131 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket Nos. ER09-1543-002, ER09-1543-003

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued June 25, 2010)

1. In this order, we address a request for rehearing of the Commission's order that conditionally accepted Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to amend the rules applicable to changes in Receipt Points and Delivery Points on a firm basis (redirects).[1] We also address Midwest ISO's compliance filing. As discussed below, we deny the request for rehearing of the 2009 Redirect Order, and accept Midwest ISO's compliance filing.

I. Background

2. On August 4, 2009, as superseded on August 11, 2009, Midwest ISO filed proposed revisions to Section 22.3 of its Tariff (August 2009 Filings).[2] Midwest ISO's proposed tariff revisions in the August 2009 Filings were based on its belief that the then-effective tariff language was flawed and had resulted in market inefficiencies. Midwest ISO argued in the August 2009 Filings that the then-effective Section 22.3 permitted transmission customers to avoid paying their firm point-to-point transmission rates by

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,018 (2009) (2009 Redirect Order).

[2] The then-effective section 22.3 allowed transmission customers to redirect their firm point-to-point transmission service to secondary Receipt and Delivery Points on a firm basis. It further provided that any such redirect is treated as a new request for service.

parking their reservations on a zero-rate transmission path for delivery to PJM Interconnection LLC (PJM) during periods when the original firm point-to-point reservations were not needed. It stated that the vast majority of firm redirects to PJM have been used as a device to avoid charges on the original paths rather than to effectuate transactions to serve load.[3]

3. Initially, Midwest ISO's August 4, 2009 filing proposed to amend its Tariff to implement a higher-of pricing for redirects to *zero-rate* transmission paths. The proposed amendment provided that when a firm redirect results in a transmission path "for which the applicable transmission rate is zero, the [t]ransmission [c]ustomer shall pay the transmission and ancillary services rates in effect between the original Receipt and Delivery Points for the duration its service is redirected . . . ."[4] However, on August 11, 2009, Midwest ISO filed to supersede its August 4, 2009 filing, explaining that, in response to the August 4, 2009 filing, certain transmission customers began engaging in the same practices on other low-cost paths. Therefore, Midwest ISO explained that a more expansive remedy was necessary to correct the Tariff flaw. Accordingly, Midwest ISO proposed the following language to expand the scope of its proposed Tariff revision in Section 22.3 to apply not just to *zero-rate* transmission paths, but to all firm redirects to *lower cost* paths:

> Notwithstanding the foregoing, if the modified Receipt or Delivery Point results in a transmission path ("redirect path") for which the applicable transmission rate is lower than the transmission rate in effect between the original Receipt and Delivery Points ("original path"), the Transmission Customer shall pay, in addition to the amounts associated with the redirect path, an additional charge reflecting the difference in the firm transmission and applicable ancillary services rates between the original path and the redirect path for the duration its service is redirected pursuant to this Section 22.3. The term "original Receipt and Delivery Points," as used in this subsection (a), shall mean the initial set of Receipt and Delivery Points rather than any Receipt or Delivery Point modified under Section 22.3.[[5]]

[3] 2009 Redirect Order, 129 FERC ¶ 61,018 at P 6.

[4] *Id.* P 5.

[5] Midwest ISO, August 11, 2009 Filing, Transmittal Letter at 3.

4. In the 2009 Redirect Order, the Commission conditionally accepted Midwest ISO's proposed revisions to Section 22.3 of its Tariff to implement a higher-of pricing proposal for firm redirects to lower-cost points of delivery and made it effective as of August 12, 2009, as requested by Midwest ISO. The Commission held that Midwest ISO had shown that certain transmission customers engaged in inefficient use of the transmission system by using redirects to avoid paying transmission charges associated with initial reservations.[6] However, the Commission found that Midwest ISO presented evidence of such market inefficiencies only with respect to short-term redirects, i.e., daily, weekly, or monthly redirect transactions.[7] Accordingly, the Commission required Midwest ISO "to submit revised tariff language . . . reflecting that the proposed language in Section 22.3 is only applicable to short-term redirects."[8] Also, the Commission noted that because market participants continue to pay the transmission rate on the original path, it required Midwest ISO to "develop and implement an appropriate crediting procedure to provide a credit to the redirecting customer if Midwest ISO resells the released capacity on the original path and the path is constrained at the time of resale."[9]

II. <u>Description of Filings</u>

5. On November 6, 2009, DTE Energy Trading, Inc. (DTE Energy) submitted a request for rehearing of the Commission's decisions in the 2009 Redirect Order (1) to deny DTE Energy's request for an opt-out provision to existing Midwest ISO's long-term firm transmission service agreements and (2) authorizing Midwest ISO to implement a higher-of pricing for weekly and monthly redirect transactions.

