112 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cargill Power Markets, LLC
Conectiv Energy Supply, Inc.
DTE Energy Trading, Inc.
PSEG Energy Resources & Trade LLC
TransAlta Energy Marketing (US) Inc.
Ontario Power Generation Inc.

Docket No. EL05-66-000

v.

Midwest Independent Transmission System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued July 5, 2005)

## Introduction

1. In this order, we deny a complaint filed by the Coalition Members[1] against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) that objects to Midwest ISO's rescission of discounted transmission rates associated with the Michigan-Ontario Independent Electricity Market Operator interface (Michigan-Ontario Interface). This order benefits customers by enforcing the provisions of a filed tariff.

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[1] The Coalition Members are Cargill Power Markets, LLC, Conectiv Energy Supply, Inc., DTE Energy Trading, Inc., PSEG Energy Resources & Trade LLC, TransAlta Energy Marketing (US) Inc., and Ontario Power Generation Inc.

**Background**

2. On July 1, 2002, on its Open Access, Same-Time Information System (OASIS),[2] Midwest ISO offered a discount with respect to its Through-and-Out Service (T&O Service) rate for reservations sinking at the Michigan-Ontario Interface (July 2002 Posting).[3] The Coalition Members requested and entered into service agreements for T&O Service.[4]

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[2] OASIS is an accessible electronic, real time way for a transmission provider to post transmission service and ancillary service Information. More specifically, the transmission provider posts: (a) Available Transmission Capability (ATC) and total transmission capability (TTC) – as well as how and when this information is to be updated; (b) transmission service products, including resold capacity, as well as their prices; (c) ancillary service offerings and their pricing; (d) requirements for posting transmission service requests and responses including service denials and curtailment or interruption of transmission; (e) requirements for posting transmission service schedules; (f) other transmission-related communications; and (g) auditing information.

[3] The July 2002 Posting states in pertinent part:

> **July 1, 2002:** The Midwest ISO has discounted the firm rates for through and out service to the rates indicated in the above spreadsheet. The Midwest ISO commits to post rates no higher than these rates for a period of 18 months.

[4] Each of the Coalition Members, with one exception, has on file with the Commission an executed service agreement for Long-Term Firm Point-To-Point Transmission Service under the Midwest ISO Open Access Transmission Tariff (OATT). The exception is the long-term service agreement with Ontario Power Generation, Inc., which was not filed with the Commission. *See Revised Public Utility Filing Requirements*, Order No. 2001, Stats. & Regs., Regs ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *enforcing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *enforcing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order on clarification*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003).) The contractual relationships between the Coalition Members and Midwest ISO have been in a state of flux over several years. In *Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,230, *clarified*, 107 FERC ¶ 61,308 (2004) (*Tenaska Power*), the Commission granted two complaints filed by certain Coalition Members that asserted that Midwest ISO improperly implemented the rollover evaluation process that it used to

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3. From July 2002 through January 2005, Midwest ISO charged a discounted rate for T&O Service sinking at the Michigan-Ontario Interface. On January 28, 2005, Midwest ISO posted notice on its OASIS that effective February 1, 2005 the discounted rate for reservations sinking in the Michigan-Ontario Interface would be removed.

**Complaint**

4. On February 22, 2005, the Coalition Members filed the instant complaint alleging that Midwest ISO improperly rescinded its discounted transmission rate for transmission service reservations (TSR) for transactions sinking at the Michigan-Ontario Interface. The Coalition Members further contend that its discounted transmission rate agreement for TSRs sinking at the Michigan-Ontario Interface had been confirmed on Midwest ISO's OASIS for the full term of the Coalition Members' TSR. The Coalition Members contend that the Midwest ISO OATT and business practices[5] establish that the posted discounted price for TSRs sinking at the Michigan-Ontario Interface constitutes the price for the full term of the transmission reservation.[6] The Coalition Members maintain that transmission service at the discounted transmission price was secured upon their confirmation of their reservation. Thus, the Coalition Members contend, Midwest ISO cannot unilaterally rescind the discount because that would violate the Federal Power Act (FPA) , Midwest ISO's OATT, Midwest ISO's business practices, and Commission policy.

