

121 FERC ¶ 61,208
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 Independent Transmission
System Operator, Inc.

Docket Nos. ER04-691-087
EL04-104-071

ORDER ON REHEARING

(Issued November 28, 2007)

1. This order addresses requests for rehearing of two Commission orders issued concurrently on May 31, 2007. The first of the two orders addressed the allocation of the marginal loss surplus refund within Midwest Independent Transmission System Operator, Inc. (Midwest ISO).¹ The May 31 Rehearing Order denied rehearing of the November 1 Order,² which accepted a compliance filing made by Midwest ISO on March 27, 2006 and supplemented on June 8, 2006. It also directed Midwest ISO to submit another compliance filing analyzing the methods proposed by certain intervenors for determining refunds of over-collected marginal losses. The May 31 Compliance Order³ accepted the compliance filing directed by the November 1 Order. This order denies or rejects the requests for rehearing of the May 31 Rehearing Order and the May 31 Compliance Order.

Background

2. On August 6, 2004, the Commission accepted for filing Midwest ISO's Transmission and Energy Markets Tariff (TEMT or tariff), which was designed to initiate

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,207 (2007) (May 31 Rehearing Order).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,142 (2006) (November 1 Order).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,216 (2007) (May 31 Compliance Order).

Day 2 operations in Midwest ISO's 15-state region.⁴ Midwest ISO's Day 2 operations include, among other things, a transition period during which market participants that over-pay for losses receive rebates for the difference between their marginal losses and their historical or average losses, and a procedure for refunding the over-collected losses.⁵

3. The TEMT II Order, among other things, directed Midwest ISO to file a marginal loss refund method applicable to the transition period within 60 days.⁶ In addition, the order required Midwest ISO, after consultation with stakeholders, to file a revised marginal loss surplus refund method within 270 days from market start that considered rules that encourage market participants to make efficient purchases from the spot market and addressed concerns of some market participants that would find themselves significantly exposed to marginal loss charges.⁷

4. On October 5, 2004, Midwest ISO made a compliance filing in response to the TEMT II Order's various 60-day compliance requirements, including those relating to a transitional marginal loss refund method. In that filing, Midwest ISO proposed to refund over-collected marginal losses based on the share of losses in each balancing authority area rather than through previously proposed "loss pools."⁸

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007) (*Wisconsin*). The TEMT defines "Transmission Provider" as Midwest ISO or any successor organization. See Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to Midwest ISO wherever the TEMT refers to the Transmission Provider.

⁵ Marginal loss surpluses, also referred to as over-collected marginal losses, are the difference between marginal losses and historical or average losses that are refunded to load. See TEMT II Order at P 73-74.

⁶ *Id.* at P 73-76.

⁷ *Id.* at P 79, 239, 649.

⁸ See Compliance Filing of Midwest Independent Transmission System Operator, Inc., Docket Nos. ER04-691-007 and EL04-104-006, Transmittal Letter at 6-8 (Oct. 5, 2004).

5. On December 20, 2004, the Commission issued an order conditionally accepting Midwest ISO's compliance filing.⁹ The Commission found that the refund of marginal loss surpluses on a balancing authority area basis has greater granularity than the previous "loss pools" approach. The Commission also determined that Midwest ISO's proposal was consistent with the goal of protecting participants from charges in excess of their average actual losses, had stakeholder support, and could be implemented. However, the Commission expressed concern about market participants with remote generation outside the territory of the balancing authority area that would not be eligible for a sufficient refund share and directed Midwest ISO to explain its method for determining the marginal loss surpluses for such entities.¹⁰

6. On January 21, 2005, Midwest ISO made a compliance filing to address the additional requirements of Compliance Order I. On April 15, 2005, the Commission issued an order that addressed rehearing requests of Compliance Order I and Midwest ISO's January 21, 2005 compliance filing.¹¹ Compliance Order IV reiterated the filing requirements that Midwest ISO had to meet within 270 days after market start. The Commission also directed Midwest ISO to submit an informational filing that:

- (1) addresses different losses among market participants within a balancing authority area and the possibility that these differences could result in significant cross-subsidies; and
- (2) specifically provides information and analysis bearing on the issue of whether certain market participants are paying more in losses in the energy market compared to before the market started, and the extent of any cross-subsidies between market participants with distant generation and market participants with generation within the balancing authority.

