

Midwest ISO Tariff.³ The Commission rejected the proposal, without prejudice, finding that Midwest ISO had not provided adequate support for the proposed tariff revisions.

4. In addition, it found that Midwest ISO Transmission Owners (Midwest ISO TOs) failed to explain how the existing tariff revisions could result in market abuses and what form such abuse could take.⁴ The Commission explained that while it had accepted “higher of” pricing for non-firm redirects for Midwest ISO and others, it had not accepted “higher of” pricing for redirects on a firm basis.⁵

II. Description of Filing

5. On August 4, 2009 (August 4 Filing), Midwest ISO filed to amend section 22.3 of its Tariff so that when redirects on a firm basis result in a transmission path,

for which the applicable transmission rate is zero, the Transmission Customer shall pay the transmission and ancillary services rates in effect between the original Receipt and Delivery Points for the duration its service is redirected pursuant to this section 22.3.[⁶]

6. Midwest ISO’s proposed tariff revisions in the August 4 Filing were based on its belief that the current tariff language is flawed and has resulted in market inefficiencies. Midwest ISO argues that the existing section 22.3 permits transmission customers to escape paying their firm point-to-point transmission rate by parking their reservations on a zero-rate transmission path for delivery to PJM during periods when the original firm point-to-point reservations are not needed. Midwest ISO states 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.”

7. According to a study performed by Midwest ISO, from January 1, 2008, to June 30, 2009, firm redirects to PJM involved 16.45 million megawatt-hours (MWh) of energy, with 89.9 percent of the redirects (or 14.69 million MWh) being unscheduled. In that same time period, unscheduled firm redirects accounted for only 24 percent of all

³ *Midwest Independent Transmission System. Operator, Inc.*, 102 FERC ¶ 61,069, at P 12 (Redirect Order), *reh’g denied*, 103 FERC ¶ 61,217 (2003) (Redirect Rehearing Order).

⁴ Redirect Order, 102 FERC ¶ 61,069 at P 15.

⁵ *Id.* P 12.

⁶ *See* August 4 Filing, Transmittal Letter at 4.

firm redirects to non-PJM sinks.⁷ Midwest ISO's study also revealed that all of the unscheduled firm redirects were short-term redirects (daily, weekly, or monthly), with 96 percent of them being daily redirects. Midwest ISO estimates that these unscheduled reservations to PJM resulted in transmission customers avoiding transmission service payments totaling transmission revenues of over \$39 million for the eighteen-month period from January 1, 2008 through June 30, 2009.⁸ According to Midwest ISO, this practice results in market inefficiencies, including transmission capacity hoarding, improper decreases in available long-term firm transmission capacity, artificial reductions in available daily firm capacity, operational inefficiencies, and lost transmission revenues.

8. On August 11, 2009, Midwest ISO filed to supersede the August 4 Filing (August 11 Filing). Midwest ISO states that, in response to the August 4 Filing, parties began engaging in the same practices on other low-costs paths, and therefore Midwest ISO now believes that "a more expansive remedy may be required to correct the tariff flaw."⁹ According to Midwest ISO, the day after Midwest ISO submitted its August 4 Filing it experienced a "disproportionately" high number of firm redirects to its next lowest-rate sink, the Indianapolis Power and Light Company (IPL) sink. No firm redirect requests for the IPL sink were received for August 3, 2009, the day before the August 4 Filing was made.¹⁰ On August 4 and August 5, Midwest ISO states that 1.56 million MWh were redirected to the IPL sink on a firm basis, with 99 percent of that amount redirected from the PJM interface and other "out" interfaces.¹¹

9. Accordingly, Midwest ISO proposes in the August 11 Filing to expand the scope of its proposed Tariff revision to apply to all redirects:

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

⁷ Affidavit of Joseph J. Gardner, at 7-8 ("Gardner Affidavit").

⁸ Gardner Affidavit at 8.

⁹ See August 11 Filing, Transmittal Letter at 2.

¹⁰ Supplemental Affidavit by Joseph J. Gardner, at 3:16-3:19.

¹¹ All of these confirmed redirects were short-term (daily, weekly, or monthly).

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.^[12]

10. Midwest ISO requests that the Commission accept the Tariff revisions proposed in the August 11 Filing and retain the August 5, 2009 effective date proposed in the August 4 Filing.¹³ Alternatively, in the event the Commission declines to make the proposed amendment effective as of August 5, 2009, Midwest ISO requests that it be made effective on August 12, 2009. Midwest ISO requests that if the Commission declines to accept the proposed amendment in the August 11 Filing the Tariff revisions proposed in the August 4 Filing be accepted as just and reasonable.

