

103 FERC ¶ 61,191
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. ER03-573-000

ORDER ACCEPTING IN PART AND REJECTING
IN PART PROPOSED TARIFF REVISIONS

(Issued May 16, 2003)

1. On February 28, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ proposed revisions to Attachment C (Methodology to Assess Available Transmission Capacity) of its Open Access Transmission Tariff (Midwest ISO OATT). The proposed revisions relate to calculation of Available Flowgate Capacity (AFC), Response Factor Calculation, and the use of new terms. In this order, we will accept the proposed revisions in part to become effective on May 29, 2003, and reject in part the proposed revisions.
2. This order benefits customers of the Midwest ISO by facilitating clear application of the Midwest ISO OATT.

Proposed Tariff Revisions

3. The proposed revisions would: (1) modify the timing and frequency of the AFC calculations to make the timing requirements of Attachment C consistent with the timing

¹16 U.S.C. § 824d (2000).

requirements of Attachment J of the Midwest ISO's OATT;² (2) change the term "transmission provider" so that it is no longer capitalized and reflected as a defined term when it refers to transmission provider(s) other than the Midwest ISO; (3) change the terms "Point-of-Delivery" (POD) and "Point-of-Receipt" (POR) to "sink" and "source," respectively; (4) under the proposed Section 2, Response Factor Calculation, allow for finer granularity³ than a control area for purposes of performing AFC calculations in determining the reliability of the transmission system; and (5) include a percentage of positive impacts from confirmed reservations, and a percentage of counter-flows from confirmed reservations, in firm and non-firm AFCs.

4. The proposed revisions would also require all American Transmission Company, LLC (ATCLLC) Control Areas⁴ to be treated as a single zone for the AFC calculation for non-firm service. The Midwest ISO explains that, pursuant to Wisconsin law,⁵ ATCLLC received approval from the Wisconsin Public Service Commission (Wisconsin Commission) to provide transmission service and calculate AFC on a system-wide basis. As a result, the Midwest ISO states that ATCLLC and its customers believe that, for AFC calculations for non-firm service that sources or sinks within ATCLLC footprint, such non-firm service is to be treated by the Midwest ISO as if the ATCLLC Control Areas were a single Control Area.

²Attachment J is the Midwest ISO's scheduling table, which posts the time frame in which Transmission Customers must submit firm and non-firm point-to-point transmission schedules pursuant to Order No. 638. See Open-Access Same-Time Information System and Standards of Conduct (OASIS), Order No. 638, FERC Stats. & Regs. Preambles July 1996-December 2000 ¶ 31,093 (2000).

³The Midwest ISO, at Original Sheet No. 253B, defines "granularity" as "the size of the entity used to process requests in a flow-based analysis."

⁴ATCLLC is comprised of five control areas that are certified by the North American Electric Reliability Council (NERC): Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Madison Gas & Electric Company, and Alliant East (Wisconsin Power & Light Company).

⁵The Midwest ISO cites Wisconsin Statute 196.485(3m)(a)1.d, which the Midwest ISO states requires that the transmission company apply for membership in the Midwest ISO as a single zone for pricing purposes, and Wisconsin Statute 196.485(3m)(a)1.f, which the Midwest ISO states requires that the transmission company elect to be included in a single zone for the purposes of any tariff administered by the Midwest ISO.

5. According to the Midwest ISO, the proposed revisions would affect only non-firm transmission service requests that involve one of the ATCLLC Control Areas, at which point the granularity of the entire ATCLLC footprint would be applied. The Midwest ISO also explains that, due to the fact that this level of granularity looks at the entire ATCLLC footprint, a non-firm transmission service request that both sources and sinks within the ATCLLC footprint would not require a flow-based review and would consequently receive automatic approval.⁶

6. Under the proposed revisions, this level of granularity for non-firm transmission service requests involving ATCLLC Control Areas would apply only for the limited time between the instant filing date and the implementation of the Midwest ISO's Day-2 congestion management program expected to be implemented in December 2003. The Midwest ISO further explains that, under the changed methodology, for other services all of the individual ATCLLC Control Areas would remain valid source and sink areas within the Midwest ISO footprint. Therefore, when a transmission service request for firm transmission service that involves one of the ATCLLC Control Areas is submitted to the OASIS, the Midwest ISO would continue to use the granularity of the individual control area in evaluating whether sufficient AFCs exist to approve the firm transmission service request.

