

109 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Midwest Independent Transmission System Operator, Inc. Docket No. ER04-961-000

ORDER REJECTING RATE SCHEDULE

(Issued October 1, 2004)

1. On June 25, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed Schedule 21 to supplement existing Schedule 2 of the Midwest ISO Open Access Transmission Tariff (OATT), related to the provision of reactive supply and voltage control (collectively, reactive power) from generation resource service. Midwest ISO also filed proposed changes to its OATT conforming to proposed Schedule 21.
2. Schedule 2 provides compensation for reactive power from generation sources from transmission owners or, as applicable, an independent transmission company (ITC). Under Schedule 2, rates for reactive power are based on the control area operator rates on file with the Commission and are paid where the load is located, i.e., on a zonal basis, while loads located outside Midwest ISO are charged an average system-wide rate. Schedule 2 compensates the transmission owners' generators for reactive power and has no mechanism to compensate independent power producers (IPPs) for providing this service.
3. Proposed Schedule 21 seeks to compensate those generation resources not currently covered by Schedule 2, i.e., IPPs. Under Schedule 21, rates for reactive power are calculated on a system-wide basis.
4. In this order, the Commission rejects Midwest ISO's proposed Schedule 21 as unduly discriminatory. This order also finds Midwest ISO's Schedule 2 to be unjust, unreasonable and unduly discriminatory under section 206 of the Federal Power Act (FPA) and directs Midwest ISO to compensate all generators under Schedule 2. This order benefits customers by ensuring that all providers of reactive power are compensated under comparable terms and conditions.

I. Background

5. In Order No. 888,¹ the Commission determined that the provision of reactive power from generators is an ancillary service and that this service is necessary to provide basic transmission service within every control area.² The Commission required: (1) transmission providers that operate a control area to provide this ancillary service; (2) transmission customers to purchase this service from the transmission provider; and (3) that this service must be offered and priced separately.³

6. Schedule 2 of Midwest ISO's OATT, which is similar to the Commission's *pro forma* OATT, explains that reactive power service will be provided by the control area operator within Midwest ISO where the load is located. Under Schedule 2, Midwest ISO receives the revenues for reactive power and then passes through these revenues to the control area operator.

7. When the load is located beyond the boundaries of Midwest ISO, the rate for Schedule 2 service is based on a weighted average of all of the relevant rates of the control area operators within Midwest ISO. Distribution of such revenues to the transmission owners is based on their peak loads.

8. Midwest ISO's Schedule 2 does not allow Midwest ISO to directly compensate non-transmission owners or IPPs for providing reactive power; rather, all payments for Schedule 2 service are distributed to the control area operator.

¹ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

² Order No. 888 at 31,716; *accord* Order No. 888-A at 30,227-29.

³ *Id.* at 31,715-21; *accord* Order No. 888-A at 30,226-29, 30,234, 30,237.

II. Filing

9. Midwest ISO states that the failure to include compensation for non-transmission owners or IPPs that provide reactive power in this revenue distribution scheme has been the source of much debate at Midwest ISO and is the main reason that the new Schedule 21 is being proposed in this filing. Midwest ISO asserts that proposed Schedule 21 seeks to implement a regional solution to the provision of reactive supply and voltage control from generation sources not enjoying compensation for their contribution to reactive supply and voltage control. Midwest ISO states that Schedule 21 is intended to maintain reliability and equitably compensate generators for being required to possess the capability to provide this service.⁴

10. Midwest ISO states that the instant filing would add reactive supply and voltage control from independent generation resources (Schedule 21) to the list of required ancillary services under section 3 of Midwest ISO's OATT. It argues that the changes in the instant filing would insure two things: "(1) a conditional entitlement for compensation that those generation resources not currently covered by or entitled for inclusion in a Transmission Owner's or Independent Transmission Company's (ITC) zonal revenue requirement and (2) a mechanism for the Midwest ISO to assess a charge to collect additional revenue requirement and to distribute the charges collected to the independent generation resource owners."