5. The Coalition Members also argue that once they confirmed their TSR, Midwest ISO was contractually committed to provide transmission service sinking at the Michigan-Ontario Interface at the discounted price posted on the OASIS. The Coalition Members state that the confirmation sheets they received, documenting their TSRs, did not limit the term of the discount or indicate that Midwest ISO may rescind the discount.

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assess competing requests for TSRs sinking at the Michigan-Ontario Interface. The Commission ordered Midwest ISO to re-do its transmission queue. Midwest ISO submitted a compliance filing reflecting the reprocessed queue which was accepted by the Commission for filing on November 1, 2004 in *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,129 (2004).

[5] The Coalition Members also state that section 6.7 of Midwest ISO's business practices requires the Midwest ISO to use the counteroffer option in order to indicate that a new offer price is being proposed.

[6] The Coalition Members also state that the discount was in accordance with the Midwest ISO's discounting protocols.

Thus, the Coalitions Members contend that Midwest ISO breached their contracts by rescinding the discounted rate. The Coalition Members also argue that because there was a mutually agreed upon rate, as set forth in the confirmation sheets, Midwest ISO's discount is "locked down" for the full term of their TSRs, thereby creating contracts with fixed-price terms protected by the *Mobile-Sierra* doctrine. They claim that the TSRs are devoid of language that permits Midwest ISO to change unilaterally the rates for these TSRs. In light of the absence of such language, the Coalition Members assert that Midwest ISO can only change the rates if it meets the higher "public interest" standard created by the *Mobile-Sierra* doctrine. Therefore, the Coalition Members contend, removal of the transmission discount must be prospective, if at all, and must meet the *Mobile-Sierra* "public interest" standard of review. They argue that Midwest ISO cannot satisfy this burden. Accordingly, the Coalition Members state that the Commission should grant their complaint and order Midwest ISO to honor the discounted price for Coalition Members' transmission service sinking at the Michigan-Ontario Interface for the full term of the reservation in question.

6. The Coalition Members also argue that, as a matter of equity, Midwest ISO cannot revoke the discount. They contend that Midwest ISO should have known that confirmation of the TSRs, with the discount posted on OASIS, meant that the posted discount would apply for the full term of the transmission reservations.

7. They assert that when the 2003 transmission queue was reprocessed, they were forced to reserve longer durations of service than they would have otherwise committed to at the full OATT price in order to secure access over the Michigan-Ontario Interface. They argue that if Midwest ISO can revoke the discount they will suffer a double injustice.[7] According to the Coalition Members, if Midwest ISO wanted to limit the duration of the discount, it should have counter-offered all TSRs with the full tariff price and indicated that Midwest ISO could not guarantee the length of time that the discount would be in effect.[8]

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[7] The Coalition Members assert that they entered into power purchase arrangements that were, in large part, priced based on the underlying necessary transmission service for transactions sinking in the Michigan-Ontario Interface. They argue that Midwest ISO should have known that they were entering into these arrangements relying on the continuation of the discount for the entire term of the confirmed TSRs. *See* Complaint at 25.

[8] *Id.*

8. The Coalition Members assert that Midwest ISO's revocation of the discount is inconsistent with Order No. 888. They claim that Midwest ISO knew that the Michigan-Ontario Interface was oversubscribed. This knowledge, they assert, should have prompted Midwest ISO to post the maximum tariff in fall 2003, thereby taking advantage of the price competition contemplated by the *pro forma* OATT. Instead, they argue that Midwest ISO unfairly waited until after it reprocessed the queue, which required transmission customers to meet competing requests of varying duration, to revoke the discount and put the maximum OATT rate in effect.

9. In addition, the Coalition Members state that Midwest ISO's approach discourages long-term transmission reservations. They assert that this practice would remove the incentive for transmission customers to request service for more than one year, thereby jeopardizing the ability to engage in long-term planning. The Coalition Members also claim that market participants would be discouraged from purchasing excess transmission capacity and may thereby result in reduced revenue due to unused capacity.

10. The Coalition Members argue that rescission of the discount for T&O service only to the Michigan-Ontario Interface results in undue discrimination among Midwest ISO's customers. They assert that the overall transmission charge assessed to customers taking firm point-to-point service under Midwest ISO's OATT for any T&O service is comprised of two components: (1) the base rate set forth in Schedule 7 of the OATT, and (2) a RTOR[9] adder set forth in Schedule 14 of the OATT. According to the Coalition Members, Midwest ISO treats the two components as a single bundled rate and discounts that overall transmission charge and they argue that the size of the discount indicates that some of the discount applies to the RTOR adder.