6. On November 9, 2009, Midwest ISO submitted proposed revisions to Section 22.3 of its Tariff, in compliance with the 2009 Redirect Order (November 9 Compliance Filing).

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[6] 2009 Redirect Order, 129 FERC ¶ 61,018 at P 29.

[7] *Id.* P 28, 30. Midwest ISO's study revealed that all of the unscheduled firm redirects were short-term redirects (daily, weekly, or monthly), with 96 percent of them being daily redirects. *Id.* P 7 (citing August 2009 Filings, Affidavit of Joseph J. Gardner, at 7-8).

[8] *Id.* P 30.

[9] *Id.* P 31.

III. Notice of Filing and Responsive Pleadings

7. Notice of the November 9 Compliance Filing was published in the *Federal Register*, 74 Fed. Reg. 61,342 (2009), with interventions, protests, and comments due on or before November 30, 2009. On November 25, 2009, DTE Energy, NRG Companies (NRG), Cargill Power Markets LLC, and ALLETE d/b/a Minnesota Power, Inc. (collectively, Affected Entities) filed joint comments. On December 8, 2009, NRG[10] filed a separate supplemental protest. On December 22, 2009, Midwest ISO filed an answer to NRG's protest. On March 17, 2010, Affected Entities filed a request for expedited action.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

IV. Discussion

A. Request for Rehearing

10. DTE Energy claims that by prohibiting existing transmission customers from opting-out of existing transmission service agreements, the Commission is effectively decreasing the reservations and increasing the available transfer capability and thereby delaying the benefits of higher-of redirect pricing. According to DTE Energy, granting existing transmission customers the right to opt-out of long-term reservations on transmission paths would allow other transmission customers the opportunity to reserve previously-unavailable paths. Also, DTE Energy argues that in rejecting the opt-out provision the Commission failed to consider existing transmission customers' reliance on previous redirect tariff provisions and associated service agreements when they entered into long-term transmission agreements.[11] In order to ensure the integrity of the

[10] In this filing, NRG Companies include NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, and NRG Sterling Power LLC.

[11] DTE Energy Rehearing Request at 11.

marketplace, DTE Energy states that the transmission customers must have a reasonable degree of certainty that long-term contracts will not be modified; or, if they are, that reasonable provisions will be considered to mitigate the consequences of such changes. Therefore, DTE Energy argues that the Commission's rejection of its request for an opt-out provision is arbitrary and capricious and not the result of reasoned decision-making.[12]

11. In addition, DTE Energy argues that there is no evidence to support the Commission's decision to accept Midwest ISO's proposal to implement the higher-of pricing for weekly or monthly redirect transactions in the Midwest ISO marketplace. According to DTE Energy, there was no showing that any appreciable abuse had occurred in weekly or monthly redirect transactions. Rather, Midwest ISO's evidence supported abuse only in daily redirect transactions and, therefore, DTE Energy asserts that the higher-of pricing is justified for daily redirects, but not for weekly or monthly redirect transactions.[13]

12. Further, DTE Energy argues that accepting the higher-of pricing with respect to weekly or monthly redirect transactions is contrary to the 2003 Redirect Order,[14] in which the Commission rejected Midwest ISO's proposal to implement the same pricing regime for redirect transactions. In the 2003 Redirect Order, the Commission found that although transmission owners had expressed concern about potential abuse, they failed to explain how such abuse could occur or even what form it could take.[15] Thus, without support for abuse with respect to weekly or monthly redirects, DTE Energy asserts, the Commission's decision to allow the higher-of pricing for such redirects departs from established precedent and is thus unlawful.[16]

Commission Determination

13. We will deny DTE Energy's request for rehearing. We disagree with DTE Energy that the Commission's decision to accept Midwest ISO's higher-of pricing rules for redirect transactions was based on insufficient evidence. In the 2009 Redirect Order, the

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[12] *Id.* at 9.

