

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER02-290-002

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued May 21, 2003)

I. Introduction

1. In this order, we conditionally accept the compliance filing by Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and direct it to make a further compliance filing concerning the Midwest ISO's proposed Process for the Use of Network Resources Outside of the Midwest ISO and Resolving Competing Requests for Transmission Service Among Network Customers and Between Point-to-Point and Network Customers (Midwest ISO Process). This order benefits customers by clarifying the terms and conditions of the Midwest ISO's Process.

II. Background

A. The Commission's Orders

2. By order issued on September 16, 1998,¹ the Commission, among other things, required Midwest ISO to file a proposed Midwest ISO Process. By order issued on January 7, 2002, the Commission found Midwest ISO's originally proposed Midwest ISO Process to be flawed and directed Midwest ISO to make revisions.² By order issued on October 10,

¹Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 64,231 (1998) (September 16 Order) (conditionally authorizing the establishment of the Midwest ISO and conditionally accepting the Midwest ISO Tariff for filing).

²Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,106

(continued...)

2002,³ the Commission rejected Midwest ISO's compliance filing, which consisted of a revised Midwest ISO Process, and directed a further compliance filing. In the October 10 Order, the Commission found that the proposal failed to adequately explain how it would impact the ongoing rights of network customers to transmission capacity. The October 10 Order further found that Midwest ISO had failed to eliminate the proposal's requirement for designation of Network Resources in order to establish a queue position for network customers that have submitted long-term load and resource plans. The October 10 Order thus rejected Midwest ISO's compliance filing as not in compliance with the September 16 and January 7 Orders and directed Midwest ISO to make a new compliance filing. Further, the Commission provided guidance, stating:

The Commission has previously addressed Network Resource designations. With respect to network service, the Commission has found that a transmission provider (itself a network customer) was not required to obtain Network Resources for future load growth at the time of the initial network forecast; but such transmission capacity had to be made available to other customers in the interim (*i.e.*, before such capacity was needed to serve native load). The Commission has found that a reservation (by a network customer) does not require designation of a Network Resource. Moreover, a network customer has a right to capacity as long as its native load growth is reasonably forecasted and is supported by a reasonable plan for Network Resources to meet that native load growth.^[4]

B. Midwest ISO's Compliance Filing

3. In response to the October 10 Order, on November 12, 2002, Midwest ISO submitted a revised Midwest ISO Process as Attachment U to the Midwest ISO Open Access Transmission Tariff (Midwest ISO OATT). Midwest ISO states that its compliance filing explains how the Midwest ISO Process impacts the ongoing rights of network customers to transmission capacity and removes the requirement for the designation of Network Resources in order to establish a queue position for transmission service.

²(...continued)
(2002) (January 7 Order).

³Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,030 (2002) (October 10 Order).

⁴101 FERC ¶ 61,030 at P 13 (footnotes omitted).

4. With respect to how the proposed Midwest ISO Process will impact the ongoing rights of network customers to transmission capacity, Midwest ISO states as follows:

Specifically, the revised Midwest ISO Process states that, when evaluating requests for firm point-to-point transmission service, the Midwest ISO will make transmission capacity available to point-to-point transmission service customers until such time as that capacity is needed to serve existing network customer load. In this situation, the determination of available capacity will be based on the annual submittals by network customers of forecasted network load and forecasted Network Resources ("FNRs"). If at the time of a request for new firm point-to-point transmission service the Midwest ISO determines that sufficient capacity will not be available to accommodate both the forecasted load growth of existing network customers and the new request for point-to-point transmission service, the transmission service agreement for the point-to-point transmission service request will reflect this limitation to the roll-over rights of the new service.^{5]}

5. Further, Midwest ISO states that it has revised the Midwest ISO Process to eliminate the requirement for network customers to designate a Network Resource in order to establish a queue position for network customers that have submitted long-term load and resource plans. It further states, "[i]n an effort to allow the Midwest ISO to make capacity that is not immediately needed to serve network customer load from FNRs available to customers on a short-term basis, the Midwest ISO is requesting that network customers designate any Network Resources that will be used within the next twelve (12) months."⁶

6. Midwest ISO also proposes to clarify the process used to resolve competing requests for transmission service among network customers by adding a new section intended to address a situation in which there is insufficient capacity to meet the annually changing forecasted needs of network customers in conjunction with the ongoing rights

⁵Midwest ISO's Transmittal Letter at 3.

