

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER03-1312-007  
ER03-1312-008

ORDER DENYING REHEARING, GRANTING CLARIFICATION IN PART,  
AND CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued August 23, 2005)

1. In this order we deny rehearing of the order issued March 29, 2005 in this proceeding<sup>1</sup> and provide clarification of certain holdings made in that order. The March 29 Order addressed requests for rehearing of an earlier order<sup>2</sup> conditionally accepting station power<sup>3</sup> rules proposed by Midwest Independent Transmission System Operator, Inc. (Midwest ISO), as well as a compliance filing submitted in accordance with the directives of the January 29 Order, and a filing proposing revisions to accommodate the commencement of Midwest ISO's energy markets on April 1, 2005. This order denies rehearing of the March 29 Order. We also conditionally accept a compliance filing directed to be filed in the March 29 Order.

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,383 (2005) (March 29 Order).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,073 (2004) (January 29 Order).

<sup>3</sup> Station power is "the electric energy used for the heating, lighting, air-conditioning, and office equipment needs of the buildings on a generating facility's site, and for operating the electric equipment that is on the generating facility's site." See *PJM Interconnection, LLC*, 94 FERC ¶ 61,251 at 61,889 (2001) (*PJM II*), clarified and reh'g denied, 95 FERC ¶ 61,333 (2001) (*PJM III*).

**Background**

2. On September 8, 2003, Midwest ISO submitted proposed revisions to its open access transmission tariff (OATT), in order to clarify the processes by which all generators may provide or obtain station power service. Midwest ISO proposed a new Schedule 20 under its OATT to address the procurement of station power in three circumstances: (1) by self-supply involving the monthly netting of a generator's gross output whenever the output equals or exceeds station power requirements (on-site self-supply); (2) by self-supply involving the monthly netting of energy scheduled from other generators owned by the same entity to supply a generator's station power load (remote self-supply); and (3) through retail purchases of station power (with such purchases made under a separate retail tariff). According to Midwest ISO's rules, a facility that self-supplies its station power requirements on site (*i.e.*, its monthly net output is zero or positive) has not used, and will not incur charges for, transmission service to provide such station power. Midwest ISO noted that the proposed revisions were interim in nature pending the implementation of its energy markets. It stated that, upon implementation of its energy markets, station power service would be provided in a manner consistent with the operation of the new markets.
3. In the January 29 Order, the Commission conditionally accepted Midwest ISO's proposed station power rules, to take effect October 8, 2003. The Commission directed Midwest ISO to modify Schedule 20 in several respects and required Midwest ISO to file with the Commission revisions to its station power rules necessary to accommodate the operation of its energy markets prior to commencement of those markets.
4. On March 1, 2004, as amended on March 15, 2004, Midwest ISO filed revisions to Schedule 20 to address the directives in the January 29 Order, except those related to operation of its energy markets.
5. On December 30, 2004, Midwest ISO submitted revisions to its station power rules to accommodate the operation of its energy markets under its Transmission and Energy Markets Tariff (TEMT) upon the commencement of those markets on April 1, 2005.
6. The March 29 Order denied several requests for rehearing of the January 29 Order, but granted clarification in part and accepted Midwest ISO's compliance filings. The Commission also directed a further compliance filing to modify the proposed revisions intended to accommodate the energy markets that commenced on April 1, 2005. Midwest ISO submitted this filing on May 27, 2005.

### **Requests For Rehearing**

7. Midwest ISO, International Transmission Company (International Transmission), Michigan Electric Transmission Company, LLC (METC), and LG&E Energy, LLC, on behalf of its utility operating companies (LG&E), filed timely requests for rehearing of the March 29 Order. Midwest ISO and International Transmission seek clarification of the Commission's discussion concerning whether existing station power arrangements should be converted to new Schedule 20 service. LG&E raises a number of jurisdictional challenges to the Commission's holdings in the March 29 Order. METC requests clarification or, in the alternative, rehearing regarding whether a generator must pay for any imbalance charges even if it is deemed to be "net positive" for a month.

