

126 FERC ¶ 61,003  
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. ER08-1285-000

ORDER ACCEPTING TARIFF REVISIONS,  
SUBJECT TO CONDITIONS

(Issued January 2, 2009)

1. On July 21, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT) and the Open Access Transmission, Energy and Operating Reserves Market Tariff (ASM Tariff).<sup>2</sup> The Midwest ISO states that its proposed revisions allow for the partial-year, intra-period allocation of Financial Transmission Rights (FTRs).<sup>3</sup> The Midwest ISO states that the ability for customers in new Auction Revenue Rights (ARR) zones to receive a partial-year allocation of these rights is necessary in order to accommodate the request made by the Duquesne Light Company (Duquesne), in Docket Nos. ER08-194-00 and ER08-1235-000, to withdraw from the PJM Interconnection, L.L.C. (PJM) regional transmission organization (RTO) and join the Midwest ISO RTO

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> The ASM Tariff (FERC Electric Tariff, Fourth Revised Volume No. 1).

<sup>3</sup> FTRs are the hedging device utilized by Midwest ISO market participants to mitigate costs attributable to transmission congestion. Under the existing provisions of the Midwest TEMT, eligible market participants may request and be allocated Auction Revenue Rights (ARRs) through an annual process. A market participant may convert an ARR to an FTR for its own use, or it can sell an FTR from an ARR to any third party. Annual ARRs, which take effect June 1 of each year, are allocated prior to June based on data inputs provided by market participants beginning the prior June 1. *See generally Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007).

(a request that includes a proposed integration timeline that does not coincide with the June Auction Revenue Rights allocation year) as well as to accommodate any future integrations that may occur which do not coincide with the allocation year.<sup>4</sup>

2. For the reasons discussed below, we accept the Midwest ISO's proposed tariff revisions, to become effective July 22, 2008 (regarding all TEMT revisions) and January 6, 2009 (regarding all ASM Tariff revisions), subject to the conditions as specified herein.

### **Background**

3. The Midwest ISO states that its proposed tariff revisions allow for the mid-cycle allocation of FTRs to customers in new ARR zones added after the beginning of an ARR allocation year. The Midwest ISO states that this allowance will apply to Duquesne's anticipated mid-year entry into the Midwest ISO (should Duquesne proceed with its request), or to any future request seeking to add a new ARR zone on a mid-cycle basis. The Midwest ISO states that, as such, its proposed tariff revisions are of general applicability. Specifically, the Midwest ISO states that its filing does not commit, or require, Duquesne to migrate to the Midwest ISO on a mid-cycle basis (a commitment that has been, or will be, addressed in other proceedings not at issue here).

4. To implement these changes, the Midwest ISO proposes to revise section 42 of the Midwest ISO TEMT to clarify that: (i) when a new Auction Revenue Right zone is integrated into the Midwest ISO after the start of an ARR allocation year, the transmission customers in that zone shall be eligible to participate in a partial-year allocation of FTRs for the remainder of that year; and (ii) that the information market participants will be required to provide (as specified at section 43.2.1.c of the Midwest ISO TEMT) shall have reference, in the case of a new ARR zone, to the four most recent complete seasons occurring prior to the ARR registration associated with the new ARR zone's integration.<sup>5</sup>

5. The Midwest ISO requests that its proposed tariff revisions be made effective, as to the Midwest ISO's proposed ASM Tariff revisions, on January 6, 2009, and, as to the Midwest ISO's proposed Midwest ISO TEMT revisions, on July 22, 2008. The Midwest ISO also requested, in its initial filing, that the Commission issue its order herein on or

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<sup>4</sup> See *Duquesne Light Company*, 122 FERC ¶ 61,039 (2008); see also *Midwest Independent Transmission System Operator, Inc. and Duquesne Light Company*, 124 FERC ¶ 61,219 (2008) (September 3 Order).

<sup>5</sup> The Midwest ISO also proposes to make a conforming change to the term "Reference Year" at section 43.2.1 of the ASM Tariff.

before September 16, 2008, given Duquesne's then-anticipated integration date of October 1, 2008.<sup>6</sup> However, on August 26, 2008, the Midwest ISO requested that the Commission defer ruling on its filing, given the Midwest ISO's planned deferral of its centralized balancing and operating reserve market proposal, in Docket No ER07-1372-000, *et al.*, and Duquesne's corresponding plans to defer its proposed integration date.<sup>7</sup> On December 10, 2008 Duquesne filed a settlement agreement stating that it intends to remain in PJM.

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

6. Notice of the Midwest ISO's filing was published in the *Federal Register*, 73 Fed. Reg. 41,623 (2008), with protests and interventions due on or before August 11, 2008. Motions to intervene were timely filed by Reliant Energy, Inc. (Reliant), Exelon Corporation, Constellation Energy Commodities Group and Constellation NewEnergy (Exelon, *et al.*), Indianapolis Power & Light Company, Consumers Energy Company, Calpine Corporation, PSEG Companies, FirstEnergy Service Company, DC Energy Midwest, LLC., Electric Power Supply Association, Duquesne Industrial Intervenors, and Duke Energy Corporation. Comments were filed by Exelon, *et al.* and Reliant.

