal price is that it violates one of the basic tenets of the LMP approach – that market participants be exposed to clear price signals and be allowed to respond accordingly. The use of individual nodes, on the other hand, would increase efficiency by providing a clear price signal to all market participants. Specifically, as stated by the OMS, all alternative retail electric suppliers operating within a zone would face the same price for wholesale electricity throughout the zone. Moreover, the use of nodal prices facilitates the creation of trading hubs by market participants. As evidenced by PJM and also the natural gas industry, the creation of trading hubs increases market liquidity and competition.

c. Discussion

103. We agree that the use of zonal pricing for purposes of LMP may have an undesirable effect on retail access programs. In some situations, alternative retail electric suppliers may have little basis to compete with the incumbent utility. We also agree that such an outcome would not best serve the interests of states that are working toward obtaining effective retail access programs within their states. However, it seems clear from Midwest ISO's filing that the selection of zonal pricing for load would be strictly voluntary and would include only a weighted average of the nodes that are selected by a specific Market Participant. Because it is not clear what impact the selection of zonal pricing by a Market Participant would have on its competitors, and since nodal pricing is a goal we support, we instruct the Midwest ISO to provide more explanation of this

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[41] Transmittal Letter at 25.

option in its next filing. We recognize there can be impediments to its immediate implementation such as the cost and complexity of implementation at the start-up. We therefore, encourage the Midwest ISO to look toward achieving the goal of having nodal pricing in place as soon as possible, and to fully address this issue with the OMS and stakeholders prior to submitting its next market rules tariff filing.

7. Requirements to Participate in the Energy Markets

a. The Midwest ISO's Proposal

104. Section 38.3 of the TEMT provides that Generation Owners and Load Serving Entities (LSEs) may not submit energy schedules, bids or offers, or submit FTR bids or offers, if they do not become Market Participants. If Generation owners intend to make their resources available to the Transmission Provider without qualifying as Market Participants, they must enter into an agreement with a Market Participant. Similarly, an LSE that does not qualify as a Market Participant may have its load served though the Midwest ISO energy market if it enters into an agreement with a Market Participant. However, current LSEs can be Market Participants as long as creditworthiness standards are met.

b. Intervenors' Comments

105. The OMS states it is supportive of these requirements for direct participation in the energy market as they appear to be reasonably related to legitimate needs of the Transmission Provider. The OMS agrees that Market Participants must meet creditworthiness standards, must be subject to market monitoring, must assume liability for transactions, and other obligations identified in Section 38.2. It is important that communications between the Midwest ISO and Market Participants follow protocols. The OMS is in agreement that the Market Participant requirement is designed to assure that compliance.

106. However, it is the OMS's understanding that LSEs will be able to self-schedule or use bilateral contracts to serve their load the same way as is done today. The OMS states this approach is supported by the Midwest ISO's comments in its transmittal letter at page 21 which states: "Market Participants will be provided maximum flexibility to continue to engage in transactions outside of the Energy Markets to serve all or part of their load. Similarly, Market Participants will continue to have the option of serving their load with their own resources. Additionally, from a non-open access state prospective, LSEs must continue to serve load with existing generation and bilateral contracts when they continue to be the lowest cost resources. It is with this understanding that the OMS supports the Midwest ISO's Market Participant language.

c. Discussion

107. We generally agree with the Midwest ISO's proposed requirements that Generation Owners and Load Serving Entities must either become Market Participants, or agree to enter into agreements with Market Participants, in order to participate in the energy markets. We believe this allows the Midwest ISO to have knowledge of all flows on the system and to identify a clear entity for settlement purposes. Similarly, the Midwest ISO's proposal to allow scheduling only through Market Participants gives the Transmission Provider knowledge needed for maintaining control of the system as we intended. We agree with the OMS that this interpretation should not interfere with the continued ability of market participants to engage in bilateral transactions outside of the Energy Markets to serve all or part of their load, or to continue to have the option of serving their load with their own resources. We have also stated in our Declaratory Order proceeding that market participants do not have to buy or sell in LMP-based markets, except as necessary to resolve imbalances.[42] We reiterate our goal, however, that all bilateral transaction be treated consistently within the market. We believe this is consistent with the intent of the Midwest ISO.