8. On April 29, 2005, Consumers Energy Company (Consumers Energy) filed an untimely request for rehearing; it later asked the Commission to consider the pleading a request for reconsideration. On May 11, 2005, Mirant Americas Energy Marketing, LP, Mirant Sugar Creek, LLC, and Mirant Zeeland, LLC (collectively, Mirant) filed an answer responding to METC's rehearing request.

### **Notice Of Filing And Responsive Pleadings**

9. Notice of Midwest ISO's May 27, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 33,468 (2005), with protests and interventions due on or before June 17, 2005. Consumers Energy filed timely comments on two particular aspects of the compliance filing. Specifically, Consumers Energy believes that the proposed definition for "On-Site Self-Supply" is too broad and challenges the manner in which Midwest ISO proposes to clarify the way Schedule 20 deals with third-party supply as opposed to retail purchases.

### **Discussion**

#### **Procedural Matters**

10. We will dismiss Consumers Energy's untimely request for rehearing of the March 29 Order. The courts have repeatedly recognized that the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the Federal Power Act (FPA)<sup>4</sup> and that the

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<sup>4</sup> 16 U.S.C. § 8251(a) (2000).

Commission has no discretion to extend that deadline.<sup>5</sup> Accordingly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order.<sup>6</sup> We also decline to treat the request for rehearing as a request for reconsideration, as Consumers Energy asks.<sup>7</sup> Granting such a request would in effect treat the rehearing request as if it had been timely filed.<sup>8</sup>

11. Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2004), answers to requests for rehearing are not permitted. Accordingly, we will reject Mirant's May 11 answer.

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<sup>5</sup> See *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) (“The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing.”); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-98, 979 (1<sup>st</sup> Cir. 1978) (describing identical rehearing provision of Natural Gas Act as “a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion.”).

<sup>6</sup> See, e.g., *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115 at 61,217-18, *reh'g denied*, 20 FERC ¶ 61,013 at 61,034 (1982). See also *Public Service Company of New Hampshire*, 56 FERC ¶ 61,105 at 61,403 (1991); *CMS Midland, Inc.*, 56 FERC ¶ 61,177 at 61,623 (1991).

<sup>7</sup> See, e.g., *Houston Light and Power*, 84 FERC ¶ 61,183 (1988) (rejecting request for reconsideration as an untimely request for rehearing).

<sup>8</sup> We distinguish this treatment from other instances where a request for reconsideration is entertained in lieu of a request for rehearing. In proceedings arising under section 210(h) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 824a-3(h) (2000), formal rehearing does not lie either on a mandatory or a discretionary basis, and we have on occasion exercised our discretion to treat parties' self-styled requests for rehearing as requests for reconsideration. See, e.g., *ConocoPhillips Company and Equilon Enterprises LLC dba Shell Oil Products US v. Los Angeles Department of Water and Power*, 111 FERC ¶ 61,268 (2005). Additionally, under the FPA, we have occasionally exercised our discretion and treated a late-filed petition for rehearing as a request for reconsideration when it raised matters requiring clarification by the Commission. See *Transcontinental Gas Pipe Line Corp.*, 43 FERC ¶ 61,207 (1988). Consumers Energy, however, raises no such matters.

