

135 FERC ¶ 61,081
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER08-394-027

ORDER ON CLARIFICATION

(Issued April 27, 2011)

1. This order addresses a request for clarification or, in the alternative, a request for rehearing of a June 8, 2010 order,¹ which rejected an August 18, 2009 compliance filing (August 2009 Compliance Filing) by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and required further compliance. We grant the request for clarification as discussed below.

I. Background

2. As part of the Midwest ISO's long-term resource adequacy plan,² the Commission issued orders addressing the relationship between the deliverability analysis for planning zones and the deliverability analysis for designating capacity resources.³ In the February 2009 Order, the Commission accepted the Midwest ISO's proposal to resolve deliverability concerns raised by numerous stakeholders, but nonetheless stated that the Midwest ISO needed a more robust and permanent approach to address congestion that limits aggregate deliverability in the resource adequacy requirement provisions of its Tariff.⁴ The Commission directed the Midwest ISO to evaluate a locational capacity

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,228 (2010) (June 2010 Compliance Order).

² Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Module E (Tariff).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,062 (2008), *on reh'g*, 126 FERC ¶ 61,144 (2009) (February 2009 Order).

⁴ February 2009 Order, 126 FERC ¶ 61,144 at P 47.

approach to addressing the deliverability issue, as used in ISO New England, Inc. (ISO New England) and the California Independent System Operator, Inc. (California ISO), as well as any other approach, and to report to the Commission as to what steps are being taken to develop a more permanent approach to address aggregate deliverability issues in the Midwest ISO.⁵

3. The Midwest ISO filed the August 2009 Compliance Filing to address the February 2009 Order. In that filing, the Midwest ISO indicated that it had multiple discussions with stakeholders regarding aggregate deliverability, but the stakeholders could not reach a consensus on the best approach to resolve the issue. Accordingly, the Midwest ISO determined that the best approach to resolve the issue was to rely on its existing Tariff without any modification. Therefore, the Midwest ISO did not propose any changes to address aggregate deliverability in the August 2009 Compliance Filing.

4. The Commission rejected the August 2009 Compliance Filing in its June 2010 Compliance Order. In that order, the Commission noted that the Midwest ISO had an obligation to identify a permanent approach to address congestion that limits aggregate deliverability in the resource adequacy requirement provisions of its Tariff. Since the August 2009 Compliance Filing failed to meet this requirement, the Commission determined that the Midwest ISO failed to satisfy the requirements of the February 2009 Order.

II. Request for Clarification or Rehearing

5. The Coalition of Midwest Transmission Customers and the Midwest Transmission Dependent Utilities (collectively, CMTC/MTDUs) filed a request for clarification or, in the alternative, a request for rehearing of the June 2010 Compliance Order. In particular, the CMTC/MTDUs are concerned that certain language in the June 2010 Compliance Order could be read as limiting the scope of the February 2009 Order, which directed “the Midwest ISO to evaluate these [locational capacity requirements] and any other approaches with its stakeholders.”⁶ CMTC/MTDUs are concerned that the Midwest ISO will not consider approaches other than locational capacity requirements to address the aggregate deliverability issue.

6. CMTC/MTDUs contend that it is unreasonable to rule out improved transmission planning as a sufficiently robust approach to addressing congestion that limits aggregate deliverability since any planning deficiencies in the August 2009 Compliance Filing can

⁵ *Id.*

⁶ *Id.*

be remedied. CMTC/MTDUs argue that the Commission had no basis to conclude that improved planning processes are inherently incapable of providing a sufficiently robust approach to congestion, and therefore the Commission should clarify that it did not reach such a conclusion.

7. In the alternative, if the Commission intended for the June 2010 Compliance Order to require the addition of locational elements onto its resource adequacy rules, CMTC/MTDUs assert that such a determination would violate the Federal Power Act by failing to provide the required section 206 findings and notice. CMTC/MTDUs note that the February 2009 Order found the Midwest ISO deliverability requirements to be just and reasonable and therefore, in order for the Commission to alter the filed rate, it must proceed under section 206 of the Federal Power Act.

8. CMTC/MTDUs also consider a locational requirement in the June 2010 Compliance Order to be arbitrary and capricious. They assert that it would be unfair, in the June 2010 Compliance Order, to reach back and re-write the February 2009 Order so that it requires a locational capacity market. CMTC/MTDUs contend that the Commission was in error if the June 2010 Compliance Order found that the Midwest ISO failed to comply with directives not stated in the February 2009 Order.

III. Commission Determination

9. We grant CMTC/MTDUs' request for clarification. Nothing in the Commission's June 2010 Compliance Order was intended to modify the Midwest ISO obligations under the February 2009 Order. As we stated in that order, the Midwest ISO should evaluate locational capacity requirements, as well as any other approaches, to address the aggregate deliverability issue in the Midwest ISO.⁷ That obligation was not changed in the June 2010 Compliance Order. Since we are addressing CMTC/MTDUs' request for clarification, we need not address their request for rehearing.

⁷ *Id.*

The Commission orders:

The request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.