[13] *Id.* at 13.

[14] *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,069, *reh'g denied*, 103 FERC ¶ 61,217 (2003) (2003 Redirect Order).

[15] 2003 Redirect Order, 102 FERC ¶ 61,069 at P 15.

[16] DTE Energy Rehearing Request at 14-15.

Commission concluded that, based on Midwest ISO's study performed from January 1, 2008 to June 30, 2009, "certain transmission customers have essentially used the Tariff to avoid paying transmission costs associated with their initial transmission reservations."[17] The Commission held that "this has resulted in inefficient use of the transmission system and such customers failing to pay their fair share of the costs of the transmission system."[18] While the Midwest ISO study indicated that the majority (96 percent) of the redirects were daily redirects, a portion (4 percent) of the redirects were weekly and monthly redirects.

14. We are not persuaded by the argument that because the percentage of the weekly and monthly redirect is small we should limit the remedy to daily redirects only and ignore the inefficient use of the transmission system that nevertheless results from weekly and monthly redirects. Moreover, if we limit the remedy to daily redirects only, it is possible that the weekly and monthly redirects would only increase. As Midwest ISO explains, when it tried to correct its Tariff on the zero-rate transmission paths, transmission customers began redirecting over lower-rate transmission paths.[19]

15. Further, we disagree with DTE Energy that accepting the higher-of pricing with respect to weekly or monthly redirect transactions is contrary to the 2003 Redirect Order. In that order, the Commission rejected Midwest ISO's higher-of pricing proposal without prejudice to Midwest ISO refiling an expanded version and explaining how potential abuse could occur.[20] Among other things, the Commission held that while the transmission owners expressed concern about potential abuse, they failed to explain how such an abuse could occur or what form it will take.[21] Here, however, as explained in the 2009 Redirect Order and above, Midwest ISO provided evidence that transmission customers were using the transmission system inefficiently with respect to weekly and monthly redirect transactions.

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[17] 2009 Redirect Order, 129 FERC ¶ 61,018 at P 29. The Midwest ISO study revealed that "parties have redirected 16.45 million MWh of energy to zero-rate transmission paths for delivery to PJM, with 89.9 percent of the redirect (or 14.69 million MWh) being unscheduled." *Id.* P 28.

[18] *Id.* P 29.

[19] Midwest ISO August 11, 2009 Filing, Transmittal Letter at 2.

[20] 2003 Redirect Order, 102 FERC ¶ 61,069 at P 12.

[21] *Id.* P 15.

16. Finally, we reject DTE Energy's argument that transmission customers should have the option of opting out of their existing long-term transmission service agreements to increase available transfer capability or to mitigate the consequences of changing long-term contracts. As the Commission previously stated, under Midwest ISO's proposed tariff revisions, "more efficient transmission reservations could occur by market participants because they would have to pay for the transmission they reserve; this, in turn, should decrease the reservations and increase the available transfer capability."[22] Moreover, pursuant to Order Nos. 888[23] and 890,[24] firm point-to-point transmission customers are permitted to voluntarily reassign all or part of their capacity to any eligible customer so as to mitigate their capacity costs as well as increase the available transfer capability for other customers.[25] Also, we are not persuaded by DTE Energy's assertion that the Commission should allow transmission customers to opt out of their existing service agreements because they relied on redirect provisions in the Tariff that existed when they entered into their service agreements. A transmission service agreement under an open access transmission tariff permits a transmission customer to obtain transmission service pursuant to that open access tariff on a non-discriminatory basis. A transmission customer with a transmission service agreement is not entitled to assert that the open access tariff that applies to it reflects only those terms and conditions that were effective at the time it signed its service agreement. Otherwise, different transmission customers would be receiving different transmission service depending upon when they signed their service agreements. That would defeat the purpose of an open access transmission tariff,

[22] *Id.* P 33.

[23] *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 31,696 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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).