### **Jurisdictional Issues**

12. In the March 29 Order, the Commission responded to arguments that it had exceeded its jurisdiction when it concluded that state-jurisdictional local distribution charges would not apply to the delivery of remotely self-supplied station power where local distribution facilities were not used for such delivery, and to related assertions that the issue of whether a utility may assess local distribution charges is wholly within the purview of state public utility commissions. The Commission rejected the position that station power rules encroach on state jurisdiction over retail sales and local distribution, based on its relevant precedent. Thus, the March 29 Order explained that not all end use of power necessarily involves a sale for end use, as an off-line generator may consume energy as station power load, though that power may not have been sold at retail.<sup>9</sup> Further, the Commission clarified that a generator must pay retail energy charges based on “its monthly net station power requirements, not its gross station power requirements, that is, that portion of its station power takes that it does not self-supply, either on-site or remotely.”<sup>10</sup>

13. The Commission also responded to a request for clarification that a state need not have enacted retail choice in order for a generator to take service under Schedule 20. The party had commented that, because there is no retail sale when a generator self-supplies, it should not matter whether retail choice provisions are in place for netting to occur. In the March 29 Order, the Commission agreed, explaining:

The formal enactment of retail choice by a state is not a prerequisite for a generator to be able to self-supply. Our January 29 Order was speaking more in terms of third-party supply; we were not as clear in this regard as we could have been. Schedule 20 does not grant an affirmative right to any third-party sellers of station power (that is, it does not entitle any third-party seller of station power) to make such sales, which are retail sales, unless the state allows them.<sup>[11]</sup>

14. On rehearing, LG&E argues that the Commission erred in the March 29 Order when it clarified that netting would be applied monthly, asserting that the Commission is attempting to eliminate retail energy sales charges through monthly netting. LG&E contends that the Commission erred in finding that the utility is not making a retail sale

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<sup>9</sup> March 29 Order at P 34.

<sup>10</sup> *Id.* at P 31.

<sup>11</sup> *Id.* at P 40.

for the gross amount of power supplied to the generator for station power use. LG&E seeks rehearing of this clarification on the grounds that the Commission does not have jurisdiction to order “net billing” for retail energy sales customers. LG&E argues further that the Commission erred to the extent that the March 29 Order would effectively allow certain retail customers (*i.e.*, independent power producers) to avoid retail supply and retail charges, despite the fact that the Commission does not have jurisdiction to impose retail access.

15. LG&E states that any generator not self-supplying remains a retail customer. LG&E contends that, if station power is not self-supplied by the generator, the generator is leaning on generation resources and delivery resources built and operated to meet that retail customer’s peak demand. Even if the generator remotely self-supplies, the distribution system must remain capable of delivering the interconnected generator’s energy during peak demand periods. LG&E concludes that merchant generators are like other end use customers and should pay for this peak deliverability capability in accordance with retail tariffs on file at the Kentucky Public Service Commission. Further, it argues that, because a generator that is capable of self-supplying on-site is an end use customer, any self-supply of station power should take place under the terms and conditions of retail tariffs, which do not allow for either net billing or choice of energy supplier.

16. We will deny rehearing. LG&E seeks to revisit the question of whether the practice of self-supplying station power via monthly netting involves the retail purchase of electricity. In support of its argument, LG&E attempts to make the consumption of energy one and the same with retail sales. It also contends that we exceeded the scope of our jurisdiction by accepting tariff provisions that provide for monthly netting of station power. We have previously addressed and dismissed these positions in our earlier station power cases.<sup>12</sup> To the extent we addressed our jurisdiction vis-à-vis states’ jurisdiction in the March 29 Order, LG&E seeks rehearing of an order on rehearing. Accordingly, rehearing does not lie, and we must dismiss the arguments. In any event, we see no need to revisit these specific issues here.

17. As we stated in prior orders, to the extent that there may be a conflict between a Commission-jurisdictional tariff (here, Midwest ISO’s Schedule 20) and a state-jurisdictional tariff (*i.e.*, LG&E’s retail tariff), we seek to resolve it in the most narrowly

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<sup>12</sup> See, *e.g.*, *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 107 FERC ¶ 61,142 at P 29-36 and 37-41 (2004); *Nine Mile Point Nuclear Station, LLC v. Niagara Mohawk Power Corp.*, 110 FERC ¶ 61,033 at P 23 (2005).

