

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Midwest Independent Transmission System Operator, Inc. Docket Nos. ER02-2595-005

ORDER ON REHEARING

(Issued April 15, 2005)

Introduction

1. In this order we address the requests for rehearing and clarification filed in response to the order in *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,235 (2004) (Schedule 16/17 Order). The Schedule 16/17 Order addressed the paper hearing, concerning the appropriate allocation of costs that Midwest ISO incurs in developing and operating a market-based congestion management system, established in *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002) (Paper Hearing Order), *reh'g denied*, 103 FERC ¶ 61,035 (2003) (Paper Hearing Rehearing Order).¹ As discussed below, we will deny the request for rehearing.
2. This order benefits customers because it ensures that the charges for recovery of costs associated with developing and operating a market-based congestion management system align cost responsibility with the benefits received.

¹ The Paper Hearing Order, among other things, directed the parties to address in the paper hearing: (1) the benefits received and costs caused by each customer class for the services associated with Midwest ISO's market-based congestion management system; (2) the appropriate billing determinants for the charges to recover Midwest ISO's costs of administering those services; and (3) the allocation of the exit fees. *See* Paper Hearing Order, 101 FERC ¶ 61,221 at P 44.

Background

3. The Paper Hearing Order addressed the September 5, 2002, proposed rate filing made by Midwest ISO. The September 5 Filing included two new rate schedules to be added to Midwest ISO's open access transmission tariff (OATT). The proposed rate schedules, designated as Schedules 16 and 17, respectively provided for the collection of costs that Midwest ISO incurs to provide Financial Transmission Rights (FTRs), and establish and implement within its footprint day-ahead and real-time energy markets (Energy Markets). The September 5 Filing did not include a detailed description of the services to be provided.

4. The Paper Hearing Order, among other things, directed Midwest ISO to participate in a paper hearing in order to justify the appropriate billing determinants and exit fees. While the paper hearing was pending before the Commission, on July 25, 2003, Midwest ISO filed a proposed Open Access Transmission and Energy Markets Tariff (TEMT) (July 25 Proposal) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000). The July 25 Proposal included terms and conditions necessary to implement a day-ahead energy market, a real-time energy market and FTRs. The July 25 Proposal was protested. Many of the protesters alleged that the filing was incomplete and premature. Following a stakeholder vote, Midwest ISO filed a motion to withdraw the July 25 Proposal.

5. The Commission granted the motion to withdraw the July 25 Proposal and provided, on an advisory basis, guidance on a number of issues raised in that filing.² After receiving guidance from the Commission, on March 31, 2004, Midwest ISO filed another proposed TEMT pursuant to section 205 of the FPA (March 31 Filing). The proposed TEMT contained the terms and conditions necessary to implement Energy Markets, including a day-ahead energy market and real-time energy market with a market for FTRs. The Energy Markets would incorporate centralized security-constrained economic dispatch with locational marginal pricing (LMP) and market mitigation based on conduct and impact thresholds. In the March 31 Filing, Midwest ISO stated that it would be unable to operate its Energy Market without integrating about 300 pre-OATT grandfathered agreements (GFAs) that are currently effective in the Midwest ISO region.³

² See *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,145 (TEMT I Order), *reh'g dismissed*, 105 FERC ¶ 61,272 (2003) (TEMT I Rehearing Order).

³ See *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004) (Procedural Order). In the Procedural Order the Commission, among

6. On August 6, 2004, the Commission conditionally accepted the proposed TEMT, subject to conditions and further orders on GFAs and Schedules 16 and 17. It was in this docket that the parties fully developed the record concerning the type of services that Midwest ISO proposed to provide under Schedules 16 and 17.⁴

7. Concurrently with the Schedule 16/17 Order, the Commission issued an order that addressed the treatment of transactions under GFAs in the Midwest ISO Energy and FTR Markets.⁵

Rehearing Requests

8. Dairyland Power Cooperative (Dairyland) requests rehearing of the Commission's determination in the Schedule 16/17 Order that Midwest ISO's Energy Markets will benefit all transmission customers. Dairyland also requests rehearing of the decision to assess Schedule 17 charges to entities that: (1) self-schedule their generation to serve their loads, (2) are parties to bilateral contracts, or (3) are parties to GFAs.

other things, initiated, under section 206 of the FPA, 16 U.S.C. § 824e (2000), a three-step process to address the treatment of transmission service provided under the GFAs in Midwest ISO's region and offered an option for GFA parties to settle.

⁴ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004) (TEMT II Order).

