

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER04-961-004  
ER04-961-005

ORDER ON REHEARING AND COMPLIANCE

(Issued February 22, 2006)

1. In its October 17, 2005 Order,<sup>1</sup> the Commission conditionally accepted the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) compliance filing to compensate all generators for Reactive Supply and Voltage Control From Generation Sources Service (collectively, reactive power or reactive power service) under revised Schedule 2 of its Open Access Transmission Tariff (OATT). On November 16, 2005, the Midwest ISO Transmission Owners (Midwest ISO TOs) filed a request for rehearing of the October 17, 2005 Order,<sup>2</sup> and the Midwest ISO submitted a compliance

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,046 (2005).

<sup>2</sup> For this filing, the Midwest ISO TOs include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Company d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate 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.); Cinergy Services, Inc. (for Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light Heat & Power Company); City of Columbia Water and Light Department (Columbia, Missouri); City Water, Light & Power (Springfield, Illinois); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; LG&E Energy LLC (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), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; 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.

filing as directed by the October 17, 2005 order. In this order, we will deny the request for rehearing, and conditionally accept the Midwest ISO's compliance filing.

## **I. Background**

2. On June 25, 2004, the Midwest ISO filed a proposed Schedule 21 to supplement its existing Schedule 2, which involved the provision of reactive power. Schedule 2 had compensated the transmission owners' own generators for reactive power service, but had no mechanism to compensate independent power producers (IPP) for this service. The Midwest ISO's proposed Schedule 21 sought to compensate generators not covered under Schedule 2, namely IPPs.

3. In an order issued on October 1, 2004,<sup>3</sup> the Commission rejected the Midwest ISO's proposed Schedule 21 as unduly discriminatory because there were substantial differences between how transmission owners' own generators would be compensated under existing Schedule 2 and how IPPs would be compensated under proposed Schedule 21. The Commission also found the Midwest ISO's existing Schedule 2 to be unjust, unreasonable, and unduly discriminatory under section 206 of the Federal Power Act (FPA),<sup>4</sup> because Schedule 2 provided compensation for reactive power from transmission owners' own generators, but had no mechanism to compensate non-transmission owners or IPPs. Accordingly, the October 1, 2004 Order directed the Midwest ISO to revise Schedule 2 to provide compensation for reactive power service from transmission owners, as well as from IPPs, i.e., from all generators. Further, the October 1, 2004 Order directed the Midwest ISO to include language in its Schedule 2 that provides for IPPs to file cost-based revenue requirements with the Commission prior to their being compensated. On November 1, 2004, as amended on December 20, 2004, the Midwest ISO filed a revised Schedule 2 in compliance with the October 1, 2004 Order.

4. In its October 17, 2005 Order, the Commission conditionally accepted the Midwest ISO's revised Schedule 2 and directed the Midwest ISO to submit further revisions. On November 16, 2005, the Midwest ISO TOs sought rehearing, and the Midwest ISO submitted further revisions of Schedule 2 in compliance with the October 17, 2005 Order.

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<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *order on reh'g*, 110 FERC ¶ 61,267 (2005).

<sup>4</sup> 16 U.S.C. § 824e (2000).

## II. October 17, 2005 Order – Elimination of “and the need” Language from Schedule 2

5. In its November 1, 2004 compliance filing, among other language, the Midwest ISO proposed the following language:

...For the purposes of this Schedule 2, the revenue distribution provisions in Section III shall apply for all Qualified Generators *standing by* to provide service under this Schedule 2, regardless of whether the Qualified Generator actually provided the service. [Emphasis added.]

6. The Midwest ISO also proposed in its November 1, 2004 compliance filing the following language:

...Any Generation Resource seeking compensation under this Schedule 2 shall be responsible for making all appropriate filings with the Commission to justify its cost-based revenue requirements *and the need* for the provision of the reactive supply and voltage control service. [Emphasis added.]

7. In its October 17, 2005 Order, the Commission found that the language “standing by” in the first sentence quoted above should be removed because it may be read to require that a unit must be on-line to be compensated for reactive power service. The Commission stated that any such requirement is contrary to the Commission’s allowing a generator to receive compensation for reactive power service based on its capability to provide such service.<sup>5</sup> The Commission explained that a generator could still be capable of providing reactive power even though it is not on-line, as the generator could be called upon by the transmission provider to go on-line and become available in the event reactive power is needed.

