

122 FERC ¶ 61,305
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest ISO Transmission Owners

Docket Nos. ER08-15-000
ER08-15-001

ORDER ACCEPTING PROPOSED TARIFF SHEETS, AS MODIFIED

(Issued March 31, 2008)

1. On October 2, 2007, as supplemented on January 31, 2008, certain Transmission Owning Members (Transmission Owners)¹ of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)² submitted for filing, under section 205 of the Federal Power Act (FPA),³ Schedule 2-A, which would revise the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT) to allow transmission owners in each zone⁴ to choose whether to compensate Qualified Generators for Reactive Supply

¹ The Midwest ISO Transmission Owners for purposes of this filing consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Transmission Company LLC; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

² The Midwest ISO joined the filing as the administrator of the TEMT, but the Midwest ISO states that it is not taking a position on the merits of the proposal.

³ 16 U.S.C. § 824d(a) (2000 & Supp. V 2005).

⁴ Under the license-plate rate design that exists in the Midwest ISO, the Midwest ISO's footprint is divided into a number of transmission pricing zones, typically based on
(continued...)

and Voltage Control from Generation Sources Service (reactive power) according to existing Schedule 2, which requires compensation on a capability basis, or proposed Schedule 2-A, which authorizes compensation only for reactive power produced outside a deadband of .95 leading to .95 lagging or the deadband as otherwise specified in a generator's interconnection agreement. For the reasons discussed below, we will accept the proposed tariff sheets, as modified, and direct the Transmission Owners to submit a compliance filing consistent with this order.

I. Background

2. The Commission has addressed Schedule 2 of the Midwest ISO's TEMT in several recent orders.⁵ Briefly, Schedule 2 formerly authorized reactive power compensation only for generators that were either owned by, or otherwise affiliated with, transmission owners; it had no mechanism to compensate independent power producers or other unaffiliated generators (collectively, IPPs). Accordingly, the Commission held that Schedule 2 was unjust, unreasonable, and unduly discriminatory under section 206 of the FPA⁶ and directed the Midwest ISO to revise Schedule 2 to compensate all generators on a comparable basis. Subsequently, the Midwest ISO filed, and the Commission accepted, a revised Schedule 2.

3. Currently, Schedule 2 provides that all Qualified Generators may receive reactive power compensation by filing a cost-based revenue requirement with the Commission. This approach ensures that all Qualified Generators are compensated on a comparable basis because each Qualified Generator—affiliated and unaffiliated—receives compensation based on its capability to provide reactive power, including capability to provide reactive power inside of the deadband. Thus, under Schedule 2, Qualified Generators are not subject to a “needs test” or to a requirement that they provide a

the boundaries of individual transmission owners or groups of transmission owners. Customers taking transmission service for delivery to load within the RTO pay a rate based on the embedded cost of the transmission facilities in the transmission pricing zone where the load is located. Thus, under license-plate rates, customers serving load within the Midwest ISO pay for the embedded cost of the transmission facilities in the local transmission pricing zone and receive reciprocal access to the entire Midwest ISO grid.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *order on reh'g*, 110 FERC ¶ 61,267 (2005) (*MISO I*), *order on compliance filing*, 113 FERC ¶ 61,046 (2005) (*MISO II*), *order on reh'g and compliance filing*, 114 FERC ¶ 61,192 (2006) (*MISO III*), *order on reh'g and compliance filing*, 116 FERC ¶ 61,283 (2006) (*MISO IV*).

⁶ 16 U.S.C. § 824e (2000 & Supp. V 2005).

specified amount of reactive power inside or outside the deadband in order to collect their revenue requirement. Schedule 2 also permits Qualified Generators to seek recovery of the cost of providing reactive power in excess of that provided by normal operation of voltage control capability. This compensation typically reflects opportunity costs associated with reducing the MW output of the generator below rated capability to produce additional reactive power. The Midwest ISO calculates rates to be paid by its transmission customers for reactive power service for each zone on its transmission system based on the annual costs of those Qualified Generators in the zone providing service pursuant to Schedule 2.

II. Summary of Filing

4. In the instant filing, the Transmission Owners propose to add Schedule 2-A to Midwest ISO's TEMT, with an effective date of December 1, 2007. Schedule 2-A would provide that transmission owners in each zone may choose to compensate Qualified Generators according to either Schedule 2 or Schedule 2-A. In those zones where the transmission owners choose Schedule 2-A, Qualified Generators would not receive compensation for reactive power inside the deadband and would be prohibited from maintaining a rate schedule or tariff authorizing such compensation. Rather, these generators would be paid the higher of their lost opportunity costs or \$2.20 per MVARh only when they provide reactive power outside the deadband.⁷

5. Transmission owners that choose Schedule 2-A must provide the Midwest ISO with 60-days' notice of their election. Similarly, transmission owners must give the Midwest ISO 60-days' notice before terminating their zones' participation in Schedule 2-A. If transmission owners within a zone disagree regarding any election, Schedule 2-A provides that such disagreements would be resolved pursuant to the dispute resolution provisions in the Midwest ISO's TEMT.

6. Consistent with the Midwest ISO's existing zonal pricing structures, transactions that sink in a zone within the Midwest ISO that is covered by Schedule 2-A would be assessed a zonal reactive power rate that the Midwest ISO would calculate to recover the costs incurred to compensate Qualified Generators in that zone for providing service pursuant to Schedule 2-A. Schedule 2-A also provides that transactions exiting the

⁷ The Transmission Owners state that this amount is a proxy cost developed in a manner similar to the \$2.26 per MVARh that the Commission recently accepted in *Southwest Power Pool, Inc.*, 119 FERC ¶ 61,199 (2007) (*SPP I*), *reh'g denied*, 121 FERC ¶ 61,196 (2007) (*SPP II*) (collectively, *SPP*). The Transmission Owners explain that they analyzed the costs of new generating units within the Midwest ISO for the revenue requirements that had been accepted by the Commission, and that \$2.20 is the median number.

Midwest ISO would pay an average reactive power rate based on the revenue requirements for all zones (with each zone's revenue requirement calculated pursuant to Schedule 2 or 2-A, whichever is applicable), while Qualified Generators would receive a *pro rata* allocation of the total reactive power revenue collected from transactions exiting the Midwest ISO, with such revenue distribution based on the Qualified Generator's monthly revenue requirement, as calculated under Schedule 2 or 2-A, whichever is applicable.

7. Under Schedule 2-A, a single deadband would apply to all Qualified Generators within a given zone unless that deadband conflicts with an individual Qualified Generator's interconnection agreement, in which case the deadband specified in the interconnection agreement would apply to that Qualified Generator.⁸ For purposes of Schedule 2-A, the Transmission Owners also propose to update the technical qualifications contained in Schedule 2 to specify that the Midwest ISO would take into consideration whether a generator is expected to be available for operation during the time of the Midwest ISO's instruction to provide reactive power outside the deadband.

8. The Transmission Owners claim that Schedule 2-A is just and reasonable and not unduly discriminatory because it is consistent with Order No. 2003⁹ and the Commission's recent orders in *SPP I & II* and *BPA*.¹⁰ The Transmission Owners argue that Schedule 2-A meets the Commission's comparability requirement because all generators within a particular zone, both affiliated and unaffiliated, would be compensated on the same basis. The Transmission Owners explain that if transmission owners within a zone choose Schedule 2-A, then no generators within that zone would be

⁸ Initially, the Transmission Owners proposed to establish a deadband for each Qualified Generator, but they subsequently revised that proposal. See Transmission Owners' Answer to Initial Protests at 24 (Transmission Owners' Answer); Transmission Owners' Response to Deficiency Letter, response to Question 3 (Transmission Owners' Deficiency Letter Response).

⁹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs., ¶ 31,146, at P 21 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., ¶ 31,160, at P 416 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs., ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs., ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹⁰ *Bonneville Power Admin. v. Puget Sound Energy, Inc.*, 120 FERC ¶ 61,211 (2007) (*BPA*).

compensated for reactive power inside the deadband; if the transmission owners continue using Schedule 2, then all generators within that zone would continue to be compensated for reactive power both inside and outside the deadband.

9. The Transmission Owners also argue that Schedule 2-A's zonal approach to reactive power compensation is just and reasonable and not unduly discriminatory. The Transmission Owners state that reactive power rates already vary significantly by zone in the Midwest ISO, and that in *ATC*¹¹ and *ITC*¹² the Commission has allowed zonal differences in methodology related to cost allocation of generator interconnection upgrades.

10. The Transmission Owners claim that, in filing Schedule 2-A under section 205 of the FPA, they do so under the authority granted to them under the Commission-approved settlement with the Midwest ISO regarding filing rights.¹³ Specifically, the Transmission Owners claim that section 3.9 of the Filing Rights Settlement grants them authority to submit a section 205 filing to revise the rates, terms and conditions of Schedule 2 as well as other ancillary service provisions. Section 3.9 provides that:

Both Transmission Owners that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the [TEMT]) and the Midwest ISO shall have the right to submit filings under FPA section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services. . . . [A]ny ancillary service proposal that has regional impacts shall be subject to the governance and coordination provisions of [s]ections 4 and 5 of this [Filing Rights Settlement].

11. The Transmission Owners state that they have complied with sections 4.1 and 5.1 of the Filing Rights Settlement. Section 4.1 requires that a majority of Midwest ISO transmission owners approve a proposal before submitting it for filing under section

¹¹ *Am. Transmission Co., LLC*, 120 FERC ¶ 61,221 (2007) (*ATC*).

¹² *Int'l Transmission Co.*, 120 FERC ¶ 61,220 (2007) (*ITC*).

¹³ Transmission Owner's Initial Filing at 2, 4 (describing the Filing Rights Settlement as the "key document enabling [them] to submit this filing"). See Settlement Agreement between Transmission Owners and Midwest ISO on Filing Rights, Docket No. RT01-87-010 (Filing Rights Settlement); see also *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,380 (2005) (accepting the Filing Rights Settlement for filing) (Filing Rights Order).

205.¹⁴ The Transmission Owners state that this requirement was met on August 2, 2007, when a majority of transmission owners voted to approve Schedule 2-A. Section 5.1 requires that the Midwest ISO receive 30-days' notice of any filing submitted under section 4.¹⁵ The Transmission Owners state that they complied with this requirement by notifying the Midwest ISO in a letter dated August 16, 2007 of their intent to file Schedule 2-A.