8. Excess Transmission Congestion Revenue

a. The Midwest ISO's Proposal

108. Section 39.3.4.c.i and ii, Determination and Disposition of Excess Congestion Charges, of the TEMT includes language specifying the proposed methodology for allocating the excess congestion charge fund.

b. Intervenors' Comments

109. The OMS finds that it is premature to comment on this language at this time. The OMS states that the Midwest ISO is currently working with its stakeholders to develop the rules for the initial allocation of FTRs. Once the final rules for the initial allocation of FTRs are developed and filed with the Commission for approval, the OMS will be in a better position to provide comment on this issue as the final initial allocation rules may greatly affect the OMS response. As a result, the OMS requests that the proposed language in Section 39.3.4.c.i and ii not be approved until such time as the final initial allocation rules are filed with the Commission and parties have been given the opportunity to comment.

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[42] See Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,210 at P 29 (2003), aff'g 102 FERC ¶ 61,196 (2003).

c. Discussion

110. We agree that the final determination of this issue should be addressed in the context of discussions addressing the initial allocation of FTRs. Therefore, we will not provide guidance at this time or comment on the Midwest ISO's proposed methodology, but will defer our judgment until such time as we see the initial allocation of FTRs and in conjunction with that allocation, a proposal for allocating excess congestion charges. We encourage the parties to work toward an equitable solution to these issues.

9. Access to Market Data by State Commissions

a. The Midwest ISO's Proposal

111. Section 38.7.3 of Module C of the Midwest ISO's proposed TEMT states that any State regulatory commission or their respective staff may request information from the Transmission Provider that is otherwise required to be maintained in confidence, and that such information shall be provided by the Transmission Provider within the time requested.[43] It also provides that the Midwest ISO may, consistent with 18 C.F.R.

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[43] The section reads as follows:

> Notwithstanding any provisions of this Section 38.7 to the contrary, if the Commission, any State regulatory commission or their respective staff, during the course of an investigation or otherwise, requests information from the Transmission Provider that is otherwise required to be maintained in confidence pursuant to this Tariff, the Transmission Provider shall provide the requested information to the Commission, any State regulatory commission or their respective staff, within the time provided for in the request for information. In providing the information to the Commission any State regulatory commission or their respective staff, the Transmission Provider may, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by the Commission and its staff and that the information be withheld from public disclosure. The Transmission Provider shall notify any affected Market Participant(s) when it is notified by the Commission or any State regulatory commission or their respective staff, that a request for disclosure of, or decision to disclose, confidential information has been received, at which time the Transmission Provider and the affected Market Participant

(Continued…)

§ 388.112, request that the information be treated as confidential and non-public by the Commission and its staff and that the information be withheld from public disclosure.

b. Intervenors' Comments

112. The OMS expresses its concern that Attachment S of the Midwest ISO's market monitoring plan does not contain a similar provision that would permit a state commission to obtain confidential information from the Midwest ISO's independent market monitor (IMM) necessary for the state to protect the interests of its retail customers. In its comments, the OMS is concerned that the effect of Section 6.3 of Attachment S[44] is directly contradictory to the spirit of Midwest ISO's proposed Section 38.7.3. In particular, Section 6.3 of Attachment S, according to the OMS, holds the legitimate public interest objectives of state regulators hostage to the parochial interests of private market participants as it requires the IMM to receive written consent from the market participant prior to releasing such data to the state commission. Section 6.3 of Attachment S must be revised consistent with the public interest spirit of Midwest ISO's Section 38.7.3.

