UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER06-313-003

ORDER REJECTING COMPLIANCE FILING

(Issued August 1, 2007)

1. On August 6, 2004, the Commission issued an order accepting Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Transmission and Energy Markets Tariff (TEMT). Under the TEMT, Midwest ISO initiated Day 2 operations throughout its 15-state region.[1] Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity.

2. This order rejects Midwest ISO's March 1, 2007 compliance filing and terminates this proceeding since Docket No. ER07-478-000 addresses both long-term and short-term allocations for FTRs, as described below.

[1] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g,* 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g and compliance,* 111 FERC ¶ 61,043 (Second TEMT II Rehearing Order), *reh'g denied,* 112 FERC ¶ 61,086, *order on compliance,* 113 FERC ¶ 61,083 (2005). Under the TEMT, all services will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as Midwest ISO or any successor organization. See Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to Midwest ISO wherever the TEMT refers to the Transmission Provider.

I. Background

3. The Commission directed Midwest ISO to offer nomination of monthly, peak and off-peak FTRs in the TEMT II Order.[2] On rehearing, the Commission accepted Midwest ISO's explanation that the earliest it could provide monthly FTRs was the second FTR allocation.[3] The Commission directed Midwest ISO to work with stakeholders to file by July 1, 2005 an equitable solution if monthly nominations are not in place in time for the second annual nomination. In that order, the Commission expressed its intent that monthly FTR allocations be implemented in the near future.[4] In another order issued on December 20, 2004 addressing certain compliance filings ordered by the TEMT II Order, the Commission directed Midwest ISO to further clarify the relationship between short-term, annual and longer-term network resource designation and eligibility for FTRs in the proposed FTR allocations.[5]

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[2] While the Commission conditionally accepted the proposed TEMT FTR Allocation Methodology, it stated that the methodology should be augmented with additional measures to ensure that market participants receive sufficient FTRs and are able to adjust their FTR portfolios based on a few months of market experience. *See* TEMT II Order at P 190 (We agree with Midwest ISO TDUs and OMS that any additional temporal differentiation in the term of FTRs availability through the allocation will assist in providing a more flexible hedge. Hence, especially given that the delay in Day 2 implementation should allow time for additional software development, we will require the Midwest ISO to offer nomination of monthly FTRs, peak and off-peak, in Tiers 2, 3, and 4, if possible by the first allocation and if not then by the subsequent re-allocation.)

[3] *See* TEMT II Rehearing Order at P 186.

[4] TEMT II Rehearing Order at P 187 ([T]he addition of monthly FTRs will significantly improve the FTR coverage of some market participants. And while it is important not to rush design improvements into the market before participants are ready for them, it is also important to introduce design elements that improve the efficiency of the market as soon as possible.)

[5] *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 at P 81-82 (2004) (December 20 Order).

4. In an order issued on May 26, 2005 that reviewed the Midwest ISO compliance filing to the December 20 Order,[6] the Commission accepted Midwest ISO's explanation for not providing for monthly FTR allocations and determined, on an interim basis, that Midwest ISO's proposal makes progress toward the Commission's flexibility objective. However, the Commission reiterated its ultimate objective that Midwest ISO offer nomination of monthly, peak and off-peak FTRs.

5. In an order issued on February 7, 2006,[7] the Commission rejected Midwest ISO's proposal of less-than-seasonal FTRs, and required, among other things, that at least 90 days before the next annual FTR allocation, Midwest ISO submit an evaluation of alternative ways to accommodate monthly FTRs. The Commission subsequently denied Midwest ISO's request for rehearing of the February 7 Order.[8]

6. On March 1, 2007, Midwest ISO submitted an informational filing (March 1 Filing) in order to comply with the February 7 Order. The March 1 Filing contains Midwest ISO's evaluation of alternative methods for accommodating monthly FTRs, as described in more detail below.

II. Midwest ISO's Compliance Filing

7. In the March 1 Filing, Midwest ISO states that it has been engaged in a comprehensive re-evaluation of its existing FTR allocation process and procedures, including the incorporation of long-term firm transmission rights (LTTRs) consistent with the Commission's directives in Order No. 681.[9] In January 2006, Midwest ISO initiated a stakeholder process to evaluate the transition from the current FTR allocation process to an allocation of financial transmission rights based on Auction Revenue Rights

[6] *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,249 at P 30 (2005) (May 26 Order).