8. In its October 17, 2005 Order, the Commission also agreed that the language “and the need” could lead to confusion and directed the Midwest ISO to remove the language. The Commission explained that it had found a “needs” test to be contrary to Order No.

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<sup>5</sup> We note that the ratemaking methodology prescribed by the Commission in *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), is based on the *capability* of a given generator, not its actual operations.

2003.<sup>6</sup> In this regard, the Commission noted that the Midwest ISO had stated that the “and the need” language did not require that any “needs” test be performed and that the Midwest ISO was willing to remove the language.<sup>7</sup>

### **III. Midwest ISO TOs’ Rehearing Request**

#### **A. Midwest ISO TOs’ Arguments**

9. The Midwest ISO TOs seek rehearing of the Commission’s elimination from revised Schedule 2 of the phrase “and the need.” They request that, notwithstanding the Commission’s directive to remove such language, the Commission clarify that it will still allow investigation into whether the facilities are needed, i.e., are used and useful.

10. The Midwest ISO TOs argue that a fundamental question to be considered in deciding whether any entity is entitled to recover its revenue requirement is whether the facility or services upon which the revenue requirement is based are used and useful to the affected ratepayers, i.e., whether there is a need for the facility or the service to be provided. The Midwest ISO TOs state that traditional, vertically integrated utilities have long operated under this used and useful test in seeking rate recovery and that the Commission should apply the same legal standard to all new generation, whether owned by traditional, vertically integrated utilities or IPPs.

11. The Midwest ISO TOs go on to contend that, presently, in most parts of the Midwest ISO region, there already is adequate reactive power available from existing generators. As a result, they argue that there should not be an automatic entitlement to rate recovery. The Midwest ISO TOs argue that the locational nature of reactive power further supports such a conclusion; the Commission cannot assume that reactive power will find a use somewhere else on a large system because reactive power does not travel well over long distances.

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<sup>6</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh’g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005). *Accord, e.g., Rolling Hills Generating, L.L.C.*, 109 FERC ¶ 61,069 at P 42 (2004).

<sup>7</sup> 113 FERC ¶ 61,046 at P 42.

12. The Midwest ISO TOs conclude that, at a minimum, the Commission should clarify that its elimination of the “need” language from revised Schedule 2 does not preclude parties either from challenging the need for reactive power at the time a generator makes a section 205 filing to obtain Commission approval of its revenue requirements or from later filing a complaint.<sup>8</sup> If the Commission does not grant such clarification, the Commission instead should grant rehearing on essentially the same grounds.

13. Finally, the Midwest ISO TOs ask, more in passing, that the Commission clarify that the October 17, 2005 order does not preclude arguments that a generator may not be entitled to compensation for reactive power service given the terms of a pre-existing interconnection agreement or some other agreement.

### **B. Commission Determination**

14. We will deny the Midwest ISO TOs’ request for rehearing.

15. At the outset, we note that, in response to the October 1, 2004 Order, the Midwest ISO filed a revised Schedule 2, which, as clarified in its answer, did not propose a “needs” test requiring a generator to show that there existed a particular need for reactive power before it could receive compensation. In fact, the Midwest ISO has strongly opposed such an approach since its initial filing in this proceeding.<sup>9</sup>

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<sup>8</sup> The Midwest ISO TOs state that at no point in Order No. 2003 did the Commission address the issue of a “needs” test in relation to reactive power charges.

<sup>9</sup> See June 25, 2004 Transmittal Letter, Attachment A at 4-11 (Testimony of Jeffrey R. Webb); August 17, 2004 Answer at 6-7; December 7, 2004 Answer at 10-14. The Midwest ISO proposed, and the Commission accepted, that all generators be compensated for their reactive power capability, i.e., be compensated so that the Midwest ISO can call upon them to provide reactive power. Contrary to the Midwest ISO TOs’ arguments, this approach already incorporates a “needs” finding, but one based on capability rather than on actual production. In fact, as the Midwest ISO’s testimony accompanying its original filing in this proceeding states, a “needs” determination “would be superfluous because, as recognized by NERC in the NERC Planning Standards, by the FERC in Order No. 2003, by the U.S.-Canada Power Outage Task Force in their Final Report, and by the Midwest ISO, this capability is needed and required of all generators interconnected to the transmission system.” See June 25, 2004 Transmittal Letter, Attachment A at 8.