113. EPSA, Dynegy, Duke, Cinergy, and Midwest ISO Transmission Owners state that the ill-defined disclosure obligation in section 38.7 of Module C provide limited and insufficient confidentiality protections and should be rejected. They state that the Commission itself has recognized that loosely administered reporting and disclosure schemes would harm not only the sellers providing the information, but also ultimately the competitive market. These intervenors find most troubling the disclosure obligations that would allow state regulatory commission or their staff to request confidential information that the Midwest ISO will provide. They state that the proposal raises a legal question about the state commission's obligations, irrespective of the TEMT, to disclose

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> may respond before such information would be made public, pursuant to 18 C.F.R. § 388.112.

[44] Attachment S of the Midwest ISO's existing tariff contains the Midwest ISO's market monitoring plan. Section 6.3 of Attachment S states:

> Upon request from a State Regulatory Agency for confidential data or information that the IMM [Independent Market Monitor] received from a Market Participant, the IMM shall promptly notify the Market Participant that provided the data and shall not release the confidential data or information without prior written consent from the Market Participant.

data in its possession. Further they request that the Commission ensure that in administering the program, the Midwest ISO has sufficiently clear rules for determining whether all requestors, including state commissions, have a legitimate need for commercially sensitive information. Finally, they state that the TEMT must be revised to make clear that confidential information will be provided only subject to the maximum protection of confidentiality available under the relevant laws of the jurisdiction requesting the information, and that confidential information will not be provided by the Midwest ISO to jurisdictions unable to preserve confidentiality.

114. Coalition of MTC states that the Commission should require the Midwest ISO to adopt data-availability provisions like those provided in the CAISO where data is published in a variety of market reports on an after-the-fact basis.

c. Discussion

115. We support the Midwest ISO's decision, as the Transmission Provider, to file tariff provisions in its TEMT that provide that the Midwest ISO will make available to state regulators market data and information upon request. We are concerned that the current provisions set forth in Attachment S related to the IMM's responsibilities with regard to the dissemination of information, may be inconsistent with this decision to file such provisions. The distribution of confidential information is a difficult issue. The Midwest ISO, its IMM and market participants should work to ensure that the states have the necessary information for carrying out their mandate under state law, and at the same time ensuring that such provisions continue to protect the rights of individual market participants with regard to this information. We encourage parties to reach a balanced approach to this issue.

10. Changes to Tariff Schedules 16 and 17

a. The Midwest ISO's Proposal

116. Schedules 16 and 17 of the current Midwest ISO OATT are cost recovery schedules that the Midwest ISO intends to use to recover the costs of implementing and operating the Midwest ISO energy markets. Schedule 16, Financial Transmission Rights Administrative Service Cost Recovery Adder, provides for a deferral of costs related to the creation of FTRs and recovery of those costs from FTR holders. Schedule 17, Energy Market Support Administrative Service Cost Recovery Adder, provides for a deferral of start-up costs related to the establishment of energy markets for the Midwest, with recovery of such costs once the markets are implemented. The Commission accepted Schedules 16 and 17 in an order dated November 22, 2002, suspended their effectiveness

and made them effective on November 25, 2002, subject to refund.[45] The Commission also ordered a paper hearing to: (1) determine the appropriate cost allocations for services provided under Schedules 17, and (2) determine the appropriate exit fee for transmission owners that withdraw from the Midwest ISO under certain circumstances.

117. The Midwest ISO now proposes to amend Schedule 16 to make Financial Transmission Rights Administrative Service applicable to “all Market Participants” that are the primary holders of FTRs issued by the Midwest ISO, and to strike from the tariff Exhibit A to Schedule 16, which was a Form of Service Agreement for Financial Transmission Rights Services. In addition, the Midwest ISO proposes to make Schedule 17 applicable to “all Market Participants” that participate in transactions using the transmission system or that participate in the day-ahead or real-time energy markets. The Midwest ISO also proposes to delete the Form of Service Agreement for Energy Market Services, which was Exhibit A to Schedule 17 of the OATT. Finally, the Midwest ISO proposes to revise the definitions for some of the variables it uses to calculate the Schedule 17 cost recovery adder.

