

123 FERC ¶ 61,178
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 No. ER07-478-005

ORDER ON REHEARING

(Issued May 16, 2008)

1. On May 17, 2007, the Commission issued an order accepting the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) long-term firm transmission rights (LTTR) proposal, subject to modification.¹ The Midwest ISO submitted modifications to comply with the LTTR Order, which were accepted in part and rejected in part by the Commission on October 19, 2007.² The Midwest TDUs³ seek rehearing of the October 19, 2007 Compliance Order concerning, among other things, (1) auction revenue rights (ARR) zone design; (2) the process for providing incremental LTTRs; and (3) the application of the limitation of counter-flow ARRs. In this order we grant in part, deny in part, and dismiss in part rehearing, as discussed below.

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143 (LTTR Order), *order on reh'g*, 121 FERC ¶ 61,063 (2007) (October 19, 2007 Rehearing Order).

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,062 (2007) (October 19, 2007 Compliance Order).

³ Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and Wisconsin Public Power, Inc.

I. Background

2. Consistent with the Energy Policy Act of 2005 (EPAct 2005),⁴ Order No. 681 required independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers. The Final Rule directed these independent transmission organizations to make LTTRs available that satisfy seven guidelines.⁵ Transmission organizations subject to Order No. 681 were given 180 days from the date of the Final Rule to make compliance filings regarding LTTRs. On rehearing, the Commission issued Order No. 681-A on November 16, 2006 reaffirming and clarifying the Final Rule.

3. The Midwest ISO, a Commission-approved regional transmission organization (RTO), coordinates the movement of electricity within several Midwestern states and operates an organized electricity market subject to the Final Rule. On January 29, 2007, the Midwest ISO submitted revisions to its Open Access Transmission and Energy Markets Tariff (TEMT) providing for LTTRs,⁶ in compliance with Order No. 681. In the LTTR Order, the Commission accepted the LTTR Proposal, but required the Midwest ISO to make modifications in 30- and 60-day compliance filings. The Commission required a defined and transparent process for granting incremental ARRs for all market participants, not just for market participants building new baseload generation. The Commission also required the Midwest ISO to clarify that the TEMT will provide for the designation of separate ARR zones based on contractual arrangements. The Commission further directed the Midwest ISO to clarify the conditions under which an LSE that is retiring a resource eligible for Stage 1A ARRs can turn back its counter-flow rights upon retirement of the resource.

4. On June 18, 2007 and July 16, 2007, the Midwest ISO made its 30-day (June 18, 2007 Compliance Filing) and 60-day (July 16, 2007 Compliance Filing) compliance filings. In the October 19, 2007 Compliance Order, the Commission accepted in part and rejected in part both compliance filings. The Commission accepted, as modified, the Midwest ISO's proposed tariff revisions to provide for a clear and transparent process for

⁴ Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958 (2005). Section 217(b)(4) of EPAct 2005 directed the Commission to use its authority to facilitate transmission planning and expansion to meet the reasonable needs of load serving entities (LSEs) with respect to meeting their service obligations and, relevant to this filing, securing LTTRs for long-term supply arrangements made, or planned, to meet such obligations. *Id.*

⁵ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at 108-428 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 at P 12-15 (Order No. 681 or the Final Rule).

⁶ LTTR Proposal.

granting incremental ARR for transmission upgrades, as well as for situations involving the replacement, termination, retirement, and addition of generation sources, and directed the Midwest ISO to make a compliance filing incorporating those changes into its TEMT. The Commission also accepted the Midwest ISO's proposed revisions with respect to ARR zone designation. However, the Commission rejected the Midwest ISO's proposal requiring the continuation of the counter-flow obligation and associated costs for ten years after a generation unit has been retired. The Commission therefore directed the Midwest ISO to submit a further compliance filing revising its tariff to terminate the counter-flow obligation upon termination of service. On November 19, 2007, the Midwest ISO submitted its compliance filing (November 19, 2007 Compliance Filing). In an order in Docket No. ER07-478-006 being issued concurrently with this order, the Commission accepts in part and rejects in part that compliance filing.⁷

II. Rehearing Request

5. The Midwest TDUs seek rehearing of the Commission's decisions in the October 19, 2007 Compliance Order regarding: (1) ARR zone design; (2) the process for providing incremental LTTRs; and (3) the application of the limitation of counter-flow ARRs.