III. Notice of Filing and Responsive Pleadings

12. Notice of the Transmission Owners' filing was published in the *Federal Register*,¹⁶ with comments and interventions due on or before October 23, 2007. Allegheny Energy Supply Company, LLC, Consumers Energy Company, The Detroit Edison Company, International Transmission Company and Michigan Electric Transmission Company, LLC, LS Power Associates, L.P., and Wisconsin Public Power,

¹⁴ Section 4.1 of the Filing Rights Settlement states, in relevant part:

FPA section 205 filings subject to this [s]ection 4 . . . shall not be made by individual Transmission Owners. Instead, it is the intention of all Parties that Transmission Owners will coordinate the filing rights subject to this [s]ection 4 through the development of joint filings Decisions on whether or not to make a joint section 205 filing shall be made by majority vote, on a "one Transmission Owner - one vote" basis; provided that any entity that has one or more written delegations of authority to exercise section 205 rights on the matter that is the subject of a vote shall be authorized to cast a vote under each such delegation of authority.

¹⁵ Section 5.1 of the Filing Rights Settlement states, in relevant part:

Transmission Owner(s) whether acting individually or jointly pursuant to [s]ection 4, shall provide the Midwest ISO and all other Transmission Owners with at least thirty (30) days notice before submitting any FPA section 205 filing that is subject to this [s]ection 5 as provided for in [s]ection 3 of this [Filing Rights Settlement].

¹⁶ 72 Fed. Reg. 57,924 (2007).

Inc. filed timely motions to intervene. American Municipal Power-Ohio, Inc. (American Municipal) and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation) filed motions to intervene out-of-time.

13. Duke Energy Shared Services, Inc. (Duke) and Wisconsin Electric Power Company (Wisconsin Electric) filed motions to intervene and comments generally supporting the filing. The Midwest ISO filed a motion to intervene and comments.

14. Calpine Corporation and Tenaska Inc. (Calpine), Dynegy Midwest Generation, Inc. and Renaissance Power LLC (Dynegy), The Electronic Power Supply Association (EPSA), Exelon Corporation (Exelon), FirstEnergy Solutions Corp. (FirstEnergy), Fox Energy Company LLC (Fox Energy), The Integrys Energy Group (Integrys),¹⁷ Michigan Public Power Agency (Michigan Public Power), New Covert Generating Company, LLC (New Covert), PSEG Energy Resources & Trade LLC (PSEG), and Reliant Energy, Inc. (Reliant) filed motions to intervene and comments protesting the filing. Dominion Energy Kewaunee, Inc. and Dominion Energy Marketing, Inc. (Dominion) filed a motion to intervene out-of-time and a protest. The Transmission Owners filed an answer to the protests. Integrys filed an answer to the Transmission Owners' answer.

IV. Deficiency Letter

15. On November 30, 2007, Commission staff issued a deficiency letter concerning various aspects of the Midwest ISO's and Transmission Owners' initial filing. On January 31, 2008, the Midwest ISO and the Transmission Owners submitted a response.

16. Notice of the Midwest ISO's and Transmission Owners' submittal was published in the *Federal Register*,¹⁸ with comments and interventions due on or before February 21, 2008. Calpine, Dynegy, Exelon, FirstEnergy, Integrys, Michigan Public Power, and Reliant filed comments. The Midwest ISO and the Transmission Owners filed an answer. Integrys filed an answer to the Transmission Owners' answer.

¹⁷ The Integrys Energy Group includes: the Integrys Energy Group, Inc., and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company, and Integrys Energy Services, Inc.

¹⁸ 73 Fed. Reg. 7,737 (2008).

V. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,²⁰ the Commission will grant American Municipal's, Constellation's, and Dominion's motions to intervene out-of-time given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,²¹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept all the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Filing Rights under the Filing Rights Settlement

1. Comments

19. New Covert and Reliant argue that the Transmission Owners are not authorized by the Filing Rights Settlement to submit Schedule 2-A under section 205. New Covert and Reliant contend that the Filing Rights Settlement allocates section 205 filing rights between the Midwest ISO and the Transmission Owners, and that in section 3.9 the Transmission Owners retained the right only to submit filings that set the rates, terms, and conditions applicable to the *provision* of ancillary services by the Midwest ISO to TEMT customers. New Covert and Reliant assert that the Transmission Owners did not in any way retain the right to make filings like Schedule 2-A, which modify the terms under which the Midwest ISO will *procure* ancillary services from third parties, and that the Midwest ISO has exclusive authority under section 3.12 of the Filing Rights Settlement to submit such filings.²² New Covert and Reliant acknowledge that the

¹⁹ 18 C.F.R. § 385.214 (2007).

²⁰ 18 C.F.R. § 385.214(d) (2007).

²¹ 18 C.F.R. 385.213(a)(2) (2007).

²² Section 3.12 of the Filing Rights Settlement states, in relevant part:

Except as provided herein, the Midwest ISO shall have full and exclusive right to submit filings under FPA section 205 with regard to its [TEMT] and related documents; provided, however that nothing herein shall prevent the Midwest ISO

(continued...)

Midwest ISO joined the Transmission Owners' filing as administrator of its TEMT, but point out that the Midwest ISO took no position on Schedule 2-A.

20. Similarly, Dynegy contends that section 3.9 preserves the section 205 rights of only those transmission owners “that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the [TEMT]).”²³ Dynegy argues that such transmission owners share the desire to recover costs associated with providing ancillary services, and that section 3.9 must therefore be interpreted as merely establishing that such transmission owners “have not relinquished their right to file [under section 205] with respect to their own rates, a right that does not extend to filing to change the rates collected by others for ancillary services.”²⁴ Dynegy thus claims that the Transmission Owners violated the Filing Rights Settlement by allowing transmission owners that do not own or control generation or other resources capable of providing ancillary services to join in filing Schedule 2-A.²⁵

21. In their answer, the Transmission Owners re-assert their interpretation of section 3.9. The Transmission Owners also claim that section 3.9's reference to “the provision of ancillary services” is general and does not detail which entity specifically must be “providing” the ancillary services. The Transmission Owners argue that if the Midwest ISO or its transmission owners are “procuring” ancillary services, then the generators from which they procure them are necessarily “providing” them.

2. Commission Determination

22. Section 3.9 of the Filing Rights Settlement states that:

Both Transmission Owners that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the [TEMT]) and the Midwest ISO shall have the right to submit filings under FPA

from inviting the participation of one or more Transmission Owners in any such submission.

²³ Dynegy Protest at 10 (quoting section 3.9 of the Filing Rights Settlement).

²⁴ *Id.* at 11.

²⁵ Dynegy maintains that Schedule 2-A must be revised to include the limitation that only transmission owners that own or control generation or other resources capable of providing ancillary services may file section 205 filings with respect to ancillary services. *Id.* at 37.

section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services. . . . [A]ny ancillary service proposal that has regional impacts shall be subject to the governance and coordination provisions of [s]ections 4 and 5 of this [Filing Rights Settlement].

We find that section 3.9 is ambiguous. However, we conclude that when read in its entirety, and in the context of section 3 of the Filing Rights Settlement, section 3.9 allocates to transmission owners the section 205 filing rights necessary to file Schedule 2-A. Accordingly, we reject the protesters' alternative interpretations of section 3.9 and hold that section 3.9 authorizes the Transmission Owners to submit Schedule 2-A as a section 205 filing.

23. New Covert and Reliant argue that the phrase “provision of ancillary services” in section 3.9 indicates that transmission owners in the Midwest ISO did not preserve the right to submit section 205 filings pertaining to the procurement of ancillary services. However, nothing in either section 3.9 or the rest of the Filing Rights Settlement supports this interpretation. For example, section 2 of the Filing Rights Settlement, which defines important terms used throughout the Settlement, does not define “provision of ancillary services” or “procurement of ancillary services.” Similarly, section 3.9 does not distinguish between the “provision of ancillary services” and the “procurement of ancillary services,” even though the purpose of section 3.9 is to allocate section 205 filing rights with respect to ancillary services.

24. Moreover, there is no support in either section 3.9 or the Filing Rights Settlement to support the claim that the phrase “provision of ancillary services” limits a transmission owner's section 205 right to make filings only with respect to its own individual ancillary services rates. In fact, this interpretation is inconsistent with the structure of section 3.9 and would render part of it meaningless. Section 3.9 states that “[b]oth [t]ransmission [o]wners . . . and the Midwest ISO shall have the right to submit filings under FPA section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services.”²⁶ This language indicates that transmission owners and the Midwest ISO share the same section 205 filing right, which is “the right to submit filings under FPA section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services.” There is no language in section 3.9 that distinguishes the section 205 filing right granted to the transmission owners from the section 205 filing right granted to the Midwest ISO. Thus, if the phrase “provision of ancillary services” has the narrow interpretation that Dynergy, New Covert, and Reliant advance— in which case it would refer only to the ability of transmission owners to make section 205 filings with respect to

²⁶ Emphasis added.

their own individual ancillary services rates—it would be meaningless with respect to the Midwest ISO because, as an independent Regional Transmission Organization (RTO) with no generation of its own, the Midwest ISO itself does not own or control generation capable of providing ancillary services and therefore could not make a section 205 filing related to those services.²⁷

25. This fault in Dynegy’s, New Covert’s, and Reliant’s interpretation is underscored by the rest of section 3.9, which requires that “any ancillary service proposal [made by transmission owners] that has regional impacts shall be subject to the governance and coordination provisions of [s]ections 4 and 5 of this [Filing Rights Settlement].” Dynegy, New Covert, and Reliant do not explain why, if section 3.9 merely confirms transmission owners’ rights to make section 205 filings with respect to their own individual ancillary service rates, it contemplates that transmission owners will submit section 205 filings that have “regional impacts.” We read this language with the rest of section 3.9, and find that it indicates that section 3.9 authorizes section 205 filings like the Transmission Owners’ filing.

26. We further agree with the Transmission Owners’ observation that section 3.9 “does not detail which entity specifically must be ‘providing’ the ancillary services,” and with their further observation that, if the Midwest ISO or its transmission owners are “procuring” ancillary services, then the generators from which they procure them are necessarily “providing” them.²⁸ Thus, when section 3.9 grants transmission owners “the right to submit filings under FPA section 205 to govern the rates, terms, and conditions applicable to the provision of ancillary services” it does not specify a transmission owner’s own individual provision of ancillary services and instead may be more reasonably read as referring more generally to the provision of ancillary services under the Midwest ISO TEMT.

27. Finally, while we agree with Dynegy that section 3.9 allocates section 205 filing rights to transmission owners that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the TEMT), this restriction does not affect our conclusion that, when read as a whole, section 3.9 also allocates

²⁷ New Covert and Reliant appear to realize that their argument renders part of section 3.9 meaningless, at least implicitly. Thus, they improperly seek to anchor the Midwest ISO’s right to make section 205 filings pertaining to the procurement of ancillary services in section 3.12’s catch-all provision, quoted above, rather than in section 3.9’s express language.