⁶Id.

of existing firm point-to-point transmission service customers. Midwest ISO describes its clarification as follows:

As part of this process, the Midwest ISO will work with its transmission owners to perform an annual baseline needs facilities study in situations in which the transmission system is over-committed based on existing point-to-point commitments and network customers' forecasted load and Network Resources. Through the baseline needs facilities study, the Midwest ISO will determine the contributions of each FNR indicated in the forecasts of network customers to any violations of applicable reliability criteria. [Footnote omitted.] In the case in which it is determined that network upgrades are necessary to accommodate the requests, the cost of the network upgrades will be recovered as provided in Attachment N to the Midwest ISO Tariff.^{7]}

7. Midwest ISO requests that the effective date of the revised Midwest ISO Process be the same as the effective date of the Midwest ISO's OATT, i.e., April 1, 2002.

III. Notice of Filing and Pleadings

8. Notice of Midwest ISO's compliance filing was published in the Federal Register,⁸ with motions to intervene and protests due on or before December 3, 2002. Timely motions to intervene raising no substantive issues were filed by Reliant Resources, Inc. and Great River Energy. Timely motions to intervene and protests or comments were filed by: Consumers Energy Company (Consumers Energy); Wisconsin Electric Power Company (Wisconsin Electric); and East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., (collectively, East Texas Cooperatives). On December 18, 2002, Midwest ISO filed a motion for leave to answer and an answer to the protests and comments. On January 2, 2003, East Texas Cooperatives filed an answer to Midwest ISO's answer.

⁷Id. at 3-4.

⁸67 FR 70421 (2002).

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. The Commission's Rules of Practice and Procedure prohibit answers to protests and answers to answers unless otherwise ordered by the decisional authority.¹⁰ We will permit Midwest ISO's and East Texas Cooperatives' answers, because they have provided information that has aided us in understanding the issues.

B. Substantive Matters

10. As discussed below, we will conditionally accept Midwest ISO's compliance filing, subject to a further compliance filing.

1. Queue Position

11. Section 1 of the revised Attachment U concerns requests by a network customer to designate Network Resources located outside of the Midwest ISO transmission system.

12. Wisconsin Electric protests that Attachment U continues to fail to address reasonably forecasted load growth and improperly requires Network Resource designation. Wisconsin Electric argues that the Midwest ISO has failed to eliminate the requirement for network customers that have submitted long-term load and resource plans to designate a Network Resource in order to establish a queue position, and that Attachment U should be amended to provide that the queue position will be determined by the earlier of the date of the first 10-year forecast applicable to such resource, or the time of the OASIS request seeking to designate the Network Resource. In its answer, the Midwest ISO agrees to make this modification.

Commission Determination

13. The Midwest ISO's agreement to modify Attachment U as requested by Wisconsin Electric adequately responds to Wisconsin Electric's concern. Accordingly, the Midwest ISO should modify Section 1 of Attachment U, in the compliance filing ordered herein, to state that the queue position for a Network Resource will be determined by the earlier of

⁹18 C.F.R. § 385.214 (2002).

¹⁰18 C.F.R. § 385.213(a)(2) (2002).

the date of the first 10-year forecast applicable to such resource, or the time of the OASIS request seeking to designate a Network Resource.

2. Network Resources

a. Designation of Network Resources

14. Section 2 of the revised Attachment U provides, in part, that “a Network Customer must designate Network Resources to be used within the next twelve months.” Section 2 also provides, in pertinent part:

Planning to meet the needs of the Network Customers is based on the information requirements for current and Forecasted Network Resources ("FNRs") (Section 29.2 (v and vi) of this Tariff) that include specific unit information, including location on the transmission system or description of purchased power forecasted as a Network Resource. . . .

15. Consumers Energy requests clarification of whether designation of Network Resources are to be made once per year with the annual 10-year forecast (i.e., on a set date), or at the point in the year twelve months prior to the beginning of the use of a particular Network Resource (i.e., on a variable date).

16. East Texas Cooperatives protest that the proposed Network Resource designation requirement is more restrictive than the current Midwest ISO OATT requirement, which provides for designation of a new Network Resource as soon as practicable. East Texas Cooperatives claim that they frequently must issue requests for proposals for small incremental Network Resources in order to serve load growth, and thus often do not have twelve months' notice. East Texas Cooperatives request that the proposed twelve-month Network Resources designation requirement be rejected.

17. Wisconsin Electric protests that Section 2 fails to recognize a network customer's load growth rights adequately in the absence of a Network Resource designation, and it requests that the Commission require the Midwest ISO to revise Section 2 to provide that neither the designation of a new Network Resource nor a FNR needs to be a resource specifically identified in previous 10-year forecasts. With respect to Section 2's reference to Sections 29.2(v) and 29.2(vi) of the Midwest ISO OATT for the information needed to be a FNR, Wisconsin Electric contends that such a level of detail (specific unit or source of supply for a power purchase agreement) is not known for forecasted resources. It asserts that an indication of the expected interface (or RTO) for imports or proposed new generating facilities can be provided for FNRs, but not specific sources.