III. Discussion

A. ARR Zone Design

6. In compliance with the requirements of guideline (1) in Order No. 681 that an LTTR should be a point-to-point right that specifies a source and a sink, the Midwest ISO proposed a methodology for allocating ARRs by eligible sources and sinks in zones based on the location of the market participant's load. In the LTTR Order, the Commission required the Midwest ISO to clarify that the TEMT will provide for the designation of separate ARR zones based on contractual arrangements.⁸ In its June 18, 2007 Compliance Filing, the Midwest ISO made revisions to section 43 of the TEMT regarding its generation resource qualification requirement.

7. On July 9, 2007, the Midwest TDUs submitted a protest to the Midwest ISO's tariff language in section 43.2.1.a.i which stated:

If two Market Participants have contracts that meet all of the above qualification requirements for the same supply Generation Resource, such that the Generation Resource would otherwise qualify as a Reserved Source Point for more than one ARR Zone, then the Market Participant that contracted with the Generation

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,179 (2008).

⁸ *See* LTTR Order, 119 FERC ¶ 61,143 at P 31.

Resource most recently will be given priority in determining the ARR Zone for which the Generation Resource will serve as a Reserved Source Point.⁹

The Midwest TDUs argued that this language could be read to bar a resource shared by multiple owners or purchasers from qualifying as a reserved source point (RSP) in the ARR zones of each of its various owners and that section 43.2.1.a.i “should be clarified, so that it is clear this limitation applies only if the exact same MWs are in question, and that Generation Resources shared by multiple market participants can be split between multiple ARR Zones.”¹⁰ The Midwest ISO responded in its July 25, 2007 answer (July 25, 2007 Answer) that it would be willing to clarify that generation resources shared by multiple market participants can be split between multiple ARR zones. The Commission found that clarification reasonable and directed the Midwest ISO to submit a further compliance filing revising its tariff to reflect this clarification.¹¹ On November 19, 2007, the same day the Midwest TDUs filed their request for rehearing, the Midwest ISO submitted its compliance filing. In the November 19, 2007 Compliance Filing, the Midwest ISO submitted revisions to section 43.2.1.a.i as follows:

Generation Resources shared by multiple Market Participants may be split between or among multiple ARR Zones of such Market Participants in proportion to their ownership or contractual interest in the Generation Resources, and the amount of Load each Market Participant actually serves with such Generation Resources. If two Market Participants have contracts that meet all of the above qualification requirements for the same ~~supply~~ Generation Resource,...such that the exact same megawatts (MWs) from the Generation Resource would otherwise qualify as a Reserved Source Point for more than one ARR Zone, then the Market Participant that contracted with the Generation Resource most recently will be given priority in determining the ARR Zone for which the Generation Resource will serve as a Reserved Source Point.¹²

1. Request for Rehearing

8. The Midwest TDUs request that the Commission clarify that generation resources shared by multiple market participants can be split among multiple ARR zones, based on

⁹ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Original Sheet No. 609B.

¹⁰ Midwest TDUs’ July 9, 2007 Protest at 8-9.

¹¹ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 19.

¹² Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Second Substitute Original Sheet Nos. 609B-609C.

the specific contractual and ownership arrangements of each joint owner. The Midwest TDUs also point out that the October 19, 2007 Compliance Order summarizes the Midwest ISO's proposed clarification as "generation resources shared by multiple market participants can be split between multiple ARR zones *if* the contracts involve the exact same megawatts."¹³ The Midwest TDUs contend that the "if" phrase used by the Commission is ambiguous and request clarification, or rehearing, so that the provisions of section 43.2.1.a.i of the TEMT apply only to the specific megawatts covered by that market participant's contract.

2. Commission Determination

9. We dismiss the Midwest TDUs' rehearing request as moot. The Midwest ISO submitted, in its compliance filing, revised tariff language that the Midwest TDUs requested that the Midwest ISO include in its TEMT and the Midwest TDUs did not raise any concerns with respect to that tariff language, which, we note, does not include the "if" phrase used by the Commission and objected to by the Midwest TDUs. The Commission is accepting that unopposed tariff language in an order being issued concurrently with this order.¹⁴ Accordingly, we consider the Midwest TDUs' rehearing request on this issue to be moot.