⁵ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order). In the GFA Order, the Commission addressed the results of its investigation of the GFAs and how they should be treated in Midwest ISO's Energy Markets. Among other things, the GFA Order divided the GFAs into several categories, with differing consequences for their treatment. The GFA Order required Midwest ISO to carve some of the GFAs out of its markets and accepted the tariff sheets that described the prospective treatment of GFAs. The GFA Order also addressed the applicability of Schedule 16 charges and Schedule 17 charges to transactions taking place under GFAs. For a more detailed discussion of the GFA Order see the order on rehearing of the GFA Order (GFA Rehearing Order) being issued concurrently in Docket No. ER04-691-001, *et al.*

9. The Midwest TDUs⁶ filed a request for rehearing or clarification in this docket and the GFA Order dockets. The Midwest Municipal Transmission Group and the Central Minnesota Power Agency (MMTG) also filed requests for rehearing or clarification in the instant proceeding and the GFA Order dockets. The Midwest TDUs' and MMTG's requests raise issues that are relevant to the GFA Order dockets and will be addressed in the GFA Rehearing Order that is being issued contemporaneously.

Discussion

Scope of Paper Hearing

Dairyland's Rehearing Request

10. Dairyland asserts that the Commission's decision to permit Midwest ISO to assess Schedule 17 charges to entities that self-schedule their generation to serve their loads, that utilize bilateral contracts, or that utilize GFAs is outside the scope of issues set for hearing. According to Dairyland, "[t]he purpose of the paper hearing . . . was expressly limited only 'to determine the appropriate cost allocations (*e.g.*, billing determinants) for these services and the appropriate exit fee for transmission owners that withdraw from Midwest ISO under certain circumstances.' (footnote omitted) The paper hearing was not opened for the purpose of determining whether the benefits of the proposed energy markets exceeded the costs of implementing the proposed energy markets."⁷ Dairyland asserts that because of the Commission's language, it did not have adequate notice to prepare evidence and arguments that would address the issues concerning the benefits of this service to all Midwest ISO customers.

⁶ The Midwest TDUs are: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities and Wisconsin Public Power Inc.

⁷ See Dairyland Rehearing Request at 4, *quoting*, Paper Hearing Order, 101 FERC ¶ 61,221 at P 1.

Commission Determination

11. The scope of the paper hearing was not limited as Dairyland asserts. Intervenors responded to Midwest ISO's initial filing in this proceeding by objecting to, among other things, the application of Schedule 17 charges to: (1) bilateral contracts,⁸ (2) generators who inject power into the Transmission System, and (3) self-scheduling entities that do not plan to transact through the Midwest ISO markets.⁹ The Commission responded to these objections by stating:

We find that the proposed billing determinants raise important issues that cannot be resolved based on the information presented. . . . [W]e believe, a "paper" hearing will allow us to make such determinations (footnote omitted) and we will order such a hearing below. While the parties may address any issue that they believe would assist the Commission in making the policy decision concerning the appropriate billing determinants, we direct the parties to address for each customer class, the benefits received and the degree of cost causation generated by each class for these services.¹⁰

12. Thus, the purpose of the paper hearing with respect to the proposed Schedule 17 charges was to determine the just and reasonable allocation of Schedule 17 costs among customer classes, including, among others, parties to bilateral contracts, generators who inject power into the Transmission System, and self-scheduling entities that do not plan to transact through the Midwest ISO markets. Furthermore, several parties, including Dairyland, filed initial comments, briefs, and reply briefs challenging the concept that self-scheduling entities, and those with bilateral contracts, who arrange their purchases and sales without a centralized market, should also bear the cost of the market structure.¹¹

⁸ See Paper Hearing Order, 101 FERC ¶ 61,221 at P 42.

⁹ See Paper Hearing Order, 101 FERC ¶ 61,221 at P 43.

¹⁰ See Paper Hearing Order, 101 FERC ¶ 61,221 at P 44.

¹¹ See Schedule 16/17 Order, 108 FERC ¶ 61,236 at P 33-42.

13. We disagree with Dairyland's argument that parties did not have notice that the issue of benefits of the Energy Markets to customers would be addressed in this proceeding. As noted above, the Paper Hearing Order explicitly directed the parties to address in the paper hearing "for each customer class, the benefits received and the degree of cost causation generated by each class for these services."¹²

14. We note further that in the March 31 Filing, Midwest ISO proposed the TEMT that addressed the issue of the assessment of Schedule 16 and 17 charges to GFA transactions.¹³ Accordingly, in the GFA Rehearing Order being issued concurrently, the Commission denies requests for rehearing of the GFA Order's findings concerning the allocation of Schedule 17 costs to GFA transactions, including requests that, like Dairyland's, argue that parties were not given notice that the allocation of Schedule 17 costs to GFA transactions was at issue in that proceeding. In the GFA Rehearing Order, the Commission finds that parties were given notice about the applicability of Schedule 16 and 17 charges to GFAs and had the opportunity to address that issue in their pleadings in that proceeding.