18. In response to Consumers Energy's request, the Midwest ISO clarifies that the twelve-month designation period is to be made on the variable date consistent with the timing requirements of Attachment J to the Midwest ISO OATT.¹¹

19. In response to Wisconsin Electric, the Midwest ISO clarifies that neither the designation of a new Network Resource nor a FNR needs to be a resource specifically identified in previous 10-year forecasts. The Midwest ISO also points out that Section 29.2 of the Midwest ISO OATT requires both current and forecasted Network Resources.

Commission Determination

20. In response to Consumers Energy, as noted above, the Midwest ISO clarifies that the twelve-month designation period is to be made on the variable date consistent with the timing requirements of Attachment J to the Midwest ISO OATT. It further explains that the capacity reservation associated with previous FNRs is queued at the time of the forecast submittal, but is released for use by other customers in the short-term, only if the Network Customer does not designate the previous FNR within the timing requirements of Attachment J. The Midwest ISO further states that it will decrement Available Flowgate Capability (AFC) for each rolling twelve-month period to reflect only those previously identified FNRs that are needed. The Midwest ISO's clarification adequately addresses Consumers Energy's concerns, and the Midwest ISO shall modify Attachment U to reflect its clarification, in the compliance filing ordered herein.

21. With respect to Wisconsin Electric, the Midwest ISO's clarification that neither the designation of a new Network Resource nor a FNR needs to be a resource specifically identified in previous 10-year forecasts adequately addresses Wisconsin Electric's concern regarding Section 2, and the Midwest ISO shall modify Attachment U to reflect its clarification, in the compliance filing ordered herein. With respect to Wisconsin Electric's argument concerning Section 29.2 of the Midwest ISO OATT, the proposed Section 2 merely makes reference to Section 29.2; the Midwest ISO is not proposing to modify Section 29.2 in this proceeding, nor did the October 10 Order direct it to do so. Accordingly, Wisconsin Electric's argument concerning Section 29.2(v) and (vi) is beyond the scope of this proceeding.

22. We will deny East Texas Cooperatives' request to reject the twelve-month Network Resources designation requirement. They have an obligation to reasonably forecast their

¹¹ Attachment J requires a maximum of 60 days lead-time for making such requests.

native load needs within the utility's planning horizon,¹² and this includes their need for small incremental Network Resources. We believe that a twelve-month designation requirement, as applied in these particular circumstances, provides an appropriate minimum planning horizon for forecasting load growth needs.

b. "New" Requests for Point-to-point Transmission Service

23. East Texas Cooperatives requests clarification that the definition of what constitutes a “new” request for point-to-point transmission service, which will be subject to limited rollover rights in the event of a conflict with existing Network Customers’ transmission service, does not include transmission service agreements entered into with Southwest Power Pool (SPP) prior to conversion to Midwest ISO service.

24. The Midwest ISO clarifies that existing transmission service agreements assigned to Midwest ISO in conjunction with the anticipated combination of the Midwest ISO and SPP do not constitute “new” agreements subject to limitation of rollover rights.

Commission Determination

25. The Midwest ISO's clarification adequately addresses East Texas Cooperatives' concern. The Midwest ISO shall, in the compliance filing ordered herein, modify Section 2 to provide that existing transmission service agreements assigned to Midwest ISO in conjunction with the anticipated combination of the Midwest ISO and SPP do not constitute “new” agreements subject to limitation of rollover rights.¹³

c. Priority of Network Services

¹²See, e.g., *Constellation Power Source, Inc. v. American Electric Power Service Corp. and Southwest Power Pool, Inc.*, 102 FERC ¶ 61,142 at P 27 & n.30 (2003) (*Constellation*).

¹³We are aware that recently the Boards of Directors for the Midwest ISO and SPP mutually agreed to terminate the Purchase and Assumption Agreement between the parties, i.e., they have decided not to merge. Accordingly, the Midwest ISO filed a motion to withdraw the Resulting Company Tariff in Docket No. ER02-1420-009, and in Docket No. ER03-707-000 it filed proposed amendments to the Midwest ISO OATT to reflect its and SPP's intent that the Resulting Company Tariff will not go into effect. However, since both the Midwest ISO's motion to withdraw in Docket No. ER02-1420-009 and its proposed amendments in Docket No. ER03-707-000 are still pending at the time of this order, it would be premature for us to opine in this order whether Midwest ISO's and SPP's intent not to merge has made East Texas Cooperatives' concern in this proceeding moot.