7. The Midwest ISO requests an effective date for the proposed revisions, except the proposed AFC calculation for non-firm service, of May 29, 2003. The Midwest ISO seeks an effective date for the proposed AFC calculation for non-firm service of 60 days following a Commission order accepting those revisions.

Notice of the Filing and Responsive Pleadings

8. Notice of the Midwest ISO's filing was published in the Federal Register,⁷ with comments, protests, and interventions due on or before March 21, 2003. Dynegy Power Marketing, Inc., Exelon Corporation (on behalf of its subsidiaries Commonwealth Edison Company and Exelon Generation Corporation), Consumers Energy Company, Madison Gas and Electric Company, the Midwest ISO Transmission Owners, and Westar Energy, Inc. each filed a timely motion to intervene. Cinergy Services, Inc. (Cinergy), MidAmerican Energy Company (MidAmerican), TRANSlInk Development Company, LLC (Translink),

⁶The Midwest ISO states that, in the event of a Transmission Line Loading Relief (TLR) event, all of the individual ATCLLC Control Areas would honor the TLR events, so that new non-firm transmission service requests that adversely affect the constraint would not be approved at the same time transactions are being curtailed during the TLR event.

⁷68 FR 11828 (2003).

Wisconsin Electric Power Company (Wisconsin Electric), Wisconsin Public Service Corporation and Upper Peninsula Power Company (jointly, WPSR Operating Companies), and Xcel Energy Services, Inc. (Xcel) each filed a timely motion to intervene and comments or protest (collectively, the Protestors).

9. On April 4, 2003, the Midwest ISO and ATCLLC filed a joint answer to the protests and comments.

10. The protests and comments, and the Midwest ISO and ATCLLC's joint answer, are discussed below.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. Rule 213(a)(2) of the Commission's regulations, 18 C.F.R. § 385.213(a)(2) (2002), allows responses to protests only at the discretion of the decisional authority. We will allow the Midwest ISO and ATCLLC's response to the intervenors' protests, as it has provided information that has aided us in understanding the matters at issue in this proceeding.

B. Analysis

1. Attachment C Revisions

12. No party to this proceeding objects to the proposed revisions to Attachment C that would: (1) modify the timing and frequency of the AFC calculation to make the timing requirements of Attachment C consistent with the timing requirements of Attachment J of the Midwest ISO's OATT; (2) change the term "transmission provider" so that it is no longer capitalized and reflected as a defined term when it refers to transmission provider(s) other than the Midwest ISO; (3) change the terms "Point-of-Delivery" and "Point-of-Receipt" to "sink" and "source," respectively; and (4) include a percentage of positive impacts from confirmed reservations, and a percentage of counter-flows from confirmed reservations, in firm and non-firm AFCs. Rather, they focus their objections on the proposed calculation for non-firm service, which we discuss below.

⁸18 C.F.R. § 385.214 (2002).

13. Our preliminary analysis indicates that these unopposed proposed modifications are just and reasonable. Accordingly, we will accept these modifications, without suspension or hearing to become effective on May 29, 2003, as requested.