²⁸ Transmission Owners’ Answer at n. 20.

section 205 filing rights to transmission owners to file Schedule 2-A.²⁹ Moreover, the fact that some transmission owners outside this subset may have joined in filing Schedule 2-A is not relevant to whether section 3.9 allocates to transmission owners in this subset the section 205 rights to file Schedule 2-A; our interpretation of section 3.9's allocation of filing rights reflects its wording, structure, and context, not which transmission owners joined the filing. Finally, the fact that transmission owners outside of the designated subset may have joined in filing Schedule 2-A has no practical consequence because Schedule 2-A will provide all transmission owners with the option of continuing under Schedule 2 or switching to Schedule 2-A.

C. Schedule 2-A and FPA Section 205

1. Comments

28. Dynegy argues that Schedule 2-A is an invalid FPA section 205 filing. Dynegy states that section 205 is used by public utilities only to establish or revise their own rates, and that section 206 is the correct mechanism for filings by one entity that seek to revise another entity's rates. Dynegy argues that the Transmission Owners are attempting to expand section 205 beyond the limits described by the court in *Atlantic City*³⁰ in order to avoid section 206's burden of showing that either Schedule 2 or the rates filed under it are unjust, unreasonable, or unduly discriminatory.

29. Dynegy contrasts Schedule 2-A with the section 205 filings in *BPA, E.ON*,³¹ and *Entergy*.³² Dynegy claims that, unlike Schedule 2-A here, the section 205 filings in those cases did not eliminate other generators' compensation inside the deadband. Dynegy explains that the transmission owners in those cases followed a two-step process – first making a section 205 filing to eliminate compensation under their respective tariffs, and then filing a separate section 206 proceeding to address the rates of unaffiliated generators.

²⁹ In fact, construing the group of transmission owners with section 205 filing rights as those that own or control generation or other resources capable of providing ancillary services (offered to customers pursuant to the TEMT) provides additional support for our interpretation, by expressly introducing a link between the Midwest ISO's TEMT and the section 205 rights allocated in section 3.9.

³⁰ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (*Atlantic City*).

³¹ *E.ON U.S. LLC*, 119 FERC ¶ 61,340 (2007) (*E.ON*).

³² *Entergy Services, Inc.* 113 FERC ¶ 61,040 (2005), *reh'g denied*, 114 FERC ¶ 61,303 (2006), (*Entergy*).

30. Dynegy also argues that Schedule 2-A is outside the scope of section 205 filings currently permitted under section III.D.1 of the existing Schedule 2. Dynegy asserts that this section of Schedule 2 permits generators to make section 205 filings to file or revise their reactive power revenue requirements, but that Schedule 2-A fails to meet this standard because the Transmission Owners have not included in Schedule 2-A a change to the rates of those Transmission Owners that are Qualified Generators under Schedule 2. Finally, Dynegy claims that the Transmission Owners' filing fails to comply with Part 35 of the Commission's regulations. Specifically, Dynegy asserts that the majority of the Midwest ISO's members have not agreed to Schedule 2-A, that the Transmission Owners failed to obtain all requisite agreement, including any agreement required by contract, before filing, and that the Transmission Owners submitted an incomplete comparison of sales and services revenue.

2. Commission Determination

31. We reject Dynegy's argument and find that this Schedule 2-A filing is a valid section 205 filing.³³ In submitting Schedule 2-A, the Transmission Owners have taken the first step in the two-step process that Dynegy acknowledges has been followed in previous cases (i.e., making a section 205 filing eliminating compensation inside the deadband). The only material difference between Schedule 2-A and the section 205 filing in *SPP*, for example, is that Schedule 2-A gives transmission owners the option of eliminating compensation within their zones, whereas the section 205 filing in *SPP* eliminated compensation for all zones without providing for an option. Accordingly, we hold that Schedule 2-A is a proper section 205 filing.

32. We also reject Dynegy's claim the Schedule 2-A is not a section 205 filing because it is outside the scope of section 205 filings permitted under section III.D.1 of Schedule 2. This argument rests on the premise that the Transmission Owners either filed, or had to file, Schedule 2-A under section III.D.1. This premise is incorrect. The Transmission Owners filed Schedule 2-A pursuant to their rights under the Filing Rights Settlement, and they were correct to do so. The Filing Rights Settlement allocates section 205 filing rights between the Midwest ISO and transmission owners in the Midwest ISO, which is the critical issue in determining whether the Transmission Owners are permitted to propose revisions to the Midwest ISO's TEMT. In contrast, section III.D.1 of Schedule 2 addresses an issue that is entirely unrelated to this case – the rights of Qualified Generators to unilaterally revise their cost-based reactive power revenue requirements. The Transmission Owners have not sought any revisions to generators'

³³ Other protesters recognize that Schedule 2-A is a section 205 filing. Fox Energy, for example, states that Schedule 2-A “does not request or propose that the Commission invalidate any other tariff or rate.” Fox Energy Protest at 6.

cost-based revenue reactive power requirements.³⁴ Rather, they have sought revisions to the reactive power compensation provisions of the Midwest ISO TEMT. Thus, we hold that section III.D.1 of Schedule 2 has no relevance to this proceeding. Moreover, we note that section III.D.1 has no bearing on whether Schedule 2-A meets the statutory requirements for a section 205 filing. As we state above, we find that it does.

33. Finally, we reject Dynegy's claim that the Transmission Owners' filing fails to comply with Part 35 of the Commission's regulations. We find that the Transmission Owners have satisfied these requirements.³⁵

D. Schedule 2-A and FPA Section 206

1. Comments

34. FirstEnergy argues that the Commission should respect and maintain existing procedures for compensating generators that supply reactive power because the Transmission Owners have not shown that either Schedule 2 or any currently effective rates filed under Schedule 2 are unjust, unreasonable, or unduly discriminatory. Fox Energy and PSEG contend that their current rate schedules are filed rates under section 205, and may only be changed through a section 206 proceeding. For example, Fox Energy states that because Schedule 2-A does not request or propose that the Commission invalidate any other tariff or rate, it is entitled to charge its filed rate unless and until the Commission, acting under appropriate legal authority, requires that it be changed.

35. Dynegy objects to a provision in Schedule 2-A that prohibits generators from maintaining on file a rate schedule or tariff that permits compensation for reactive power inside the deadband. Dynegy asserts that this requirement discriminates against IPPs because transmission owners have revenue requirements but do not maintain them in a rate schedule or tariff, whereas IPPs establish their revenue requirements in a rate schedule or tariff. Dynegy contends that, while this provision is ambiguous, it implies that generators with rate schedules or tariffs are required to cancel them if the

³⁴ And, as we discuss below, the Transmission Owners cannot change the IPPs' cost-based revenue requirements through their filing of Schedule 2-A.

³⁵ We find that the Transmission Owners obtained the requisite agreement before filing Schedule 2-A. Contrary to Dynegy's implication, the Transmission Owners are not required—by contract or by section 205—to obtain the agreement of a majority of Midwest ISO members before filing. In this case, the only contractual agreement governing the Transmission Owners' filing rights is the Filing Rights Settlement, and they have complied with its requirements.

transmission owners in their zones select Schedule 2-A. Dynegy asserts that the Transmission Owners have failed to justify this provision and propose that the Commission revise Schedule 2-A to provide that Schedule 2 rate schedules or tariffs are suspended if a transmission owner elects Schedule 2-A. Similarly, Reliant asserts that generators should be permitted to maintain their Schedule 2 rate schedules or tariffs to avoid the administrative burden of re-filing if transmission owners switch back to Schedule 2.

36. The Transmission Owners respond that FirstEnergy's argument fails to recognize that Schedule 2-A was submitted as a section 205 filing, and that, under section 205, the Transmission Owners do not need to show that the existing rates are unjust and unreasonable. The Transmission Owners state that they must show only that Schedule 2-A is just and reasonable.

2. Commission Determination

37. We reject FirstEnergy's argument and agree with the Transmission Owners. Schedule 2-A is a section 205 filing proposing to revise the Midwest ISO's TEMT; therefore, the Transmission Owners must demonstrate that proposed Schedule 2-A is just and reasonable but do not need to show that Schedule 2 or any rates filed under Schedule 2 are unjust, unreasonable, or unduly discriminatory.³⁶

38. That being the case, we also agree with PSEG and Fox Energy that as a section 205 filing, the Transmission Owners' proposal cannot override existing rate schedules, which will remain in force unless and until the Commission accepts or requires a change to the rate schedules. Schedule 2-A does not eliminate a generator's compensation inside the deadband provided under a separate rate schedule on file with the Commission; it merely provides that transmission owners in each zone have the option of switching to Schedule 2-A's compensation regime. Transmission owners that choose to switch to Schedule 2-A remain obligated to compensate generators in their zones pursuant to the generators' filed rate schedules unless and until these rate schedules are successfully challenged under section 206 of the FPA. Accordingly, we direct the Transmission Owners to delete the provision in Schedule 2-A prohibiting a Qualified Generator from maintaining a rate schedule that provides compensation inside the deadband and to include this change in the compliance filing directed below.

³⁶ See *Transcontinental Gas Pipe Line Corp. v. FERC*, No. 06-1286, 2008 U.S. App. LEXIS 4923, at *2-3 (D.C. Cir. Mar. 7, 2008) (distinguishing sections 4 and 5 of the Natural Gas Act, which, as relevant here, parallel sections 205 and 206 of the FPA, noting that under section 4 a company need merely show that its proposal is just and reasonable while under section 5 the complaining party must show both that the existing rate/term is unjust and unreasonable and that the new rate/term is just and reasonable).

E. Schedule 2-A and Generator Filing Rights

1. Comments

39. Dominion, New Covert, Reliant, and PSEG argue that Schedule 2-A infringes on generators' section 205 rights by effectively giving transmission owners the right to determine whether generators may seek compensation and by foreclosing compensation if a transmission owner selects Schedule 2-A. These protesters claim that transmission owners have no authority to establish generators' rates and, therefore, object to the Transmission Owners' proposal to establish a rate for outside the deadband service. These protesters assert that each generator has a right to seek its own compensation for such service under section 205. Additionally, some protesters raise the related concern that the Schedule 2-A compensation provisions may be inconsistent with the compensation provisions in existing individual interconnection agreements.

40. The Transmission Owners state that existing interconnection agreements will remain in place in zones subject to Schedule 2-A but that a generator will not be compensated under any existing rate schedule or tariff.³⁷

2. Commission Determination

41. We find that the Transmission Owners may revise the Midwest ISO's TEMT to provide for compensation only outside the deadband. We note that the Commission accepted a similar proposal in *SPP*³⁸ and, as we discuss below, the proposal is consistent with the Commission's reactive power policy in Order No. 2003.