[24] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 778, 808, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[25] Order No. 890, FERC Stats. & Regs. ¶ 31,241, App. C, Pro Forma Open Access Transmission Tariff § 23.1.

which is to make transmission service available to all transmission customers in a non-discriminatory manner.

B. Compliance Filing

1. Midwest ISO Proposal

17. Midwest ISO revises its Tariff to implement the Commission's directive in the 2009 Redirect Order to limit the applicability of Section 22.3 to short-term redirects. Midwest ISO states that the proposed revision is consistent with the definitions of short-term service used in its Tariff and the Business Practice Manuals.[26] Specifically, Midwest ISO proposes to revise Section 22.3 to state as follows:

> Notwithstanding the foregoing, if a~~the~~ modified Receipt or Delivery Point <u>is modified on a short-term basis (i.e., daily, weekly or monthly for a term less than 12 full Months) resulting</u>~~s~~ in a transmission path ("redirect path") for which the applicable transmission rate is lower than the transmission rate in effect between the original Receipt and Delivery Points ("original path"), the Transmission Customer shall pay, in addition to the amounts associated with the redirect path, an additional charge reflecting the difference in the firm transmission and applicable ancillary services rates between the original path and the redirect path for the duration its service is redirected pursuant to this Section 22.3[[27]]

18. Additionally, Midwest ISO proposes to amend Section 22.3(a) to add a crediting procedure in compliance with the Commission's directive in the 2009 Redirect Order. It states that the crediting procedure will provide a credit to the redirecting customer if the Midwest ISO resells the released transmission capacity on the original path and the path is constrained at the time of resale. Midwest ISO proposes to add the following paragraph to Section 22.3(a):

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[26] November 9 Compliance Filing, Transmittal Letter at 4.

[27] *Id.*

> **<u>Crediting Procedure</u>**
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> For purposes of this Crediting Procedure, the term "constrained path" shall mean instances where a path between a Point of Receipt and a Point of Delivery is comprised of the electrical equivalent of a single line and a single controllable device which is fully subscribed with Firm Point-to-Point Transmission Service at the time service is redirected pursuant to this Section 22.3. If all or part of the transmission capacity on the constrained path that becomes available as a result of a firm redirect originating on that path, and that capacity is subsequently resold as new firm service, the redirecting customer(s) will receive a credit on a pro-rata MWh basis. The credit shall be for the same number of MWhs that were resold on the original path and shall represent the per MWh incremental charge that was collected from the redirecting customer pursuant to this paragraph (a) of Section 22.3 of the Tariff.[[28]]

2. <u>Protests and Comments</u>

19. Affected Entities argue that they have suffered a "significant adverse financial impact" because the 2009 Redirect Order changed material terms of transmission customers' long-term firm transmission service agreements mid-contract.[29] To alleviate this adverse impact, Affected Entities propose a transitional measure to mitigate their damages. Affected Entities request that the Commission authorize a transition period such that the higher-of pricing for redirects contemplated by the 2009 Redirect Order becomes effective January 1, 2010 and not August 12, 2009, as authorized by the Commission.[30] According to Affected Entities, logistical difficulties associated with the effective date of August 12, 2009 as directed in the 2009 Redirect Order prohibited transmission customers from effectively mitigating their exposure to the new redirect pricing rules. They claim that there was much "uncertainty and confusion" surrounding the August 2009 Filings because Midwest ISO submitted two competing higher-of redirect pricing proposals. Moreover, the 2009 Redirect Order approved Midwest ISO's

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[28] *Id.* at 5.

[29] Affected Entities Comments at 2, 5.

