

126 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. OA08-14-003
OA08-14-004

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued February 11, 2009)

1. On June 16, 2008, Indiana Municipal Power Agency (Indiana Municipal Power), Madison Gas & Electric Company (Madison) and Wisconsin Public Power Inc. (Wisconsin Public Power) (collectively, Petitioners)¹ filed a request for rehearing of an order² accepting the Order No. 890³ compliance filing of Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Specifically, Petitioners request assurance that energy sales into organized markets of PJM Interconnection, L.L.C. (PJM) can be made from resources designated as Midwest ISO network resources, without first undesignating the underlying resource. Petitioners also allege that Midwest ISO's business practices are inconsistent with the undesignation requirements of Order No. 890. In addition, on June 16, 2008, Midwest ISO filed a compliance filing revising its Open

¹ Lincoln Electric System intervened in the underlying proceeding and filed joint supplemental comments with the Petitioners. However, Lincoln Electric System did not join in the rehearing request.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154 (2008) (May 15 Order).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

Access Transmission and Energy Markets Tariff (Tariff) as directed in the Commission's May 15 Order.

2. In this order, we will deny Petitioners' request for rehearing of the undesignation requirement for sales into PJM. We find, however, that Midwest ISO's business practices are inconsistent with the undesignation requirements of Order No. 890. In addition, we will accept Midwest ISO's compliance filing, to be effective October 11, 2007, as in compliance with the Commission's May 15 Order and Order No. 890, as discussed below.

I. Background

3. In the May 15 Order, the Commission accepted, subject to a further compliance filing, Midwest ISO's proposed changes to the non-rate terms and conditions of service set forth in its Tariff, which incorporated the revisions adopted in the Order No. 890 *pro forma* OATT and/or, where applicable, found that existing Tariff provisions were "consistent with or superior to" the modifications adopted in the *pro forma* OATT. As relevant here, Midwest ISO incorporated into the Tariff the new definition of Non-Firm Sales as set forth in the *pro forma* OATT. In Order No. 890, the Commission changed section 30.4's description of permissible sales from a network resource located in the network customer's or transmission provider's control area from an undefined term, "non-firm sales," to the newly defined term, "Non-Firm Sales." Section 1.29 of the *pro forma* OATT now defines Non-Firm Sales as "[a]n energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller."⁴ Except for the purposes specified in section 30.4, network customers may not operate designated resources located in the network customer's or transmission provider's control area for firm third-party sales.⁵ Therefore, third-party sales that fall outside the definition of Non-Firm Sales (or any other uses permitted under section 30.4) may be sourced from those designated resources only if the resources are undesignated prior to the third-party sale.

4. In its contemplation of concerns regarding the potential effect of the definition of Non-Firm Sales on RTO and ISO markets, the Commission found in Order No. 890-A that it was unnecessary to amend the *pro forma* OATT to accommodate the particular market operations of each RTO and ISO.⁶ It noted that RTOs and ISOs have adopted

⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, section 1.29; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1688.

⁵ Order No. 890-B, 123 FERC ¶ 61,299 at P 234.

⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 1018.

many variations from the *pro forma* OATT to facilitate development of their markets, with some entirely eliminating the designation and undesignation requirements for network resources.⁷ Further, the Commission noted in Order No. 890-A that Midwest ISO adopted the *pro forma* definition of Non-Firm Sales in its compliance filing in response to Order No. 890, and stated that the Commission would address arguments concerning the appropriateness of that proposal on review of the Midwest ISO compliance filing.⁸ The Commission also noted that, in the interim, under Order No. 890, Midwest ISO retains significant discretion in implementing undesignation requirements for network resources.⁹

5. The Commission declined to impose any particular requirements in the May 15 Order regarding the designation and undesignation of network resources selling into neighboring RTO/ISO markets. However, the Commission did require Midwest ISO to revise section 30.4 of its Tariff¹⁰ to specifically permit sales from designated network resources into its energy markets in light of the obligation of Midwest ISO network resources to submit offers in the day-ahead market and the Reliability Assessment Commitment process. The Commission further found that undesignation is not necessary to account for effects on Available Transfer Capability (ATC), explaining that “[u]ndesignation of network resources within Midwest ISO is not necessary because the day-ahead and real-time markets are centrally dispatched without regard to physical transmission rights.”¹¹

⁷ *Id.*

⁸ *Id.* P 1019.