11. Specifically, Midwest ISO states that the major elements to its proposed filing of Schedule 21 are as follows. The first element is that Schedule 21 inserts two new defined terms - Qualified Generator and Independent Generation Resource, and that the filing amends section 37.3 of the OATT to ensure that all transmission customers pay Schedule 21 charges. Midwest ISO states that the lone exception to this provision recognizes commitments made by the Midwest ISO with Ameren Services Company (Ameren), who recently joined the Midwest ISO on May 1, 2004, as a participant in GridAmerica.⁵

⁴ See *Standardization of Generation Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Article 9.6.1 (2003) ("Interconnection Customer shall design the Generating facility to be capable of maintaining a composite power delivery at continuous rated power output at the Point of Interconnection . . ."). Cf. Order No. 2003 at P 546 (finding that interconnection customer should be penalized or otherwise compensate the transmission provider if the interconnection customer does not meet the transmission provider's voltage schedule requirements, so long as the voltage schedule requirements can be met by the established power factor range).

⁵ Citing *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,293 (2004).

12. The second element is that the technical qualifications for “Independent Generating Resources” seeking to become “Qualified Generators” are provided consistent with NERC policy and Attachment X (Large Generator Interconnection Agreement) to the Midwest ISO OATT. Midwest ISO states that those generators seeking compensation under Schedule 21 must give the Midwest ISO written notice of their compliance with both the technical requirements set forth in the proposed Schedule 21 and the Commission's acceptance of their revenue requirements.

13. The third element is that Midwest ISO will be responsible for calculating rates on an annual basis each June and will also recalculate the rates anytime there is a change to the total revenue requirements for the service made by the Commission. Midwest ISO states that the rate for service from the new generators, i.e., independent generators, under proposed Schedule 21 takes the average of their total established revenue requirement divided by system load served by the tariff. It states that the resulting charge will be applied to all load taking service under the tariff unless the Commission has previously made explicit case-by-case determinations for the treatment of Schedule 2 charges. Midwest ISO adds that revenues collected under Schedule 21 will be passed back directly to the Qualified Generators based on a pro-rata share of their respective revenue requirements. Further, Midwest ISO states that it reserves the right to review the Qualified Generator status of all generators deemed as such, and may revoke this status if the generator fails to comply with the control area operator's voltage control requirements three or more times in a calendar month.

14. The fourth element is that Midwest ISO proposes to remedy the potential for discrimination by paying all eligible suppliers regardless of location and without capping the amount to be procured per the NERC Reliability Standards and the recommendations of the U.S. - Canada Power System Outage Task Force in their final report on the August 14, 2003, power outage.

15. Also, Midwest ISO states that the provisions for determining the rates to be charged are intended to achieve resultant rates to be charged for transactions of a volume sufficient to ensure a reasonable likelihood for recovering the revenue requirements used in calculating the rate and that the rate charge determination under Schedule 21 will not employ a divisor larger than the expected set of billing determinants subject to the charge.

16. With regard to grandfathered agreements, Midwest ISO states that there is no change in that the status quo is preserved by amending section 37.3 to add Schedule 21 to the list of ancillary services grandfathered agreements for service of load within the Midwest ISO do not pay.

17. Midwest ISO requests an effective date of October 1, 2004.

III. Notice of Filing, Interventions, Comments and Protests

18. Notice of Midwest ISO's filing was published in the *Federal Register*, 68 Fed. Reg. 41,466 (2004), with comments, interventions, and protests due on or before July 16, 2004 (later extended to July 30, 2004). Notices of intervention were filed by the Kentucky Public Service Commission and the Minnesota Department of Commerce. Timely motions to intervene were filed by Reliant Energy, Inc., City of Hamilton, Ohio, DTE Energy Company, Illinois Municipal Electric Agency, Northern Indiana Public Service Company. Michigan Public Service Commission (MPSC) filed a motion to intervene out-of-time.
19. Timely motions to intervene and comments in support of Midwest ISO's proposals were filed by Duke Energy North America, LLC and Duke Energy Trading and Marketing, L.L.C., Constellation, T.E.S. Filer City Station Limited Partnership, Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, CMS Generation Michigan Power, L.L.C., Dearborn Industrial Generation, L.L.C., Dynegy Power Corp., Covert Generating Company, LLC, and Mirant.
20. Timely motions to intervene and comments in support of Midwest ISO's proposals, but requesting modification(s), were filed by Dominion Resources, Inc. and Troy Energy, LLC, Exelon Corporation, Williams Power Company, Inc., Electric Power Supply Association, Detroit Edison Company, Calpine Corporation, and Midwest Stand-Alone Transmission Companies.
21. Wisconsin Public Power Inc., which filed a timely motion to intervene, and Madison Gas & Electric Company (Madison), which filed a motion to intervene out-of-time, filed joint general comments (collectively, Wisconsin TDUs).
22. Timely motions to intervene and protests were filed by FirstEnergy Service Company, Organization of MISO States (OMS), Midwest ISO Transmission Owners, Wolverine Power Supply Cooperative, Inc., Michigan Public Power Agency and Michigan South Central Power Agency (Michigan Agencies), American Municipal Power-Ohio, Inc., LG&E Energy LLC, Dairyland Power Cooperative, WPS Resources Corporation, Wisconsin Electric Power Company, and Consumers Energy Company.
23. Additional comments were filed by the Regulatory Studies Program of the Mercatus Center at George Mason University (Mercatus Center) and the Indiana Public Utility Regulatory Commission, the Michigan Public Service Commission, and the Pennsylvania Public Utility Commission (IN, MI, and PA Commissions)
24. Midwest ISO filed an answer to the comments and protests.

