

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliant Energy Corporate Services,  
Inc.

Docket No. EL05-82-000

v.

Midwest Independent Transmission  
System Operator, Inc.

ORDER ON COMPLAINT

(Issued June 28, 2005)

1. On March 28, 2005, as amended on April 28, 2005, Alliant Energy Corporate Services, Inc. (Alliant) filed a complaint, pursuant to sections 206 and 306 of the Federal Power Act (FPA),<sup>1</sup> against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) regarding the allocation of Financial Transmission Rights (FTRs) by Midwest ISO for certain transmission entitlements held by Alliant. Alliant's amended complaint alleges that Midwest ISO improperly defined two of Alliant's transmission service entitlements, resulting in the denial of an allocation of FTRs for those entitlements.<sup>2</sup> In this order, the Commission grants Alliant's complaint and requires Midwest ISO to refund to Alliant the congestion charges incurred over the transmission

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<sup>1</sup> 16 U.S.C. §§ 824e and 825e (2000).

<sup>2</sup> Except as noted, capitalized terms are defined in Module A of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT). *See Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (August 6 Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004).

path in question. This order benefits customers by ensuring that transmission service entitlements are properly defined and reflected in the allocation of FTRs to Market Participants.

## **I. Background**

2. On April 1, 2005, Midwest ISO began operating energy markets under the TEMT. Among other things, the TEMT provides for the economic dispatch of energy based on Locational Marginal Pricing (LMP),<sup>3</sup> the operation of Day-Ahead and Real-Time Energy Markets, and the allocation of FTRs and administration of supplemental FTR auctions.<sup>4</sup> Under the TEMT, instead of holding physical transmission rights on the Midwest ISO system, Market Participants hold FTRs, which usually allow FTR holders to collect the congestion revenues from the LMP, and can thus serve as a hedge against congestion charges.

3. As part of its shift from physical transmission rights to FTRs, the Midwest ISO conducted an initial FTR allocation process beginning in 2004. The initial FTR allocation process, set forth in the TEMT, provided a series of steps by which Market Participants registered their existing physical transmission rights and nominated those rights to receive FTRs, and Midwest ISO allocated FTRs for the nominated rights. For most existing long-term transmission entitlements eligible for conversion to FTRs, Market Participants were required to define and register their existing transmission entitlements by providing certain information to Midwest ISO.<sup>5</sup> However, for Native Network Load eligible for FTRs, Midwest ISO, rather than the Market Participant, defined and registered annual FTR entitlements for Market Participants that had no long-

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<sup>3</sup> In an LMP system, prices for energy reflect differences in cost at different locations due to congestion.

<sup>4</sup> The TEMT defines an FTR as “[a] financial instrument that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the Transmission System is congested and differences in LMPs result from the redispatch of Resources out of economic merit order to relieve that congestion.” TEMT, section 1.101, FERC Electric Tariff Third Revised Volume No. 1, Second Revised Sheet No. 76.

<sup>5</sup> TEMT, section 43.2.1(a), FERC Electric Tariff Third Revised Volume No. 1, Second Revised Sheet No. 608-609.

term designated resources to meet their forecast annual peak load.<sup>6</sup> The definition and registration by Market Participants of their long-term entitlements occurred prior to the definition and registration of entitlements for Native Network Load by the Midwest ISO.

4. Following the process of defining and registering transmission entitlements as eligible for FTRs, such entitlements were nominated by Market Participants to be included in the FTR allocation process. That process included multiple tiers within which Market Participants were able to nominate for FTRs up to specified caps. After receiving all nominations, Midwest ISO analyzed the nominated FTRs to ensure that, in aggregate, all nominated FTRs could be accommodated (or were “simultaneously feasible”) given any operational or physical constraints on the system. Nominated FTRs that were determined to be simultaneously feasible were then allocated to Market Participants.