tailored and careful manner. Any generator not capable of self-supplying station power remains a retail customer, as LG&E states in its rehearing request. This could happen, as we noted in *PJM II*, because of the particular configuration of the flow of electricity into a generating station.<sup>13</sup> However, “all generators that are self-supplying may net their station power requirements.”<sup>14</sup>

18. We do not agree with LG&E’s statement that, since Kentucky is not a retail choice state, any power that is consumed in a net negative billing interval is end use consumption and constitutes a retail sale. Even in states that do not have retail choice, as we have explained previously, consumption does not automatically equate to retail sales.<sup>15</sup> Our holding regarding netting does not conflict with state law or state tariffs relating to the rates, terms or conditions of retail sales because, when a generator is self-supplying, no sale has occurred. However, to the extent that a self-supplying generator has a negative net output during a netting period, and a third party sale has in fact occurred, state law and the relevant retail tariff would apply; to the extent any state law limits the choice of supplier, that state law would apply.<sup>16</sup>

19. LG&E also states that the Commission’s reliance on the *PJM* orders is misplaced. LG&E states that in these orders, the Commission acknowledged that it does not have jurisdiction to regulate sales of station power from a third party and that its jurisdiction in station power cases is only over transmission, not retail sales.

20. We reject LG&E’s argument. When a generator is self-supplying, there are no retail sales subject to state jurisdiction. Thus, the generator is not an end-use customer when it is self-supplying. The circumstances under which netting would occur in Kentucky appear no different than those in the *PJM* cases.

21. In addition, LG&E asserts that the Commission’s order failed to account for the variance in electricity values and shifts costs among retail customers. LG&E argues that electricity supplied in one hour by the utility could have a significantly different value than the electricity supplied by the generator into the Midwest ISO market another hour in the month. LG&E points out that this is especially true in Day 2 markets that settle on

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<sup>13</sup> *PJM II*, 94 FERC ¶ 61,251 at 61,893.

<sup>14</sup> *Id.* at 61,892.

<sup>15</sup> See *California Independent System Operator Corporation*, 111 FERC ¶ 61,452 at P 22 & n.23 (2005), *reh’g pending*.

<sup>16</sup> *Id.* at P 17 & n.16 (discussing state law limits on retail suppliers in California).

an hourly basis. LG&E explains that the Commission held in *PJM IV*<sup>17</sup> that monthly netting of transmission charges does not affect hourly energy sales. In other words, LG&E claims, there is a “sale” of energy on an hourly basis for station power, but the transmission charges are determined on a net monthly basis.<sup>18</sup>

22. We will deny rehearing. We dealt with similar arguments in *PJM IV* that monthly netting will result in “low value” station power supplied by a utility being netted against “high value” power supplied to the energy markets. We concluded that monthly netting does not impact hourly energy prices because, under the proposal accepted in *PJM IV*, while monthly netting is used to determine the billing determinants for the transmission access charge, charges for energy imbalance service and transmission congestion charges are applied on an hourly basis. Midwest ISO’s station power rules are essentially the same as those accepted in *PJM IV* in this regard,<sup>19</sup> and our findings in *PJM IV* apply equally here. LG&E has not provided any support to the contrary. The fact that there is no retail choice in Kentucky has no bearing on this issue.

23. Finally, regarding LG&E’s assertion that its facilities are being used without compensation, we have made it clear that, to the extent transmission and/or distribution facilities of others are used to procure station power, we expect arrangements for such services to be made.<sup>20</sup>

### **Impact on Pre-Existing Agreements**

24. In the March 29 Order, the Commission considered whether existing station power arrangements should be converted to new Schedule 20 service. We recognized that procedures relating to station power service were only first clarified in Midwest ISO’s tariff by its September 8, 2003 application and that interconnection agreements accepted for filing before that time may already contain provisions regarding supply of station power. We held that, to the extent a generator has made other arrangements for the delivery of station power, it need not take transmission service under Schedule 20. We continued:

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<sup>17</sup> *PJM Interconnection, L.L.C.*, 95 FERC ¶ 61,470 (2001) (*PJM IV*).