⁹ *Id.*

¹⁰ Section 30.4 of Midwest ISO’s Tariff states: “[t]he Network Customer shall not operate its designated Network Resources located in the Network Customer’s or Transmission Owner(s’) or ITC Control Area(s) such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Module B of this Tariff, plus Marginal Losses.” See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, section 1.29; see also Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1688.

¹¹ May 15 Order, 123 FERC ¶ 61,154 at P 89.

II. Docket No. OA08-14-003: Request for Rehearing

A. Petitioners' Arguments

6. Petitioners request rehearing regarding whether energy sales into the organized markets of PJM can be made from resources designated as Midwest ISO network resources, without first undesignating the underlying resource. To the extent the Commission requires that network resources must be undesignated before their designator is permitted to offer or sell output from those resources into PJM's centralized energy markets, Petitioners argue that requiring undesignation would: (1) not meaningfully facilitate ATC utilization; (2) be inconsistent with the Commission's orders requiring that Midwest ISO and PJM operate a "joint and common market" thereby minimizing the intertwined Midwest ISO-PJM seam; and (3) create scheduling and other practical difficulties.

7. Petitioners raise the issue of whether section 30.4 of Midwest ISO's Tariff requires that Midwest ISO network resources must first be undesignated before their designator is permitted to make an offer into PJM's day-ahead energy market and deliver energy produced by those resources into PJM's real-time energy market. Petitioners argue that sales from Midwest ISO into PJM's organized energy markets should not be viewed as causing network resources to operate inconsistently with section 30.4 of the Tariff. Petitioners seek confirmation that at the time a Midwest ISO network customer submits a day-ahead offer to sell into PJM, it will not violate section 30.4. They argue that section 30.4 is a limit only on actual operation, i.e., output in real-time, and that there is no delivery obligation associated with the acceptance of a day-ahead offer as the RTO considers the day-ahead market separate from the real-time market and has no expectation that a day-ahead financial commitment implies a requirement for physical delivery.¹² Petitioners also distinguish the financial, non-physical nature of day-ahead markets from that of firm sales that include liquidated damages provisions for failure to uphold the obligation to deliver energy.¹³ To support its reading of section 30.4, Petitioners argue that: (1) the PJM markets at issue are energy markets, not capacity markets, and thus, these sales are "energy sales" within the contemplation of the Non-Firm Sales definition; (2) interruption of such centralized market sales in real-time does not trigger any liability of the kinds that distinguish Non-Firm Sales from firm sales; (3) such a reading would not be inconsistent with the discussion of Non-Firm Sales in Order No. 890-A;¹⁴ and (4) a day-ahead commitment in PJM's day-ahead market is only

¹² Petitioners Rehearing Request at 7.

¹³ *Id.* at 8.

¹⁴ Petitioners Rehearing Request at 9, citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 1016-17.

financial, implying no delivery obligation and delivery in real-time is at the seller's election and such sales are interruptible for "any or no reason."¹⁵ Therefore, Petitioners suggest that the Commission more closely analyze sales from Midwest ISO designated resources into PJM's energy markets and they ask that the Commission conclude that these sales fit within the Non-Firm Sale definition and do not trigger undesignation.

8. Petitioners question whether requiring undesignation before Midwest ISO network resources may be sold into PJM's centralized energy markets is consistent with the Commission's orders requiring that Midwest ISO and PJM operate a "joint and common market" and thereby minimize the practical significance of the intertwined Midwest ISO-PJM seam.¹⁶ Petitioners state that the unique configuration of the intertwined Midwest ISO-PJM seam is meant to be minimized to promote efficient and competitive electricity markets.¹⁷ Further, they state that the Commission has characterized the Midwest ISO-PJM seam as an "intra-RTO" and has recently treated it as an intra-RTO seam for purposes of long-term rights allocation.¹⁸

9. Petitioners also raise the issue of whether requiring undesignation before Midwest ISO network resources may be sold into PJM's centralized energy markets would facilitate ATC utilization or serve any other purpose. Petitioners state that the Midwest ISO-PJM procedures for determining whether transmission capability is available have evolved beyond the designation-based procedures that apply outside of centralized market regions to the point that undesignation would serve no purpose in this context. Petitioners explain that the Joint Operating Agreement between Midwest ISO and PJM, (Midwest ISO-PJM Joint Operating Agreement)¹⁹ makes no reference to resource

¹⁵ Petitioners Rehearing Request at 8-10.