## **II. Alliant’s Amended Complaint**

5. Alliant’s amended complaint alleges that definitional errors committed by Midwest ISO during the process of registering transmission entitlements resulted in Alliant being denied the opportunity to request FTRs for two long-term Network Integration Transmission Service entitlements held by Alliant. Alliant holds these entitlements, labeled entitlements 746 and 919, on behalf of its affiliates, Interstate Power and Light (IPL) and Wisconsin Power and Light (WPL). These transmission rights represent 150 megawatts and 50 megawatts, respectively, of capacity for flows from the Alliant-West (ALTW) to Alliant-East (ALTE) control areas. Alliant uses these rights to

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<sup>6</sup> Section 43.2.4 of the TEMT, FERC Electric Tariff Third Revised Volume No. 1, First Revised Sheet No. 613A, provided:

For Market Participants that do not have designated annual or longer term Network Resources to meet their forecast annual peak load to be served using the Network Integration Transmission Service, the Transmission Provider shall define additional annual FTR entitlements based on the Generation Resources that the entity used to serve their Network Load during the previous twelve (12) month period. Such entitlements shall be defined based upon the difference between the Market Participant’s forecast Network Load for the next twelve (12) month period and the total Capacity provided by annual or longer designated Network Resources, also for the next twelve (12) month period. This provision shall only be effective during the Transmission Provider’s initial FTR allocation period.

This provision was subsequently removed from the TEMT. *See Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,249 at P 11, 35 (2005).

move power from ALTW, outside the Wisconsin Upper Michigan System (WUMS) Narrow Constrained Area (NCA), across constrained transmission lines, into ALTE, inside WUMS.<sup>7</sup> Without the FTRs, Alliant states that it will likely incur additional costs in serving IPL's and WPL's customers, since it will not have a hedge against transmission congestion costs. Alliant states that these additional costs may not be recoverable through IPL's or WPL's retail rates. Alliant requests that the Commission direct the Midwest ISO to issue its FTRs representing the service provided under entitlements 746 and 919; Alliant requests only an allocation of FTRs representing the average annual energy schedule associated with each entitlement rather than the full reservation, however.<sup>8</sup>

6. Specifically, Alliant states that it participated in Midwest ISO's entitlement registration and validation process, and included entitlements 746 and 919 in that process. Alliant provides an excerpt from Midwest ISO's FTR Administration Tool that it states indicates the registration and processing of the entitlements. Further, Alliant states that, throughout the process of registering the entitlements, it communicated with Midwest ISO to ensure that the entitlements would be reflected correctly in Midwest ISO's FTR Administration Tool. According to Alliant, during these communications Midwest ISO informed Alliant that entitlements 746 and 919 would be addressed as part of the process for Native Network Load FTR entitlements. Midwest ISO then rejected the entitlements, explaining, Alliant states, that they could be treated as part of Alliant's Native Network Load nomination and allocation process. Alliant says that it validated this rejection, because it was assured by Midwest ISO that Midwest ISO would define the rights in the Native Network Load process.<sup>9</sup>

7. Alliant further explains that on November 19, 2004, the final day of the FTR validation process, Midwest ISO rejected the Alliant entitlements at issue here, as well as several Alliant FTR entitlements that represented transmission service for loads and

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<sup>7</sup> Alliant states that both entitlements are eligible for the Expanded Congestion Cost Hedge, which provides additional congestion cost relief to Market Participants with load in an NCA for a five-year period. See TEMT, section 43.2.6, FERC Electric Tariff Third Revised Volume No. 1, Substitute Second Revised Sheet No. 630 *et seq.*

<sup>8</sup> Alliant states that the average annual energy schedules associated with entitlements 746 and 919 are 82 megawatts and 40 megawatts, respectively. Amended Complaint at 19.

<sup>9</sup> In rejecting the entitlements, Midwest ISO Staff noted that the entitlements were "rejected since these will be included in NITS load," referring to the Native Network Load entitlement process. Response of Alliant at 5, Attachment A.

resources in the same control area. According to Alliant, deleting entitlements 746 and 919 effectively deleted them from the next stage of the FTR registration, nomination and allocation process, preventing Alliant from nominating them to receive FTRs unless the rights were defined by Midwest ISO in the Native Network Load process.

8. Alliant asserts that, on November 24, 2005, prior to the completion of the first tier of the nominations phase, it discovered the consequences of Midwest ISO's rejection of entitlements 746 and 919, namely that entitlements representing transmission service between control areas could not be defined in the Native Network Load process. Alliant notified Midwest ISO of the problem with the definition of its entitlements. Midwest ISO responded that "[a]s per earlier Midwest ISO and Alliant communications, since the entitlements 746 and 919 have already being [sic] included in the [Native Network Load] calculations, similar to some of the other entitlements; we will not be able to redefine these at this stage."<sup>10</sup> Alliant states that it then called Midwest ISO staff on November 29, 2004, and Midwest ISO staff indicated that while they did not disagree that the entitlements should have been eligible to receive FTRs reflective of the service provided under them, the entitlements could not be treated correctly in the FTR nomination and allocation process because the registration and validation process had closed on November 19, 2004. Alliant states that it was unable to nominate FTRs for the entitlements because of Midwest ISO's action in rejecting the entitlements and then not correctly defining the entitlements in the Native Network Load process.