11. The Coalition Members describe the RTOR adder as a surcharge designed to recover lost revenues associated with the elimination of rate pancaking throughout the Midwest ISO footprint that collects and distributes revenues on a region-wide basis, consistent with Schedule 14 of the OATT. They argue that the selective rescission of the discount for firm point-to-point T&O service to the Michigan-Ontario Interface is unduly discriminatory. This selective rescission, they argue, subjects a group of customers to disparate rate treatment for the same class of T&O service provided under the OATT and is a form of monopoly rent, forcing those same customers to subsidize the lost revenues obligation of all other Midwest ISO transmission customers that retain the benefit of a discounted RTOR adder.

[9] Regional Through and Out Rate.

12. However, if the Commission allows Midwest ISO to apply the full transmission rate for the remaining term of their transmission reservations, the Coalition Members contend that the Commission should fashion relief appropriate to each Coalition Member's particular circumstance. The Coalition Members state that they intend to place the disputed amount in an independent escrow account until the issue is resolved.

**Notice of Filing, Answer, and Responsive Pleadings**

13. Notice of the Coalition Members' complaint was published in the *Federal Register*,[10] with the answer, interventions or protests due on or before March 14, 2005. Midwest ISO filed its answer. Split Rock Energy LLC, Northern Indiana Public Service Company, and MidAmerica Energy Company filed timely motions to intervene without substantive comments. Midwest ISO Transmission Owners[11] filed a timely motion to intervene and substantive comments. Midwest Stand-Alone Transmission Companies (MSATs)[12] filed a joint motion to intervene with comments. International Transmission

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[10] 70 Fed. Reg. 9939 (2005).

[11] The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); Cinergy Services, Inc. (for Cinncinati Gas & Electric Company, PSI Energy, Inc., and Union Light Heat & Power Company); City Water, Light & Power (Springfield, IL.); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Lincoln Electric System; Minnesota Power (and its subsidiary Superior Water L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Services Company; Northern States Power Company and Northern States Power Company (Wisconsin) subsidiaries of Xcel Energy Inc.; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

[12] For purposes of this intervention, the MSATs include American Transmission Company LLC, GridAmerica LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

Company (ITC) filed a separate motion to intervene with comments that supplemented the comments filed by the MSATs.

14. Midwest ISO filed an answer asserting that, in accepting a TSR, it reserves transmission capacity for a customer for a designated period but makes no commitment as to the price of the provided service. According to Midwest ISO, the bid and offer prices referenced on the TSR acceptance printouts are not the filed rate or a guaranteed price; instead, the applicable price is contained in the OATT. Midwest ISO states that its OATT explicitly permits rate changes in accordance with the Attachment O formula and provides that the rate may be revised under section 205 of the FPA.[13] Midwest ISO points out that the July 2002 notice obligated it to apply the discount for eighteen months or until December 31, 2003. Midwest ISO explains that the posted notice stated in relevant part: "The Midwest ISO commits to post rates no higher than these rates for a period of 18 months."

15. Midwest ISO states that the Coalition Members submitted multiple rollover and the original transmission service requests between March 6, 2003 and October 31, 2003 to ensure continuation of the service over the Michigan-Ontario Interface in 2004 and later. According to Midwest ISO, it began processing the transmission queue for the Michigan-Ontario Interface in November 2003 for the calendar year 2004 and beyond. Because of customer- dissatisfaction over the outcome of Midwest ISO's queue processing and the decision in *Tenaska Power*, Midwest ISO reprocessed the queue during the period July 6, 2004 to July 29, 2004. Midwest ISO submitted a compliance report and a proposed amendment to section 2.2 of its OATT to provide for prospective application of the revised queue processing methodology. The Commission found that Midwest ISO had correctly reprocessed the queue for these transmission service requests,[14] accepted the compliance report, accepted the proposed amendment to section 2.2, effective October 31, 2004, and directed certain minor modifications to the accepted procedures.[15] Midwest ISO points out that shortly after the reprocessed queue had been accepted by the Commission, on January 28, 2005, Midwest ISO posted a notice that prospectively revoked the discount effective February 1, 2005. Midwest ISO concludes,

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[13] 16 U.S.C. **§** 824d (2000).