¹⁶ Petitioners Statement of Issues at 2, citing *e.g.*, *Wisconsin Pub. Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,269 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003).

¹⁷ Petitioners Rehearing Request at 11, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105, at P 30 (2003).

¹⁸ Petitioners Rehearing Request at 11, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 at P 35; *see also Long-Term Firm Transmission Rights in Organized Electricity Markets*, 117 FERC ¶ 61,201, at P 79 (2006).

¹⁹ Petitioners Rehearing Request at 12, citing Midwest ISO FERC Rate Schedule No. 5.

undesignation and that certain provisions of that agreement substitute for a resource undesignation procedure.²⁰

10. Petitioners maintain that requiring undesignation for sales from Midwest ISO designated network resources into PJM's day-ahead or real-time market serves none of the undesignation purposes underlying Order No. 890. According to Petitioners, reliability and ATC calculation are not affected because Midwest ISO and PJM actually operate the market-to-market seam without regard to formal "undesignations."²¹ Further, Petitioners argue that undue discrimination and comparable treatment are not "implicated" either.²² Petitioners state that Midwest ISO and PJM are not market participants. They argue that under a clarified rule that undesignation is not required for sales across the market-to-market seam, the same comparable, non-discriminatory rule applies to all market participants, transmission owning and transmission-dependent alike.²³

11. Petitioners contend that requiring undesignation for sales into PJM would create substantial scheduling and other practical difficulties that exceed the May 15 Order's contemplated burden of "electronically submitting several items of information."²⁴ They point to Midwest ISO's Business Practice Manual²⁵ and explain that its description equates undesignation with termination, which would expose redesignation to all of the risk of a brand-new designation request under section 29.2 of the Tariff, including: risks of process delays, funding and awaiting the outcome of a system impact study, inability to redesignate the resource if other reservations precede it in the queue for scarce transmission capacity, and paying for specially-assigned transmission upgrade costs.²⁶

12. Petitioners state that the Midwest ISO's Business Practice Manual restriction provides that all undesignations "start at 0:00 hours," which would effectively preclude any customer attempt to make hourly or part-day sales of excess output from its network

²⁰ *Id.* at 13.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 13-14.

²⁴ Petitioners Statement of Issues at 2.

²⁵ Petitioners Rehearing Request at 13, citing Midwest ISO's Business Practice Manual No. 13, "Module B – Transmission Service," issued April 1, 2008.

²⁶ Petitioners Rehearing Request at 15.

resources.²⁷ Moreover, Midwest ISO's one-day minimum service term for an external network resource would further restrict customers' ability to make short-term sales into PJM if undesignation were made a precondition for such sales.²⁸ Petitioners argue that the minimum term may prevent customers from retrieving the resource on a firm basis for part of an undesignation period in the event the system conditions were to change.

13. In addition, Petitioners assert that Midwest ISO's Open Access Same-Time Information System (OASIS) form to request undesignation of a network resource clearly precludes the short-term undesignation and automatic re-designation contemplated by Order No. 890. It states that "[un]-designating a Network resource can only be requested for existing firm Monthly and Yearly "confirmed" reservations. A new [n]etwork [r]esource request will be required should the customer desire to re-designate the same resource. The new request to designate a network resource will be evaluated as a new request."²⁹ They add that Order No. 890's requirement that a reattestation accompany the redesignation request that is to be paired with a request for temporary undesignation is another practical difficulty.³⁰ Petitioners caution the Commission that because a second act is required to perfect the redesignation, customers have reason for concern that any OASIS request for such a paired undesignation and redesignation will be deemed to be simply a stand-alone termination unless a separate "attestation" is received and recognized.³¹ They argue that in real-world practice customers will forego the off-system sale due to the risk a vital network service designation will be lost because a faxed or other attestation communication will not be recognized as timely received. Petitioners predict that this would result in less efficient markets and cause dead-weight loss to national wealth. They add that OASIS interfaces lack fail-safes to prevent keystroke errors in the undesignation/redesignation process and it is not clear that Midwest ISO would choose to forgive, or have the discretion to forgive, such errors.³²

²⁷ *Id.* at 16.

²⁸ *Id.* at 17 citing Midwest ISO Business Practice Manual No. 13 at 6-19.

²⁹ Petitioners Rehearing Request at 16, citing Exhibit A "Midwest ISO Request to UN-Designate a Network Resource (Required for all requests to UN-Designate a Network Resource)."

³⁰ Petitioners Rehearing Request at 17, citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1541.