[30] 2009 Redirect Order, 102 FERC ¶ 61,069 at P 36.

waiver of the Commission's 60-day notice requirement, such that the new redirect pricing rules became effective one day after filing. Affected Entities also note that details of the new redirect pricing rules have only recently been made available with the Midwest ISO's November 9 Compliance Filing. Overall, Affected Entities argue that the transmission customers have not had sufficient time and information to mitigate damages resulting from the new redirect pricing rules. Thus, they claim that "granting the proposed transition period would permit the Affected Entities to make informed, reasoned business decisions . . . ."[31]

20. Affected Entities also request that, for the remaining term of existing long-term firm transmission agreements, Midwest ISO define a short-term redirect as "any redirect with a duration of a single month, or any period less than a single month" and to exclude from that definition all redirect transactions that extend beyond a single monthly reservation (i.e., two or more consecutive redirects for monthly transmission service or annual redirects).[32] They state that, according to Midwest ISO, 96 percent of the inefficient redirect transactions were associated with daily redirects, not weekly or monthly redirects. In that regard, Affected Entities argue that redefining short-term redirect for the remaining term of existing long-term firm transmission agreements would curtail inefficient redirect transactions while simultaneously providing transmission customers additional flexibility to schedule redirects that have not been shown to be harmful or inefficient.[33] Affected Entities note that this flexibility would provide "equitable relief and mitigate the negative effects" that resulted from the change in transmission customers' long-term service agreements mid-contract.

21. In their request for expedited action, Affected Entities state that they have discussed their proposed transition measure with Midwest ISO. Affected Entities note that it is their understanding that Midwest ISO is capable of implementing such a measure should the Commission approve it. Affected Entities indicate that the parties involved in this proceeding are awaiting the Commission's decision regarding their proposed measure and thus seek expedited action in order to perform settlements with Midwest ISO.

22. Additionally, NRG takes issue with the crediting procedure that Midwest ISO proposes in its November 9 Compliance Filing and seeks changes. NRG claims that

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[31] Affected Entities Comments at 7.

[32] *Id.* at 8.

[33] *Id.*

Midwest ISO's proposed crediting procedure "does not adequately address the situation where the Midwest ISO has over-sold transmission service across a given flowgate interface to such a degree that redirecting transmission service away from that interface does not create additional Available Flowgate Capacity (AFC)."[34] In such situations, according to NRG, a third-party customer cannot repurchase the transmission capacity released by a transmission customer because Midwest ISO's transmission purchasing system will show negative transmission AFC available across the interface, even though released capacity is available. Thus, NRG recommends that "where Midwest ISO has oversold a particular flowgate (as evidenced by a negative AFC value) any transmission customer redirect that reduces congestion across the flowgate should be credited as if the transmission had been resold."[35]

23. Second, NRG asserts that the proposed crediting procedure is inconsistent with the Midwest ISO's AFC methodology. It contends that Midwest ISO sells firm transmission service based on AFC across a particular flowgate and not based on particular paths. However, Midwest ISO's proposed crediting procedure is a path-based program, under which transmission customer redirects that create additional AFC on a particular flowgate would receive no compensation.[36] Therefore, NRG argues that Midwest ISO should use the same methodology to credit customers for redirects. It proposes a remedy that would require Midwest ISO to credit customers based on the additional flowgate capacity they create, rather than basing any credits on a path-by-path basis.

24. NRG also contends that when flowgates are oversold, transmission owners receive revenues over and beyond the approved tariff for a particular path. Thus, NRG states that Midwest ISO's Tariff should minimize the financial incentive to oversell transmission across constrained paths. Further, NRG argues that "Midwest ISO's proposal would create an inequitable situation where the Midwest ISO would charge transmission customers redirecting transmission service away from a heavily over-sold flowgate a higher rate than the same transmission customer redirecting service from a flowgate that is only slightly constrained."[37] NRG argues that the latter transmission customer should not be charged a lower rate than what the former would be charged.

[34] NRG Supplemental Protest at 2.

[35] *Id*. at 3.

[36] *Id.* at 4.

[37] *Id.*

3. **Midwest ISO Answer**

25. Midwest ISO responds that NRG's request to modify the crediting procedure should be rejected because NRG's arguments are without merit and lack understanding about how Midwest ISO sells firm point-to-point transmission service.[38] Midwest ISO states that it does not oversell transmission service. Midwest ISO explains that:

> [i]n the Midwest ISO, transmission service requests (TSRs) are evaluated in accordance with the Tariff and applicable [North American Electric Reliability Corporation] and [North American Energy Standards Board] standards, i.e., at the time of submittal and on a path basis. If sufficient transfer capability exists on a path at the time of submittal, the TSR is approved. Otherwise, it is denied.[[39]]

Midwest ISO indicates that there are instances when an AFC on a particular path may become negative at a particular point in time; however, this simply reflects changing system conditions,[40] not that Midwest ISO has oversold transmission service or that it has presold the capacity that would have been created by the transmission customer redirecting its service in advance.[41] Thus, the Midwest ISO asserts that there is no basis for NRG's proposal for negative AFC reduction credits.