7. On March 27, 2006, as supplemented on June 8, 2006, Midwest ISO submitted a filing to update the Commission on its analysis of its marginal loss surplus data. In that filing, Midwest ISO stated, among other things, that it was unable to provide the data and perform the analyses requested on marginal loss surplus refunds for certain market participants. According to Midwest ISO, its data and systems were unable to match specific buyers with specific sellers, or estimate losses on this basis. Midwest ISO noted it does not allocate marginal losses or average losses by market participant.

⁹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,285 at P 171-72 (2004) (Compliance Order I), *order on reh'g*, 111 FERC ¶ 61,053, *reh'g denied*, 112 FERC ¶ 61,086 (2005).

¹⁰ Compliance Order I at P 171-72.

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053 (2005) (Compliance Order IV), *reh'g denied*, 112 FERC ¶ 61,086 (2005).

8. As a result of Midwest ISO's representations, and in consideration of the intervenors' comments, the Commission issued the November 1 Order. The November 1 Order accepted Midwest ISO's filings, but directed Midwest ISO to submit an additional filing that analyzed the methods the intervenors proposed to determine refunds of over-collected marginal losses. The Commission stated that, to the extent Midwest ISO found acceptable the intervenors' proposed methods for calculating the marginal loss surplus refunds, it should also determine if application of those methods to all market participants would result in a more equitable allocation of marginal loss surplus refunds than the current allocation.¹² The November 1 Order also found that, while a refined allocation to certain market participants with distant generation would be ideal, there were no data to support the conclusion that these market participants were not already receiving an equitable refund.¹³

May 31 Rehearing Order

9. The May 31 Rehearing Order denied the rehearing requests of the Midwest Transmission Dependent Utilities (Midwest TDUs)¹⁴ and Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Companies) for rehearing of the November 1 Order. The Commission determined that the November 1 Order was consistent with prior orders, even though the November 1 Order required Midwest ISO to further analyze the intervenors' proposals. The Commission rejected the idea of ordering a technical conference or hearing to address these issues. The Commission reiterated its finding that the data necessary to further refine the marginal loss refund method were not available, based on Midwest ISO's assertion that it did not have the data necessary to individualize the allocation of marginal loss surplus.¹⁵ The

¹² November 1 Order at P 28.

¹³ *Id.* at P 29.

¹⁴ Midwest TDUs participating in the rehearing request are: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities, and Wisconsin Public Power Inc.

¹⁵ *See* May 31 Rehearing Order at P 13.

Commission instead directed Midwest ISO to consider the data provided by the intervenors as the best available under the circumstances. The Commission noted that:

[C]ontrary to Midwest TDUs' statements, adjustments to real-time loss sensitivity estimates increase marginal losses, as estimated from the day-ahead schedule.[footnote omitted] Therefore, the record in this proceeding continues to support the conclusion that divergences between day-ahead and real-time losses are a factor in ensuring that day-ahead only analyses will not be accurate.¹⁶

10. The Commission once again refused to require that Midwest ISO make refunds back to market start. The Commission reiterated its determination that the current refund allocation had been found to be just and reasonable; therefore, any refunds that resulted from Midwest ISO considering the intervenors' data would be prospective. Lastly, the Commission said:

While we agree with the parties that if Midwest ISO is not applying the TEMT correctly it is violating the filed rate doctrine, we do not see a basis to grant rehearing and to order refunds since we have not found that Midwest ISO is violating its TEMT. Furthermore, there is no evidence, as discussed in the [May 31 Compliance Order] that indicates Midwest ISO is not following the terms of the TEMT in determining the marginal loss refunds.¹⁷

May 31 Compliance Order

11. The Commission issued a second order on May 31, 2007 that accepted Midwest ISO's filing to comply with the November 1 Order. The compliance filing presented Midwest ISO's analysis of the methods proposed by Midwest TDUs and WPS Companies to allocate refunds of over-collected marginal losses.

