

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. ER06-1412-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued October 24, 2006)

1. In this order, the Commission will accept in part and reject in part proposed revisions to the Transmission and Energy Markets Tariff (TEMT or tariff), filed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) on August 25, 2006 pursuant to section 205 of the Federal Power Act (FPA).¹ The proposed revisions address the reallocation of financial transmission rights (FTRs)² to reflect load switching under state retail choice programs. Regarding the proposed revisions we are rejecting, we find that the Midwest ISO proposal has not provided sufficient justification to alter its role, as specified in the tariff, as the transmission provider responsible for allocating and reallocating FTRs.

I. Background

2. In an order dated August 6, 2004, the Commission accepted the Midwest ISO's TEMT, which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state

¹ 16 U.S.C. § 824d (2000).

² FTRs are financial instruments that entitle the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the Transmission System is congested and differences in LMPs result from the redispatch of Resources out of economic merit order to relieve that congestion. *See* Module A, section 1.101, Second Revised Sheet No. 76.

region.³ The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and an FTR market for transmission capacity.

3. Section 43.7.2 of the Midwest ISO's TEMT provides for the reallocation of FTRs to reflect load switching under state retail choice programs. On an annual basis, each market participant's nomination eligibility is based on forecasted load for the upcoming FTR allocation period and reflects load switching between annual FTR allocation periods.

4. Within the annual allocation period, the Midwest ISO has established reallocation procedures to reflect load shifts on a daily and monthly basis. In order to reflect load shifts on a daily basis, the Midwest ISO reallocates FTRs as auction revenue rights (ARRs), entitling the right-holder to revenue based on clearing prices in the upcoming monthly FTR auctions. On a monthly basis, the Midwest ISO allocates ARRs and ARR funding obligations based on load reported to have shifted between market participants under state retail choice programs during the month. Market participants losing and gaining load are charged and reimbursed accordingly.

II. The Midwest ISO's Proposal

5. First, the Midwest ISO proposes modifying TEMT language in section 43.7.2 to reflect the fact that not all state auctions occur pursuant to state mandated retail choice programs. The proposed revision would broaden the tariff language to provide that FTRs will be reallocated on a monthly basis pursuant to state retail choice programs "*or such other state auction programs.*"

6. Second, the Midwest ISO proposes to amend the TEMT to make monthly reallocations of ARRs and ARR funding obligations to state choice programs or auctions voluntary. Under the proposed revision, a market participant wishing to utilize an ARR reallocation cannot do so if only one market participant elects to use that reallocation.

³ *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*, 111 FERC ¶ 61,043 (2005) (Compliance Order III). The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

7. Third, and related to the Midwest ISO's proposal to make the ARR reallocation process voluntary, the Midwest ISO proposes to have both the market participant losing the load and the market participant gaining that load inform the Midwest ISO of the agreed upon load switching that occurred pursuant to the monthly state retail choice program or auction. The proposed tariff language would provide that "once the Market Participant losing the Load and the Market Participant gaining the Load inform the Transmission Provider of the Load switching, the Transmission Provider will allocate ARRs and ARR funding obligations on a monthly basis. . . ." This proposed revision conditions monthly reallocations on both market participants agreeing to the load switching and then reporting it to the Midwest ISO.

8. The Midwest ISO states that these proposed revisions will enlarge the scope of the Midwest ISO's FTR reallocation to similarly run state wholesale load auction programs and not limit it to only those load shifts made pursuant to "state retail choice programs." The Midwest ISO requests that the Commission waive its sixty (60) day notice requirement and grant an effective date of October 1, 2006 for the proposed revisions to section 43.7.2 of the TEMT. According to the Midwest ISO, an October 1, 2006 effective date will ensure proper and timely entitlements of the allocation of FTRs (*i.e.*, prior to the start of the annual fall allocation of FTRs), consistent with upcoming deadlines of wholesale load auction programs in the states of some of the Midwest ISO market participants.

III. Notice and Responsive Pleadings

9. Notice of the Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 53,436 (2006), with interventions, comments and protests due on or before September 15, 2006. Motions to intervene were timely filed by Ameren Services Company and the WPS Companies.⁴ The WPS Companies also submitted comments. Consumers Energy Company filed a motion to intervene out-of-time, without substantive comments. On October 2, 2006, the Midwest ISO filed an answer in response to WPS Companies' comments.