26. Section 2 provides, in pertinent part:

When evaluating new requests for Firm Point-to-Point Transmission Service on the Midwest ISO Transmission System, the Midwest ISO will make transmission capacity available to Point-to-Point Customers until such time as that capacity is needed to serve existing Network Customer load. The determination of available capacity will be based on the annual submittals by Network Customers of forecasted network load and FNRs. If at the time of a request for new Firm Point-to-Point Transmission Service, the Midwest ISO determines that sufficient capacity will not be available to accommodate both the forecasted load growth of existing Network Customers, and the new request for Point-to-Point Transmission Service, the Service Agreement for the Point-to-Point Transmission Service request will reflect this limitation to the roll-over rights of the new service.

27. East Texas Cooperatives argue that Section 2 improperly subordinates firm point-to-point service requests to Network Service by attaching a limitation on rollover rights solely to point-to-point requests. They argue that Order Nos. 888 and 888-A¹⁴ are clear that no one kind of firm service is subordinate to another.

28. Wisconsin Electric also seeks clarification that the reference to FNRs in Section 3 of Attachment U (Planning for Forecasted Load Growth and Forecasted Network Resources of Network Customers and Resolving Competing Requests for Transmission Service Among Network Customers) is not to be interpreted as a requirement for the designation of Network Resources in the 10-year forecasts, and that in the event a forecasted resource set forth in a 10-year forecast conflicts with a subsequently received point-to-point request, the forecasted resources should have priority. In response to Wisconsin Electric, the Midwest ISO contends that the priority of Network Customers to use FNRs over new requests for point-to-point transmission service is clearly set forth in Section 2 of Attachment U.

¹⁴Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in part and rev'd in 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).

Commission Determination

29. In announcing the rollover rights policy in Order No. 888, we explained that there are circumstances under which a transmission provider can restrict a transmission customer's rollover rights under Section 2.2. For example, the Commission determined that public utilities may reserve existing transmission capacity needed for native load growth reasonably forecasted within the public utility's current planning horizon.¹⁵ In Order No. 888-A, the Commission stated that "if a utility provides firm transmission service to a third party for a time until native load needs the capacity, it should specify in the contract that the right-of-first refusal does not apply to that firm service due to a reasonably forecasted need at the time the contract is executed."¹⁶

30. Since the issuance of Order Nos. 888 and 888-A, the Commission has consistently reaffirmed this policy, stating that a transmission provider can deny a customer the ability to roll over its long-term firm service contract if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term.¹⁷ The Midwest ISO's proposal is consistent with this policy.

¹⁵Order No. 888 at 31,694.

¹⁶Order No. 888-A at 30,198.

¹⁷See, e.g., Constellation, 102 FERC ¶ 61,142 at P 26-27; Public Service Co. of New Mexico, 85 FERC ¶ 61,240 at 62,066 (1998) (discussing requirement to state expressly in future transmission contracts (as distinguished from existing (i.e., pre-Order No. 888) contracts) if the right-of-first refusal does not apply due to a need for the capacity that is reasonably forecasted at the time of the contract's execution); Nevada Power Co. and Public Service Co. of New Mexico, 99 FERC ¶ 61,162 at 61,667 (2002); Nevada Power Co., 97 FERC ¶ 61,324 at 62,493 (2001).

3. Network Upgrades

a. Studies to Determine Needed Upgrades

31. Section 3.5 of Attachment U provides that the Midwest ISO will perform a baseline needs Facility Study in collaboration with the Midwest ISO Transmission Owners to determine needed upgrades if the system is over-committed.

32. East Texas Cooperatives contend that Section 3.5 compromises the independence of the Midwest ISO by limiting its collaboration only to the Midwest ISO Transmission Owners, thus excluding customer and stakeholder input in the process. As transmission requests will be directly assigned the costs of the upgrade in accordance with Attachment N of the Midwest ISO OATT and according to the contribution of each FNR to the reliability criteria violations causing the upgrade under Section 3.8 of Attachment U, East Texas Cooperatives request clarification of the method by which the Midwest ISO will determine the contribution of each FNR, and what constitutes “applicable reliability criteria.”

33. The Midwest ISO clarifies that applicable reliability criteria are defined by the local system reliability criteria filed annually with the Commission on Form No. 715. Further, the Midwest ISO agrees to amend Section 3.5 of Attachment U to state that “the Midwest ISO will determine in an open stakeholder planning process Network Upgrades needed to reliably meet commitments, by performing a baseline needs Facility Study in collaboration with Transmission Owners.”