42. However, as we discuss above, all of the rates, terms and conditions in existing interconnection agreements, including any reactive power compensation provisions, remain in effect unless and until modified through appropriate Commission proceedings.³⁹ This adequately addresses concern that the compensation provisions in Schedule 2-A may be inconsistent with compensation provisions in existing individual

³⁷ Transmission Owners' Deficiency Letter Response, response to Question 4; Transmission Owners' Answer to Deficiency Letter Protests at 8.

³⁸ The revised Schedule 2 in *SPP* provided that generators would receive \$2.26 per MVarh for reactive power outside the deadband. See *SPP I*, 119 FERC ¶ 61,199 at P 9.

³⁹ See *Tucson Electric Power Co.*, 60 FERC ¶ 61,236, at 61,791 (1992) (explaining that acceptance of a utility's agreement with one customer does not erase preexisting contractual obligations to other customers or preempt other customers' rights under their preexisting agreements).

interconnection agreements. Accordingly, we direct the Transmission Owners to modify Schedule 2-A to provide that existing interconnection agreements will remain in place in zones subject to Schedule 2-A.

F. Stakeholder Process

1. Comments

43. Calpine, Dynegy, EPSA, and Fox Energy argue that Schedule 2-A, like Schedule 2, should have been developed through Midwest ISO's stakeholder process. Calpine asserts that submitting such changes through a stakeholder process is the standard approach and the approach followed by Southwest Power Pool in *SPP*.

44. Fox Energy claims that Schedule 2-A is untimely and not yet ripe for Commission consideration, because it has not yet been presented or vetted by the Midwest ISO stakeholder process. EPSA claims that circumventing the stakeholder process undermines the very purpose of an RTO. Dynegy points to a case where it claims that the Commission rejected without prejudice the Midwest ISO's revised Attachment N (Recovery of Costs Associated with New Facilities) because it had not been through the stakeholder process.⁴⁰ Protesters are concerned that there are serious substantive flaws in Schedule 2-A because the Transmission Owners ignored the stakeholder process and failed to obtain generator input.

45. Dynegy also argues that *MISO IV* requires a stakeholder process. Dynegy states that in paragraph 23 of *MISO IV*⁴¹ the Commission referred to two different groups -

⁴⁰ Dynegy Protest at 33-34 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 98 FERC ¶ 61,064, *reh'g denied*, 98 FERC ¶ 61,356 (2002)).

⁴¹ Paragraph 23 states:

While we have denied the Midwest ISO TOs' rehearing request on this matter, the very exercise of doing so highlights the Midwest ISO TOs' difficulty in supporting their position. Indeed, the Midwest ISO TOs have never made a proposal as to how a needs test might be formulated and applied to all generators on a comparable basis. Moreover, the Midwest ISO TOs have failed, throughout this long proceeding, to demonstrate that the Midwest ISO's proposed Schedule 2 is unjust and unreasonable or otherwise unduly discriminatory or preferential. The Midwest ISO TOs have only speculated that the capability approach favored by and filed by the Midwest ISO could result in excessive charges being paid to generators. Significantly, they have never attempted to

(continued...)

“Midwest ISO Transmission Owners (MISO TOs)” and “parties” – and that the Commission switched from referencing “MISO TOs” and began referencing “parties” when it established a path for future revisions to Schedule 2. In so referencing “parties,” Dynegy argues that the Commission indicated that any proposal for future revisions to Schedule 2 must be a single proposal that had been developed through the stakeholder process. Dynegy also interprets the last sentence of paragraph 23, which states that “[a]ny such proposal should be advanced in a separate section 205 proceeding,” as requiring that the Midwest ISO submit a section 205 filing to begin any proceedings on future revisions in a new docket.

46. The Transmission Owners respond that they are not required to follow a stakeholder process like that utilized in *SPP* because it is not one of the requirements for proposing revisions to Midwest ISO’s TEMT prescribed in the Filing Rights Settlement. The Transmission Owners state that they must comply only with sections 4.1 and 5.1 of the Filing Rights Settlement, which require that they obtain a majority vote of transmission owners in favor of a proposal and that they give the Midwest ISO 30-days’ notice before filing. The Transmission Owners state that they have complied with these requirements.

2. Commission Determination

47. We find that the Transmission Owners are not required to submit Schedule 2-A through a stakeholder process. The process for filing Schedule 2-A is governed by the Filing Rights Settlement, which requires only that filings receive support from a majority of transmission owners and that the Midwest ISO receive 30-days’ notice before filing.

address the Midwest ISO’s reliability concerns that led it, at least in part, to its decision to file a Schedule 2 based on capability and comparability for all generators. *Going forward, parties may propose a rate* for all generators that compensates them comparably for the level of reactive power actually needed and used, so as to avoid remuneration in excess of those levels. Therefore, criteria may be developed, applied comparably and prospectively, that would determine which generators would receive reactive power compensation. We would also expect that reliability would be factored into any proposal that may be made. *Any such proposal should be advanced in a separate section 205 proceeding.* [Footnote omitted, emphasis added by Dynegy.]

There is no requirement for a stakeholder process. Thus, Dynegy's observation that the Commission once rejected without prejudice Midwest ISO's revised Attachment N because it had not been through the stakeholder process is irrelevant to this proceeding.

48. We also reject Dynegy's interpretation of *MISO IV*. Dynegy's reading of paragraph 23 of *MISO IV* is without support; the Commission did not mention the term "stakeholder process" in paragraph 23, much less require a stakeholder process as a prerequisite for future filings related to reactive power compensation. Accordingly, we reject Dynegy's argument.

G. Comparability

1. Comparability within an RTO

a. Comments

49. Certain protesters argue that Schedule 2-A violates the Commission's comparability policy because it permits similarly situated generators in different zones to receive different compensation for providing the same service. For example, Dominion asserts that comparability requires that all generators within the same RTO receive compensation on the same basis and that the zonal approach in Schedule 2-A violates this standard because it creates two different compensation options within the Midwest ISO. Similarly, several protesters argue that Schedule 2-A is inconsistent with the revised Schedule 2 accepted in *SPP* because the revised Schedule 2 in *SPP* removed compensation for all generators within *SPP*.

50. Dominion, Dynegy, and Integrys further argue that the Commission has required each RTO, as the transmission provider, to provide comparable reactive power compensation to all generators on the RTO's transmission system. Dominion argues that for the Midwest ISO in particular, the Commission determined that "because the Midwest ISO was compensating existing generators and was doing so on a capability basis, comparability required that the Midwest ISO compensate *all generators* (including IPPs) on that same basis."⁴²

51. FirstEnergy argues that while certain rates are set on a zonal basis in the Midwest ISO, all such rates were developed on the basis of costs allocated to the service being provided such that the differences in charges among the various zones simply reflect the cost differences among the zones. FirstEnergy states that, in contrast, Schedule 2-A will create a paradigm where differences in reactive power charges in different zones do not

⁴² Dominion Protest at 9 (citing *MISO IV*, 116 FERC ¶ 61,283 at P 14) (emphasis added).

reflect cost differences, but instead reflect a different pricing philosophy. Similarly, Exelon argues that zonal recovery of costs in other cases does not support the notion that the methodology for compensating generators may differ among zones within a single transmission provider's system.

52. New Covert and Reliant argue that generators must be compensated on the same basis, regardless of their zone, because each generator provides reactive power for the benefit of the entire transmission system, which the Midwest ISO operates on a single, integrated basis. For example, New Covert and Reliant state that generators within the Midwest ISO must follow the Midwest ISO's instructions and provide reactive power for the benefit of the entire Midwest ISO system, which is not the case for a generator on the border of two transmission systems operated by different transmission providers. New Covert and Reliant state that a generator located on the border of two transmission systems that are not within an RTO will follow only the instructions of the transmission system with which it is interconnected.

53. Dynegy and Exelon argue that Schedule 2-A is discriminatory because transmission owners with facilities in multiple zones may choose a different payment option for each zone. For example, Exelon states that transmission owners could elect Schedule 2-A and deny compensation in a zone where there are unaffiliated generators, but retain Schedule 2 in a zone where there are affiliated generators. Dynegy and Exelon also note that a generator located within a zone whose transmission owners elect Schedule 2-A would receive no compensation for the reactive power it produces within the deadband, yet could pay rates that reflect Schedule 2 reactive power compensation costs for those zones that elect to use Schedule 2 if, for example, the generator exports its power from the Midwest ISO.

54. In their answer, the Transmission Owners argue that Schedule 2-A's zonal approach is not unduly discriminatory. The Transmission Owners state that reactive power rates in the Midwest ISO already vary significantly by zone. The Transmission Owners also argue that the Commission has already allowed different pricing methodologies based on zone within the Midwest ISO. For example, the Transmission Owners state that in *ATC* and *ITC* the Commission accepted generator interconnection upgrade cost allocation methodologies for some zones that differ from the cost allocation methodology for such upgrades in other zones. The Transmission Owners also argue that it makes sense to use a zonal approach with respect to reactive power compensation because reactive power is more of a localized service than other ancillary services.

b. Commission Determination

55. We find that the approach proposed by the Transmission Owners in Schedule 2-A satisfies the principle of comparability. Accordingly, we reject the protesters' arguments and find that Schedule 2-A does not violate our reactive power compensation policy.

56. In Order No. 2003-A, the Commission stated that a Transmission Provider must treat affiliated and unaffiliated generators on a comparable basis, which requires 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.”⁴³ Consequently, the Commission has required Transmission Providers to modify reactive power compensation policies that compensated affiliated generators inside the deadband, but did not similarly compensate unaffiliated generators.⁴⁴

57. We disagree with protesters’ arguments that Schedule 2-A violates the principle of comparability and that the Midwest ISO, as the transmission provider, must maintain a single compensation policy that applies to all zones. Order Nos. 2003 and 2003-A were written to apply generically to traditional utilities outside an RTO; thus, in applying the principle of comparability to a situation where transmission owners within an RTO propose different reactive power compensation policies for different zones within the RTO, we must distinguish between how the term “Transmission Provider” is used in the context of Order Nos. 2003 and 2003-A, and how the term “transmission provider” is used in the context of RTOs and Order No. 2000.⁴⁵

58. In Order Nos. 2003 and 2003-A, the Commission defined “Transmission Provider” to include both the entity that provides transmission service and, if they are separate, the entity that actually owns the transmission facilities.⁴⁶ In contrast, when the

⁴³ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416 (emphasis added); *accord* Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 113, 119; Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 34, 42-43; *Entergy*, 113 FERC ¶ 61,040 at P 22-24, 38-39. Section 9.6.3 of the Commission’s Order No. 2003-A *pro forma* Large Generator Interconnection Agreement (which was reaffirmed in relevant respects in Order Nos. 2003-B and 2003-C) reflects this policy, providing that as a general rule, payment for reactive power is only for reactive power “outside the agreed upon deadband” but also providing for payment for reactive power within the deadband *if, and only if*, the Transmission Provider pays its own or affiliated generators for reactive power within the deadband.