[14] These reprocessed TSRs are the subject of the instant complaint.

[15] *See Tenaska Power Services Co. v. Midwest Independent Transmission Service Operator, Inc.*, 109 FERC ¶ 61,129 (2004). Midwest ISO submitted the minor modifications and they were accepted by letter order dated January 21, 2005 (Docket No. ER04-1165-002).

therefore, any service taken on the Michigan-Ontario Interface and billed after February 1, 2005 should not receive a discount.

16. Midwest ISO argues that the Coalition Members' reliance on the *Mobile-Sierra* doctrine is baseless and inapplicable to its contractual arrangements with the Coalition Members. Midwest ISO states that the discount posted on the OASIS is not the rate that is part of the Coalition Members' service agreements on file with the Commission and nowhere in any filings made to the Commission did Midwest ISO commit to charging the discounted rate for the full length of the Coalition Members' TSRs. Thus, Midwest ISO contends that such agreements did not contain fixed price terms, such as those the *Mobile-Sierra* doctrine is intended to protect. In addition, Midwest ISO points out that the non-discounted rate is prospective in nature, and that a policy of using discounts to increase throughput is not appropriate here due to existing constraints that will not permit an increase in throughput to the Michigan-Ontario Interface.

17. Midwest ISO Transmission Owners request that the Commission deny the complaint. They assert that Midwest ISO acted consistent with its OATT both in discounting the transmission service related to the Michigan-Ontario Interface for 18 months, beginning July 2002 and thereafter in restoring the standard OATT rate for transmission service over that interface. In addition, Midwest ISO Transmission Owners assert that the relevant transmission service agreements contain no provisions that would override Midwest ISO's OATT. They point out that the agreements under which the Coalition Members take transmission service are umbrella agreements that are for long-term, firm, point-to-point transmission service under Midwest ISO's OATT and that the agreements are on file with the Commission. These umbrella agreements, they assert, do not contain a specified rate for Through and Out (T&O) service but, rather, refer to the OATT and do not contain language obligating Midwest ISO to provide the discount for the entire period of the TSR.

18. The MSATs assert that the Coalition Members have not met their section 206 burden of proof and have failed to set forth a *prima facie* case that their interpretation of the contracts is sufficiently plausible to entitle them to a hearing on the complaint.[16] The MSATs point out that the Coalition Members did not include their executed service agreements in the complaint and they did not include the transaction specification sheets executed to memorialize individual reservations. The MSATs argue that the Commission need not address the *Mobile-Sierra* issue raised by the Coalition Members because nothing in the complaint shows that the terms of their contracts were changed.

[16] 16 U.S.C. § 824e (2000).

19. The MSATs further assert that Midwest ISO followed proper procedures when it discontinued the discount as of February 1, 2005. They point out that Midwest ISO followed the three principles contained in its OATT applicable to discounting point-to-point transmission service.[17] Furthermore, the MSATs argue that policy considerations do not support requiring Midwest ISO to continue the discount. They explain that the Michigan-Ontario Interface is oversubscribed and that economic efficiency supports the notion that "scarce capacity be allocated to those who value it the most."[18] The MSATs thus conclude that, if Midwest ISO retains discounted rates for service at this interface, the economic signals would be inaccurate.

20. The MSATs also note that all customers, including the Coalition Members, benefit from the assessment of maximum tariff rates for T&O service because, under Attachment O of the Midwest ISO OATT, T&O service revenues are credited to the transmission owners' cost of service and thus reduce the rates designed to recover the transmission owners' annual revenue requirements. According to the MSATs, the Coalition Members, some of the largest transmission customers receiving service under the Midwest ISO OATT, are likely to be among those who benefit most.