12. The WPS Companies proposed one method that assumed that the marginal loss cost is twice the average loss cost, with the average loss cost defined as the product of the day-ahead locational marginal price (LMP), the balancing authority physical losses, and the average load ratio share of the WPS Companies' load to the balancing authority's load (WPS Companies' Method 2). The WPS Companies also proposed another method which was similar to the Midwest TDUs' proposed method (WPS Companies' Method 1). The WPS Companies' Method 1 determined the marginal loss cost by multiplying the

¹⁶ May 31 Rehearing Order at P 14.

¹⁷ *Id.* at P 16.

quantity of energy injected in either the day-ahead or real-time markets by the marginal loss component of LMP in the respective day-ahead or real-time markets. The Midwest TDUs' approach differed only because it assumed a two-to-one ratio of marginal losses to actual losses to estimate the actual cost of serving the losses caused by bilateral transactions.

13. Midwest ISO concluded that each of the approaches were flawed because they: (1) utilized financial schedules, and therefore did not calculate the marginal losses from the actual physical source of power; and (2) equate real-time losses with day-ahead estimates even though to the extent actual real-time losses differ from day-ahead estimates, the cost of energy to supply the differences must be covered in the real-time market and reduces the revenue available for refunds. Midwest ISO asserted that changes in its method of estimating day-ahead losses raised the over-collected marginal loss refunds from approximately 37 percent of the estimated cost of losses to approximately 70 percent of the estimated cost of losses. Midwest ISO also pointed out that by taking account of the marginal loss-related costs that are not paid by the scheduling party, and using data provided by the Midwest TDUs, it calculated that the over-collected marginal losses protocol is 90 percent of the refund that would be due under Midwest TDUs' approach, as properly adjusted.

14. The Commission agreed with Midwest ISO that the methods proposed by WPS Companies and Midwest TDUs were not suitable for determining marginal losses and were not a reliable method for assessing refunds. In addition, the Commission accepted Midwest ISO's analysis that found the intervenors' proposals did not provide a basis for determining refunds.

Rehearing Requests

15. Integrys Energy Group, Inc. (Integrys)¹⁸ and Midwest TDUs each filed a combined request for rehearing of the May 31 Rehearing Order and the May 31 Compliance Order. According to Integrys, the Commission erred because it: (1) did not find that Midwest ISO misapplied the marginal losses methodology in violation of the TEMT and the filed rate doctrine; (2) implicitly found that no disputed issues of material fact that warrant hearing procedures exist regarding whether Midwest ISO misapplied the TEMT; and (3) did not find that Midwest ISO's method of calculating refunds is unjust, unreasonable, and unduly discriminatory.

¹⁸ As the result of a merger with Peoples Energy, WPS Resources Corporation, the parent of WPS Companies, changed its name to Integrys Energy Group. For consistency, the name WPS Companies will be used when describing previous filings in this proceeding.

16. Integrys argues that the Commission should have found that Midwest ISO violated the TEMT, required Midwest ISO to modify its methodology, and ordered refunds for marginal losses back to the commencement of Midwest ISO's Day 2 operations energy market. It also asserts that the Commission should have: (1) rejected as unjust, unreasonable, and unduly discriminatory Midwest ISO's method because it includes unrelated loop flow losses and differences between day-ahead and real-time losses; and (2) adopted one of the alternative approaches presented by WPS Companies. In the alternative, Integrys asserts that the Commission should have set the matter for hearing.

17. Midwest TDUs assert that the Commission should have rejected Midwest ISO's filing to comply with the November 1 Order. Characterizing the Commission's findings as "pivotal," they argue that there is no basis for the Commission's conclusion that real-time losses significantly exceed day-ahead losses and that the existence of differences between day-ahead and real-time losses is sufficient ground to deny relief. According to Midwest TDUs, the Commission failed to adequately explain its departure from precedent¹⁹ when it found it equitable to allocate the costs of loop flows caused by third parties disproportionately to those market participants who happen to pay disproportionately high marginal loss charges. They insist that the Commission erred when it found that "the data is not available to further refine the marginal loss surplus refund method."