b. Intervenors’ Comments

118. In its comments, the OMS states its understanding, based on discussions with the Midwest ISO, that the Commission’s pending paper hearing issues on cost allocations and billing for Schedules 16 and 17 will be incorporated into the TEMT, to the extent changes are necessary, once the Commission’s Order is issued in that proceeding (Docket No. ER02-2595-000). The issue of assigning costs on a cost-causative basis (i.e. assigning costs where possible to the user(s) of the services) is an important concept that the OMS believes should be considered as cost assignment is addressed in the future in order to ensure an efficient market.

c. Discussion

119. First, we clarify for the OMS that any decision concerning Schedules 16 and 17 that result from the paper hearing in that proceeding, will ultimately be incorporated into the Midwest ISO’s tariff, or will otherwise be treated as provided in that proceeding. We will also take this time to restate our belief that the energy markets proposed by the Midwest ISO will confer benefits to all. With this understanding we believe that the costs of implementing these markets as proposed to be recovered under Schedules 16 and 17 should be spread over the largest group of participants as can be supported under cost

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[45] See Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,221 (2002).

causation principles. We therefore, generally support the proposal of the Midwest ISO in this regard.

D. Issues Requiring Further Development in Future Filings

1. The Midwest ISO's Proposals

120. In its Answer, the Midwest ISO explains that it intends to make a filing, or filings, in November 2003 to include the following missing elements from its current proposal: (1) a pro forma SSR agreement; (2) a marginal loss crediting mechanism; (3) initial FTR allocations; (4) creditworthiness provisions; and (5) market mitigation measures.

121. The Midwest ISO proposes new tariff provisions that it did not review with stakeholders prior to filing, that will apply to generation units designated as System Support Resources (or SSRs) that are required to support system reliability. However, the Midwest ISO did not file the pro forma agreement, nor address compensation issues.

122. The Midwest ISO proposes a marginal loss cost component in the LMP calculation to recover the cost of real power losses on its system, consistent with the Commission's declaratory order in EL03-35. However, it does not propose a mechanism by which excess marginal loss revenues will be allocated in this filing.

123. The Midwest ISO proposes to create FTRs as part of its congestion management mechanism. However, it does not make a proposal for the initial allocation of FTRs.

124. According to Module A, Section 11.1, entitled Creditworthiness, the Midwest ISO shall develop creditworthiness standards and post them on the OASIS. The Midwest ISO may require reasonable credit review procedures, and may require the transmission customer and the Market Participant to provide, and maintain in effect during the term of the service agreement or market participant agreement, credit support. Credit support includes the credit agreement, letter of credit, or cash deposit as security consistent with the Uniform Commercial Code that protects the transmission provider and Independent Transmission Companies against the risk of non-payment. Listed under 38.2.3 (i), market participants have an obligation to continually comply with the creditworthiness criteria and to notify the transmission provider of changes to their status.[46]

2. Intervenors' Comments

125. Several protesters, while providing comments on many issues, also state for a variety of reasons that the proposed tariff filings are premature and not ripe for decision

[46] Module C, Section 38.2.3, Original Sheet No. 274.

or meaningful comment because critical components have not yet been filed by the Midwest ISO, or that the Midwest ISO's current proposal is not fully developed. The protesters state that many of these issues should still be under discussion between the Midwest ISO and the stakeholders.

126. Most stakeholders accept the concept of SSR contracts, but have issues with the details of their selection and payment which have not yet been filed. While we note that certain parties object to the marginal loss component of the LMP calculation, the Commission has already reached a decision on this matter in a declaratory order in EL03-35-000. The Midwest ISO is currently working with its stakeholders to determine an appropriate methodology for the dispensation of the excess revenues that will result under this mechanism as directed. The OMS states it would like to see issues associated with the allocation of FTRs to be resolved prior to market start-up. The OMS also is concerned that the market monitoring and mitigation portion of the tariff was not included in this filing.