<sup>18</sup> LG&E Request for Rehearing at 10.

<sup>19</sup> See Schedule 20, Section III.3.

<sup>20</sup> *PJM II*, 94 FERC ¶ 61,251 at 61,891 & n.60.

However, if such other arrangements involve the transmission owner providing for use of its transmission facilities directly by the generator, i.e., not through the Midwest ISO OATT, the transmission owner shall be responsible for taking transmission service under the Midwest ISO OATT to satisfy its obligations to provide for delivery of station power. This will ensure that Midwest ISO continues to meet the requirement that, as a regional transmission organization, it is the only provider of transmission service over the facilities under its control.<sup>[21]</sup>

We used similar language addressing the same issue in the context of the TEMT.<sup>22</sup> We directed Midwest ISO to file revisions to its station power rules, both in its OATT and the TEMT, to make them consistent with that discussion.

25. Midwest ISO and International Transmission request clarification of these findings. Midwest ISO states that several stakeholders contacted it expressing concern that the order may effectively reform the provisions of certain grandfathered agreements and affect the status of independent transmission companies by requiring them to procure new services from Midwest ISO on behalf of their contractual counterparts. International Transmission in its request for rehearing questions the applicability to its circumstances of our directive requiring that a transmission owner be responsible for taking transmission service under Midwest ISO's tariff for delivery of station power. International Transmission argues that, as an independent transmission company, it is not structured to serve load, participate in energy markets, manage congestion or otherwise perform the functions required of transmission customers. International Transmission assumes that the Commission did not intend for the March 29 Order to impact its independence, but seeks clarification.

26. International Transmission suggests that the Commission could provide case specific clarification that it, as an independent transmission company, is not required to become a transmission customer for purposes of implementing the March 29 Order, but that instead the entity actually receiving station power service, i.e., the generator, would remain the transmission customer. It states that this is consistent with the Commission's findings, in the proceeding concerning the treatment of grandfathered agreements (GFAs)

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<sup>21</sup> March 29 Order at P 21 (footnote omitted).

<sup>22</sup> *Id.* at P 47.

in Midwest ISO's energy markets,<sup>23</sup> that the GFA customer, and not International Transmission, should be responsible for financially settling, under the TEMT, transactions pursuant to the GFAs to which International Transmission is a party.<sup>24</sup>

27. As an alternative, International Transmission suggests that the Commission could recognize the applicability of a more generic exception that is already provided in Midwest ISO's tariff regarding the requirement that transmission owners take transmission service under the Midwest ISO tariff to meet their obligations under GFAs, in accordance with Opinion Nos. 453 and 453-A.<sup>25</sup> Under the exception, a transmission owner is not required to take transmission service under the Midwest ISO tariff to meet its obligations under GFAs if the transmission owner is not a load serving entity. If the Commission does not so clarify, International Transmission requests rehearing.

28. Midwest ISO similarly believes that the Commission did not intend to reform the provisions of any grandfathered agreements, or to require independent transmission companies to procure new services or to become market participants. Midwest ISO instead presumes that the Commission intended to act consistently with its prior rulings regarding obligations of transmission owners to take transmission service under the Midwest ISO tariff to meet their obligations under GFAs, in accordance with Opinion Nos. 453 and 453-A. Midwest ISO proposes to revise the tariff language of Section III of Schedule 20 to state that, to the extent that a generator has other arrangements for the delivery of station power, it is not required to use non-firm point-to-point service for remote self-supply under Schedule 20. It would further specify that, if such other arrangements involve the transmission owner providing for use of transmission facilities directly by the generator, then the transmission owner will be responsible for taking transmission service under the tariff to satisfy its obligations to provide for delivery of station power consistent with applicable Commission precedent. Midwest ISO seeks

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<sup>23</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order), *order on reh'g*, 111 FERC ¶ 61,042 (2005) (*GFA Rehearing Order*).