[7] *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,117 at P 26 (2006) (February 7 Order).

[8] *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,162 (2006) (May 10 Order).

[9] *Long-Term Firm Transmission Rights in Organized Electricity Markets,* Order No. 681, 116 FERC ¶ 61,077, *order on reh'g,* Order No. 681-A, 117 FERC ¶ 61,201 (2006).

(ARRs).[10] As part of this process, Midwest ISO and its stakeholders addressed a broad range of issues relating to the allocation of ARRs and LTTRs on both a short- and long-term basis. Subsequently, on January 29, 2007, Midwest ISO submitted in Docket No. ER07-478-000 its proposal for modifying the existing FTR allocation methodology to provide for a prospective allocation of financial transmission rights, including LTTRs, based on the allocation of ARRs (January 29 Filing). Midwest ISO states that constraints on its resources, which were needed to complete the January 29 Filing and to meet the requirements of Order No. 681, hindered its ability to implement less-than-seasonal FTRs under the current FTR allocation process in order to comply with the February 7 Order. Midwest ISO further notes that the issue of less-than-seasonal FTRs/ARRs was not specifically raised by stakeholders leading up to the January 29 Filing.

8. Midwest ISO continues to assert that the problems relating to the allocation of monthly financial transmission rights, whether in the form of FTRs or ARRs will be complex and difficult to appropriately resolve. In addition, Midwest ISO maintains that market participants have, and will continue to have, appropriate means to address the financial risks associated with less-than-seasonal transmission service through existing means, including through bilateral arrangements in the secondary markets. Because the January 29 Filing outlining a revised means for allocating ARRs and LTTRs and less-than-seasonal FTRs cannot be accommodated in the currently ongoing FTR process applicable to the 2007-2008 time-period, Midwest ISO argues that any further consideration of issues regarding the allocation of less-than seasonal FTRs/ARRs should be addressed either in the ARR proceeding in Docket No. ER07-478-000, or in some future proceeding.

III. <u>Notice, Interventions and Protests</u>

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 11,348 (2007), with interventions and protests due on or before March 22, 2007. Integrys Energy Group, Inc., and its subsidiaries, Wisconsin Public Service Corporation (WPSC), Upper Peninsula Power Company (UPPCO) and Integrys Energy Services, Inc., (collectively Integrys Energy Group) filed a timely intervention and protest.

10. Integrys Energy Group asserts that the March 1 Filing should be rejected because instead of evaluating alternatives, Midwest ISO offers old and new rationales to avoid having to provide monthly FTR allocations. Integrys Energy Group urges the Commission to discount Midwest ISO's argument that the monthly allocations will be

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[10] ARRs are allocated to market participants to either directly receive equivalent FTRs or collect auction revenues in the FTR auction.

complex and difficult to resolve because the Commission has already determined that monthly FTRs are required. Integrys Energy Group notes that the Commission previously emphasized that the existing tariff provisions "do not allocate FTRs for less-than-seasonal service, a deficiency [the Commission] has required the Midwest ISO to address, and therefore a continuation of the pre-existing tariff provisions would continue this gap in FTR treatment."[11] Integrys Energy Group also notes that the May 26 Order describes the ultimate objective of this proceeding to be that Midwest ISO offers nominations of monthly FTRs.[12] Integrys Energy Group argues that Midwest ISO should not be allowed to avoid its obligation to evaluate FTR options by relying on market participant bilateral transactions. According to Integrys Energy Group, the ability to enter into bilateral arrangements is not a new phenomenon and it certainly was an available option when the Commission decided that the just and reasonable way to correct the deficiency in Midwest ISO's FTR allocation process was through monthly FTR allocations.

11. Integrys Energy Group further asserts that Midwest ISO's LTTR compliance activities do not justify its failure to comply with the Commission's February 7 Order. Assuming that Midwest ISO was aware at the time the February 7 Order was issued that it lacked the resources to comply, Integrys Energy Group argues that Midwest ISO could have requested an extension of the compliance deadline. Integrys Energy Group maintains that Midwest ISO, not the stakeholders, was required by the February 7 Order to evaluate alternatives for allocating monthly FTRs. To the extent it was appropriate to include monthly FTR allocations as part of the LTTR compliance filing, Integrys Energy Group contends that Midwest ISO should have added this issue to the LTTR agenda.