127. AMP-Ohio and the MISO TOs believe that the Midwest ISO should have to file its creditworthiness procedures in the tariff, subject to Commission approval. This would ensure that parties may comment, eliminate differences between the Midwest ISO and PJM, and prove that the policies are "enforceable." Coalition of MTC concurs, and argues that the Midwest ISO should be required to adopt measures similar to those in PJM, that limit the "financial spillover" that can occur from the default of any market participant.

3. Discussion

128. The Commission believes that details on these five issues – a pro forma SSR agreement, a marginal loss crediting mechanism, initial FTR allocations, creditworthiness provisions and market mitigation mechanisms – must be laid out in a comprehensive tariff filing. We strongly urge the Midwest ISO to complete its proposals for these issues, discuss them with stakeholders, and to include in the Market Rules Refiling revised tariff sheets that set forth each proposal. We do not anticipate that it will be possible to thoroughly evaluate a revised tariff proposal in the absence of these important provisions.

129. In particular, we agree with intervenors that the Midwest ISO should file detailed creditworthiness procedures as a part of their tariff, not in their business practices manuals. The Commission has previously recognized in Outback Power Marketing, Inc. v. PJM Interconnection, L.L.C. the impact creditworthiness requirements can have on jurisdictional transactions.[47] The Commission also expects that the Market Rules

[47] 104 FERC ¶ 61,079 (2003).

Refiling will include the Market Mitigation Measures, which we consider to be an intricate part of the energy markets the Midwest ISO envisions, as part of the proposed energy markets tariff.

The Commission orders:

(A) The Midwest ISO's Motion to Withdraw Filing Without Prejudice is hereby granted.

(B) The Midwest ISO is required to file, for informational purposes, a revised timeline for implementing its energy markets and reliability measures, as discussed herein.

(C) As this order provides guidance only and the matters discussed are subject to further proceedings, this order is advisory in nature and not subject to rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX A

Notices of Intervention and Motions to Intervene

Ameren Services Company
American Municipal Power-Ohio, Inc.
American Transmission Company LLC *
Central Iowa Power Cooperative
Central Power Electric Cooperative, East River Electric Power Cooperative, Grand Electric Cooperative, KEM Electric Cooperative, Mor-Gran-Sou Electric Cooperative, Rushmore Electric Power Cooperative, and Upper Missouri Generation and Transmission Electric Cooperative
Cinergy Services, Inc.
City of Cleveland, Ohio
Constellation Power Source, Inc.
Corn Belt Power Cooperative, Inc.
Dairyland Power Cooperative
Environmental Law & Policy Center
Gen~Sys Energy
Great River Energy
GridAmerica LLC
Indiana Office of the Utility Consumer Counselor
Illinois Industrial Energy Consumers
Illinois Municipal Electric Agency
Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency and Wisconsin Public Power Inc.
International Transmission Company
ISG Burns Harbor Inc., ISG Cleveland Inc., ISG Hennepin Inc. and ISG Indiana Harbor Inc.
Michigan Electric Transmission Company, LLC
Michigan Public Service Commission
Minnesota Public Utilities Commission and Minnesota Department of Commerce
Minnkota Power Cooperative, Inc. *
Mirant Americas Energy Marketing, LP and Mirant Zeeland, LLC
Missouri River Energy Services *
Nebraska Public Power District
North Dakota Public Service Commission
Organization of MISO States, Inc.
Public Service Commission of Wisconsin
Public Utilities Commission of Ohio
Tenaska Power Services Co.

TRANSLink Management Development Corporation
Westar Energy, Inc. and Kansas Gas and Electric Company
Wolverine Power Supply Cooperative, Inc.

* Filed out of time.