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

9. Notice of Alliant's original complaint was published in the *Federal Register*,<sup>11</sup> with the answer to the complaint and interventions or protests due on or before April 18, 2005. This date was extended by the Commission to April 28, 2005 at Alliant's request. Notice of Alliant's amended complaint was issued by the Commission on April 29, 2005, with the answer to the complaint and interventions or protests due on or before May 19, 2005. Midwest ISO filed an answer to Alliant's original complaint, and an amended answer to the amended complaint. Wisconsin Electric Power Company and Resale Power Group of Iowa filed timely motions to intervene. Iowa Utilities Board filed a notice of intervention. Dominion Energy Marketing, Inc., Dominion Retail, Inc., and Troy Energy LLC (collectively Dominion) and the Iowa Office of Consumer Advocate (Consumer Advocate) filed timely motions to intervene and comments. Dominion states that since any reallocation of FTRs could negatively impact existing FTR holders, the Commission should ensure that any action taken in the complaint proceeding preserves

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<sup>10</sup> Amended Complaint at 17 and Attachment 6.

<sup>11</sup> 70 Fed. Reg. 17,079 (2005).

the rights and expectations of existing FTR holders. Consumer Advocate requests that the Commission take action to prevent Iowa customers of Alliant from being exposed to additional congestion costs resulting from the alleged failure of Midwest ISO to allocate FTRs for Alliant's transmission rights.

10. On May 13, 2005, Alliant filed a request for leave to respond and response to Midwest ISO's initial answer. On May 27, 2005, Alliant filed a letter notifying the Commission that it intends its May 13 response to also apply to Midwest ISO's amended answer.

**A. Midwest ISO's Amended Answer**

11. In its amended answer, Midwest ISO asserts that "any error made in defining the transmission entitlements underlying Alliant's claim . . . is ultimately the fault of Alliant and not the Midwest ISO."<sup>12</sup> It contends that the FTR allocation process relies on Market Participants like Alliant to appropriately define and register their transmission entitlements, so that they are properly represented during the process of allocating FTRs. Midwest ISO states that it does not have the authority to redefine transmission entitlements that are submitted by Market Participants, and cannot alter the definition of a Market Participant's entitlements after the time period for submitting and validating entitlements has passed. Accordingly, Midwest ISO asks the Commission to deny Alliant's amended complaint.

12. More specifically, Midwest ISO argues that Alliant had the responsibility to appropriately define entitlements 746 and 919, and that contrary to Alliant's claims, it did not inappropriately modify the data or information submitted by Alliant with respect to the entitlements. Midwest ISO states that Alliant had the opportunity to register these entitlements appropriately to ensure their eligibility for FTRs prior to confirming the registration of its FTR entitlements. According to Midwest ISO, Alliant confirmed its final set of registered FTR entitlements, which "explicitly excluded entitlements 746 and 919 as rejected by the Midwest ISO," without communicating any reservations to the Midwest ISO.

13. Midwest ISO further argues that while it may assist Market Participants during the FTR registration process, it does not make registration decisions for Market Participants or second-guess the decisions they have made. Midwest ISO contends that it acted appropriately in rejecting entitlements 746 and 919, given the way Alliant defined them. Midwest ISO states that if Alliant had provided necessary information on these

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<sup>12</sup> Amended Answer of Midwest ISO at 3.

entitlements during the registration period, it could have worked with Alliant to ensure proper definition of the entitlements. However, asserts Midwest ISO, once the FTR registration process closed and the FTR nomination and allocation process began, Alliant's entitlements could not be redefined, because changing the FTRs available to one Market Participant impacts the amount of FTRs available to others, given the simultaneous feasibility criteria used in allocating FTRs. Furthermore, Midwest ISO states that, to change the definition of Alliant's entitlements, it would have had to reopen the FTR registration process, resulting in a delay in the FTR allocation process that would have prevented that process from being completed within the timeframe established by the Commission.