2. AFC Calculation for Non-Firm Service

a. The Proposed ATCLLC Revisions

14. As indicated above, the proposed AFC calculation for non-firm service (set forth in the last paragraph in Section 2 of Attachment C) provides that, for non-firm transmission service requests that source and/or sink within an ATCLLC Control Area, the response factor calculation will include all ATCLLC Control Areas (Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Madison Gas & Electric Company, and Alliant East (Wisconsin Power & Light Company)) as if they are a single Control Area. Section 2 further provides that the Midwest ISO will use this level of granularity for non-firm transmission service requests involving the ATCLLC Control Areas until the Midwest ISO implements its Day-2 congestion management program, at which time this exception is no longer needed.⁹

b. Protests and Comments

15. As an initial matter, the Protestors state that the Midwest ISO failed to vet the proposed AFC calculation for non-firm service through the stakeholder process. The Protestors allege that these proposed revisions were instead presented to a subcommittee of MAIN, a regional reliability council, to which many Midwest ISO participants do not belong. Indeed, WPSR Operating Companies state that although they, as members of ATCLLC's customer group, requested the single-zone AFC calculation, they did not specifically request a tariff revision, because a detailed procedure to implement the single-zone AFC calculation within the Midwest ISO process was never agreed upon by the stakeholders. Xcel requests that the Commission reject the proposed AFC calculation for non-firm service and require the Midwest ISO to submit those revisions to stakeholder review prior to submitting them to the Commission as an amendment to the Midwest ISO OATT.

⁹The Midwest ISO states that, due to the fact that this level of granularity looks at the entire ATCLLC footprint, a transmission service request that both sources and sinks within ATCLLC footprint would not require a flow-based review and would consequently receive automatic approval. Midwest ISO Transmittal Letter at 3.

16. The Protestors further allege the proposed AFC calculation for non-firm service would foster discrimination in the development of regional power markets. They note that, under these proposed revisions, non-firm transmission service requests that both source and sink within the ATCLLC footprint would not require flow-based review by the Midwest ISO,¹⁰ but instead would be automatically approved. MidAmerican states that the Midwest ISO has provided no justification to exempt non-firm, intra-ATCLLC transactions from such a review. Xcel maintains that the proposed revisions would give a preference to those customers with transactions that source and sink within the ATCLLC footprint, at the expense of other customers in the Midwest ISO who wish to transact in the ATCLLC footprint or use non-firm transmission service that has loop flow impacts across ATCLLC facilities. Xcel maintains that such a result violates the FPA, prior Commission orders, and the Midwest ISO's OATT and Business Practices Standards for OASIS transactions (BPS), which, according to Xcel, place an affirmative obligation on transmission providers in reviewing transmission service requests to evaluate, on a non-discriminatory basis, whether there is sufficient available transmission capacity.¹¹ TRANSLink expresses concern that the proposed AFC calculation for non-firm service could lead to ATCLLC approving transactions for which there may not be capacity on neighboring transmission networks, leading to curtailments on those neighboring transmission networks.

17. Cinergy further states that, while it is clear that the Midwest ISO would not analyze non-firm transactions that source and sink within the ATCLLC footprint, it also appears that the Midwest ISO would reduce the level of granularity employed when analyzing the impact of transactions that source or sink in the ATCLLC footprint. Cinergy expresses concern about what effect this will have on other non-firm transmission requests and whether other non-firm transmission transactions will become more prone to TLR procedures. Cinergy further expresses concern about the Midwest ISO's statement in its filing that new non-firm transmission service requests that adversely affect the constraint would not be approved at the same time transactions are being curtailed during the TLR event.¹² Cinergy alleges that this may adversely affect other transmission customers, by diminishing both the quantity of

¹⁰Cinergy notes that all transmission requests that source in a control area within the Midwest ISO and sink in either another control area within the Midwest ISO or a control area external to the Midwest ISO (or vice versa) are, prior to approval, scrutinized pursuant to a flow-based analysis.

¹¹Xcel adds that, under the proposed ATCLLC revisions, transactions that source and sink in ATCLLC would automatically and effectively pre-empt transactions that source outside of ATCLLC but sink within the ATCLLC footprint without, as required by the BPS, providing the original request with any ability to match the competing request.

¹²Midwest ISO Transmittal Letter at 3.

non-firm transmission service available to transmission customers of the Midwest ISO, as well as the quality of the service.