10. The WPS Companies want to ensure that a market participant assuming a load serving obligation automatically receives by reallocation the associated FTRs/ARRs; in other words, FTRs/ARRs should follow the load. The WPS Companies point out that under the Midwest ISO's proposed TEMT revisions, reallocation of ARRs between the

⁴ The WPS Companies are Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC.

load-serving entity (LSE) losing the load and the market participant gaining that load depends on both parties agreeing to that reallocation. Absent an agreement between the parties switching load, the WPS Companies contend that the FTRs would remain with the LSE that lost the load. The WPS Companies further contend that any benefit or cost associated with those FTRs/ARRs should reside with the entity responsible to serve the load. The WPS Companies express concern that the Midwest ISO's proposal to permit consensual FTR/ARR reallocation could lead to disputes and provide unintended competitive advantages to the incumbent LSE, leading to the economic distortion of customer choice programs. For example, the WPS Companies assert that the consensual reallocation procedures the Midwest ISO proposes would permit an incumbent LSE to retain FTRs/ARRs without the corresponding obligation to serve the associated load, leaving the load gaining market participant unhedged for congestion costs incurred to serve the load. The WPS Companies recommend that the Midwest ISO's TEMT provide an unambiguous and objective process for FTR allocation and reallocation based on the obligation to serve load.

11. In its answer, the Midwest ISO submits that its proposed revisions to the FTR allocation procedures of: (1) making monthly reallocation of ARR and ARR funding obligations voluntary; and (2) providing that the entities losing and gaining load report their agreed upon load-switching to the Midwest ISO, are appropriate because the revisions simply contemplate aligning the monthly ARR redistribution process with the annual FTR allocation process. The Midwest ISO contends that market participants currently provide information about forecasted peak load for use in annual FTR allocation, but not for the interim monthly reallocations. The Midwest ISO further states that, at present, it does not have the capability to track load at the level necessary to perform ARR redistributions without reliance on consent by and notification from market participants. However, the Midwest ISO expects to be able to track load at the level necessary to perform ARR redistributions without reliance on notification by and consent from market participants by January 29, 2007.

12. The Midwest ISO claims that, given its limited knowledge of load shifts, reallocation of ARRs must be voluntary (i.e., require the assent of both parties). Otherwise, the Midwest ISO states that without the ability to independently confirm the claims of the LSE gaining the load, a system that does not require validation by both parties would be open to fraud.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), timely, unopposed motions to intervene serve to make the

entities that filed them parties to this proceeding. We will grant Consumers Energy Company's unopposed motion to intervene out-of-time given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

15. We will accept in part and reject in part the Midwest ISO's revised tariff sheets to be effective October 1, 2006, as requested. We find that the Midwest ISO's proposed modification to section 43.7.2 of its tariff to reflect the fact that not all state auctions occur pursuant to state mandated retail choice programs is just and reasonable.

16. However, we will reject as unjust and unreasonable the Midwest ISO's other proposed modifications to section 43.7.2 that would make monthly reallocation of ARR's relating to state retail choice programs or auctions voluntary and require both the market participants losing and gaining the load to report their agreed upon reallocation of ARR's and FTR's to the Midwest ISO.

17. The Midwest ISO's proposal to make monthly reallocation of ARR's between market participants voluntary is unacceptable. The Midwest ISO, as the transmission provider, is responsible for allocating FTR's and ARR's to market participants and it therefore must be responsible for reallocations as well. Considering the Midwest ISO's control of the FTR and ARR allocation process, the Commission finds that the Midwest ISO may not abdicate its responsibility to control the reallocation process.

18. Moreover, we agree with the WPS Companies that the Midwest ISO's proposal to permit consensual ARR reallocation could lead to disputes and provide unintended competitive advantages to the LSE holding the original ARR's and FTR's. We also find that making an allocation subject to agreement among market participants would create uncertainty and provide an opportunity for collusion and gaming of the FTR process.

19. In addition, we will reject the Midwest ISO's proposed revision that would condition the Midwest ISO's reallocation of ARR's on both market participants' reporting an agreed upon amount of load switching to the Midwest ISO. The Midwest ISO can ensure there is no fraud in the reallocation process, even without a reporting requirement, by basing its reallocations on its confirmation of state auction results and consultations with market participants. The Midwest ISO also has not shown that it cannot make

reallocations with its existing systems and procedures. We further note that the Midwest ISO indicates that it intends to implement system changes to perform this function by January 29, 2007 that should ease any difficulties that the Midwest ISO may currently be experiencing.

20. We will direct the Midwest ISO to file revised tariff sheets consistent with this order within 30 days of the date of this order.

The Commission orders:

(A) The Midwest ISO's revised tariff sheets are hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.