16. The Midwest ISO TOs' proposal is contrary to the comparability principle described in Order No. 2003-A, and unduly discriminatory.<sup>10</sup>

17. In Order No. 2003-A, the Commission emphasized comparability and stated that "if the transmission provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer."<sup>11</sup> Provided that a generator is capable of providing reactive power within the established range, the Commission did not qualify the compensation to that interconnection customer, *i.e.*, generator, much less impose a "needs" test as proposed by the Midwest ISO TOs.

18. Compensation is based on comparability; in fact, the imposition of a "needs" test as proposed by the Midwest ISO TOs would be contrary to this principle,<sup>12</sup> and would be unduly discriminatory. The Midwest ISO TOs effectively propose a "needs" test that would be applied only to new generation, and not to their pre-existing generation. Such a proposal would be unduly discriminatory because existing generators, most of which are owned by or affiliated with the transmission owners, would not be subject to the test; existing generators would be presumed to be needed and receive compensation for their capability, while new generators would be presumed not to be needed unless proven otherwise.<sup>13</sup>

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<sup>10</sup> Order No. 2003-A at P 416 (comparability of compensation); *see also* Order No. 2003, LGIA art. 9.6.1; Order No. 2003-A, LGIA art. 9.6.1 (comparability of technical requirements).

<sup>11</sup> Order No. 2003-A at P 416. *Accord Entergy Services, Inc.*, 113 FERC ¶ 61,040 at P 22-24, 38-39 (2005) (*Entergy*); Order No. 2003-B at P 113, 119. We note that Order No. 2003 begins its analysis of compensation for reactive power by noting that "the Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation." Order No. 2003 at P 546. Subsequently, in Order No. 2003-A, the Commission went on to explain, however, that should the transmission provider compensate its own or its affiliated generator for reactive power, then it should also compensate the Interconnection Customer, *i.e.*, the non-affiliated generator, for reactive power. Order No. 2003-A at P 416. *Accord* Order No. 2003-B at P 113, 119.

<sup>12</sup> In line with the Commission's comparability standard, the Commission has accepted a proposal to eliminate compensation for reactive power within the established range for all generators, regardless of whether the generator is independent or owned by or otherwise affiliated with a transmission owner. *See Entergy*, 113 FERC ¶ 61,040 at P 22-24, 38-39.

<sup>13</sup> The Midwest ISO TOs do not appear to propose that their "needs" test be applied equally to all generators on a comparable basis, irrespective of whether they are existing or new, or that such analysis of whether each generator is "needed" be revisited

(continued...)

19. Contrary to what the Midwest ISO TOs contend, the fact that the reactive power which a generator is capable of producing is not used at some particular given time does not render the generator's filed rates based on reactive power capability unjust or unreasonable.<sup>14</sup> Consistent with North American Electric Reliability Council (NERC) and Regional Reliability Council criteria and Good Utility Practice, Order No. 2003 requires generators to be capable of providing reactive power within a specified range when called upon.<sup>15</sup> It is this *capability* for which generators are compensated under the Midwest ISO's Schedule 2.<sup>16</sup> Accordingly, a generator is "used and useful" if the generator is capable of providing reactive power.<sup>17</sup>

20. With regard to the Midwest ISO TOs' request that they be allowed to argue that in a particular instance a particular generator may be precluded from rate recovery due to an interconnection agreement or some other agreement, we agree. The October 17, 2005 order does not preclude such arguments.<sup>18</sup>

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on a regular basis as new generators come on-line or new transmission lines are built or circumstances otherwise change.

<sup>14</sup> See *supra* note 5.

<sup>15</sup> Order No. 2003 at P 542. Cf. *Interconnection for Wind Energy*, Order No. 661, 70 Fed. Reg. 34,993 (June 16, 2005), FERC Stats. & Regs. ¶ 31,186 at P 66 (2005) (requiring that a wind plant have reactive power capability if the Transmission Provider shows, in the System Impact Study, that it is needed for safety or reliability), *order on reh'g*, Order No. 661-A, 70 Fed. Reg. 75,005 (Dec. 19, 2005), FERC Stats. & Regs. ¶ 31,198 (2005).

<sup>16</sup> Cf. *Rolling Hills*, 109 FERC ¶ 61,069 at P 12 (finding a "needs" test to be contrary to, among other things, Order No. 2003, as all generators must maintain reactive power capability, and not requiring a "needs" test for a generator to be compensated for reactive power).