Evidence of Energy Market Benefits to All Customers

Dairyland

15. Dairyland argues that the record contains insufficient evidence to support the Commission's conclusion that the Energy Markets benefit all customers within Midwest ISO's footprint.¹⁴

¹² See Paper Hearing Order, 101 FERC ¶ 61,221 at P 44.

¹³ In the March 31 Filing, Midwest ISO stated that the Commission's decision in the paper hearing in Docket No. ER02-2595-000 will be incorporated into the TEMT. In addition, in the March 31 Filing, Midwest ISO proposed to assess Market Participants the charges in Schedules 16 and 17, instead of the Transmission Customers, Transmission Owners and Users as initially proposed in this proceeding. In the March 31 Filing, Midwest ISO also proposed other minor modifications to Schedules 16 and 17, clarifying definitions in the formulary rates and conforming the schedules to tariff modifications included in the TEMT.

¹⁴ Dairyland also asserts that the Commission improperly relied on a Midwest ISO report that is not in the record. See Dairyland Rehearing Request at 4, *citing*, Schedule 16/17 Order, 108 FERC ¶ 61,236 at P 44, n52.

Commission Determination

16. Dairyland has not made any arguments that have not already been considered in this proceeding. We reiterate that the testimony of Midwest ISO witness, Mr. Pfeifenberger, supported the conclusion that generators and load benefit from the Energy Markets service.¹⁵ Midwest ISO explained in its reply brief that all users of the Transmission System derive a benefit from the existence of the Energy Markets because the Energy Markets provides both an energy service (*i.e.*, spot market) and a transmission service (*i.e.*, real-time imbalance energy service and congestion management).¹⁶

17. However, as Midwest ISO's Energy Markets continued to evolve with the proposed TEMT, it was appropriate that the Commission's ultimate findings on the allocation of Schedule 17 costs in the Schedule 16/17 Order were informed by the record concerning the design of Midwest ISO's Energy Markets in the proposed TEMT, as ultimately modified and approved by the Commission. Therefore, the findings in the Schedule 16/17 Order were based, not only on the record in this proceeding, but also on the consideration of the range of economic and reliability benefits that Midwest ISO's market is designed to achieve, as enumerated in the Schedule 16/17 Order, and discussed further, below. Further proceedings at this point to quantify benefits of Midwest ISO's Energy Markets for customers generally, or individual customers, would not be worthwhile or necessary to arrive at a reasonable basis for allocating Schedule 17 costs for the commencement of Midwest ISO's Energy Markets.¹⁷

18. As discussed in the Schedule 16/17 Order, Schedule 17 is designed to recover Midwest ISO's costs of providing Energy Market services, including market modeling and scheduling, market bidding support, LMP support, market settlements and billing, and market monitoring.¹⁸ Midwest ISO's Energy Markets are designed to produce global benefits to all those transacting over the Midwest ISO grid, including a more reliable and

¹⁵ See Schedule 16/17 Order, 108 FERC ¶ 61,236 at P 31.

¹⁶ See Midwest ISO reply brief at 4.

¹⁷ The courts do not require ratemaking agencies to allocate costs with exacting precision. Rather, it is enough that the cost allocation mechanism not be "arbitrary and capricious" in light of the burdens imposed and benefits received. See *Midwest ISO Transmission Owners, et al. v. FERC*, 373 F.3d 1361, 1371 (D.C. Cir. 2004).

¹⁸ See Schedule 16/17 Order, 108 FERC ¶ 61,235 at P 29.

efficiently-used transmission grid, clear price signals for better infrastructure siting, better opportunities for demand response to participate in the markets, and price transparency, which benefits even bilateral contract formation.¹⁹

19. Under the TEMT, Midwest ISO centrally coordinates unit commitment day-ahead on a regional basis to ensure adequate resources to serve load given anticipated security constraints on the system.²⁰ In addition, in real-time, Midwest ISO centrally dispatches generation as needed to account for security constraints. Midwest ISO's centralized security-constrained unit commitment and dispatch allows Midwest ISO to take timely action to avoid anticipated security violations, and to cure such violations in the event that they occur, and largely replaces the practice of *pro rata* curtailment under the North American Electric Reliability Council (NERC) Transmission Line-Loading Relief (TLR) process in the region.²¹ The centralized security-constrained dispatch allows Midwest ISO to respond to and relieve security violations more quickly and precisely than the TLR process and will result in more efficient utilization of the transmission system, increasing the supply of competing generation available to serve load and contributing to more reliable service to all those who transact over the Midwest ISO system.²²