Commission Determination

34. The Midwest ISO's clarification adequately responds to East Texas Cooperatives' concern. Accordingly, we will direct the Midwest ISO, in the compliance filing ordered herein, to amend Section 3.5 of Attachment U to (1) reflect its clarification that applicable reliability criteria are defined by the local system reliability criteria filed annually with the Commission on Form No. 715 and (2) state that “the Midwest ISO will determine in an open stakeholder planning process Network Upgrades needed to reliably meet commitments, by performing a baseline needs Facility Study in collaboration with Transmission Owners.”

b. Costs of Upgrades

35. Consumers Energy protests that Section 3.7 unduly burdens the rights of network customers by requiring network customers to pay the carrying costs of network upgrades judged by the Midwest ISO to be linked to FNRs. Consumers Energy asserts that the 5 to 10-year models of load forecasts allow such upgrades to be planned for and schedule rate

cases as appropriate. Consumers Energy further argues that, at a minimum, a Transmission Owner should have to show that it is not fully recovering its costs before charging network customers the cost of upgrades.

36. In response to Consumers Energy, the Midwest ISO states that Section 3.7 of Attachment U does not modify the cost recovery mechanism of Attachment N to the Midwest ISO OATT that the Commission previously accepted. Instead, Section 3.7 states that only where network upgrades are charged to Network Customers, as provided for under Attachment N, would Network Customers share in the charge according to the contributions of each FNR to the reliability criteria violations causing the network upgrades. This is consistent with Section B.2(d)(I) of Attachment N, which states, “to the extent that a Network Upgrade is caused by different customers or different loads, and the Midwest ISO can develop an equitable and efficient methodology for apportioning the costs of the Network Upgrade between those customers, the Midwest ISO shall file such methodology.”

37. East Texas Cooperatives respond that the Midwest ISO is attempting to rebuff the important cost assignment issue. East Texas Cooperatives contend that the direct assignment of costs for network upgrades is inconsistent with Commission precedent favoring roll-in of network upgrade costs.

Commission Determination

38. With regard to Consumers Energy's and East Texas Cooperatives' concerns about cost allocation, we find that the Midwest ISO has not modified the cost recovery mechanism of Attachment N nor does the compliance filing address issues such as direct assignment or roll-in of network upgrades. However, the Midwest ISO's proposal does address how competing requests for transmission service should be treated and how additional upgrades, if needed, will be funded. We find that the proposal for the Midwest ISO, as the independent entity, to apportion network upgrade costs based upon contributions to violations of reliability criteria is acceptable. We note that Attachment N allows for the Midwest ISO to develop and file an equitable methodology for apportioning network upgrade costs for those upgrades clearly caused by certain customers. In the instant compliance filing, the Midwest ISO proposes such an equitable methodology based on a comparative Facilities Study for determining which customer caused the facilities to be built. We find that this application of cost causation principles is necessary and appropriate. We therefore accept the proposed allocation contained in Section 3 of Attachment U.

c. Multiple Designations

39. Section 3.9 of Attachment U provides:

If the Midwest ISO determines that facilities will be over committed before appropriate Network Upgrades can be constructed (e.g., a new FNR appears in the first or second year of the annual forecast for the first time and requires a significant Network Upgrade that can not be completed within the 1-2 year available lead-time) the Midwest ISO will inform the Network Customer that designation of the FNR will not be possible until the Network Upgrade can be completed.

40. East Texas Cooperatives argue that Section 3.9 is too rigid and does not offer a partial or redispatch option. Wisconsin Electric requests that Section 3.9 be modified to provide an allocation methodology for allocating capacity in the event of multiple designations from more than one entity.

41. The Midwest ISO responds that there is nothing in the instant compliance filing that alters the redispatch or other options provided for under the Midwest ISO OATT that apply to requests for designation of a Network Resource.

Commission Determination

42. We agree with the Midwest ISO that the provisions in Section 3 of Attachment U do not alter the options for redispatch offered through the Midwest ISO OATT.¹⁸ We expect the Midwest ISO to follow all applicable redispatch procedures under its OATT, when handling requests for redesignation of Network Resource and optimizing the use of the Midwest ISO grid. With regard to Wisconsin Electric 's request for an allocation methodology to address multiple designations of the same resource, we find that its concern is speculative. Wisconsin Electric has failed to adequately explain its concern and has not presented evidence that multiple designations of the same resource during the same designation period could occur.

¹⁸See, e.g., Sections 19.7 and 30.5 of the Midwest ISO OATT.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby conditionally accepted, subject to the modifications ordered below, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to make a further 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.