³¹ Petitioners Rehearing Request at 17.

³² *Id.* at 18.

B. Commission Determination

14. We will deny Petitioners' request for rehearing of the May 15 Order. Petitioners generally raise the same issues that they initially raised in their protest and that were addressed by the Commission in the underlying order. In the May 15 Order, the Commission was not persuaded by Petitioners' arguments that further revisions to Midwest ISO's Tariff were required to address their broader concerns about sales into the RTO markets from neighboring systems. The Commission explained that:

[t]here is no obligation for resources located in control areas external to Midwest ISO to offer their energy into Midwest ISO's markets. Undesignating a network resource is not unduly burdensome, consisting only of electronically submitting several items of information that are intended to assist the host transmission provider in calculating ATC. While [Petitioners] focus on the potential benefit of allowing increased offers into the Midwest ISO market, they do not address the policy goals supporting the undesignation requirement imposed in the *pro forma* OATT, namely the promotion of reliability, the prevention of undue discrimination, promotion of comparable treatment of customers, and increasing the accuracy of ATC calculations.^[33]

15. We disagree with Petitioners' argument that the Commission erred in failing to specifically address sales into PJM's centralized energy markets and that the Commission further neglected to make clear that such sales do not require undesignation. In the May 15 Order, the Commission accepted Midwest ISO's adoption of the *pro forma* OATT and its compliance with Order No. 890. The Commission specifically stated that it was not persuaded that any further revisions to Midwest ISO's Tariff are required to address commenters' broader concerns about sales into the RTO markets from neighboring systems. Further, in its acceptance of Midwest ISO's adoption of the *pro forma* OATT, the Commission noted that the undesignation requirement that is imposed by the *pro forma* OATT clearly indicates that such sales require undesignation. Moreover, in Order No. 890-B the Commission again considered commenters' concerns about the effect of undesignation policies on ISO/RTO markets and again concluded that it is reasonable to require sellers to undesignate resources being used for third-party sales

³³ See May 15 Order, 123 FERC ¶ 61,154 at P 90, citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1576.

for which there is liability for interruption except in the circumstances stated in section 30.4 of the *pro forma* OATT.³⁴

16. Under Module E of Midwest ISO's Tariff, Load Serving Entities (LSE) must ensure conformity with planning reserve procedures to ensure there are adequate Planning Resources available to enable LSE's to reliably serve Load. Under the resource adequacy regime, Midwest ISO Market Participants with resources identified as available to meet the reliability requirements must comply with the requirements for designation of network resources. Therefore, Midwest ISO Market Participants are required to designate network resources, identifying them as deliverable to load within the Midwest ISO Reliability Authority Footprint, in order to meet resource adequacy obligations. We remind Petitioners here that the Commission required Midwest ISO to revise section 30.4 of its Tariff to specifically permit sales from designated network resources into its energy markets due to the obligation of Midwest ISO network resources to submit offers in the day-ahead market and the post day-ahead Reliability Assessment Commitment process. Midwest ISO market participants with designated network resources are required to submit an offer or bilateral transaction schedule in the day-ahead energy market for the full operable capacity of the unit up to the designated network resource amount, except to the extent the network resource is unavailable due to a full or partial forced or scheduled outage. Furthermore, designated network resources not on a forced or maintenance outage must offer into the Reliability Assessment Commitment process any capacity not scheduled in the day-ahead energy market. Therefore, in light of resource adequacy obligations, an undesignation requirement for offers in the day-ahead market and Resource Adequacy Commitment process would result in Market Participants violating the resource adequacy obligation due to their compliance with the associated must-offer requirement, and is thus unjust and unreasonable. In contrast, sales from Midwest ISO designated resources into PJM's energy markets are not subject to must-offer requirements. Therefore, it is not unreasonable that sales into PJM must comply with the undesignation requirements established in the Tariff.