B. Process for Providing Incremental LTTRs

10. In the LTTR Order, the Commission required a defined and transparent process for granting incremental ARRs for all market participants, not just for market participants building new baseload generation. In response, in its June 18, 2007 Compliance Filing the Midwest ISO explained that section 43.6.1 of its TEMT already specified procedures by which a market participant could free up system capability to increase the feasibility of ARRs for a new RSP as a replacement for an existing ARR entitlement. However, the Midwest ISO set forth several revisions and additions (though not revised tariff language) in its July 25, 2007 Answer. The revisions and additions included provisions for an annual allocation period, designation of a new reserved source point, replacement of a source point, the feasibility upgrade process, and treatment of external loads. In the October 19, 2007 Compliance Order, the Commission found the proposed revisions responsive to the Commission's request for a clear and transparent process for granting incremental ARRs for transmission upgrades and conditioned acceptance on the Midwest ISO making a further compliance filing incorporating in its tariff the proposed revisions and additions.

¹³ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 16 (emphasis added).

¹⁴ See supra note 7.

1. Request for Rehearing

11. The Midwest TDUs request clarification that the October 19, 2007 Compliance Order leaves open any decision on the merits of the Midwest ISO's process for securing incremental ARR's, and that the Commission has not pre-judged the justness and reasonableness of the tariff changes that the Midwest ISO will submit in a further compliance filing due November 19, 2007. The Midwest TDUs contend that the Commission's obligations under section 217(b)(4) of the FPA are not satisfied by the Commission's acceptance of the Midwest ISO's filings without clear, proposed tariff language providing for just and reasonable procedures for LSEs to obtain new LTTRs for new baseload resources, the opportunity for parties to submit protests to the proposed tariff language, and the opportunity for further explanation that would assure that the Midwest ISO's proposal is just and reasonable. Nevertheless, the Midwest TDUs state that the Commission found the compliance filing and answer responsive to the Commission's request for a clear and transparent process, and accepted the tariff revisions, subject to a further compliance filing incorporating those revisions. The Midwest TDUs state that to the extent the Commission has accepted the changes that the Midwest ISO had proposed in its July 25, 2007 Answer, where the process would not be reviewed *de novo*, that decision was in error and the Midwest TDUs seek rehearing of that decision.

12. In particular, the Midwest TDUs argue that it is unclear whether the Midwest ISO intends that the simultaneous feasibility test would maximize the replacement Stage 1A ARR's or LTTRs requested by the entity that is voluntarily relinquishing existing Stage 1A ARR's or LTTRs. The Midwest TDUs contend that it is unclear what it means for a market participant to "mak[e] an advance commitment to accept the simultaneous feasibility test results" in this context.¹⁵

13. The Midwest TDUs also seek rehearing of the October 19, 2007 Compliance Order to the extent that it approved a methodology for granting incremental LTTRs that may be restricted to individual, sequential simultaneous feasibility tests, as the Midwest ISO described in its July 25, 2007 Answer.¹⁶ The Midwest TDUs maintain that this new description appears to make it needlessly difficult for LSEs to obtain incremental LTTRs for new or replacement generation resources, making it unreasonably difficult for such requests to pass the Midwest ISO's simultaneous feasibility tests. With respect to replacement baseload resources, the Midwest TDUs argue that the Midwest ISO's provision for the removal of MWs from an RSP, if that removal results in the loss of

¹⁵ Midwest TDUs' Request for Rehearing at 7 (quoting October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 67; Midwest ISO's July 25, 2007 Answer at 13).

¹⁶ Midwest ISO's July 25, 2007 Answer at 13.

MWs eligible to be requested from all RSPs, is a testing regimen that requires the marginal impacts of each individual LSE-proposed replacement to be evaluated separately and will likely be difficult to satisfy for baseload RSPs and extremely difficult to satisfy for non-baseload RSPs.¹⁷

14. The Midwest TDUs request that the Commission direct the Midwest ISO to adopt an approach that enables LSEs to secure long-term rights for planned power supply arrangements. For example, the Midwest TDUs state that the Midwest ISO's process would seem to foreclose evaluation and implementation of a clustering approach, whereby multiple requests received in the same timeframe are studied in the same simultaneous feasibility test. The Midwest TDUs maintain that clustering would allow more requests to pass the simultaneous feasibility test, as the flows associated with one request for RSP changes could be offset by counter-flows from another request. The Midwest TDUs also point out that the Commission has recognized the benefits of clustering in other contexts, such as in Order No. 890, where the Commission encouraged transmission providers to cluster service request studies when reasonable, and required transmission providers to consider clustering if requested to do so by the customers involved.¹⁸