III. Notice of Filings

11. Notice of the August 4 Filing was published in the *Federal Register*, 74 FR 40579 (2009), with interventions, protests, and comments due on or before August 25, 2009. Notice of the August 11 Filing was published in the *Federal Register*, 74 FR 42066 (2009), with interventions, protests, and comments due on or before September 1, 2009. The Illinois Commerce Commission filed a notice of intervention. Timely motions to intervene were filed by Constellation Energy Commodities Group, Inc., Consumers Energy Company, Detroit Edison Company, and the Electric Power Supply Association. Timely motions to intervene and protests or comments were filed by Midwest ISO TOs,¹⁴

¹² See August 11 Filing, Transmittal Letter at 3.

¹³ *Id.* at 2.

¹⁴ Midwest ISO TOs for this filing consist of: Ameren Services Company, American Transmission Company LLC, American Transmission Systems, Incorporated, City of Columbia Water and Light Department (Columbia, MO), City Water, Light & Power (Springfield, IL), Duke Energy Business Services, LLC, Great River Energy, Hoosier Energy Rural Electric Cooperative, Inc., Indiana Municipal Power Agency, Indianapolis Power & Light Company, International Transmission Company, ITC Midwest LLC; Michigan Electric Transmission Company, LLC, Michigan Public Power Agency, Montana-Dakota Utilities Company, Northern Indiana Public Service Company, Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, Northwestern Wisconsin Electric Company, Otter Tail Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Company, Southern Minnesota Municipal Power Agency, Wabash Valley Power Association, Inc., and Wolverine Power Supply Cooperative, Inc.

American Municipal Power, Inc. (American Municipal), and Madison Gas & Electric Company, et al. (Midwest ISO TDUs),¹⁵ NRG Companies (NRG), Cargill Power Markets LLC (Cargill), DTE Energy Trading, Inc. (DTE Energy), and ALLETE, Inc. (ALLETE). On September 8, 2009, Manitoba Hydro filed a motion to intervene and protest out of time. On September 18, 2009, Potomac Economics, Ltd. (Potomac Economics) filed a motion to intervene and comment out of time. On September 17, 2009, Midwest ISO filed an answer to the protests and comments. On September 30, 2009, Cargill filed an answer to Midwest ISO's answer. On October 1, 2009, ALLETE filed an answer to Midwest ISO's answer, and DTE Energy filed an answer to Midwest ISO's answer and a motion to reject Potomac Economics' motion to intervene out of time.

A. Protests

12. ALLETE and DTE Energy argue that Midwest ISO has not justified its claims of gaming.¹⁶ ALLETE asserts that Midwest ISO has not provided sufficient evidence that all firm redirects to lower cost sinks are examples of hoarding by specific customers, and issues of hoarding should be addressed on a case-by-case basis.¹⁷ DTE Energy questions Midwest ISO's study method by claiming that Midwest ISO failed to compare activity in the 18-month period with any other period to determine whether the practices are in fact unusual or whether they are instead part and parcel of ordinary redirect transaction activity.¹⁸ DTE Energy suggests that any pattern of behavior regarding the exercise of redirect rights is likely due to secular, temporary changes in price differences between regional markets.¹⁹ Cargill and NRG argue that the ability to redirect long-term transmission service to lower cost points of delivery is a legitimate business tool that NRG and other load serving entities use to reduce costs to end-use customers. They also disagree with Midwest ISO that redirecting a firm point-to-point transmission reservation on a short-term basis is improper.²⁰ Cargill maintains that there is no Commission rule,

¹⁵ In addition to Madison Gas & Electric Company, the Midwest ISO TDUs consists of the Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and WPPI Energy.

¹⁶ ALLETE Protest at 17; DTE Energy Protest at 8.

¹⁷ ALLETE Protest at 17-18.

¹⁸ DTE Energy Protest at 14-16.

¹⁹ *Id.* at 15.

²⁰ Cargill Protest at 16; NRG Protest at 6.

filing, or business practice that mandates that a reservation must be scheduled or that redirecting to a new path to take advantage of a real-time business opportunity is improper and that there is no redirect loophole as Midwest ISO claims.²¹

13. ALLETE, NRG, Cargill, and DTE Energy argue that Midwest ISO's proposal provides no cost support, violates Commission ratemaking policies, and represents a rate increase that will result from the application of "higher of" pricing to firm redirects.²² ALLETE argues that Midwest ISO's tariff revisions violate cost causation principles, result in over-recovery of revenues, and reinstitute rate pancaking between Midwest ISO and PJM.²³ DTE Energy argues that Midwest ISO fails to distinguish this case satisfactorily from previous Commission precedent in which the Commission rejected outright in 2003 a similar attempt by Midwest ISO to implement a rate increase in the form of "higher of" firm redirect pricing.²⁴