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant MPSC's and Madison's motions to intervene out-of-time given their interests in the proceedings the early stage of the proceedings and the absence of any undue prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Undue Discrimination Objections to Schedule 21

27. Several parties argue that proposed Schedule 21 is unduly discriminatory. Most significantly, they argue that the charges to transmission customers for reactive power supplied to maintain transmission voltages on the Midwest ISO's transmission system within acceptable limits and the compensation to generators that supply such reactive power will be substantially different depending on whether Schedule 2 or Schedule 21 is deemed to be applicable. OMS states that in the existing Schedule 2, rates for reactive power are based on the control area operator rates on file with the Commission and are paid where the load is located, while loads located outside MISO are charged an average system-wide rate. Conversely, OMS states that proposed Schedule 21 rates are based on the sum of the gross annual reactive power revenue requirement for all newly qualified generators in the transmission system netted for calculation as a single system-wide rate. Also, FirstEnergy points out that: (1) although both Schedule 2 service and Schedule 21 service are assessed on a \$/kW basis, the numerator and the denominator used to develop each of these charges will be different and that it is likely that the rates charges may be substantially different; (2) rates for Schedule 2 service in each control area are subject to modification from time-to-time upon a rate filing by the control area operator, but rates under Schedule 21 service are subject to modification annually; and (3) Midwest ISO remits revenues collected for Schedule 2 service in each control area to the control area operator for distribution among generators supplying reactive power within its area, whereas Midwest ISO proposes to remit revenues for Schedule 21 service directly to the independent generation resources.

28. Moreover, FirstEnergy argues that the distinction between Independent Generation Resources, i.e., generators who may receive compensation under Schedule 21, and Other Generation Resources is irrational because the only distinction between these resources

supplying reactive power to Midwest ISO is whether they were being compensated for the supply of reactive power as of June 25, 2004 (the date of the instant filing). FirstEnergy states that generators not receiving compensation under a zonal charge pursuant to Schedule 2 of Midwest ISO's OATT as of June 25, 2004 are eligible to be treated as Independent Generation Resources (under Schedule 21), whereas generators receiving compensation as of that date are ineligible. FirstEnergy argues that this is an arbitrarily selected date which is meaningless for distinguishing among generators supplying reactive power to the Midwest ISO system.

29. In addition, Consumers argues that given Midwest ISO's proposed exemption from Schedule 21 charges for Ameren bundled load, it would be impermissibly discriminatory to deny a similar exemption to Consumers. Consumers states that one of the provisions of the service agreement for Ameren's bundled load is that Ameren be allowed to self-supply ancillary services, *e.g.*, reactive power. Thus, Consumers concludes, Midwest ISO has proposed to exempt Ameren load served under that service agreement, based on the fact that the service agreement allows Ameren to self-supply Schedule 2. Consumers states that that very same basis for exempting Ameren bundled load from Schedule 21 also applies to Consumers' load under its service agreement.

30. Also, several parties argue that Schedule 2 and Schedule 21 should have identical penalty provisions. They point out that generators that are being compensated under Midwest ISO's Schedule 2 are not subject to any penalties and that there is no legitimate reason for Midwest ISO to treat affiliated and non-affiliated generators differently.

31. Further, WPS argues that Midwest ISO's grandfather agreement (GFA) exemption provided in proposed Schedule 21 unduly discriminates against non-GFA customers by exempting GFA parties from the obligation to pay Schedule 21 charges. WPS states that Midwest ISO's proposal arbitrarily shifts the burden of cost recovery under Schedule 21 from 100 percent of Midwest ISO's load to as little as 60 percent of Midwest ISO's load, relieving up to 40 percent of Midwest ISO's load served under GFAs from any obligation to pay.