2. Commission Determination

15. We grant in part and deny in part the Midwest TDUs' request for rehearing with respect to the Midwest ISO's process for securing incremental ARRs. We clarify, as the Midwest TDUs recognize, that the Commission accepted the Midwest ISO's revisions and additions as responsive to the Commission's concerns, but made that acceptance conditional on the Midwest ISO making a further compliance filing incorporating these revisions and additions in its tariff. The Midwest ISO submitted its revised tariff language in its November 19, 2007 Compliance Filing and the Midwest TDUs were free to protest that language and the Commission has the opportunity to review it. In this regard, with respect to the Midwest TDUs' concerns regarding the replacement of RSPs and the methodology for granting incremental LTTRs, we note that the Midwest TDUs did not protest these issues in the November 19, 2007 Compliance Filing.

16. We do not consider the Midwest ISO's proposal to require market participants to make an advance commitment to accept the simultaneous feasibility analysis results to be unreasonable. Such a requirement ensures that the annual replacement process for

¹⁷ Midwest TDUs' Request for Rehearing at 11.

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 at P 1370 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

determining ARR and LTTRs recognizes the validity of the simultaneous feasibility analysis for all replacement requests, and thereby ensures that all requests are evaluated in a non-discriminatory manner using a common analysis framework. We do not interpret this requirement as foreclosing the rights of market participants to file complaints or request arbitration. Thus, on this issue, we deny the Midwest TDUs' rehearing request.¹⁹

17. We also deny rehearing of the Midwest TDUs' argument that the Midwest ISO should adopt a clustering approach for the allocation of LTTRs. We first note that we consider the Midwest ISO's sequential process for granting new LTTRs and replacement LTTRs to be reasonable, and therefore a revision to this process is not needed. As the Commission has explained in its previous orders, the sequential assignment of LTTRs ensures the feasibility of those LTTRs already allocated and ensures that new LTTRs for new resources do not create infeasibility.²⁰ With respect to the Midwest ISO's tariff provision for the removal of MWs from an RSP if that removal results in the loss of MWs eligible to be requested from all RSPs, we consider this provision appropriate and in compliance with the requirements of Order No. 681 since it ensures that the feasibility of existing LTTRs remains intact.

18. Furthermore, we disagree with the Midwest TDUs' argument that clustering would allow more requests to pass the simultaneous feasibility test since processing more requests at the same time does not create more rights. If the Midwest ISO were to adopt a clustering approach to LTTR allocation, market participants that already have LTTRs would have to share them or in effect give them up to market participants with new generation that do not yet have LTTRs and want them. The Commission has previously rejected a proposal that generators whose plants are in service should have to relinquish those rights to generators whose plants are not yet in service since such a result is contrary to the requirements of Order No. 681.²¹ We also note that clustering will not make an infeasible LTTR request feasible just because it is processed with a request that

¹⁹ We note that the Midwest ISO filed tariff language in its November 19, 2007 Compliance Filing addressing this concern and the Midwest TDUs did not protest the Midwest ISO's tariff language. In the order being issued concurrently with this order in Docket No. ER07-478-006, the Commission is finding that the tariff language submitted is consistent with the original purpose of section 43.2.1.a.i, to provide a priority for the market participant that contracted most recently for the generation resource, and to base the sharing of generation resources among ARR zones on the proportion of the ownership or contractual interest in the generation resource. *See supra* note 7.

²⁰ *See* October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 58-59; October 19, 2007 Rehearing Order, 121 FERC ¶ 61,063 at P 29-30.

²¹ *Id.*

is feasible, as we explained above, and therefore deny the Midwest TDUs' rehearing request.²²

C. Application of the Limitation of Counter-flow ARRs

19. In the LTTR Order, the Commission required the Midwest ISO to clarify the conditions under which an LSE that is retiring a resource eligible for Stage 1A ARRs, and thus also Stage 1A counter-flow ARRs, can turn back its counter-flow rights upon retirement of the resource.²³ In its June 18, 2007 Compliance Filing, the Midwest ISO clarified that, in section 43.2.5.e of its TEMT, the counter-flow obligation lasts ten years. The Midwest ISO stated that if a party knows ten years in advance that it will be retiring a unit, the party can stop nominating a Stage 1 ARR entitlement and can then be assured of not being assigned counter-flows on the entitlement after the units retire. In the October 19, 2007 Compliance Order, the Commission rejected the Midwest ISO's proposal that the counter-flow obligation continue after the generation resource is retired, and directed the Midwest ISO to revise its tariff to terminate the counter-flow obligation upon termination of service with no continuing notice obligations to be submitted in its November 19, 2007 Compliance Filing.