21. ITC argues that removal of the discount furthers Commission policy of encouraging transmission expansion. It argues that the market reaction to reducing or eliminating the discount will help to inform transmission system planning and investment decisions. ITC points out that Attachment O of Midwest ISO's OATT treats T&O service revenues as revenue credits to the transmission owner's cost of service in the

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[17] *See* MSATs Motion at 10, n.24, *citing* Midwest ISO Tariff Schedule 7, section 5 (Sheet No. 187A), which states the following: **"**Discounts: Three principal requirements apply to discounts for transmission service as follows: (1) any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System"

[18] *See* MSATs Motion at 12, n.29, *citing Texas Eastern Transmission Co.*, 79 FERC ¶ 61,256 at 62,110 (1997).

calculation of transmission rates so the transmission owners receive no benefit from removal of the discount. ITC explains that increased revenues will create a larger revenue credit, which will translate into lower rates the following year. ITC also points out, in this regard, the additional benefit of the Attachment O rate formula that permits the increase in revenue credit to flow through to customer rates automatically.

22. Finally, ITC asserts that the Michigan-Ontario Interface experiences significant unscheduled loop flow, which reduces the transmission capacity available for sale on ITC's transmission network without providing any offset of additional transmission revenue to the transmission customers normally responsible for paying the full revenue requirement of these facilities through their rates. Thus, continuing the discount means Michigan customers do not get to use the network they pay for, and do not get any rate relief from those who do use the network.

23. The Coalition Members also submitted an answer to Midwest ISO's answer.

## Discussion

### Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[19] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure[20] prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Coalition Members' answer and will, therefore reject it.

### Analysis

26. We will deny Coalition Member's complaint. As discussed below, Midwest ISO acted consistent with its OATT and Coalition Members have not shown that any language in its service agreements overrides the discounting and rate provisions of Midwest ISO's OATT.

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[19] 18 C.F.R. § 385.214 (2004).

[20] 18 C.F.R. § 385.213(a) (2) (2004).

**Midwest ISO's OATT Requirements**

27. We disagree with the Coalition Members' characterization that the confirmed TSRs represent a fixed-price contract protected by the *Mobile Sierra* doctrine. Under the FPA and the filed rate doctrine, a jurisdictional entity must charge the rate that is on file with the Commission.[21] Here, the rates, terms, and conditions of service applicable to the confirmed TSRs are contained in: (1) the filed service agreements, and (2) Midwest ISO's OATT. Moreover, the filed service agreements include as Exhibits, Transaction Specification Sheets that provide certain transactional details not provided in the service agreements, and do not create a fixed price contract.

28. Schedule 7 (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service) of Midwest ISO's OATT provides that all effective rates under that schedule shall be posted on OASIS and that a Transmission Customer "shall pay the zonal rate (per KW of reserved capacity) based upon the zone where the load is located."[22] Schedule 7 also provides that the rates that apply to T&O service adjust at least once a year pursuant to the Attachment O formula. Schedule 14 includes a RTOR adder that is also applicable to customers taking firm point-to-point transmission either through or out of Midwest ISO. Both Schedule 7 and Schedule 14 prescribe procedures for providing discounted transmission service. These procedures track the procedures set forth in Order No. 888-A.[23] This language confirms that transmission charges determined under the OATT are subject to change and subject to discounting procedures, consistent with Order Nos. 888 and 888-A. Thus, the service agreements are not fixed-price contracts as alleged by the Coalition Members.

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[21] *See* 16 U.S.C. § 824d (2000); *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981).

[22] *See* Midwest ISO OATT, Schedule 7(1).

[23] *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,812 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC & 61,046 (1998), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Group, v. FERC*, 535 U.S. 1 (2002).

29. Midwest ISO points out, and the Coalition Members do not dispute, that Midwest ISO determined the rate for the Michigan-Ontario Interface in accordance with the Attachment O formula and the discounting procedures in Schedule 7and posted the applicable rate on its OASIS. As discussed above, Schedule 7 of the OATT states that such rates will adjust from year to year pursuant to the Attachment O formula and are also subject to adjustment through OASIS postings in accordance with the discounting provisions. The Coalition Members' service agreements incorporated the Midwest ISO's OATT. Thus, the Coalition Members were on notice that the discounted rate could be adjusted.

30. Further, we agree with Midwest ISO's assertion that when it accepts transmission service requests it is reserving capacity for a transmission customer for a designated period and is not making a commitment as to the specific price for that transmission service. Thus, Midwest ISO has the unilateral right to change the rates at issue and Coalition Members have pointed to nothing in the service agreements, the OATT or the Transaction Specification Sheets that overrides this right.