⁴⁴ *See, e.g., MISO I*, 109 FERC ¶ 61,005 at P 39-41.

⁴⁵ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁴⁶ *See* Order No. 2003 at n. 3.; Order No. 2003-A n. 2 (stating that “[t]he entity (or entities) with which the Generating Facility is interconnecting is referred to as the
(continued...)

Commission refers to an RTO as the transmission provider, it is generally in the context of Order No. 2000 and section 35.34(k) of the Commission's regulations, which require that the RTO "be the sole provider of transmission service and sole administrator of its own open access tariff."⁴⁷ Thus, when used in the context of an RTO, the term "transmission provider" (i.e., the RTO) describes an entity that is separate and distinct from the entity that is the transmission owner (i.e., the RTO member(s) that has (have) turned over operational control of the transmission facilities it owns to the RTO).

59. An RTO is a transmission provider that by design does not have any affiliated generation. Consequently, although Order Nos. 2003 and 2003-A define "Transmission Provider" to include transmission providers and transmission owners, in the context of reactive power compensation within an RTO, the concern addressed by the Commission's comparability policy – that affiliated and unaffiliated generators receive compensation on the same basis – is adequately addressed when transmission owners are required to compensate their affiliated and unaffiliated generators on the same basis.

60. As a result, we find that Schedule 2-A satisfies the Commission's comparability policy. Schedule 2-A permits different reactive power compensation policies for different zones within the Midwest ISO. However, all generators in a zone – whether they are affiliated or unaffiliated – will receive compensation on the same basis; either all will receive compensation inside the deadband or none will receive compensation inside the deadband. Thus, Schedule 2-A, like Schedule 2, ensures that transmission owners will treat affiliated and unaffiliated generators on a comparable basis and that transmission owners will not be able to gain an unfair competitive advantage over unaffiliated generators. Although we find that Schedule 2-A is consistent with Commission precedent and satisfies the Commission's comparability policy, we also agree with Dynegy and Exelon that comparability would not be achieved if transmission owners with facilities in multiple zones could choose a different compensation policy for

Transmission Provider"); LGIA Article 1 (Definitions) (stating "[t]he term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider").

⁴⁷ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,108; *See also* 18 C.F.R. § 35.34(k)(1)(i) ("The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff. The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnections.").

each zone. As we have explained, in the context of reactive power compensation within an RTO, the concern addressed by the Commission's comparability policy is adequately addressed when transmission owners are required to compensate their affiliated and unaffiliated generators on the same basis. If transmission owners with facilities in multiple zones could choose a different compensation policy for each zone, they would not be treating all affiliated and all unaffiliated generators on the same basis because some generators affiliated with the transmission owners would receive compensation inside the deadband while some unaffiliated generators would not receive such compensation. Therefore, we direct the Transmission Owners to revise their proposal to prohibit transmission owners from adopting different reactive power schedules for different zones in which they or their affiliates own facilities.

2. Other Comparability Issues

a. Comments

61. PSEG asserts that Schedule 2-A is unduly discriminatory because it treats generation suppliers of reactive power differently than it treats transmission suppliers of reactive power. PSEG explains that in addition to generators, transmission equipment⁴⁸ and synchronous condensers also supply reactive power. PSEG states that transmission owners recover the costs of such equipment in their rates on a revenue requirement basis, which means that where Schedule 2-A applies, the transmission owners will receive reactive power compensation for transmission equipment that supplies reactive power inside the deadband while generators will not. PSEG states that Schedule 2 currently recognizes this reality.

62. Fox Energy argues that Schedule 2-A is unduly discriminatory because affiliated generators can recover their reactive power costs through retail rates while unaffiliated generators cannot. Fox Energy acknowledges that the Commission has previously rejected such arguments but states that in a recent section 203 policy statement the Commission stated that it can and should consider whether a franchised utility can impose costs on captive non-jurisdictional retail customers when deciding whether a jurisdictional disposition is in the public interest.⁴⁹ Fox Energy claims that there is no rational basis for the Commission not to do the same analysis with respect to transmission owners' ability to impose their reactive power costs on captive retail customers.

⁴⁸ For example, capacitors, reactors, static var compensators, and static compensators.

⁴⁹ Fox Energy Protest at 5 (citing *FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007)).

63. Similarly, New Covert and Reliant claim that Schedule 2-A violates the functional unbundling requirement of Order No. 888.⁵⁰ New Covert and Reliant contend that Order No. 888 requires transmission owners to state separate rates for wholesale generation, transmission, and ancillary services, but that once Schedule 2-A is in place certain Midwest ISO transmission owners will violate this command by bundling their rates for reactive power, which is an ancillary service, with their wholesale power rates. New Covert and Reliant allege that this practice is discriminatory because tariff customers who purchase wholesale power from transmission owners that select Schedule 2-A will pay for reactive power service, while tariff customers who do not purchase wholesale power from such transmission owners will not.

64. In their answer, the Transmission Owners assert that the ability of existing generators to collect reactive power costs in bundled retail rates is not relevant to whether generators are being treated comparably under the proposed zonal approach. The Transmission Owners state that in *SPP* the Commission rejected this argument, and the general concept that the ability of some generators to recover reactive power costs in bundled rates creates an unfair advantage.

b. Commission Determination

65. We reject the protesters' arguments and find that Schedule 2-A is not unduly discriminatory merely because the Transmission Owners may have other avenues to recover their reactive power costs. Indeed, the Commission has previously addressed these same arguments. In *SPP*, for example, the Commission explained that the fact that transmission owners have an opportunity to recover their reactive power costs through retail rates does not render a tariff revision that treats affiliated and non-affiliated generators comparably unduly discriminatory.⁵¹ Comparability requires only that IPPs and transmission owners have a similar opportunity to make up the revenue that they previously might have earned through a separate charge for reactive power inside the deadband; it does not require that the Commission guarantee that IPPs and transmission

⁵⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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) (Order No. 888).

⁵¹ *SPP I*, 119 FERC ¶ 61,199 at 39; *SPP II*, 121 FERC ¶ 61,196 at P 18.

owners will be equally successful in pursuing such opportunities.⁵² Just as transmission owners have the opportunity to recover their costs for producing reactive power inside the deadband through means other than the ancillary service provisions of open access transmission tariffs, so IPPs have the opportunity to find other ways to recover their costs. IPPs, for example, may negotiate agreements recovering these costs through their market based power sales.

66. We disagree with Fox Energy's argument that the Commission should consider the ability of affiliated generators to recover their reactive power costs through retail rates because the Commission has indicated, in a policy statement, that it may properly take retail charges into account in the context of section 203 orders. The Commission's policies with respect to section 203 filings are not relevant in determining whether a reactive power compensation proposal filed under section 205 complies with the Commission's comparability policy. Similarly, the Commission's policy that transmission owners recover the cost of transmission equipment and synchronous condensers in basic transmission rates is not relevant to the issue before us in this proceeding.⁵³ What is relevant is whether the proposal treats IPPs and affiliated generators in a comparable manner. Here, Schedule 2-A meets this requirement.

67. We also find that the argument about the unbundling of ancillary services is not a basis to reject the Transmission Owners' proposal to adopt the Commission's default reactive power compensation policy. The argument that the Commission's Order No. 2003 reactive power policy violates the unbundling requirements of Order No. 888 overlooks the evolution of Commission policy since Order No. 888 and amounts to a collateral attack on the subsequently issued Order Nos. 2003 and 2003-A, which specifically addressed the circumstances and manner in which a transmission owner must pay for reactive power inside the deadband.

⁵² *SPP II*, 121 FERC ¶ 61,196 at P 18.

⁵³ See Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,706 (“We accept NERC’s identification of two ways of supplying reactive power and controlling voltage. One is to install facilities, usually capacitors, as part of the transmission system. We will consider the cost of these facilities as part of the cost of basic transmission service. Providing reactive power and voltage control in this way is not a separate ancillary service.”)

H. Schedule 2-A and Other Commission Precedent

1. Schedule 2-A and Schedule 24

a. Comments

68. Integrys argues that the Commission should reject Schedule 2-A for the same reason it rejected Schedule 24, which Integrys claims was a similar proposal to create unilateral transmission owner-by-transmission owner cost recovery flexibility. Integrys explains that Schedule 24 would have allowed Balancing Authorities within the Midwest ISO to choose whether to recover their costs under Schedule 1 of the TEMT, which is allocated on a regional postage-stamp basis, or Schedule 24, which is allocated on a zonal license-plate basis. Integrys states that the Commission rejected Schedule 24 because it would have resulted in transmission owners unilaterally imposing different rate methodologies on similarly situated customers based solely on the generators' geographic location.⁵⁴

b. Commission Determination

69. We reject Integrys' argument. As Integrys notes in its protest,⁵⁵ the Commission rejected Schedule 24 because of the potential for cross-subsidization between zones and between categories of customers.⁵⁶ In contrast, Schedule 2-A does not force customers

⁵⁴ Integrys Protest at 4-5(citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,169 (2005) (Schedule 24 Order)).

⁵⁵ *Id.* at 5, n.4.

⁵⁶ In the Schedule 24 Order, 112 FERC ¶ 61,169 at P 39, the Commission stated that:

[T]he result of permitting this choice would be that customers whose Balancing Authority chose to recover costs under Schedule 24/24-A would pay a zonal charge plus a share of regional charges, while customers whose Balancing Authority chose to recover costs under Schedule 1 would pay only a share of regional charges. This choice would also permit the Balancing Authorities to choose the entities from which they recover costs: Schedule 1 provides for cost recovery from transmission customers only, and revised Schedule 24 and proposed Schedule 24-A would permit recovery of costs from generators and transmission customers, but on a zonal basis. As a result, customers in some zones of the Midwest ISO

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in some zones to subsidize customers in other zones, and it does not result in subsidies to different categories of customers. Although Schedule 2-A may result in customers in one zone paying a reactive power rate that includes compensation inside the deadband while customers in another zone do not, all customers within the same zone are treated comparably, with revenue associated with rates paid for reactive power in a particular zone going only to generators within the same zone. Thus, a key concern that the Commission cited in rejecting Schedule 24 is not applicable to Schedule 2-A.