<sup>24</sup> International Transmission Request for Rehearing, *citing GFA Rehearing Order* at P 150.

<sup>25</sup> *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033 at 61,170-71 (2001), *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192 (2003), *reh'g denied*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

clarification that its proposed revisions are consistent with the directives of the March 29 Order.

29. We will grant the requested clarification. In the March 29 Order, the Commission did not intend to treat independent transmission companies' arrangements for the delivery of station power inconsistently with the treatment of GFAs at issue in Opinion Nos. 453 and 453-A or the treatment of GFAs in Midwest ISO's energy markets. Accordingly, the Commission clarifies that, to the extent that an independent transmission company has arrangements providing a generator direct use of its transmission facilities for the delivery of station power, *i.e.*, not through the Midwest ISO TEMT, the generation owner is responsible for taking transmission service under the Midwest ISO TEMT to deliver such station power. However, in recognition of the generation owner's existing right to use the independent transmission company's facilities, the generation owner will not pay the applicable zonal transmission rate under Schedules 7, 8, or 9 of the tariff. The generation owner shall be responsible for all other charges under the Midwest ISO TEMT applicable to such transmission service.

30. Midwest ISO proposed specific language addressing pre-existing agreements, consistent with its clarification request, in its May 27 Compliance Filing. We address this proposal below.

31. International Transmission also seeks clarification that the Commission's discussion in the May 29 Order regarding the interconnection agreement it has with Detroit Edison was not meant to interpret or to otherwise address the parties' rights and obligations under that agreement.

32. We will clarify that our discussion was not intended to interpret the interconnection agreement. While we observed that the interconnection agreement "appears to provide for the use of certain transmission facilities to deliver station power supply;"<sup>26</sup> this observation was not based on a fully developed record, and we did not intend to resolve any issues with that statement. The parties' rights and responsibilities under the contract would need to be litigated in a separate proceeding.

### **Impact on Energy Imbalance Charges**

33. METC raises for the first time on rehearing concerns about the payment of imbalance charges by generators whose output is positive in a particular month, and thus do not owe any amounts for station power or for the delivery thereof. METC claims that clarification or rehearing of the March 29 Order is needed to eliminate ambiguities

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<sup>26</sup> March 29 Order at P 47.

relating to the station power provisions of Midwest ISO's tariff that may allow generators to take power off the transmission system for free as long as they are net positive for a month. METC acknowledges that this issue relates only to the provision of station power prior to the commencement of Midwest ISO's energy markets, but urges that the clarification is necessary to help it and others better understand their rights and obligations under Schedule 20.

34. The Commission looks with disfavor on parties raising new issues on rehearing.<sup>27</sup> This is because other parties are not permitted to respond to a request for rehearing;<sup>28</sup> further, "[s]uch behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision."<sup>29</sup> In this case, parties have had no opportunity to comment on the proper interpretation of tariff language and other agreements that are not part of the record in this proceeding. METC does not suggest that this issue could not have been raised in its earlier pleadings in this proceeding, and this rehearing proceeding is not the appropriate forum to resolve for METC "a potential dispute with a generator located on [METC's] system."<sup>30</sup> Accordingly, we will deny rehearing of this issue.

### **Compliance Issues**

35. On May 27, 2005, Midwest ISO made a compliance filing in response to the Commission's March 29 Order. The compliance filing, among other things: (1) amends the definitions section of the TEMT to include three new terms (on-site self-supply, remote self-supply and third party supply) and clarifies that all energy received by a facility, regardless of voltage and interconnection points, should be netted against energy produced by the facility when determining on-site self-supply; (2) clarifies Schedule 20, Section II to provide that, to the extent the transmission owner or transmission provider has primary access to relevant meter data, it must cooperate with generators on metering

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<sup>27</sup> *Baltimore Gas & Electric Company*, 91 FERC ¶ 61,270 at 61,922 (2000); *Baltimore Gas & Electric Company*, 92 FERC ¶ 61,043 at 61,114 (2000).