<u>Motions to Intervene, Protests and/or Comments</u>

Alliant Energy Corporate Services, Inc. (Alliant)
Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, and Central Illinois Light Company d/b/a AmerenCILCO; Alliant Energy Corporate Services, Inc., on behalf of Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Aquila, Inc., d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); City Water, Light & Power (Springfield, Illinois); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; LG&E Energy Corporation (for Louisville Gas and Electric Company and Kentucky Utilities Company); Lincoln Electric System; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Company; Northern States Power Company and Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana) and Wabash Valley Power Association, Inc. (collectively, MISO TOs)
American Municipal Power-Ohio, Inc. (AMP-Ohio)
American Transmission Company LLC, International Transmission Company and Michigan Electric Transmission Company, LLC (ATC/ITC/METC)
American Wind Energy Association (AWEA)
Aquila, Inc. (Aquila)
Basin Electric Power Cooperative [48] (Basin)
Basin Electric Power Cooperative, Heartland Consumers Power District, Minnkota Power Cooperative, Inc., NorthWestern Energy, Sunflower Electric Power Corporation and Upper Great Plans Region of the Western Area Power Administration (collectively, Crescent Moon)
Cinergy Services, Inc. (Cinergy)
Coalition of Midwest Transmission Customers[49] (Coalition of MTC)

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[48] Filing includes requests for rejection of proposed effective date and for hearing.

[49] Filing includes a motion for summary disposition or, in the alternative, request for hearing and suspension.

Consumers Energy Company (Consumers)
City of Cleveland, Ohio (Cleveland)
City of Hamilton, Ohio (Hamilton)
Detroit Edison Company[50] (Detroit Edison)
Duke Energy North America, LLC and Duke Energy Trading and Marketing L.L.C. (collectively, Duke)
Dynegy Power Marketing, Inc., Dynegy Midwest Generation, Inc. and Illinois Power Company (collectively, Dynegy)
Electric Power Supply Association (EPSA)
Exelon Corporation (Exelon)
FirstEnergy Service Company (FirstEnergy)
Great River Energy and Dairyland Power Cooperative (collectively, Great River/Dairyland)
Hoosier Energy Rural Electric Cooperative, Inc., Southern Illinois Power Cooperative and Wabash Valley Power Association, Inc. (collectively, Hoosier)
Illinois Commerce Commission *
Illinois Municipal Electric Agency (Illinois Municipal)
Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency and Wisconsin Public Power Inc. (collectively, Midwest TDUs)
Indiana Office of Utility Consumer Counselor (Indiana OUCC)
Manitoba Hydro
Michigan Public Power Agency and the Michigan South Central Power Agency (collectively, Michigan Agencies)
MidAmerican Energy Company (MidAmerican)
Midwest Municipal Transmission Group (Midwest MTG)
Missouri Public Service Commission (Missouri Commission)
Montana-Dakota Utilities Company * (Montana-Dakota)
North Dakota Public Service Commission (North Dakota Commission)
Northern Indiana Public Service Company, EnergyUSA-TPC Corp., and Whiting Clean Energy, Inc. (collectively, NiSource Companies)
Ohio Consumers' Counsel
Organization of MISO States (OMS)
Otter Tail Power Company (Otter Tail)
PSEG Energy Resources & Trade LLC (PSEG)
Public Service Commission of Kentucky (Kentucky Commission)
Public Service Commission of Wisconsin (Wisconsin Commission)
Reliant Resources, Inc. (Reliant)

[50] Filing includes a request for clarification.

Steel Dynamics, Inc. – Bar Products Division and Nucor Steel (collectively, Steel Producers)
Tenaska Power Services Company (Tenaska)
Tennessee Valley Authority (TVA)
TRANSLink Management Development Corporation (TRANSLink)
Wisconsin Electric Power Company (WEPCO)
Wisconsin Transmission Customer Group, Wisconsin Paper Council, Citizens Utility Board and Wisconsin Industrial Energy Group, Inc. (collectively, Wisconsin Entities)
WPS Resources Corporation, Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Power Development Inc., and WPS Energy Services (collectively, WPS Companies)[51]
Xcel Energy Services Inc. (Xcel)

* Filed out of time.

[51] Filing includes a request for hearing.