31. Finally, the Coalition Members' reliance on *Texaco, Inc. v. FERC*, 148 F.3d 1091 (D.C. Cir. 1998) (*Texaco*) to support their argument that the service agreements are silent regarding unilateral modification, is misplaced. To the contrary, the service agreements incorporate Midwest ISO's OATT provisions and section 9 of that OATT states in pertinent part:

> Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider . . . to unilaterally make application to the Commission for a change in rates, terms and conditions, charges . . . under Section 205 of the Federal Power Act . . . .

32. Accordingly, we find that there was not a fixed-price contract regarding the TSRs for the Michigan-Ontario Interface and, by rescinding the discount applicable to these TSRs, Midwest ISO did not breach the service agreements in question.

**Equitable Relief**

33. The Coalition Members have provided no basis for a grant of equitable relief. As Midwest ISO points out, at the time these transmission service requests were submitted (March 2003 to October 2003) and at the time Midwest ISO first accepted them (November-December 2003), the Coalition Members, because of the OASIS language notifying customers that rates could change after 18 months, had no justified expectation that the discount would continue for the life of their service agreements. We find that the Coalition Members' transmission service requests, reprocessed in the queue as the direct result of their complaints granted in *Tenaska Power*, had no reason to expect that the

discount would continue beyond December 31, 2003 – the date up to which Midwest ISO guaranteed the discount. Furthermore, the Coalition Members do not allege that Midwest ISO otherwise expressly communicated to them that the discount would remain in effect for the duration of their service agreements.

**Commission's Discount Policy**

34. We do not agree with the Coalition Members' assertion that Midwest ISO's revocation of the discount violates the Commission's policy on discounts. As the Commission explicitly stated in Order No. 888-A, the sole purpose of transmission rate discounting is to increase throughput.[24] The Coalition Members and Midwest ISO agree that the Michigan-Ontario Interface is constrained.[25] Therefore, a discount would have no effect on throughput at that interface and Midwest ISO properly determined that a discount was not needed and properly revoked the discount.[26]

35. Moreover, because of the constraint at that interface, Coalition Members' argument that Midwest ISO's discount approach discourages long-term transmission reservations and market participants from purchasing excess transmission capacity is misplaced. Excess transmission capacity is simply no longer available at this interface. Indeed, Midwest ISO's discounting approach is consistent with Commission policy of providing discounts for the sole purpose of increasing throughput.

**Undue Discrimination**

36. We disagree with the Coalition Members' characterization of Midwest ISO's rescission of the discount for T&O service that sinks at the Michigan-Ontario Interface as unduly discriminatory. Order No. 888 requires transmission providers, such as Midwest ISO, to post all discounts on their OASIS. Furthermore, the posted discount must be available to all potential customers for that service and if the transmission provider offers a discount on a particular path it must offer the same discount for the same period on all unconstrained paths that go to the same point(s) of delivery on the transmission

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[24] *See* Order No. 888-A, FERC Stats & Regs (1996-2000) ¶ 31,048 at 30,274 ("A transmission provider should discount only if necessary to increase throughput on its system.")

[25] *See* Complaint at 26; Midwest ISO Answer at 16.

[26] Coalition Members' assertion that the discount policy set forth in Order No. 888 should be harmonized with the discount policy in the natural gas industry is a collateral attack on Order No. 888-A and is rejected.

provider's system.[27] Thus, Midwest ISO appropriately revoked the discount for *all* transmission customers receiving this service over the Michigan-Ontario Interface in a not unduly discriminatory manner.

37. Indeed, if Midwest ISO were to continue the discount for the entire term of the Coalition Members' TSRs, but not offer it to other customers taking service over the Michigan-Ontario Interface, it would be in violation of Order No. 888 and it would constitute undue discrimination.

38. For the reasons discussed above, we find that Midwest ISO followed the terms of its OATT and the service agreements in offering, providing and then rescinding the discount with respect to T&O service that sinks at the Michigan-Ontario Interface. Midwest ISO followed the Commission's discounting policy set forth in Order No. 888-A and the Coalition Members were on notice that the discount could be discontinued at any time after December 31, 2003.

<u>The Commission orders</u>:

The Coalition Members' complaint is hereby denied, as discussed in the body of this order.

By the Commission.

Linda Mitry,
Deputy Secretary.

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[27] *See* Order No. 888-A at 30,275.