14. ALLETE argues that Midwest ISO's proposed tariff revisions establish a rate for firm redirect customers that would be arbitrarily set depending on the price for the service that a customer previously received, i.e., the rate for transmission service over the transmission customer's original path, a path over which the customer no longer holds a reservation for the amount of capacity.²⁵ DTE Energy and Cargill argue that Midwest ISO's proposal improperly discriminates against redirecting customers because firm redirects to a lower cost path will result in a higher charge to the redirecting customers as compared to the customer taking new service on the same lower cost path during the same period.²⁶ ALLETE and Manitoba Hydro believe that the proposed changes unfairly lump all redirecting customers, both "short-term" and "long-term," in the same category of transmission customers.²⁷

15. ALLETE believes that section 22.3, as revised, inappropriately incorporates an assumption that all market participants that redirect to lower-priced paths are engaging in capacity hoarding, something that ALLETE maintains is unsupported and inappropriately

²¹ *Id.* at 16.

²² ALLETE Protest at 14-15; Cargill Protest at 12-13; DTE Energy Protest at 13-5.

²³ ALLETE Protest at 14.

²⁴ DTE Energy Protest at 1-2.

²⁵ ALLETE Protest at 15.

²⁶ DTE Energy Protest at 21-22; Cargill Protest at 11.

²⁷ ALLETE Protest at 18; Manitoba Hydro at 4.

targets market participants that legitimately seek to redirect their capacity.²⁸ Cargill maintains that if one transmission customer can obtain short-term service on a redirected path, other transmission customers can obtain the same service on the original path if they so choose. It adds that, the economics of a transaction can change, and the *pro forma* Open Access Transmission Tariff (OATT) allows customers to take advantages of business opportunities that develop.²⁹ NRG states that the flexibility of redirecting to a zero-cost delivery point has substantially reduced the costs of serving its end-use customers. It maintains that it entered into a long-term transmission purchase because it believed it would be able to redirect service to a lower-cost delivery point when delivering power was not economic.³⁰

16. Cargill and DTE Energy argue that Midwest ISO's proposed Tariff revisions would result in less firm available transfer capability.³¹ According to Cargill, if a transmission customer redirects on a firm basis to the PJM sink transmission path, the transmission customer will still be required to pay the original point-to-point rate. DTE Energy believes that instead of exercising redirect rights under the current Tariff language, under the proposed Tariff language transmission customers would submit a new request for transmission service, thus the proposed Tariff revisions would encourage dual reservations and decrease available transfer capability.³² DTE Energy further argues that when a transmission customer redirects transmission, the available transfer capability on the original path is freed up and can be resold, thus undermining Midwest ISO's argument that capacity cannot be resold.³³

17. ALLETE argues that Midwest ISO has not explained why its proposal concerning the PJM zero cost sink does not reintroduce rate pancaking for firm transmission service

²⁸ ALLETE Protest at 18.

²⁹ Cargill Protest at 4.

³⁰ NRG Protest at 6-8.

³¹ Cargill Protest at 14; DTE Energy Protest at 13.

³² DTE Energy Protest at 22.

³³ *Id.* at 13.

sinking in PJM,³⁴ something ALLETE states the Commission was attempting to eliminate in its orders on Midwest ISO and PJM regional through and out rates.³⁵

18. DTE Energy, ALLETE, and NRG argue that if the Commission does not accept their legal arguments, it should grandfather their existing reservations or otherwise exempt them from Midwest ISO's proposal.³⁶ NRG also proposes that the Commission institute a one-time annulment option as an alternative.³⁷ These parties argue that they entered into their firm transactions in reliance on Midwest ISO's existing redirect rules, and it would be inequitable to deprive them of the benefits of their bargain. Cargill argues that just as transmission customers are subject to rate changes that are filed during their term of service, transmission providers are subject to the *pro forma* OATT's redirect rules, and their associated pricing variability for different paths, which provides transmission customers with the flexibility to choose which path on the relevant transmission system is the most cost-effective for potential business transactions.³⁸

19. Cargill, ALLETE, and DTE Energy argue that Midwest ISO failed to vet the new pricing methodology through any type of meaningful stakeholder process or to notice the proposal before submitting it to the Commission.³⁹ ALLETE further argues that the lack of stakeholder involvement has led to many of the substantive flaws in the proposal, which dramatically alters the economic expectations of market participants who made decisions based on Tariff provisions that Midwest ISO now proposes to change with no advance notice or discussion.⁴⁰

20. ALLETE, Cargill, and NRG argue that if the Commission does not reject Midwest ISO's filings altogether, it should deny Midwest ISO's requested August 5, 2009 effective date.⁴¹ ALLETE maintains that Midwest ISO has failed to justify waiver

³⁴ ALLETE Protest at 16.