17. We are not persuaded to reach a different conclusion based on Petitioners' arguments regarding ATC utilization under Midwest ISO's market and transmission scheduling timelines and the Midwest ISO-PJM Joint Operating Agreement procedures for determining whether transmission capability is available. In Order No. 890-B, the Commission explained that failing to require undesignation could result in the host transmission provider decreasing the amount of ATC that is available for competing uses by maintaining the same existing transmission commitments for the seller's use of the designated network resource even though the seller is otherwise using the resource to

³⁴ Order No. 890-B, 123 FERC ¶ 61,299 at P 246.

support off-system sales.³⁵ While in the May 15 Order, the Commission found that undesignation of network resources within the Midwest ISO to sell in the Midwest ISO energy markets is not necessary to account for effects on ATC because the day-ahead and real-time markets are centrally dispatched without regard to physical transmission rights, we find that Petitioners have not supported their argument that there is no impact on ATC if undesignation is not required to sell into neighboring markets. Therefore, we will reject Petitioners' argument and find that it is not necessary to change the definition of Non-Firm Sales in order to have just and reasonable rates, terms, and conditions nor have Petitioners shown granting their request would result in just and reasonable rates, terms, and conditions.

18. We also disagree with Petitioners' argument that requiring undesignation would create significant scheduling and practical difficulties that exceed the burden contemplated by the Commission in the May 15 Order. The electronic submission of several items of information intended to assist the host transmission provider in calculating ATC is not unduly burdensome. Petitioners' argument that a customer could be "bankrupt" by a keystroke error in the OASIS system is speculative and unsupported. Indeed, such an argument would be applicable to many actions that an entity could take on OASIS. Moreover, in Order No. 890-B the Commission encouraged network customers and transmission provider merchant functions to coordinate with transmission providers in exploring ways to accommodate more flexibility in the use of designated resources; and in circumstances where the transmission provider believes that the *pro forma* OATT does not have sufficient flexibility, Order No. 890 gives transmission providers the option of proposing superior non-rate terms and conditions to address such concerns.³⁶

19. We agree with Petitioners that Midwest ISO's business practices are inconsistent with the undesignation requirements of Order No. 890. We agree with Petitioners that Midwest ISO's requirement that all undesignations start at 0:00 hour forestalls hourly or part-day sales from network resources. We remind Midwest ISO that in Order No. 890 the Commission directed transmission providers to develop OASIS functionality and, working through the North American Energy Standards Board, business practice standards describing the procedural requirements for submitting both temporary and indefinite terminations of network resources. The Commission found that, among other things, OASIS functionality should allow for electronic submittal of the type of termination (i.e., temporary or indefinite) and the effective date and time of redesignation for temporary terminations.³⁷ By requiring all designations to start at 0:00 hour, Midwest

³⁵ Order No. 890-B, 123 FERC ¶ 61,299 at P 202-03.

³⁶ *Id.* P 246.

³⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1541.

ISO is enacting a minimum term for undesignations. This contradicts the Commission's statement in Order No. 890 that there should be no minimum term for undesignations.³⁸ Therefore, we find that a requirement that all designations start at 0:00 hour is inconsistent with Order No. 890. Consistent with the filed rate doctrine, Midwest ISO must revise its business practices in order to be consistent with its Tariff.

20. We also agree with Petitioners that Midwest ISO's OASIS form precludes short-term undesignation and automatic re-designation as contemplated by Order No. 890. Midwest ISO's OASIS form, which is required for all requests to undesignate a network resource, states that a new network request will be required should the customer desire to redesignate the same resource. It further states that the request to designate a network resource will be evaluated as a new request. In Order No. 890, the Commission clarified that a request to undesignate network resources submitted concurrently with a request to redesignate those network resources at a specific point in time shall be considered a temporary termination.³⁹ The Commission further explained that a concurrently submitted request for temporary termination of the resource and the request for the related transmission service, should be evaluated as a single request, and approved or disapproved as such.⁴⁰ Midwest ISO's OASIS form does not allow a request for temporary termination and a concurrently submitted request for related transmission to be evaluated, and approved or disapproved, as a single request. It specifically states that a new network resource request will be required after a request to undesignate and that the new request will be evaluated as a new request. We agree with Petitioners that undesignation under Midwest ISO's current OASIS form is, in effect, a termination, which precludes the short-term undesignation and automatic re-designation contemplated by Order No. 890. As such, we find that Midwest ISO's OASIS form is inconsistent with Order No. 890.⁴¹ Therefore, consistent with the filed rate doctrine, Midwest ISO must revise its OASIS form in order to be consistent with its Tariff.

³⁸ *Id.* P 1583.

³⁹ *Id.* P 1540.

⁴⁰ *Id.* P 1540-41.

⁴¹ In Order No. 890, the Commission directed transmission providers, working through the North American Energy Standards Board (NAESB), to develop OASIS functionality to allow for the electronic submission of information related to the termination (temporary and permanent) of designated network resources. *Id.* P 1541. Although NAESB has yet to implement business standards providing this functionality, Midwest ISO has done so on its own OASIS and the operation of its OASIS must be consistent with the requirements of Order No. 890.