18. According to Midwest TDUs, the Commission should have ordered refunds for the period that began with the effective date of the compliance filings. They assert that the Commission improperly abdicated its decisional role by leaving it to Midwest ISO, an interested party, to "address the veracity of the intervenors' claim" that Midwest ISO's methodology "was not equitably refunding the customer's contribution to the marginal loss surplus." Midwest TDUs argue that the Commission reversed the burden of proof under Federal Power Act (FPA) section 205²⁰ by requiring intervenors to prove the appropriateness of their proposed marginal loss refund mechanisms rather than requiring Midwest ISO, as the filing utility, to prove that its marginal loss refund mechanism is just, reasonable, nondiscriminatory, in the public interest, and compliant with preceding Commission orders. They allege that the May 31 Rehearing Order's reference to the compliance proceedings being decided under FPA section 206²¹ was legal error.²² They

¹⁹ Midwest TDUs' Request for Rehearing at 4 (citing *PJM Interconnection LLC*, 117 FERC ¶ 61,220 at P 86 (2006)).

²⁰ 16 U.S.C. § 824d (2000).

²¹ 16 U.S.C. § 824e (2000).

²² Midwest TDUs' Request for Rehearing at 5 (citing May 31 Rehearing Order at P 15 & n.21).

contend that the Commission misconstrued the extent of its refund authority in these compliance proceedings when it found that any remedy would be prospective from a date after November 1, 2006, rather than prospective from an earlier date during these compliance proceedings.

Discussion

19. The rehearing requests applicable to the May 31 Rehearing Order restate arguments raised earlier in this proceeding and rejected by that order, as well as the November 1 Order. They also, in some instances, duplicate arguments that were considered and rejected by the court of appeals in related dockets. Since the parties present no new arguments here, we will reject Integrys' and Midwest TDUs' rehearing requests to the extent that they apply to the May 31 Rehearing Order. The Commission does not allow rehearing of an order denying rehearing.²³ Any other result would lead to never-ending litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing.²⁴ And, as the court of appeals has provided, even "an improved rationale" would not justify a further request for rehearing.²⁵

20. Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.²⁶ In fact, in instances when the later order modifies the results of the earlier order in a significant way, a second rehearing request is required before a party may challenge the Commission's decision in court.²⁷ The May 31 Rehearing Order did not

²³ See, e.g., *Cargill Power Markets, LLC*, 114 FERC ¶ 61,093 (2006) (*Cargill*); *KeySpan-Ravenswood, LLC v. New York Indep. Sys. Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *Southern Co. Services, Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Co. d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Southwestern Public Service Co.*, 65 FERC ¶ 61,088 at 61,533 (1993).

²⁴ Accord, e.g., *Canadian Association of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").

²⁵ See *Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

²⁶ See *Cargill*, 114 FERC ¶ 61,093 at P 6.

²⁷ See *California Department of Water Resources v. FERC*, 306 F.3d 1121, 1125 (D.C. Cir. 2002); *Town of Norwood, Massachusetts v. FERC*, 906 F.2d 772, 775 (D.C. Cir. 1990).

modify the November 1 Order. We will therefore reject the rehearing requests to the extent that the issues raised have already been addressed in the previous rehearing order and or in the court's decision.

21. Here, the May 31 Rehearing Order denied rehearing and affirmed the findings in the November 1 Order. Under these circumstances, the second rehearing request was inappropriate. Furthermore, in *Wisconsin* the court approved, over Midwest TDUs' objections, the Commission's conclusion that Midwest ISO's method for determining and allocating the refund marginal loss surplus revenue is just and reasonable.²⁸ The court recognized that the Commission had not required, and need not require, that Midwest ISO "issue refunds based on the average losses incurred by *each individual* transmission customer."²⁹ The court also saw no problem with the Commission directing Midwest ISO to make additional compliance filings that analyzed the intervenors' proposals. The court said:

Although FERC has instructed [Midwest ISO] to consider the Transmission Dependents' proposals for further refining [Midwest ISO's] method for computing average losses, FERC has never stated it is willing to revisit the conclusion that the method is just and reasonable. . . . And FERC has clarified that "any revisions in the future will be prospective in nature." . . . The mere fact that FERC has continued to allow fine-tuning through additional compliance filings does not affect the finality of Compliance I: "Commission rate orders often appear to leave detail issues to 'compliance' filings, without anyone supposing that this deprives them of finality."³⁰

The court went on to say:

On the merits, we reject the Transmission Dependents' arguments concerning [Midwest ISO's] average loss computation method. In approving that method, FERC reasonably interpreted its initial instructions that refunds be distributed "based either on historical loss charges associated with existing transmission service, or otherwise on average loss charges calculated by the Midwest ISO." TEMT II Order, 108 F.E.R.C. ¶ 61,163, at 61,926 P 74. . . .

FERC's acknowledgment that the computation method can and should be

²⁸ *Wisconsin*, 493 F.3d at 266

²⁹ *Id.* (emphasis original).

³⁰ *Id.* (internal citations omitted).

refined does not, however, undercut FERC's conclusion that the overall method affords a just and reasonable rate for the transmission customers. Merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one FERC approved does not mean that FERC erred in concluding the latter was just and reasonable. Again, reasonableness is a zone, not a pinpoint. *See ExxonMobil Gas Mktg.*, 297 F.3d at 1084 ("The burden is on the petitioners to show that the Commission's choices are unreasonable and its chosen line of demarcation is not within a zone of reasonableness as distinct from the question of whether the line drawn by the Commission is precisely right.") (internal quotation marks omitted).³¹

22. Midwest ISO's method of allocating marginal loss surplus revenue has been found to be just and reasonable.³² Furthermore, the existing allocation method is no longer open to challenge, contrary to Midwest TDUs' assertion, except pursuant to section 206 of the FPA.³³

23. We find nothing in the record to indicate that Midwest ISO incorrectly applies its tariff provisions when it allocates over-collected losses to market participants. The TEMT does not require Midwest ISO to subtract an average number from a marginal number, as Integry's argues. For the calculation of day-ahead and real-time marginal losses, the TEMT states that Midwest ISO shall calculate for each hour of the energy market the marginal losses surplus as the total charges for energy market purchases, minus total credits for energy market sales, minus total congestion charges.³⁴ Furthermore, for the purpose of calculating and distributing marginal losses, the TEMT states:

[Midwest ISO] shall calculate Marginal Losses Surplus as the sum of the Day-Ahead Marginal Losses Surplus calculated pursuant to section 39.3.5 and the Real-Time Marginal Losses Surplus calculated pursuant to section 40.5 minus the determined value of Inadvertent Energy summed across all

³¹ *Id.* at 266.

³² *See Id.*; May 31 Rehearing Order at P 15; November 1 Order at P 29; Compliance Order I at P 171.

³³ *See* May 31 Rehearing Order at P 15; November 1 Order at P 25, 29.

³⁴ *See* section 39.3.5 and section 40.5 of the TEMT.

Control Areas. [Midwest ISO] shall allocate the Marginal Losses Surplus to Load in a manner that reflects the difference between Marginal Losses and System Losses on a Balancing Authority Area.³⁵

After Midwest ISO subtracts out all the costs, the surplus that remains is classified as marginal loss. The TEMT only requires Midwest ISO to refund this surplus, and we have no evidence that Midwest ISO is not doing so.

24. The only question that remains is whether the May 31 Compliance Order correctly accepted Midwest ISO's analysis that the refund allocation method should not be reformulated, even prospectively. We again find that Midwest ISO complied with the requirements of the November 1 Order. As discussed below, we will deny Integrys' and Midwest TDUs' rehearing requests to the extent that they address the May 31 Compliance Order.