³⁵ See *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105, *order on reh'g*, 105 FERC ¶ 61,212 (2003) (RTOR Orders).

³⁶ DTE Energy Protest at 24-25; ALLETE Protest at 24-25; NRG Protest at 8-10.

³⁷ NRG Protest at 6 and 10.

³⁸ Cargill Protest at 14-16.

³⁹ ALLETE Protest at 11-12; Cargill Protest at 16; DTE Energy Protest at 20.

⁴⁰ ALLETE Protest at 1-2.

⁴¹ ALLETE Protest at 20-23; Cargill Protest at 17-19; NRG Protest at 11.

of the standard 60-day notice period, and that granting the August 5, 2009 effective date would result in retroactive ratemaking.⁴² Cargill asserts that it and other transmission customers had no reasonable notice that Midwest ISO would almost immediately propose to apply “higher of” pricing to all firm redirects. It states that many customers who redirect on a firm basis will face significant rate increases, particularly those currently redirecting firm service to the PJM sink.⁴³

B. Comments in Support

21. American Municipal, Midwest ISO TDUs, Midwest ISO TOs, and Potomac Economics support the revisions to section 22.3 and argue that the existing firm redirect procedures are flawed and allow opportunistic transmission customers to avoid transmission costs improperly.⁴⁴ Potomac Economics asserts that the current rules provide holders of firm transmission reservations with a zero-cost option to schedule transmission.⁴⁵ The Midwest ISO TOs argue that Midwest ISO has provided ample evidence of gaming that shows the need for reform.⁴⁶

22. In support of Midwest ISO’s proposed Tariff revisions, Potomac Economics asserts that Midwest ISO’s proposed tariff revisions will not result in rate pancaking because firm transmission customers will incur no incremental costs associated with redirecting their firm service unless the new path has a higher cost than the original path.⁴⁷ The Midwest ISO TOs support the proposed Tariff revisions and believe that the Tariff’s current “flawed” language results in an unjust and unreasonable distortion of transmission revenues.⁴⁸ The Midwest ISO TOs also argue that the proposed revisions are consistent with previous Commission orders on Midwest ISO’s pricing of redirect service and therefore should be accepted.⁴⁹

⁴² ALLETE Protest at 21.

⁴³ Cargill Protest at 17.

⁴⁴ American Municipal Comments at 4; Midwest ISO TDUs at 3; Midwest ISO TOs at 3-6; Potomac Economics at 9.

⁴⁵ Potomac Economics Comments at 4.

⁴⁶ Midwest ISO TO Comments at 6.

⁴⁷ Potomac Economic Comments at 6.

⁴⁸ Midwest ISO TOs Comments at 4.

⁴⁹ *Id.* at 6.

23. Potomac Economics asserts that Midwest ISO's proposal is not discriminatory because no incremental costs will be borne by the existing customer who has redirected its firm transmission service to the new path.⁵⁰ The Midwest ISO TOs and the Midwest ISO TDUs also comment that under the current rules transmission revenues have been inappropriately shifted, and many market participants have avoided their responsibility for the fixed costs of the system.⁵¹

24. Potomac Economics asserts that Midwest ISO's proposal will result in more efficient transmission reservations by market participants because they will have to pay for the transmission they reserve.⁵² American Municipal asserts that current redirect practices are reducing the availability of long-term firm transmission capacity on constrained paths and improperly discounting transmission rates.⁵³

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will deny DTE Energy's motion to reject Potomac Economics' late-filed motion to intervene and will grant the late-filed motions to intervene of Potomac Economics and Manitoba Hydro given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

26. 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 are not persuaded to accept the answers filed in this proceeding and will, therefore, reject them.

⁵⁰ Potomac Economics Comments at 8.

⁵¹ Midwest ISO TOs Comments at 8; Midwest ISO TDUs Comments at 3.

⁵² Potomac Economics Comments at 7.

⁵³ American Municipal Comments at 4.

B. Commission Determination

27. We will conditionally accept Midwest ISO's proposed tariff revisions, subject to modification, to become effective August 12, 2009. As discussed below, we find Midwest ISO's proposed revisions to be just and reasonable.