2. Other Precedent

a. Comments

70. Several protesters, including Fox Energy and PSEG, maintain that reactive power is a valuable service for which generators should be compensated. Fox Energy describes the idea of generators providing reactive power without compensation as a “taking,” while PSEG maintains that reactive power should be compensated on an equal footing with other ancillary services. PSEG asserts that no other ancillary service is simply given away for free, and claims that there is no reason to treat the reactive power and voltage control service that generators produce any differently.

71. Dynegy contends that *MISO I* and *MISO IV* establish criteria for future revisions to Schedule 2 that Schedule 2-A does not satisfy. For example, Dynegy notes that in *MISO I* the Commission stated that “only a Schedule 2 that includes *all generators*, including IPPs, is just and reasonable and not unduly discriminatory or preferential.”⁵⁷ Dynegy argues that Schedule 2-A is in direct conflict with this unambiguous requirement because the requirement will not be met if a transmission owner receiving compensation under Schedule 2 elects to adopt Schedule 2-A in order to eliminate compensation for non-affiliated generation. Dynegy also asserts that *MISO IV* establishes that the Commission will permit deviation from the requirement to compensate all generators under Schedule 2, provided that “needs” criteria are developed and applied comparably to all generation, but that Schedule 2-A does not meet this condition because the only “needs” it accounts for are the “needs” of transmission owners for flexibility in selecting Schedule 2-A. EPSA claims, in contrast, that the Commission has consistently rejected a

region would unjustifiably subsidize customers in other zones, and some categories of customers would unjustifiably subsidize others.

⁵⁷ Dynegy Protest at 26 (citing *MISO I*, 109 FERC ¶ 61,005 at P 40 (emphasis added)).

“needs” test, and that Schedule 2-A is a backdoor approach to implementing a “needs” test. Finally, Dynegy asserts that Schedule 2-A does not account for reliability issues, as required by *MISO IV*.

b. Commission Determination

72. We reject the protesters’ arguments. At the outset, we reject Fox Energy’s and PSEG’s arguments as impermissible collateral attacks on Order Nos. 2003 and 2003-A and subsequent Commission precedent. The Commission has stated that an interconnecting generator 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 and that generators interconnected to a transmission provider’s system need only be compensated where the transmission provider directs the generator to operate outside the deadband.⁵⁸ In Order No. 2003-A, the Commission clarified that the principle of comparability requires 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.”⁵⁹ Thus, the Commission has already rejected Fox Energy’s and PSEG’s argument.

73. We also reject Dynegy’s argument that Schedule 2-A fails to meet criteria established in *MISO I* and *MISO IV* for future revisions to Schedule 2. In those orders, the Commission was discussing potential revisions to Schedule 2, which does not permit transmission owners to choose whether or not to pay compensation inside the deadband. Thus, the considerations outlined in *MISO I* and *MISO IV* apply differently in the context of Schedule 2-A, which does permit transmission owners to make this choice. As we have explained, Schedule 2-A complies with the Commission’s comparability requirement, which lies behind the considerations discussed in *MISO I* and *MISO IV*, because all generators in a zone, whether they are affiliated or unaffiliated, will receive compensation on the same basis; either all will receive compensation inside the deadband or none will receive compensation inside the deadband.

⁵⁸ *Michigan Electric Transmission Co.*, 96 FERC ¶ 61,214, at 61,906 (2001) (*METC*), *order on reh’g*, 97 FERC ¶ 61,187, at 61,852 (2001) (“[T]o the extent that reactive power is provided . . . outside reactive design limitations, Generators would be entitled to compensation.”). Section 9.6.3 of the Commission’s Order No. 2003 *pro forma* Large Generator Interconnection Agreement expressly provided that payment for reactive power is only for reactive power “outside the agreed upon deadband.”

⁵⁹ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416 (emphasis added); *accord* Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 113, 119; Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 34, 42-43; *Entergy*, 113 FERC ¶ 61,040 at P 22-24, 38-39.

I. Reliability and Technical Issues**1. Deadband****a. Comments**

74. Duke argues that Schedule 2-A should be revised to require that the same deadband applies to all Qualified Generators in a given control area (or zone), although exceptions might be made where the zonal deadband conflicts with an interconnection agreement.

75. In their answer, the Transmission Owners agree with Duke and propose to revise section I of Schedule 2-A to include the following sentence:

A single Deadband shall apply to Qualified Generators within a given zone, unless such Deadband conflicts with an individual Qualified Generator's interconnection agreement, in which case the Deadband specified in the interconnection agreement will apply to that Qualified Generator.⁶⁰

b. Commission Determination

76. We agree that there should be a consistent deadband within each control area or zone unless there is a different deadband in a generator's interconnection agreement. Therefore, we direct the Midwest ISO Transmission Owners to revise the tariff language in Schedule 2-A as proposed above and to include such changes in the compliance filing directed below.

2. Qualified Generators**a. Comments**

77. Duke requests that the Commission clarify that no generator will be compelled to remain a Qualified Generator if the transmission owners in its zone select Schedule 2-A. Dynegy states that it is not clear whether an existing Qualified Generator under Schedule 2 is truly grandfathered under Schedule 2-A since Schedule 2-A requires that all generation resources submit a request to the transmission provider certifying compliance with certain requirements in order to be qualified. Dynegy is also uncertain whether a grandfathered generator may be subject to having its status revoked.

⁶⁰ Transmission Owners' Answer at 24.

78. The Transmission Owners state that all existing generators collecting charges for reactive power under a Commission approved cost-based rate schedule as of December 1, 2007 are Qualified Generators and are eligible to receive compensation under Schedule 2-A, provided that they submit information consistent with the requirements of Schedule 2-A and notify the Midwest ISO of their decision to remain Qualified Generators. The Transmission Owners also state, however, that Schedule 2-A provides that if a grandfathered Qualified Generator fails to comply with the Control Area Operator's voltage control requirements three or more times in a calendar month for reasons other than planned or unscheduled outages, the Transmission Provider shall determine whether the Generation Resource should continue to be a Qualified Generator based on the criteria established in Schedule 2-A.

b. Commission Determination

79. Currently, under section 2(II)(A) of existing Schedule 2, a generator is assumed to be qualified if it collected charges for reactive power under a Commission approved cost-based rate schedule as of May 1, 2004. However, generators must file a rate schedule with the Commission and submit a request to the Midwest ISO certifying compliance with the qualification requirements under Schedule 2. We find that it is appropriate, therefore, that generators in zones covered by proposed Schedule 2-A have the same right to choose whether or not to become a Qualified Generator.

80. In response to Dynegy, we find that the Midwest ISO Transmission Owners' answer provides the necessary clarification and that the explanation is consistent with the language in the proposed Schedule 2-A. All generators currently qualified under Schedule 2 meet the qualification requirements of Schedule 2-A, provided they provide the information consistent with the requirement of Schedule 2-A and notify the Midwest ISO of their decision to remain Qualified Generators. We also find that under section IV of Schedule 2-A, which describes the process for re-evaluating qualified generator status, any generator, whether grandfathered or newly qualified, that does not follow the Midwest ISO's directives shall be re-evaluated by the Midwest ISO to determine if the generator continues to meet the requirements of qualified generator status.

3. Emergency Conditions

a. Comments

81. Duke implies that because generators in a zone covered by Schedule 2-A will no longer receive compensation for reactive power inside the deadband, generators that either previously were Qualified Generators under Schedule 2 or were interested in becoming Qualified Generators under Schedule 2 will decline to become Qualified Generators under Schedule 2-A should that schedule apply to their zone. In other words, Duke suggests that the incremental revenue a generator might receive under Schedule 2-A for providing reactive power outside the deadband in a non-emergency situation may

not be sufficient incentive for a generator to become a Qualified Generator. Duke argues that it is possible that so many generators decline to sign up to be Qualified Generators in a particular zone that the reduction in reactive power capability available in non-emergency situations creates reliability issues. As a consequence, Duke argues that the Midwest ISO should have the authority to override a transmission owner's decision to select Schedule 2-A unless and until a minimum threshold of generators elect to become Qualified Generators.

82. Duke also argues that in order to give the Midwest ISO time to verify that there are enough Qualified Generators to ensure system reliability in every zone, generators should have to decide whether to remain Qualified Generators within 30 days of the transmission owners in their zones selecting Schedule 2-A.

83. The Transmission Owners agree with Duke's suggestion to incorporate a deadline for generators to notify the Midwest ISO of their decision to remain or become Qualified Generators.

b. Commission Determination

84. We find that Duke's concern that many generators in a zone covered by Schedule 2-A will decline to become or remain Qualified Generators is speculative and premature, and we therefore find that requiring the Midwest ISO to have authority to override a transmission owners' decision to select Schedule 2-A is unnecessary at this time. We expect that the Midwest ISO will consider the reliability impact of the proposal as part of its implementation of Schedule 2-A and that it will recommend any changes to its TEMT that are necessary to maintain reliability.

85. We also note that the possibility that generators might choose to forgo Qualified Generator status under Schedule 2-A and therefore not be obligated to provide reactive power outside the deadband in non-emergency situations does not implicate the requirements all generators must meet to support system reliability under Order No. 2003. All generator interconnection agreements require generators to provide reactive power in a specified power factor range, and, thus, under Schedule 2-A, all generators will continue to be obligated to make reactive power within this range available to the Midwest ISO transmission system. Providing reactive power within the deadband is an obligation of a generator and is as much an obligation of a generator as, for example, operating in accordance with Good Utility Practice.⁶¹ Additionally, no party disputes that all generators, qualified or not, are obligated to respond to a request for reactive power outside the deadband during a system emergency. Indeed, the Order No. 2003 *pro*

⁶¹ See, e.g., *SPP I*, 119 FERC ¶ 61,199 at P 29 (citing Order No. 2003 at P 546 and P 537).

forma Large Generator Interconnection Agreement states: “Interconnection Customer shall comply with all of Transmission Provider’s or Transmission Owner’s operating instructions concerning Generating Facility real power and reactive power output within the manufacturer’s design limitations of the Generating Facility’s equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.”⁶²

86. We accept the Transmission Owners’ proposal to accept Duke’s suggestion to require a deadline for generators to notify the Midwest ISO whether they intend to remain or become a Qualified Generator within 30 days of the transmission owners in their zones selecting Schedule 2-A. Therefore, we direct the Transmission Owners to submit, in the compliance filing directed below, this revision to Schedule 2-A.