26. According to Midwest ISO, NRG incorrectly argues that Midwest ISO sells firm transmission service based on the AFC across a particular flowgate and not based on particular paths. While Midwest ISO uses its AFC methodology to calculate transfer capability on a particular path, Midwest ISO states that firm point-to-point transmission service is defined as transmission service "that is reserved and/or scheduled between specified Points of Receipt and Points of Delivery,"[42] and it is sold on a path basis.

[38] Midwest ISO Answer at 5.

[39] *Id.*

[40] The Midwest ISO notes that "as a result of various system condition changes, such as, for example, transmission outages, generation outages, load changes and loop flows from neighboring transmission providers, AFC on a particular flowgate could become negative at a particular point in time after service is granted, including at the time of the redirect." *Id.* at 6.

[41] *Id.*

[42] *Id.*

Consequently, according to Midwest ISO, it does not sell transmission capacity on a flowgate-by-flowgate basis and it considers the entire path in evaluating a transmission service request. Therefore, Midwest ISO contends that its crediting procedure correctly reflects how Midwest ISO sells transmission service. Moreover, Midwest ISO argues that its crediting procedure is consistent with the Commission's directives in Order No. 890.[43]

27. Furthermore, Midwest ISO argues that, contrary to NRG's assertions about rate differentials among transmission customers, the rate differential is based on pricing zones and is a function of the Midwest ISO's zonal pricing method. Midwest ISO explains that prices are not set by flowgates, but are set by transmission costs eligible for recovery, in accordance with Attachment O of its Tariff.

4. Commission Determination

28. As stated above, in the 2009 Redirect Order, the Commission directed Midwest ISO to revise its Tariff language to reflect that the revisions in Section 22.3 would only apply to short-term redirects. The Commission also required Midwest ISO to include a crediting procedure in its Tariff to provide a credit to the redirecting transmission customer if Midwest ISO resells the released capacity on the original path and the path is constrained at the time of resale. We find that Midwest ISO's proposed revisions in the November 9 Compliance Filing comply with the 2009 Redirect Order and, therefore, we will accept Midwest ISO's proposed modifications to Section 22.3 of the Tariff.

29. We reject Affected Entities' arguments for a transitional measure as beyond the scope of this compliance filing. The only issue presented by this compliance filing is whether Midwest ISO has complied with the Commission's directives in the 2009 Redirect Order. Affected Entities do not argue that Midwest ISO failed to comply with the 2009 Redirect Order. Affected Entities' request for a transition period with an effective date of January 1, 2010 and to redefine short-term redirects should have been raised as a rehearing to the 2009 Redirect Order. In any event, we see no reason to perpetuate any inefficiencies of the transmission system with a transition period as requested by the Affected Entities. As the Commission stated in the 2009 Redirect Order, it is necessary to correct the inefficient use of the transmission system as soon as possible "to protect the integrity of the market."[44]

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[43] *Id.* at 7.

[44] *Id.* P 34. In the 2009 Redirect Order, we accepted Midwest ISO's proposal, to be effective August 12, 2009.

30. With regard to NRG's arguments regarding the proposed crediting procedure, we find that NRG has misconstrued Midwest ISO's sale of firm point-to-point transmission service. As Midwest ISO explains, its proposed crediting procedure reflects how Midwest ISO sells transmission service, on a path basis, rather than on a flowgate-by-flowgate basis, as NRG contends. Thus, we agree with Midwest ISO that its proposed crediting procedure correctly reflects how it sells transmission service. We find that Midwest ISO's proposed crediting procedure is consistent with the 2009 Redirect Order's requirement to develop and implement an appropriate crediting procedure if Midwest ISO resells released capacity on the original path and the path is constrained at the time of resale.

The Commission orders:

(A) DTE Energy's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Midwest ISO's compliance filing is hereby accepted, to be effective August 12, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.