<sup>28</sup> 18 C.F.R. § 385.713(d) (2004).

<sup>29</sup> *Californians for Renewable Energy, Inc. v. Calpine Energy Services*, 107 FERC ¶ 61,238 at P 7 (2004) (footnote omitted), *citing Tenaska Power Services Co. v. Southwest Power Pool, Inc.*, 102 FERC ¶ 61,140 at P 14 (2003); *Northern States Power Company (Minnesota)*, 64 FERC ¶ 61,172 at 62,522 (1993); *Cities and Villages of Albany and Hanover, Illinois*, 61 FERC ¶ 61,362 at 62,451 (1992).

<sup>30</sup> METC Request for Rehearing at 5.

arrangements and data verification relating to Schedule 20 implementation; (3) clarifies that under Schedule 20, Section III, generators with other arrangements for delivery of station power supply need not take transmission service under Schedule 20, but where such other arrangements involve a transmission owner providing for use of transmission facilities directly by the generator, the transmission owner will be responsible for taking transmission service under the TEMT to satisfy its obligations to provide for delivery of station power, consistent with Commission precedent; and (4) clarifies Schedule 20, Section V to provide Midwest ISO with full responsibility to determine whether a facility has self-supplied during a month, and whether metering information is sufficiently accurate, complete and verifiable.

36. Consumers Energy comments on two aspects of the compliance filing. First, Consumers Energy opines that the proposed definition for “On-Site Self-Supply”<sup>31</sup> overstates the scope of station power load beyond the definition of “Station Power” already in Midwest ISO’s tariff. Consumers Energy believes that the language “which shall include all Energy received by the Facility” could include energy received at a facility for non-station power purposes, and suggests that the quoted phrase be deleted from the definition, or that it be revised to read “which shall include all Energy received by the Facility for its own Station Power needs.”

37. It appears that Consumers Energy misunderstands the purpose of the clarifications contained in the proposed definition of on-site self-supply. As Midwest ISO explains in its transmittal letter, it has defined on-site self-supply to clarify that any energy received by a facility for use as station power, regardless of voltage or metering point, shall be netted against energy produced by the facility, consistent with the Commission’s findings in an earlier order addressing station power supply.<sup>32</sup> Thus, rather than expanding the scope of station power load beyond the definition of station power, as Consumers Energy asserts, the proposed definition is intended to clarify that station power load is not limited by delivery voltage or metering point, consistent with *KeySpan*. We find this clarification appropriate. However, we believe that it would be clarified by adding the phrase “to serve its Station Power Load” at the end of the clause “which shall include all

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<sup>31</sup> Proposed Section 1.232a reads: “On-Site Self-Supply: The netting of the generation output of a Facility against the Facility’s Station Power Load, which shall include all Energy received by the Facility, regardless of its voltage or the metering point of receipt.”

<sup>32</sup> May 27 Transmittal Letter at 3, citing *KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.*, 101 FERC ¶ 61,230 at P 25 (2002) (*KeySpan*), *reh’g denied*, 107 FERC ¶ 61,142 (2004).

Energy received by the Facility.” Accordingly, we direct Midwest ISO to file this revision to Schedule 20 within 60 days of the date of this order.

38. Second, Consumers Energy agrees that, in response to the directives of the March 29 Order, Midwest ISO has correctly defined “Third-Party Supply” as a retail purchase.<sup>33</sup> However, Consumers argues that Schedule 20, Section I is confusing in that it lists “Third-Party Supply” and “retail purchases of Station Power” as two separate options.