**B. Alliant's Response**

14. In its response, Alliant notes that it was only after Midwest ISO had rejected entitlements 746 and 919, under the mistaken belief that they could be defined as part of Alliant's Native Network Load, that it became apparent that the rejection eliminated Alliant's ability to nominate and obtain FTRs for those entitlements. Alliant states that its ability to nominate FTRs for entitlements 746 and 919 was eliminated because the design of the Midwest ISO FTR nomination and allocation modeling systems does not permit these entitlements to be eligible for FTRs unless they are defined as control area to control area transfers. Alliant states that it had no advance knowledge of this limitation in the modeling systems, and relied on Midwest ISO's statements that these entitlements would be addressed as part of Alliant's Native Network Load nomination and allocation process.

**IV. Discussion**

**A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>13</sup> the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>14</sup> prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Alliant's response because it has provided information that assisted us in our decision-making process.

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<sup>13</sup> 18 C.F.R. § 385.214 (2004).

<sup>14</sup> 18 C.F.R. § 385.213(a)(2) (2004).

**B. Substantive Matters**

16. As explained further below, the Commission will grant Alliant's amended complaint. We find that, during the course of the events outlined in Alliant's amended complaint, Midwest ISO incorrectly defined Alliant's transmission entitlements, resulting in an unjust and unreasonable allocation of FTRs to Alliant. We will not order Midwest ISO to issue Alliant the FTRs it requests in its complaint, however, given the disruptive effect this remedy would have on other Market Participants. Instead, the Commission will grant Alliant a monetary remedy, as discussed below.

17. Section 43.2.4 of the TEMT stated that, during the initial FTR allocation, Midwest ISO "shall define additional annual FTR entitlements . . . for Market Participants that do not have designated annual or longer term Network Resources to meet their forecast annual peak load to be served using Network Integration Transmission Service."<sup>15</sup> Under this provision, Midwest ISO had responsibility for defining certain Native Network Load transmission entitlements. The transmission service underlying entitlements 746 and 919 met the requirements of this provision. During the course of defining Alliant's entitlements, Midwest ISO took responsibility for defining entitlements 746 and 919 pursuant to this provision. Midwest ISO's incorrect identification and definition of these entitlements, however, ultimately prevented Alliant from nominating and receiving an FTR allocation for these entitlements. The Commission finds this result to be an unjust and unreasonable outcome with respect to Alliant's FTR allocation.

18. Based on the language quoted above from the TEMT, which was in effect for the initial FTR allocation, we reject Midwest ISO's arguments in its answer that Alliant was ultimately responsible for properly defining entitlements 746 and 919. Although Midwest ISO states that it is not in a position to make registration decisions for Market Participant, we find that Midwest ISO did have the obligation, at least during the initial FTR allocation process, to define transmission right entitlements for Market Participants with certain Native Network Load resources, including Alliant with respect to the entitlements at issue here. Therefore, Midwest ISO's contention that Market Participants, including Alliant in this case, were ultimately responsible for defining all FTR entitlements is unpersuasive. Indeed, we find that Midwest ISO correctly assumed the obligation in the TEMT to define certain entitlements in the Native Network Load process, but ultimately failed to correctly define Alliant's rights in that process. It

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<sup>15</sup> See TEMT, section 43.2.4, FERC Electric Tariff, Third Revised Volume No.1, First Revised Sheet No. 613A. As noted above, this provision applied only during the initial FTR allocation, and was subsequently removed from the TEMT. See *supra* note 7.

appears that Midwest ISO should have defined Alliant's entitlements as sourcing in ALTW and sinking in ALTE, rather than as separate rights with sources and sinks in single control areas.<sup>16</sup>

19. Additionally, we reject Midwest ISO's assertion that Alliant confirmed its final set of FTR entitlements, "which explicitly excluded entitlements 746 and 919," without reservation. From the record here, it is clear that Alliant confirmed its final set of FTR entitlements on the assumption (based on Midwest ISO's assurances) that entitlements 746 and 919 would be defined as part of Alliant's Native Network Load allocation process. This is not an explicit exclusion of the entitlements as Midwest ISO suggests.

20. From the record, we find that, during the FTR allocation process, Alliant acted in accordance with the TEMT and took due care to provide "all of the information requested [by Midwest ISO] during the FTR registration period."<sup>17</sup> Alliant attempted to have its entitlements first defined in the Market Participant registration phase, and then in the Native Network Load registration phase based on Midwest ISO's assertion that the entitlements belonged in that registration phase. Midwest ISO fails to explain how Alliant should have registered entitlements 746 and 919 if it was not through one of these processes. Further, Midwest ISO does not cite to or explain the rules it used to determine that Alliant had incorrectly defined its entitlements in the Market Participant registration phase. Midwest ISO does not address how the entitlements should have been registered by Alliant. On this record, we cannot find that Alliant misconstrued any tariff provision or committed any error, either in providing necessary registration information to Midwest ISO, failing to provide necessary registration information, or verifying registration information, that would explain the ultimate denial of FTRs for entitlements 746 and 919.