C. Other Objections to Schedule 21

32. Parties also raise many other objections to proposed Schedule 21. Among these are the objections that: only reactive power from generators passing an objective needs test should be allowed to recover for that service; consistent with Order No. 888, Schedule 21 should allow transmission customers to self-supply reactive power; and Schedule 21 should be assessed zonally – as Schedule 2 charges are assessed – rather than on a regionalized basis.

D. Conclusion

33. We recognize, as does Midwest ISO, that generators that provide reactive power to support the transmission system should be compensated for providing that service. However, the generators that provide that service should not be treated in an unduly discriminatory fashion. Accordingly, as we explain below, we must reject proposed Schedule 21 and direct revisions to existing Schedule 2.

1. Schedule 21

34. We will reject Midwest ISO's proposed Schedule 21 as unduly discriminatory or preferential. As several protestors point out, there are substantial differences between how a generator is compensated under existing Schedule 2 and how a generator is compensated under proposed Schedule 21.

35. In existing Schedule 2, which applies to reactive power provided by generation sources from essentially transmission owners, rates for reactive power are based on the control area operator rates on file with the Commission for where the load is located, while loads located outside MISO are charged an average, system-wide rate. Under proposed Schedule 21, which applies to reactive power provided by those generation sources not currently covered by Schedule 2, i.e., IPPs, rates for reactive power are based on the sum of the gross annual reactive power revenue requirement for all newly qualified generators in the transmission system netted for calculation as a single, system-wide rate.

36. Also: (1) although both Schedule 2 service and Schedule 21 service are assessed on a \$/kW basis, the numerator and the denominator used to develop each of these charges will be different and thus the rates charged will be different; (2) rates under Schedule 2 service for each control area are subject to modification from time-to-time upon a rate filing by the control area operator, which may be more frequently than once a year or less frequently, but rates under Schedule 21 service are subject to modification annually; and (3) Midwest ISO remits revenues collected for Schedule 2 service for each control area to the control area operator for distribution among generators supplying reactive power within its area, whereas Midwest ISO proposes to remit revenues for Schedule 21 service directly to the independent generators.

37. Further, Midwest ISO's only stated distinction between generators who may receive compensation under section 2 and those who may receive compensation under Schedule 21 is based on whether they were being compensated or not under Schedule 2 as of June 25, 2004 (the date of the instant filing). There is no distinction based on the

type or size of generators (and what quantity of reactive power it can produce or when), its location, or any other physical characteristic. This distinction is simply an inadequate basis in this context to distinguish between generators.

38. We find the differences between existing Schedule 2 and proposed Schedule 21 to be unduly discriminatory and, therefore, reject proposed Schedule 21.

2. Schedule 2

39. Midwest ISO's existing Schedule 2 provides compensation for reactive power service from generation sources from transmission owners or, as applicable, an ITC. Schedule 2 has no mechanism to directly compensate non-transmission owners or IPPs for providing this same reactive power service. Because Schedule 2 has no mechanism to compensate non-transmission owners or IPPs, we find that Midwest ISO's Schedule 2 is unduly discriminatory under section 206 of the FPA.⁶

40. We find that Schedule 2 must be revised to provide compensation for reactive power service to both transmission owners and ITCs and also non-transmission owners or IPPs insofar as they both provide such service; in that fashion, Schedule 2 will be just and reasonable and not unduly discriminatory. That is, only a Schedule 2 that includes all generators, including IPPs, is just and reasonable and not unduly discriminatory or preferential.

41. Accordingly, we direct Midwest ISO to file to replace existing Schedule 2 with a revised Schedule 2 within 30 days of the date of this order; that revised Schedule 2 must provide compensation for all generators, including IPPs. Further, given that transmission owners under Schedule 2 receive compensation for reactive power based on cost-based revenue requirements that are filed with the Commission and that IPPs currently do not have cost-based revenue requirements on file with the Commission, we will direct 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.

The Commission orders:

(A) Midwest ISO's proposed Schedule 21 is hereby rejected, as discussed in the body of this order.

⁶ 16 U.S.C. § 824e(a) (2000).

(B) Midwest ISO is hereby directed to file with the Commission, within 30 days of the date of this order, a revised Schedule 2, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.