7. Exelon, *et al.* argue that the Midwest ISO's proposed tariff revisions may not be necessary as they apply to Duquesne, should Duquesne's integration into the Midwest ISO be requested, or required, to coincide with the beginning of the ARR allocation year (an argument advanced by Exelon, *et al.* in Duquesne's RTO withdrawal proceeding in Docket No. ER08-1235-000). They believe that the Commission should not approve Duquesne's integration into the Midwest ISO unless and until: (i) Duquesne has satisfied all the prerequisites for leaving PJM and entering the Midwest ISO and has filed the implementation details with the Commission; (ii) the Commission has ruled on Duquesne's plans; and (iii) Duquesne determines unequivocally that it will join the Midwest ISO. Exelon, *et al.* are concerned that the simultaneous feasibility study necessary to implement the partial-year FTR allocation proposal would be based on conditions contrary to fact if Duquesne does not integrate on October 1. Thus, they

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<sup>6</sup> The Midwest ISO explained that this proposed expedited acceptance would permit Duquesne zone customers to participate in the October 2008 FTR Auction and to make the Midwest ISO's proposed tariff changes applicable to the registration process and related activities that Duquesne zone customers need to undergo in preparation for their participation in the proposed partial FTR allocation.

<sup>7</sup> In the Duquesne RTO withdrawal proceeding, in Docket Nos. ER08-194-000 and ER08-1235-000, Duquesne stated that its proposed integration date was intended to coincide with the Midwest ISO's implementation of its centralized balancing proposal.

request the Commission require the Midwest ISO to perform a simultaneous feasibility study based on the actual conditions of Duquesne's integration and to make the study public prior to any partial year allocation of FTRs.

8. Reliant requests clarification that the Commission's acceptance of the Midwest ISO's filing does not address or otherwise prejudice the issue of whether a given integration date, as may be proposed by Duquesne, is just and reasonable. Reliant also objects to the Commission's piecemeal consideration of filings relating to Duquesne's withdrawal from the PJM RTO and entry into the Midwest ISO RTO. Reliant argues that the instant proceeding and all other filings addressing Duquesne's requests should be addressed by the Commission on a consolidated basis.

### **Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### **Discussion**

10. The Midwest ISO's proposed tariff revisions allow transmission customers of a transmission owning utility, joining the Midwest ISO on a mid-cycle basis, to obtain FTRs for the remainder of that ARR allocation period. These tariff changes, consistent with our policy, will protect these customers' legitimate interests, subject to the conditions adopted below.<sup>8</sup>

11. Exelon, *et al.* notes that the Midwest ISO's proposed tariff revisions may not be necessary should Duquesne's integration into the Midwest ISO be timed to occur consistent with the start of the Midwest ISO's ARR planning year. Reliant adds that the Commission should not address, here, on a piecemeal basis, a proposal relating to Duquesne's withdrawal from PJM and entry into the Midwest ISO. Since that time, Duquesne filed a settlement stating that it intends to remain within PJM. However, the tariff revisions at issue here are of general applicability and neither commit, nor obligate, Duquesne in any manner. As such, it is neither necessary, nor appropriate, to consider in this proceeding any other issue concerning Duquesne's RTO membership status, nor are we required to consolidate this case with any other proceeding.

12. Exelon, *et al.* request that the Midwest ISO be required to conduct, as a condition to its allocation of mid-year FTRs, a simultaneous feasibility study examining the effect of Duquesne's integration based on the actual integration date, when known. The

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<sup>8</sup> See September 3 Order, 124 FERC ¶ 61,219 at P 106.

Midwest ISO proposes that when a new ARR zone is integrated into the Midwest ISO after the start of an ARR allocation year, the transmission customers in that zone shall be eligible to participate in a partial-year allocation of FTRs for the remainder of that year. However, the Midwest ISO provides no further details regarding the procedures for allocating such FTRs among customers in that zone. By contrast, the Midwest ISO has detailed procedures for allocating annual ARRs. The Midwest ISO provides no mention of which, if any, of these existing ARR allocation provisions will be incorporated into its proposed partial-year allocation process.

13. To cure this deficiency, we accept this filing conditioned on the Midwest ISO filing with the Commission, within 30 days of this order, revised tariff sheets providing that no partial-year FTRs will be allocated to customers in a new ARR zone absent a prior section 205 filing detailing how FTRs will be allocated during the partial year. In providing such additional detail as to how FTRs will be allocated, the Midwest ISO must also address whether more than one stage of allocation will be used to prioritize existing uses for allocation of financial rights, how the allocation will occur in each stage, and how the FTRs will be allocated in different months of the remaining partial year. In addition, such partial-year FTR allocations should be based upon a simultaneous feasibility study reflecting the actual date of the transmission owner's integration into the Midwest ISO, when that date is known.

14. For the reasons set forth above, we grant Reliant's request for clarification that the Commission's acceptance of the Midwest ISO's filing, herein, does not address or otherwise prejudge the issue of whether a given integration date, as may be proposed by Duquesne in a future filing, is just and reasonable.

15. Finally, we will require the Midwest ISO to make a further compliance filing to correct the page number designations on the proposed tariff sheets.<sup>9</sup> We require the Midwest ISO to submit this compliance filing within 30 days of the date of this order.

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<sup>9</sup> The proposed tariff sheets, in fact, do not supersede the Original Sheet Nos. 1198 and 1221 as proposed in Docket No. ER09-15-000 (the clean-up filing for the ASM tariff). Instead, as currently numbered, they would replace unrelated tariff sheets.

The Commission orders:

The Midwest ISO's proposed tariff revisions are hereby accepted, as discussed in the body to this order, subject to conditions and the submission of a compliance filing within 30 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.