1. Request for Rehearing

20. The Midwest TDUs request that the Commission clarify, or if necessary, grant rehearing that its determination in the October 19, 2007 Compliance Order limiting counter-flow ARRs applies both to the permanent retirement of baseload units and to the termination of long-term power supply contracts. The Midwest TDUs assert that the Commission's reasoning in the October 19, 2007 Compliance Order²⁴ applies equally to both types of long-term power supply arrangements. The Midwest TDUs argue that neither section 217(b)(4) of the FPA, nor Order No. 681, nor the Midwest ISO's LTTR proposal distinguish between ownership interests and long-term contracts for generation sources. The Midwest TDUs assert that Order No. 681 expressly envisioned that long-term power supply contracts would be eligible for long-term rights. Thus, the Midwest TDUs request that the Commission clarify that its directive that the Midwest ISO submit a compliance filing that allows for "termination of the counter-flow obligation upon

²² We do not consider the Order No. 890 analogy of the Midwest TDUs to be applicable to LTTR allocation since the allocation of LTTRs and ARRs confers a long-term right to market participants that is guaranteed for ten years, which clustering puts at risk.

²³ See LTTR Order, 119 FERC ¶ 61,143 at P 51.

²⁴ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 80-82.

termination of service,”²⁵ applies to termination of the long-term power supply contract that supported the LTTR, as well as to retirement of the generation source. The Midwest TDUs also take issue with the Midwest ISO’s usage of the terms “ARRs” and “LTTRs” in the July 25, 2007 Answer. In that answer, the Midwest ISO states that all ARR and ARR entitlements that source at a retired generator resource will cease to exist, “with the exception of the LTTRs.”²⁶ The Midwest TDUs argue that “ARRs” and “LTTRs” are used inconsistently and that the Midwest ISO appears to treat them as mutually exclusive categories rather than recognizing that LTTRs are a subcategory of ARRs.

2. Commission Determination

21. We deny the Midwest TDUs’ rehearing request. As the Midwest ISO explained in its LTTR proposal, counter-flow obligations are necessary to ensure the funding of LTTRs. The Commission accepted this proposal, but recognized a necessary exception – retired generators should be exempt from continued payment of counter-flow obligations because “[w]ithout a generation resource, these counter-flow ARR holders no longer have the ability to hedge congestion by producing energy.”²⁷ The counter-flow obligation is based on the difference between clearing prices at the delivery point and the receipt point, and it follows that this obligation applies to market participants that participate in the energy market between these two points. Once a generator is retired, transactions between these two points cease, and congestion revenues cease. In this circumstance, the Commission has determined that it is reasonable that counter-flow obligations consequently cease. The same outcomes are not necessarily true for the termination of long-term supply contracts, since alternative transactions can potentially continue after the termination of the contract and therefore market participants can continue to receive the benefits of congestion revenues. Thus, in that context, a continuing counter-flow obligation is appropriate.²⁸

²⁵ *Id.* P 82.

²⁶ Midwest ISO’s July 25, 2007 Answer at 13-14.

²⁷ October 19, 2007 Rehearing Order, 121 FERC ¶ 61,063 at P 22.

²⁸ We agree with the Midwest TDUs that the Midwest ISO, in its July 25, 2007 Answer, used the terms “ARRs” and “LTTRs” inconsistently in its description of the termination of ARRs and LTTRs with the termination of generation resources. In the October 19, 2007 Compliance Order, the Commission rejected the Midwest ISO’s proposal that LTTRs continue after the termination of generation resources, and determined that counter-flow ARRs must terminate with the termination of the generation resource. *See* October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 80. Implicit in that determination is that LTTRs are a subcategory of ARRs, and it was intended that both ARRs and LTTRs would terminate when a generation resource terminates.

The Commission orders:

The Midwest TDUs' request for rehearing is hereby granted in part, denied in part, and dismissed in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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