21. We reiterate that in the May 15 Order the Commission accepted Midwest ISO's adoption of the *pro forma* OATT language for Non-Firm Sales and the Commission accepted that filing as in compliance with Order No. 890. The Commission specifically noted that Order No. 890 allows transmission providers significant discretion in how they choose to implement undesignation requirements for network resources and the Commission declined there, as do we here, to impose any other particular requirements regarding undesignation of network resources being sold into neighboring RTO-ISO markets, e.g., PJM's day-ahead and centralized energy markets. We note that Midwest ISO has not proposed any variations from the *pro forma* OATT designation/undesignation requirements, other than those imposed on it by the Commission in the May 15 Order, nor has Midwest ISO made a showing that these requirements are not necessary to account for transmission capability for cross-border sales under the Midwest ISO-PJM JOA, or elsewhere. As discussed above, the Commission has invited transmission providers to propose variations from the designation/undesignation requirements, to the extent they address the policy goals supporting the undesignation requirement imposed in the *pro forma* OATT (i.e., the promotion of reliability, the prevention of undue discrimination, promotion of comparable treatment of customers, and increasing the accuracy of ATC calculations).⁴² With respect to long-term impacts on ATC, such proposals should adequately address the Commission's concern, as stated in Order No. 888, that network customers may (absent a prohibition on network resources including any portion of a resource that was committed for sale to a third party) have the incentive to specify unlimited generation resources to be integrated into their load without any commensurate financial obligation, given that network transmission service is billed on a load ratio basis.⁴³

22. With regard to Petitioners' arguments concerning the joint and common market initiatives, we previously found that it is more appropriate that each transmission

⁴² *Id.* P 1576, 1590.

⁴³ See Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 951. See also *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,753-45 (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 relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

provider develop such requirements in concert with its stakeholders.⁴⁴ We encourage Petitioners to utilize the Midwest ISO stakeholder process for this purpose. We note that Petitioners' concerns may be able to be addressed through initiatives that are implemented through the current Midwest ISO and PJM joint and common market process and procedures.⁴⁵ Furthermore, we encourage Midwest ISO to work with its stakeholders and, if necessary, PJM, to determine whether any adjustments to its designation/undesignation requirements are necessary to further promote the joint and common market initiatives. This process will allow Midwest ISO, in concert with Petitioners and other stakeholders, to evaluate the joint and common market initiatives and determine what revisions to the designation/undesignation procedures are necessary, if any.

III. Docket No. OA08-14-004: Compliance Filing

23. On October 11, 2007, Midwest ISO made its filing in compliance with Order No. 890. In the May 15 Order, the Commission accepted that compliance filing, as modified, to be effective October 11, 2007. The Commission also directed Midwest ISO to file, in a compliance filing to be submitted within 30 days of the date of the order, revisions to its Tariff addressing its proposed provisions for: (1) ATC calculations; (2) Capacity Reassignment; (3) Operational Penalties; (4) Distribution of Operational Penalties; (5) Other Ancillary Services; (6) Planning Redispatch and Conditional Firm; (7) Clustering; (8) Simultaneous Submission Window; (9) Definition of Non-Firm Sales; and (10) Rollover Reform. In compliance with that order, Midwest ISO has made a further filing, which we address below. Midwest ISO states that the instant compliance filing implements the May 15 Order and incorporates certain Tariff revisions, as directed by the Commission.

24. Notice of Midwest ISO's compliance filing in Docket No. OA08-14-004 was published in the *Federal Register*, 73 Fed. Reg. 35,682 (2008), with interventions and protests due on or before July 7, 2008. None was filed.

25. We find that Midwest ISO's proposed revisions are consistent with Order No. 890 and comply with the directives of the Commission's May 15 Order. We will accept Midwest ISO's compliance filing in Docket No. OA08-14-004, to be effective October 11, 2007.

⁴⁴ See *Wisconsin Pub. Serv. Corp.*, 118 FERC ¶ 61,089 (2007), *order denying reh'g*, 120 FERC ¶ 61,269 (2007).

⁴⁵ *Id.*

The Commission orders:

(A) Petitioners' rehearing request is hereby denied, as discussed in the body of this order.

(B) Midwest ISO's compliance filing is hereby accepted, to be effective October 11, 2007, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.