<sup>17</sup> See December 7, 2004 Answer at 11-12 ("[A]ll generators interconnecting to the Transmission System must be capable of providing reactive power to support system voltage in order to ensure reliable operation of the interconnected system") (quoting Webb testimony at 4).

<sup>18</sup> See Order No. 2003-B at P 121.

#### **IV. Compliance Filing**

##### **A. Midwest ISO's Proposed Revisions**

21. In the October 17, 2005 order, the Commission directed the Midwest ISO to modify its OATT (now, Transmission and Energy Markets Tariff or TEMT)<sup>19</sup> and amend certain sections of Schedule 2, which included revising certain definitions in the OATT. Among the required revisions, the Commission directed the Midwest ISO to provide that non-public utilities are eligible to receive compensation for reactive power,<sup>20</sup> and to define “a reasonable time period” as used in section II.B.2.<sup>21</sup>

22. In its compliance filing, the Midwest ISO does not include language to provide that non-public utilities are eligible to receive compensation for reactive power. The Midwest ISO does define, however, “a reasonable time period” in section II.B.2 as “immediately, if intraday system conditions require additional reactive power supply to maintain reliability, or as instructed by the Transmission Provider prior to the Operating Day based on forecasted system condition.”

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

23. Notice of the Midwest ISO's compliance filing was published in the *Federal Register*, 70 Fed. Reg. 72,815 (2005), with interventions and protests due on or before December 7, 2005. E.ON U.S. LLC (E.ON) filed a timely protest.<sup>22</sup> Dynegy Power Corp. (Dynegy) filed an answer to E.ON's protest.

24. E.ON argues that the Midwest ISO's compliance filing is deficient because it does not adequately define a “reasonable time period.” It asserts that the word “immediately” as proposed by the Midwest ISO is vague and unclear. E.ON further requests that there be some minimum criteria to assure that a generator can respond “immediately.”

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<sup>19</sup> The Midwest ISO replaced its OATT with the TEMT, effective April 1, 2005. *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,289 (2005) (approving Readiness Certification which allowed TEMT service to commence); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (2004) (TEMT II Order), *order on reh'g, Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053 (2005).

<sup>20</sup> *See Entergy*, 113 FERC ¶ 61,040 at P 88.

<sup>21</sup> October 17 Order, 113 FERC ¶ 61,046 at P 32.

<sup>22</sup> E.ON U.S. LLC is the new name for LG&E Energy LLC who submitted a timely intervention earlier in this proceeding.



Specifically, E.ON states that such criteria should include that generators have remote start-up capability or on-site staffing 24 hours-a-day, including weekends, so that they can respond when so required, as well as an assurance of firm fuel supply.

### **C. Commission Determination**

#### **1. Procedural Matters**

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Dynegy's answer and will, therefore, reject it.

#### **2. Non-Public Utilities and "A Reasonable Period"**

26. We accept the Midwest ISO's compliance filing, with one exception. In the October 17, 2005 order, we required the Midwest ISO to revise its tariff to provide that non-public utilities are eligible to receive compensation for reactive power.<sup>23</sup> The Midwest ISO has not done so yet. Accordingly, we will require the Midwest ISO to submit another compliance filing to provide the revised language.

27. As to E.ON's argument that the definition of "reasonable time period" is deficient, we disagree. We find the Midwest ISO's definition of "reasonable time period" as "immediately" sufficient, until such time as experience may demonstrate otherwise. Moreover, E.ON's proposed additional criteria that generators either have remote start-up capability or on-site staffing 24 hours-a-day, including weekends, so that they can respond when so required, as well as an assurance of firm fuel supply, are new, unsupported criteria, and, more importantly, do not better clarify "reasonable time period."<sup>24</sup>

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

(A) The Midwest ISO TOs' request for rehearing is hereby denied, as discussed in the body of this order.

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<sup>23</sup> October 17 Order, 113 FERC ¶ 61,046 at P 88.

<sup>24</sup> An entity should submit in a compliance filing only the modifications directed by the Commission. *See, e.g., Southern Company Services, Inc.*, 63 FERC ¶ 61,217 at 62,595 & nn.4 & 5 (1993); *Indiana & Michigan Municipal Distributors Ass'n*, 61 FERC ¶ 61,351 at 62,373 (1992).

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

(C) The Midwest ISO is hereby directed to submit a compliance filing within fifteen (15) days of the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.