4. Voltage Schedules and Directives

a. Comments

87. Dynegy and FirstEnergy argue that Schedule 2-A does not clearly explain how and when a generator in a zone covered by Schedule 2-A will receive compensation for reactive power outside the deadband. Additionally, Dynegy and FirstEnergy challenge the Transmission Owners’ response to question six of the deficiency letter, which asks for instances where the Midwest ISO may issue a voltage schedule or directive to a generator to produce reactive power outside the deadband. Dynegy points out that the process that the Transmission Owners describe is an automated process, with no manual intervention. Dynegy maintains that it is not clear what constitutes a directive that would qualify for compensation under Schedule 2-A. For example, Dynegy states that it is not clear whether a generator will be eligible to receive compensation if it follows a directive in the form of a voltage schedule issued by a transmission owner. Dynegy argues that section III(B) of Schedule 2-A could be unduly discriminatory if it precludes compensation for reactive power outside the deadband when at least one generator is operating outside the deadband under a voltage schedule with no further directive from the control area operator, and another generator is operating outside the deadband under a directive from the control area operator.

88. Dynegy is also concerned that the transmission owners are the entities typically establishing voltage schedules, including a tolerance band. Since compensation under Schedule 2-A is based on a “Qualified Generator appropriately following voltage schedules,”⁶³ Dynegy argues that the transmission owners could exercise their discretion

⁶² *Pro Forma* Large Generator Interconnection Agreement, Section 13.5.1.

⁶³ Proposed Schedule 2-A at Original Sheet No. 8570.

to establish an overly narrow tolerance band, and that if a generator deviates slightly from the band, a transmission owner can claim that the voltage schedule has not been met, enabling the transmission owner to receive the benefits of reactive power supply without paying for outside the deadband reactive service. Dynegy requests that transparent objective criteria that are technically based and reasonable be established to avoid this scenario. Dynegy also points out that no information is provided with regard to tolerance bands and acceptable deviation during a system emergency.

89. Dynegy suggests that section III (B) of Schedule 2-A should be expanded to capture all entities that could issue directives, not just the control area operator. Dynegy requests that Schedule 2-A be clarified to provide compensation where reactive power is provided outside the deadband – whether a directive is given in the form of a voltage schedule, an explicit reactive power request, or other directive, in order to reduce the likelihood for unduly discriminatory or preferential treatment. Dynegy also highlights the Commission’s requirement in the development of SPP’s Schedule 2 of a detailed description of the criteria used when determining which qualified generators to call upon to provide reactive power outside the deadband.

90. The Transmission Owners state that, if the Commission approves Schedule 2-A, they will modify the Midwest ISO Business Practice Manuals to include the process that will be used to establish the criteria that the Midwest ISO or control area operator will use to determine which qualified generators to call upon to provide reactive power outside of the deadband and the process they will use to determine the voltage schedules and tolerance bands. The Transmission Owners also point out that the Midwest ISO’s TEMT has dispute resolution procedures and the Independent Market Monitoring Plan in place to address claims of discrimination if they arise.

b. Commission Determination

91. We agree with Dynegy that there are situations where generators that provide reactive power outside the deadband should be compensated under Schedule 2-A even if the generators are not doing so as the result of an explicit “directive” to provide such service. Whether the generator follows its voltage schedule and must provide reactive power outside the deadband to maintain the required voltage, or the generator provides a specific amount of reactive power in response to a directive, the generator is providing reactive power outside the deadband and Schedule 2-A provides for compensation for reactive power outside the deadband.

92. In response to Dynegy’s concerns regarding overly tight voltage schedule tolerance bands, we agree that voltage schedules and tolerance bands should be based on sound engineering analysis. As we stated in *SPP*, the dispute resolution procedures and

independent market monitoring plan provide an appropriate forum for generators to address any undue discrimination concerns that may arise.⁶⁴ We agree that the provisions in the TEMT offer similar protections.

93. We agree with Dynegy that the Transmission Owners should revise Schedule 2-A to clarify who issues directives, how they are communicated, what is contained in a directive, and whether directives go to an entire control area, a sub area of a control area, or to specific generators. We also agree with Dynegy that, consistent with *SPP*,⁶⁵ the Transmission Owners should include in Schedule 2-A a detailed description of the criteria that will be used to determine which Qualified Generator to call upon to provide reactive power outside the deadband as well as a description of how voltage schedules and tolerance bands will be established.⁶⁶ Therefore, we direct the Midwest ISO Transmission Owners to include these changes in the compliance filing directed below.

5. Directives and Uninstructed Deviation Penalties

a. Comments

94. Dynegy raises a concern with respect to how the requirements of Schedule 2-A will be reconciled with the requirements of the Midwest ISO's Ancillary Services Market (ASM) as proposed in Docket No. ER07-1372.⁶⁷ Specifically, Dynegy notes that in response to question 6 of the deficiency letter, the Transmission Owners state that the Midwest ISO may request generators to increase or decrease the reactive power output and, if necessary, to reduce real power output to increase reactive power capability. Dynegy is concerned that this type of directive would expose a generator to uninstructed deviation penalties under the ASM proposal.

b. Commission Determination

95. We agree that if the Midwest ISO requests a generator to modify its real power output in order to increase reactive power output, the generator is following Midwest ISO instructions and should not be penalized. To the extent this is not already the case, we

⁶⁴ *SPP I*, 119 FERC ¶ 61,199, at P 45.

⁶⁵ *See id.* P 68-69.

⁶⁶ The Transmission Owners provided such a description in response to question no. 5 in the November 30 deficiency letter.

⁶⁷ Dynegy deficiency letter comments at 21. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008).

direct the Transmission Owners to work with the Midwest ISO as part of the Schedule 2-A implementation process and to propose any necessary changes to the TEMT in the compliance filing directed below.

6. Rate Issues

a. Comments

96. Dynegy argues that Schedule 2-A should be revised so that reactive power compensation is not limited to the higher of lost opportunity costs or the \$2.20 per MVARh proxy rate. Instead, Dynegy asserts that when a generator must reduce real power output to provide the necessary reactive power outside the deadband, Qualified Generators should be allowed to recover *both* the \$2.20 rate *plus* lost opportunity costs. Reliant also argues that generators should be allowed to recover both the proxy rate and their full lost opportunity costs, since it is not likely that the combined revenue from the two rates will lead to an over-recovery of the costs of providing reactive power.

97. In response, the Transmission Owners state that allowing compensation under both the proxy rate and the lost opportunity cost methodologies could result in over-recovery.⁶⁸ The Transmission Owners further state that such a proposal would be administratively burdensome to implement.

98. Dynegy also raises concerns about the lost opportunity cost formula in Schedule 2-A. Dynegy states that although the formula is similar to one the Commission previously accepted, that formula was based on the costs of a nuclear plant, and the Transmission Owners have not shown that the same formula is appropriate for non-nuclear facilities. Dynegy argues that the lost opportunity cost formula contained in Dynegy's interconnection agreement is better suited than the one proposed by the Transmission Owners. Dynegy also states that it is concerned because the Schedule 2-A formula for lost opportunity costs specifically excludes compensation for a reduction in real power output above a facility's rated capability. It notes that both real power and reactive power capability can be impacted by ambient conditions.

99. In response, the Transmission Owners state that they will revise Schedule 2-A to require generators to provide the full rated megawatt output of the generation resource at the point of interconnection for both summer and winter.

⁶⁸ Transmission Owners' Answer at 26 (citing *Ameren Energy Mktg. Co.*, 117 FERC ¶ 61,334, at P 16 (2006) ("The combination of the embedded cost component, the opportunity cost component, and the locational marginal price energy charge, provides for the potential to over-recover embedded costs and opportunity costs") (*Ameren*)).

100. In addition, Dynegy asks that the deadline for Qualified Generators to submit monthly lost opportunity cost calculations within 20 days of the end of the month either be extended or be subject to a true-up prior to invoicing transmission customers under schedule 2-A. Dynegy argues the extension is needed because a Qualified Generator may not receive timely billing information from third parties that it needs to perform its lost opportunity cost calculations. In response, the Transmission Owners state that they are willing to extend the notice requirement to 40 days.

b. Commission Determination

101. We find that the Transmission Owners' proposal to charge the higher of the \$2.20 per MVARh proxy rate and lost opportunity costs is just and reasonable. The Transmission Owners analyzed the revenue requirements of new generating units within Midwest ISO to arrive at the \$2.20 per MVARh rate, which is the median of the non-nuclear units.⁶⁹ This approach is the same as the one the Commission accepted in *SPP*. In addition, calculating lost opportunity costs by relying on the LMP in the Midwest ISO markets, as is the case here, can ensure that opportunity costs are accurately and transparently measured.⁷⁰ Under the formula in Schedule 2-A, lost opportunity costs are the hourly LMP less the generator's incremental cost savings of producing less real power and more reactive power times the reduction in MW output requested by the Transmission Provider. Although Dynegy asserts that this formula is not reasonable because it is modeled on a rate related to a nuclear unit, Dynegy does not point to any aspect of the proposed formula that is not appropriate for a non-nuclear unit or explain why it believes the formula in its interconnection agreement is better.

102. In addition, we reject the request to allow generators under Schedule 2-A to recover both a stated rate *and* their lost opportunity costs when providing reactive power outside the deadband. The protesters have not demonstrated that the proposed "higher of" pricing provides an insufficient amount of compensation to generators for providing reactive power outside of the deadband. Furthermore, although Reliant alleges that it is extremely unlikely that the combined revenue from the proxy rate and lost opportunity costs will lead to an over-recovery of the cost of providing reactive power, that fact does not support its claim that the proposed rate is insufficient to attract or retain capability to produce reactive power outside of the deadband by adequately compensating for the cost

⁶⁹ Affidavit of Greg M. Gudeman at 5, Attachment B of Transmission Owners' Filing. The generation plants used in the calculation are listed as Holland Energy (natural gas combined cycle), Mirant Zeeland (natural gas), Duke Vermillion (natural gas peaker), Michigan Power (natural gas peaker, and Calpine Fox (national gas combined cycle)) *Id.* at Attachment C.

⁷⁰ *See, e.g., Ameren*, 117 FERC ¶ 61,334 at P 15.

of such capability. Reliant also does not explain why it believes that the \$2.20 per MVARh rate is only a “token” rate that necessitates allowing generators to also recover their full opportunity costs.⁷¹

103. We will accept the Transmission Owners’ proposal to revise Schedule 2-A so that generators will provide ratings for both summer and winter capability and to extend the deadline for generators to submit their lost opportunity cost calculations for 20 to 40 days. However, under Schedule 2-A, a generator receives the higher of a stated rate that provides a contribution to embedded costs or their lost opportunity costs, and, therefore, it is not necessary to limit lost opportunity costs to a particular capability rating. Under Schedule 2-A, a generator receives compensation only when it actually produces reactive power outside the deadband, and, unlike under Schedule 2, it does not receive a contribution to its embedded costs of providing reactive power when it is not providing that service. Accordingly, a generator in a zone covered by Schedule 2-A should be allowed to recover lost opportunity costs related to the actual amount it reduced real power output to provide the required reactive power outside the deadband, if opportunity costs are higher than the embedded cost rate. This reduction should be measured against the real power output the generator would have otherwise been expected to produce during the hour in which reactive power outside the deadband was needed. Therefore, we direct the Transmission Owners to revise Schedule 2-A so that the opportunity cost calculation considers a generator’s actual reduction in real power when producing reactive power outside the deadband and to include such changes in the compliance filing we direct below.