20. As we noted in the Procedural Order,²³ the Final Report on the August 14, 2003 Blackout (Blackout Report) finds that "the TLR procedure is cumbersome, perhaps unnecessarily so, and not fast and predictable enough for use [in] situations in which an Operating Security Limit is close to or actually being violated."²⁴ The Blackout Report recommends that TLRs should not be used in situations involving actual violation of an

¹⁹ Additionally, as Midwest ISO witness, Mr. Torgerson, stated in this proceeding, all market participants will benefit from the superior congestion management and imbalance capabilities of the Energy Markets. See Exhibit No. MISO-1, at 6.

²⁰ See Exhibit No. MISO-4 at 22-23 filed in the TEMT Filing.

²¹ *Id.* at 19-22.

²² *Id.* at 19-22.

²³ See Procedural Order, 107 FERC ¶ 61,191 at P 56.

²⁴ U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations at 163 (2004) (Blackout Report).

Operating Security Limit.²⁵ We note that Midwest ISO also states that, “no TLR mechanism could have prevented the events of August 14, 2003.”²⁶ Thus, by allowing Midwest ISO to respond to and relieve security violations more quickly and precisely, Midwest ISO’s Energy Markets represent a significant improvement over current reliability practices and will produce reliability benefits to all using Midwest ISO’s transmission system.

21. Midwest ISO’s Energy Markets will also provide price signals that will facilitate identification of cost-effective transmission system improvements that will reduce congestion and the potential for curtailments.²⁷ In addition, the TEMT will facilitate the participation of demand response, which helps to alleviate shortages, in the regional electricity market, which will also reduce the potential for curtailments, system emergencies or price spikes, due to shortages.²⁸

22. In addition, parties transacting under bilateral or self-scheduled transactions can benefit from Midwest ISO’s Energy Markets by participating in the spot markets when it is economic to do so.²⁹ Moreover, bilateral transactions will benefit in price formation aided by the transparent market prices produced by the markets that Midwest ISO will operate and monitor. Also, Midwest ISO will use its spot market to provide energy imbalance service and congestion management service to bilateral and self-scheduled transactions.

23. The situation here regarding allocation of Schedule 17 costs to bilateral transactions and self-scheduled transactions is similar to the situation we faced with respect to application of the Schedule 10 ISO Cost Adder to bundled retail and

²⁵ *Id.*

²⁶ See Exhibit No. MISO-4, at 20 filed in the TEMT Filing.

²⁷ *Id.* at 38-39.

²⁸ *Id.* at 29-31.

²⁹ For instance, Wisconsin Electric Power Company, in its January 21, 2003, response to the Paper Hearing Order request for comments, argued that Schedule 17 “must be modified to exclude charging entities for transactions that are not utilizing or derived from the market” while recognizing that “an entity self-scheduling generation to meet its load [may at some time] use the Energy Market.” WEPCO Comments at 3, 5. *See also*, Reply Brief of Public Service Commission of Kentucky at 2, 3, 11.

grandfathered wholesale transactions in Opinion Nos. 453 and 453-A. In upholding our decision in those orders that Schedule 10 charges should apply to bundled retail and grandfathered wholesale transactions, the Court of Appeals likened the issue to the court system which is largely funded by taxpayers, at great expense, even though the vast majority of taxpayers will have no contact with that system in any given year. The public nevertheless benefits from having a system for the prompt adjudication of criminal offenses and the resolution of civil cases.³⁰ It found that the Schedule 10 ISO Cost Adder covers the administrative costs of having an ISO, and, even if bundled and grandfathered wholesale loads are not in some sense using the ISO, they still get some benefit from having an ISO. The same is true with respect to the Energy Markets and the reliability and economic benefits that will emanate from those markets to all transacting over the Midwest ISO system, including bilateral transactions and self-scheduled transactions.

24. Based on the forgoing, we reiterate our findings in the Schedule 16/17 Order that Midwest ISO's Energy Markets will have both economic and reliability benefits for customers in the Midwest ISO region. Moreover, these benefits will be experienced by all transacting over the Midwest ISO grid, including parties transacting under bilateral and self-scheduled transactions. Accordingly, we reaffirm that Schedule 17 charges should be assessed on all transactions over the Midwest ISO grid, including bilateral and self-scheduled transactions.

The Commission orders:

Dairyland's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

³⁰ See *Midwest ISO Transmission Owners, et al. v. FERC*, 373 F.3d 1361, 1371 (D.C. Cir. 2004).