28. In the Redirect Order, the Commission rejected Midwest ISO's proposal for "higher of" pricing without prejudice to Midwest ISO refiling an expanded version and explaining how potential abuse could occur. Midwest ISO has now shown 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 redirects (or 14.69 million MWh) being unscheduled. Further, Midwest ISO's study reveals that all of the unscheduled firm redirects were short-term redirects (daily, weekly, or monthly).

29. Certain transmission customers have essentially used the Tariff to avoid paying transmission costs associated with their initial transmission reservations. 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. Moreover, no party has alleged that it will be deprived of the opportunity to engage in a legitimate redirect transaction; each protest is limited to a concern that the party will no longer be able to redirect at a zero or lower rate and thereby avoid paying transmission costs. Thus, Midwest ISO's proposed tariff revisions to eliminate this practice, as modified below, are just and reasonable.

30. However, Midwest ISO has presented evidence of market inefficiencies only with respect to "short-term" redirects. Thus, we will require Midwest ISO to submit revised tariff language in a compliance filing to be submitted within 30 days of the date of this order, reflecting that the proposed language in section 22.3 is only applicable to short-term redirects.

31. Moreover, because we are limiting the revised tariff language to short-term firm redirects, Midwest ISO would not over-recover its costs since all short-term firm service is revenue credited on an annual basis to the transmission owners' transmission revenue requirement. However, because market participants continue to pay the transmission rate on the original path, we will require 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. Midwest ISO must submit these revisions in a compliance filing to be filed within 30 days of the date of this order.

32. We disagree with protesters' arguments that the proposed tariff revisions discriminate between redirecting market participants and market participants seeking new service. Redirecting customers have the option of requesting new service, instead of redirecting existing reservations, and paying the same rate as other customers reserving

new service. Further, contrary to protesters' arguments, Midwest ISO's proposed revisions do not reintroduce rate pancaking. As Potomac Economics explains, Midwest ISO's revisions do not result in rate pancaking for reservations to PJM because customers will not incur any incremental costs associated with a redirect unless the cost of the new path is higher than the cost of the original path. In addition, market participants that wish to serve load in PJM at the zero rate are free to do so pursuant to a new firm point-to-point transmission service reservation.

33. We are not persuaded by Cargill's and DTE Energy's assertions that the proposed Tariff revisions would result in less firm available transfer capability. We agree with Potomac Economics that under Midwest ISO's proposal 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.⁵⁴

34. We also conclude that grandfathering existing reservations or instituting a one-time annulment option is not appropriate. We have found that certain market participants are taking advantage of the Tariff and that it is necessary to correct this behavior as soon as possible to protect the integrity of the market. However, we note that we have limited Midwest ISO's proposal to short-term redirects, and all other market participants will continue to be able to redirect as they have in the past.

35. While the Commission prefers that revisions to Midwest ISO's Tariff be vetted through the stakeholder process, we have not required this in every case.⁵⁵ Here, Midwest ISO explained that there was an urgent need for the proposed tariff revisions to correct a problem and we are convinced that quick action to address that problem is needed. Indeed, the market behavior that occurred following the August 4 Filing emphasizes the impracticality of proceeding through the stakeholder process.

36. We will grant Midwest ISO's request to waive the 60-day prior notice of filing requirement. Here, we agree with Midwest ISO that failure to accept the revision and make it effective promptly could perpetuate inappropriate redirect practices.⁵⁶ Thus, we

⁵⁴ Potomac Economics Comments at 7.

⁵⁵ See *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,278 (2006).

⁵⁶ *California Independent System Operator (CAISO)*, 111 FERC ¶ 61,008 (2005) (accepting interim solution to the problem of Scheduling Coordinators causing CAISO to incur excessive costs as a result of the manner in which import and export bids from system resources are cleared and settled, effective one day after filing); *ISO New England Inc.*, 112 FERC ¶ 61,301 (2005) (accepting effective date one day after filing market rule
(continued...))

will grant the requested waiver and allow the tariff revisions to become effective on August 12, 2009, which is one day after Midwest ISO's amended filing.⁵⁷

The Commission orders:

(A) The Midwest ISO's proposed tariff revisions are hereby conditionally accepted for filing, to become effective August 12, 2009, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to submit 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

changes to correct a market rule flaw to reduce the number of minimum generation Emergencies and to provide more incentive for generators to follow ISO-NE's dispatch instructions during minimum generation emergencies)

⁵⁷ 16 U.S.C. § 824d (2006) (authorizing the Commission to allow changes to become effective on less than 60-days' notice to the Commission). Contrary to arguments raised by certain parties, this is a waiver of prior notice matter and not a retroactive ratemaking or filed rate matter.