12. Moreover, Integrys Energy Group disagrees with Midwest ISO's suggestions that its January 29 LTTR filing obviates the need for implementing monthly FTR allocations or that monthly FTR allocations are more appropriately addressed in the Midwest ISO LTTR compliance proceeding. Integrys Energy Group maintains that monthly FTR allocations and LTTR provisions address two distinct issues. Integrys Energy Group notes that the Commission directed Midwest ISO to evaluate monthly FTR allocation methodologies to address a gap in Midwest ISO's current FTR process that has exposed load serving entities to periods of unhedged congestion costs. In contrast, Integrys Energy Group asserts that Midwest ISO's LTTR compliance filing is intended to implement Order No. 681, which directed "each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm

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[11] *See* February 7 Order at P 22.

[12] *See* May 26 Order at P 30.

transmission rights …."[13] Although both filings involve FTRs, Integrys Energy Group argues that they address different issues and concerns.

13. Integrys Energy Group notes that Midwest ISO previously requested rehearing of the February 7 Order and the Commission rejected that rehearing request in the May 10 Order. Therefore, Integrys Energy Group asserts that Midwest ISO is barred from seeking further modification of that order.[14] Integrys Energy Group asserts that Midwest ISO cannot do indirectly through a compliance filing what it is barred from doing directly in a request for rehearing.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make the entity that filed it party to this proceeding.

B. Commission Determination

15. Although the TEMT II Order required Midwest ISO to offer nomination of monthly, peak and off-peak FTRs, we find that our consideration of the issue in this docket has been overtaken by Midwest ISO's compliance with the Order No. 681 requirements relating to long-term transmission rights in Docket No. ER07-478-000.[15] The examination of Midwest ISO's LTTR proposal includes a comprehensive evaluation of both long-term and short-term FTR allocations and we find it most appropriate to consider the issue of monthly FTRs in that ongoing proceeding.

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[13] *See* Order No. 681 at P 1.

[14] Integrys Energy Group cites *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115 at 61,217 (1982), where the Commission denied a late request for rehearing saying, "[t]he Commission has neither the authority to waive the statutory requirement nor any inclination to employ a legal artifice to circumvent it."

[15] In that docket, the Midwest ISO has submitted its first compliance filing, and will be submitting further compliance filings per the requirements of *Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007) (LTTR Order).

16. Integrys Energy Group argues that monthly FTR allocations are not more appropriately addressed in the LTTR Order and urges the Commission to evaluate this issue in this docket. We disagree; the LTTR Order involves a comprehensive review of Midwest ISO's rules for allocating short-term financial transmission rights and therefore it is more appropriate to review monthly allocations in the context of our review of the changes to the Midwest ISO short-term FTR proposals. In the LTTR Order, we accepted a market design that incorporates two classes of ARRs, long-term and short-term. ARRs will be allocated in three stages: Stage 1A, Stage 1B, and Stage 2. Stage 1B and Stage 2 are for the allocation of short-term ARRs, which do not come with the same guarantees of renewal from year to year as the LTTRs. Also, there are two types of short-term rights: "peak" ARRs and seasonal ARRs. Stage 1B will enable qualified market participants to nominate candidate peak ARR rights from approved peak-load resources to load. Stage 2 then involves Midwest ISO's determination of each qualified market participant's *pro rata* share, if any, of the residual revenues from the FTR seasonal auctions.[16] Given the significant changes in FTR allocations that have been accepted in the LTTR Order, prior proposals regarding monthly FTR allocations have been overtaken by that proceeding where the appropriateness of monthly FTR allocations can be evaluated in light of the other changes to short-term FTR allocations.

17. Considering the comprehensive evaluation of both short-term and long-term FTRs and ARRs in ongoing Docket No. ER07-478-000, we will terminate the requirement to propose monthly FTR allocations in this docket. We note that parties can raise monthly FTR issues in the ongoing compliance proceedings in Docket No. ER07-478-000. In addition, in future annual FTR allocation proceedings, parties can raise monthly FTR issues in the context of Commission evaluation of all FTR products.

[16] *Id.* at P 6.

<u>The Commission orders</u>:

Midwest ISO's compliance filing is hereby rejected, for the reasons discussed herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.