25. In the May 31 Compliance Order, we noted that the differences between day-ahead loss estimates and real-time actual losses ensure that loss estimates from the day-ahead market will not accurately reflect the actual losses incurred in the real-time market, and hence will result in differences in the estimate compared to actual results. We determined that Midwest TDUs' and Integrys' proposed methods did not provide a basis to better estimate the over-collected losses for market participants with distant generation, nor did they provide a more equitable basis than Midwest ISO's current method for allocating the surplus revenues.³⁶

26. The Midwest TDUs mischaracterize as "pivotal" the Commission's statement that loop flows and differences between day-ahead and real-time losses may explain the differences between actual refunds received and the refunds sought by the Midwest TDUs.³⁷ All the figures developed by parties and reviewed by Midwest ISO in its compliance filing are estimates based on losses that occur from generation sources that are designated in bilateral transactions. By contrast, in the energy markets Midwest ISO cannot "pair" each generator with each load because it does not know the actual generators used to serve each load³⁸ in real time. The Commission was inferring that the differences between the methods developed by parties that relied on the loss sensitivity estimates in the marginal loss components of the LMP, and the method used by the

³⁵ See section 40.6 of the TEMT.

³⁶ May 31 Compliance Order at P 26.

³⁷ *Id.* at P 30.

³⁸ *Id.* at P 14.

Midwest ISO to calculate the amount of refunds it provides, would explain the difference in refund results. Therefore, the Commission's inferences comparing day-ahead and real-time loss sensitivities are evaluations of an estimation technique and nothing more.³⁹

27. Furthermore, the estimates must account for loop flows in order to be an accurate measure of marginal losses, and the methods proposed by the Midwest TDUs and Integrys do not account for loop flow. For these reasons, we consider incorrect the statement that refunding less than half the estimate of day-ahead marginal loss payments will leave the market participant paying more than its own actual average losses. The day-ahead loss sensitivities are estimates, and do not reflect actual losses, as the Midwest TDUs admit.⁴⁰ Therefore the estimates cannot be compared to actual average losses. Neither day-ahead nor real-time loss sensitivity estimates account for loop flow, and therefore a comparison of day-ahead and real-time amounts does not have a bearing on the fact that loop flows reduce the amount of loss revenues available for refunding.

28. Because intervenors' proposed methods for estimating over-collected losses do not improve upon Midwest ISO's proposal, we find that no purpose is served in gathering dollar loss information by customer. Individual allocations based on loss sensitivity estimates do not reflect actual losses associated with the actual source generation and do not account for loop flows or scheduling error factors and are therefore deficient.

29. We affirm that the allocation of loop flows is reasonable, and note that the court of appeals also affirmed the allocation is reasonable.⁴¹ Accordingly, we find that the Midwest TDUs' argument in favor of another allocation under consideration in the PJM Interconnection is beyond the scope of this proceeding since the existing allocation method is no longer open to challenge, except pursuant to FPA section 206.

30. We note that the data Midwest ISO provided in the January 30 Filing are by necessity rough estimates of loop flows and differences between day-ahead and real-time losses, and the fact that the data is not exact may explain the differences between the

³⁹ Seen in this context, differences between estimates of day-ahead and real-time loss sensitivities do not have a bearing on actual refunds. Neither sensitivity accounts for loop flow and does not reflect losses from actual generation.

⁴⁰ See Midwest TDUs' Rehearing Request at 11.

⁴¹ See *Wisconsin* at 266.

actual refunds received and the refunds sought by the Midwest TDUs and Integrys.⁴² Accordingly, these estimates should not, in contrast to the Midwest TDUs' and Integrys' assertions, provide a reasonable basis for determining refunds.⁴³

Hearing Request

31. We find no need to order a hearing or technical conference. We reiterate our determination that the current rate is just and reasonable. We have analyzed all proposed methods and find no need to continue this proceeding since the current method appropriately calculates Midwest ISO's marginal losses. We also note that the court of appeals has already affirmed the Commission's earlier determinations that Midwest ISO's approach for determining marginal losses is just and reasonable. Furthermore, Midwest ISO states that the methods proposed by Midwest TDUs and Integrys would not provide a better calculation. Therefore, there is no need to alter the current method and no need for further proceedings on this matter.

The Commission orders:

The rehearing requests of Midwest TDUs and Integrys are hereby denied or rejected for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴² May 31 Compliance Order at P 30.

⁴³ We also do not consider the rough estimates of the differences between day-ahead and real-time losses provided by Midwest ISO to be suitable to justify ordering Midwest ISO to implement a revised allocation on this basis, as Integrys argues.