21. Alliant requests an allocation of FTRs to remedy the harm it expects from additional congestion costs for power flows between ALTE and ALTW that the FTRs could hedge. While we grant Alliant's complaint, we cannot instruct the Midwest ISO to re-run the initial FTR allocation after FTR holders have relied on the allocation in market

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<sup>16</sup> We note that section 43.2.4 of the TEMT contained no prohibition preventing the Midwest ISO from defining entitlements in the Native Network Load process that source in one control area and sink in another.

<sup>17</sup> See generally TEMT, section 43.2.1, FERC Electric Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 608 *et seq.*

operations, and no doubt planned for future operations based on the current allocations. To so order would potentially change the allocation of FTRs for every Market Participant in the Midwest ISO and upset the expectations of existing FTR holders.

22. Instead, the Commission will order a monetary remedy to address the fact that Alliant was denied the opportunity to nominate FTRs for entitlements 746 and 919 due to Midwest ISO's definitional errors.<sup>18</sup> In accordance with our finding that Midwest ISO's incorrect definitions of entitlements 746 and 919 resulted in an unjust and unreasonable allocation of FTRs for Alliant, the Commission directs Midwest ISO to refund to Alliant any congestion charges that have been applied to the transmission service underlying entitlements 746 and 919.<sup>19</sup> These refunds should include any congestion charges applied between the refund effective date established below and the date of this order, or that may be applied during the remaining months of the initial FTR allocation period. We also note that, had Alliant been able to nominate FTRs for these entitlements, it appears that they would have been eligible for the Expanded Congestion Cost Hedge in the TEMT, which provides additional relief to Market Participants with load in an NCA.<sup>20</sup> We will not require Alliant to take the necessary steps to register for the Expanded Congestion Cost Hedge during the initial FTR allocation period. However, we will direct Midwest ISO to use the structure of the Expanded Congestion Cost Hedge mechanism in its settlement of refunds for Alliant during the remainder of the initial FTR allocation period.

23. For any congestion charges that have been applied between the refund effective date and the date of this order, we direct Midwest ISO to make refunds within 30 days of the date of this order.<sup>21</sup> Finally, we direct Midwest ISO to submit a refund report no later

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<sup>18</sup> See, e.g., *Connecticut Valley Electric Co. v. FERC*, 208 F.3d 1037, 1044 (D.C. Cir. 2000) (noting that the breadth of the Commission's discretion is at its "zenith" when fashioning remedies); *Niagara Mohawk Service Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) (same).

<sup>19</sup> Midwest ISO should provide refunds for congestion paid for up to 200 megawatts of transmission service.

<sup>20</sup> See TEMT, section 43.2.6, FERC Electric Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 630.

<sup>21</sup> We direct Midwest ISO to collect the costs associated with these refunds consistent with the structure of the Expanded Congestion Cost Hedge, *i.e.* to charge all  
(continued)

than 30 days after the close of the initial FTR allocation period, covering both any refunds made for charges incurred between the refund effective date and the date of this order, and any future intermittent refunds under the methodology of the Expanded Cost Congestion Hedge provision.

24. In cases involving a complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy,<sup>22</sup> we will set the refund effective date 60 days after the date of the date of filing of the original complaint, *i.e.*, May 27, 2005.

The Commission orders:

- (A) Alliant's complaint is hereby granted as discussed in the body of this order.
- (B) The refund effective date established pursuant to section 206(b) of the Federal Power Act is May 27, 2005.
- (C) Midwest ISO is hereby directed to refund to Alliant any congestion charges that have been applied to the transmission service underlying entitlements 746 and 919 between the refund effective date and the date of this order within 30 days of the date of this order, as discussed in the body of this order.
- (D) Midwest ISO is hereby directed to refund to Alliant any future congestion charges that may be applied to the transmission service underlying entitlements 746 and 919 in a manner consistent with the Expanded Congestion Cost Hedge provision, as discussed in the body of this order.

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Market Participants on a pro rata basis, based on their load ratio share across the Midwest ISO region.

<sup>22</sup> See, *e.g.*, *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(E) Midwest ISO is hereby directed to submit a refund report no later than 30 days after the close of the initial FTR allocation period, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.