39. We agree with Consumers Energy that, while Midwest ISO has formally defined “Third-Party Supply” as required by the March 29 Order, it has failed to make other necessary changes to Schedule 20 to conform to that new definition. Third-party supply is defined as “the provision of Station Power for a Facility net of On-Site Self-Supply and Remote Self-Supply . . . pursuant to an applicable retail rate or tariff,” and, thus, would include all retail sales of station power.<sup>34</sup> Yet Schedule 20, Section I.3 describes an option to make retail purchases of station power as an alternative to third-party supply. In addition, Section II.1 states that third-party supply may be procured only through unbundled retail delivery that is required by the state or voluntarily provided, thus excluding retail purchases outside of the context of mandatory or voluntary unbundled retail delivery. We, therefore, direct Midwest ISO to consult with its stakeholders to develop further revisions to Schedule 20 to harmonize it with the new definition of third-party supply and to file those revisions within 60 days of the date of this order.

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<sup>33</sup> In its comments on Midwest ISO’s December 31, 2004 compliance filing, Consumers Energy argued that Midwest ISO used the term third-party supply, in addition to self-supply and retail purchases, but did not define third-party supply or distinguish it from retail purchases. In its answer to those comments, Midwest ISO proposed in a future filing to define third-party supply, clarifying it as an option to procure (rather than self-supply) station power under a retail tariff or, where permissible, under a retail open access program. The Commission agreed that defining third-party supply should eliminate confusion regarding the availability of this option and directed Midwest ISO to file revisions to Schedule 20 to incorporate its proposed definition of third-party supply. March 29 Order at P 68-70.

<sup>34</sup> However, the generator’s choice of a retail supplier when that generator has not self-supplied its station power requirements would be governed by applicable state law. Thus, for a generator that has not fully self-supplied its station power requirements during a netting period, in a state where the choice of retail suppliers is limited, the actual supplier would be governed by state law. *See California Independent System Operator Corporation*, 111 FERC ¶ 61,452 (2005) at P 17 & n.16.

40. Midwest ISO has also revised Schedule 20, Section III to provide that:

In the event a Generation Owner has other permissible transmission arrangements that involve a Transmission Owner or [independent transmission company participant] providing for use of transmission facilities directly by the Generation Owner, the Transmission Owner or [independent transmission company participant] shall be responsible for taking Transmission Service under the Tariff to satisfy its obligations to provide for delivery of Station Power, consistent with applicable Commission precedent.

We find the reference to “applicable Commission precedent” lacks appropriate specificity for a tariff provision. Therefore, we will direct Midwest ISO revise Schedule 20, Section III to further specify the responsibilities of transmission owners and independent transmission company participants to take transmission service under the TEMT, including the specific rates that would apply to such service. In addition, we direct Midwest ISO to revise Schedule 20, Section III to reflect our findings described above concerning the responsibilities of independent transmission companies and generators in situations where a generator has arrangements with an independent transmission company providing the generator the use of its transmission facilities for the delivery of station power. Midwest ISO is directed to file these revisions within 60 days of the date of this order.

41. We also note that, while Schedule 20, Section I.2 provides the option of procuring transmission service pursuant to Section III in instances of remote self-supply and third-party supply, Section III only addresses transmission service in the instance of remote self-supply. In the compliance filing directed herein, Midwest ISO should revise Schedule 20, Section III to remedy this inconsistency.

42. The remainder of Midwest ISO’s proposed tariff revisions comply with our directives in the March 29 Order. Accordingly, we will accept the revised tariff sheets submitted in the May 27, 2005 filing, to become effective as of April 1, 2005, subject to Midwest ISO filing revisions as discussed above.

The Commission orders:

- (A) Consumers Energy’s request for rehearing is hereby dismissed.
- (B) The remaining requests for rehearing are hereby denied, as discussed in the body of this order.

(C) The March 29 Order is hereby clarified in part, as discussed in the body of this order.

(D) Midwest ISO's May 27, 2005 compliance filing is hereby conditionally accepted, to become effective as of April 1, 2005, as discussed in the body of this order.

(E) Midwest ISO is hereby directed to submit revised tariff sheets within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.