7. Must be in Operation

a. Comments

104. Reliant argues that when determining whether a generator qualifies to receive reactive power compensation under Schedule 2-A, the Midwest ISO should not have to consider “whether the Generation Resource is expected to be available for operation during the time of the request.”⁷² Reliant argues that this appears to preclude any compensation for outside-the-deadband service based on a non-objective disqualification standard relating to the Midwest ISO’s expectation that the generator would not be operating at the time of a request even when a generator is, in fact, providing such

⁷¹ Reliant Protest at 19.

⁷² Reliant Protest at 19-20 (citing proposed Schedule 2-A at Original Sheet No. 857M).

service. Reliant argues that this provision is unnecessary since under Schedule 2-A generators will only be compensated when they operate to provide reactive power service.

b. Commission Determination

105. We agree with Reliant that it is unnecessary for the Midwest ISO to consider whether a generator “is expected to be available for operation during the time of the request” as a criterion to establish that a generator should be considered a Qualified Generator. The process is meant to establish that a generator meets the requirements to provide reactive power outside the deadband *before* an actual request for such service is made. Whether a generator is available to provide such service at a specific time is something the Midwest ISO should consider when deciding which generators to call upon when it needs reactive power outside the deadband, but it is not a reasonable basis to exclude a generator from even being considered as a potential source of the required service. Therefore, we direct the Transmission Owners to remove the relevant language from Schedule 2-A and to include such changes in the compliance filing directed below.

J. Administrative Issues

1. Effective Date

a. Comments

106. Several protestors contend that if the Commission accepts Schedule 2-A, the effective date should be no sooner than the date the Midwest ISO is fully prepared to implement it. Reliant argues that Schedule 2-A should not become effective until the Midwest ISO has made a compliance filing demonstrating that it is fully capable of implementing the new schedule. Reliant also contends that the Commission should clarify that transmission owners may not provide notice to opt out of Schedule 2 prior to Schedule 2-A’s effective date.

107. FirstEnergy contends that the Commission should permit Midwest ISO to defer work on implementing Schedule 2-A until after Midwest ISO has successfully implemented the ASM.

108. Integrys argues that the Commission should mandate a two to five year transition period for converting to Schedule 2-A so that generators, which may lose a significant source of revenue, may make whatever contractual accommodations are needed to ensure the economic viability of their facilities.

109. In response, the Transmission Owners agree that Schedule 2-A cannot be implemented unless the Midwest ISO is ready. They also clarify that the notice provisions of Schedule 2-A will not go into effect until Schedule 2-A is effective and that, therefore, generators cannot opt out of Schedule 2 before that time. In their response

to the deficiency letter, the Transmission Owners state that the Midwest ISO will need approximately 13 months to make changes necessary to implement Schedule 2-A. They also argue that a two-to-five year transition period is not necessary but state they are willing to extend the minimum notification period that a transmission owner must provide before a request to switch reactive power schedules can become effective from the proposed 60 days to a period somewhere between 90 and 120 days.

b. Commission Determination

110. While the Transmission Owners requested in their filing an effective date of December 1, 2007, they subsequently indicated in their response to the Commission staff's deficiency letter that the Midwest ISO will need approximately 13 months to make the changes necessary to implement Schedule 2-A. Accordingly, we will require the Transmission Owners to submit a notice to the Commission at least 61 days prior to the date they plan to implement their proposal, as modified in this order, with revised tariff sheets that include the appropriate effective date. In addition, we agree that it is appropriate to extend the minimum advance notice period and direct the Transmission Owners to include in the compliance filing directed below revision to Schedule 2-A to extend the deadline for transmission owners to notify Midwest ISO of their intent to switch between Schedules 2 and 2-A from 60 days to 120 days.

2. Notice Requirements

a. Comments

111. Wisconsin Electric asserts that Schedule 2-A should not allow frequent switching between Schedule 2 and Schedule 2-A, and should require transmission owners to wait one year before electing to switch to another schedule. In response, the Transmission Owners agree that there should be a safeguard in place to prevent frequent switching between Schedule 2 and Schedule 2-A and recommend that the safeguard be a twelve month minimum effective period. In other words, if transmission owners in a zone elected to change to Schedule 2-A, then Schedule 2-A must be in place for at least twelve months before the transmission owners can change back to Schedule 2 (and vice versa).

b. Commission Determination

112. We agree that it could be problematic, if only on an administrative basis, for transmission owners to switch frequently between Schedule 2 and Schedule 2-A. However, at this point, this concern is speculative, and it is not clear whether a restriction on switching is necessary or, if it is, how long such a restriction should be. In any event, customers must know the rate for service in a particular zone and the TEMT must therefore state which zones are covered by Schedule 2 and which zones are covered by Schedule 2-A. As a result, we will require the Midwest ISO and the applicable transmission owners to make a filing under section 205 of the FPA to revise the TEMT

before the transmission owner in a zone can effectuate a switch between one schedule and the other. To the extent a concern about the actual frequency of switching arises, parties may file a complaint or raise their concerns in protests to the section 205 filings directed herein.

3. Explain Criteria

a. Comments

113. EPSA asserts that Schedule 2-A should express clearly the process and criteria for determining whether to elect or switch between Schedule 2 and Schedule 2-A, including specifying when an election can be made, the rights of market participants to provide input or feedback or to challenge an election, and the process for filing the new rates. EPSA also contends that a mechanism for determining zones should be defined so that transmission owners do not draw zones to their advantage. Wisconsin Electric asserts that the Commission should require the transmission owners to explain the decision-making process with respect to choosing between Schedule 2 and Schedule 2-A, and specify who is to be involved in that process.

114. In response, the Transmission Owners state the transmission owner within a zone will decide whether to elect Schedule 2-A, unless the transmission owner is not also the Control Area Operator. The Transmission Owners also agree to revise Schedule 2-A to add the following language:

However, if the Transmission Owner(s) is not also the Control Area Operator, the Transmission Owner(s) in consultation with the Control Area Operator, will decide whether to elect Schedule 2-A.⁷³

b. Commission Determination

115. We find that EPSA's concerns about a transmission owner's decision to change to Schedule 2-A are premature. As discussed above, EPSA, or any other party, will have an opportunity to raise their concerns about a transmission owner's decision when a section 205 filing is made to amend the TEMT to include the applicable zone under Schedule 2-A. Similarly, we will require that any change to the existing boundaries of the Midwest ISO zones must be made with the Commission in a section 205 tariff change filing.

116. We agree that a transmission owner must consult and gain the approval of the control area operator before choosing Schedule 2-A. Therefore, we direct the Transmission Owners to revise the tariff language in Schedule 2-A to require that, when a

⁷³ Transmission Owners' Answer at 20-21.

transmission owner is not also the control area operator of its zone, both entities must agree to any change to Schedule 2-A, and to include such changes in the compliance filing directed below.

4. Disagreements within a Zone

a. Comments

117. Dynegy and Michigan Public Power question the adequacy of the Transmission Owners' proposal to submit disputes between transmission owners in the same zone over whether to select Schedule 2 or Schedule 2-A to Midwest ISO's dispute resolution process. Dynegy asserts that this proposal raises questions requiring further consideration, such as what criteria will be used to resolve a disagreement and how the 60-day notice period will apply when there is a dispute. Michigan Public Power argues that dispute resolution is not the proper forum for such a dispute because the choice between Schedule 2 and Schedule 2-A is an either/or choice not conducive to negotiation. Michigan Public Power asserts that in zones with multiple transmission owners, only those serving load should have the ability to decide whether to choose Schedule 2 or Schedule 2-A because they are the ones that pay Schedule 2 (or 2-A) charges and receive compensation from such charges.

118. In response, the Transmission Owners continue to support the dispute resolution process in the TEMT as the proper process to resolve disputes. The Transmission Owners also state that, in the case of a disagreement between transmission owners in the same zone, Schedule 2 will apply to the zone as the default until the disagreement can be resolved.

b. Commission Determination

119. We are satisfied that the tariff provisions currently in place under the TEMT allow transmission owners to resolve disputes pertaining to Schedule 2-A and reactive power compensation in an equitable manner. As the Transmission Owners point out, no switch can occur until disagreements between transmission owners in the same zone are resolved. In addition, as discussed above, a filing must be made under section 205 of the FPA to revise the TEMT before a transmission owner can switch between Schedule 2 and Schedule 2-A; parties can raise concerns about any unresolved disputes when such a filing is made.

5. Metering Data

a. Comments

120. Dynegy states that while Schedule 2-A provides for metering at the point of interconnection, metering for reactive power under interconnection agreements with deadbands other than the Schedule 2-A deadband often occurs at the generators' terminals, not the point of interconnection. As a result, Dynegy raises a number of questions relating to metering, such as: Who is to provide the metering data? Where is the metering to be performed? If a transmission owner provides the data from its meters at the point of interconnection, how will the Qualified Generator whose meter is at its generators, terminals be able to verify the reporting to the Transmission Provider? To the extent costs are incurred to address these issues, how are the costs to be recovered?

b. Commission Determination

121. The types of questions raised by Dynegy regarding metering are better addressed as part of the implementation process the Midwest ISO must complete before Schedule 2-A can become effective. Therefore, we direct the Transmission Owners to work with the Midwest ISO and affected customers to address these types of questions and we direct the Transmission Owners to propose all necessary changes to the tariff language and to make necessary changes to the Business Practice Manuals, as needed.

VI. Compliance Filing

122. As discussed above, the Transmission Owners must revise Schedule 2-A in several respects. In addition, the Midwest ISO Business Practice Manuals must be revised and expanded to include information related to Schedule 2-A. Therefore, we direct the Transmission Owners to make the necessary changes to Schedule 2-A and file the revised Schedule in a compliance filing at least 61 days prior to the date that Schedule 2-A becomes effective. In the compliance filing, the Transmission Owners must confirm that the applicable Business Practice Manuals have been updated as required.

The Commission orders:

(A) The Transmission Owners' proposed tariff sheets are hereby accepted for filing, as modified, as discussed in the body of this order.

(B) The Transmission Owners are hereby directed to submit a compliance filing within 60 days of the date of this order.

(C) The Transmission Owners are hereby directed to submit a notice to the Commission at least 61 days prior to the date that they plan to implement their proposal, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.