18. The Protestors further challenge the proposition that the proposed AFC calculation for non-firm service is required by Wisconsin law. WPSR Operating Companies and Cinergy state that, while the Wisconsin statutes cited by the Midwest ISO appear to require that ATCLLC seek a single zone tariff, they do not require that the individual Control Areas within ATCLLC operate as a single zone. MidAmerican states that the exact language of the Wisconsin statutes requires ATCLLC to apply for membership in the Midwest ISO as a single zone for pricing purposes, not for calculating AFC. MidAmerican further argues that, even if Wisconsin law did require ATCLLC to be treated as a single source or sink, there is no support for the position that the requirement apply only to the AFC calculation for non-firm service. Moreover, MidAmerican maintains that the Wisconsin Commission did not require that AFC for the ATCLLC be calculated on a system-wide basis, rather, the Wisconsin Commission merely authorized ATCLLC to perform such a calculation. In any case, Cinergy states that requiring the Midwest ISO to accommodate individual state initiatives creates "home field" advantages with respect to, among other things, the provision of transmission service, and could lead to the establishment of a balkanized OATT lacking in comparability. Moreover, Xcel argues that any right to a particular allocation of interstate transmission capacity must be considered an exclusive matter of Federal law, and not Wisconsin law.

19. The Protestors also allege that the Midwest ISO's proposed AFC calculation for non-firm service lacks sufficient detail regarding administration. Wisconsin Electric requests that the Midwest ISO be required, either in its tariff or BPS, to provide the specific methodology to be used to determine single-system, non-firm available transfer capability. WPSR Operating Companies request a technical conference in order to address implementation of the single-zone AFC calculation for the ATCLLC footprint.

20. Xcel adds that, as a matter of policy, the Commission should reject the proposed AFC calculation for non-firm service. Xcel states that, if the ATCLLC utilities are allowed to operate as if they are a single control area when they are not, there will be little incentive for ATCLLC or its members to pursue consolidation of the five control areas in eastern Wisconsin. Xcel contends that this result is contrary to the Commission's goal of reducing the number of control areas within the Midwest ISO's footprint.

c. The Answer

21. The Midwest ISO and ATCLLC dispute the Protestors' assertions that the proposed AFC calculation for non-firm service was not vetted through the stakeholder process. They state that, in addition to being the subject of a MAIN meeting, the proposed revisions were

discussed among the Midwest ISO's Policy Committee, Advisory Committee (of which Cinergy is a member), and Tariff Working Group Committee on three separate occasions in February 2003. The Midwest ISO states that neither it nor ATCLLC received questions or contrary comments regarding the proposed revisions as a result of those meetings. In addition, the Midwest ISO and ATCLLC state that they held numerous meetings in early 2003, which Wisconsin Public Service Corporation attended, regarding the proposed ATCLLC revisions. Indeed, the Midwest ISO and ATCLLC state that Wisconsin Public Service Corporation voted in favor of the single-zone AFC treatment of non-firm transmission service at the April 10, 2001 MAIN ATC Subcommittee meeting.

22. The Midwest ISO and ATCLLC further state that the proposed calculation is consistent with Commission policy. They state that the formation of ATCLLC was premised, in part, on the creation of a single transmission zone, and that, once formed, ATCLLC would exercise control over facilities in its transmission area as a single transmission system and calculate AFC on a system-wide basis. They state that, while it is true that Wisconsin law is not determinative here, ATCLLC, unlike any other control area operator in the Midwest ISO's footprint, is statutorily obligated under state law to operate its transmission system on behalf of all transmission customers. The Midwest ISO and ATCLLC state that the proposed AFC calculation for non-firm service simply represents a return to the method used by ATCLLC prior to the Midwest ISO taking operational control over the ATCLLC system: non-firm transmission transactions that source and sink within the ATCLLC footprint will initially be automatically approved for transmission service. The Midwest ISO and ATCLLC argue, contrary to the Protestors' suggestions, that treating the ATCLLC as a single control area is consistent with the Commission's objective of reducing the number of control areas and promoting a more efficient wholesale market.

d. Commission Response

23. The Midwest ISO's proposal to automatically approve non-firm transmission transactions that source and sink within ATCLLC's footprint, without a flow-based analysis, raises many questions, identified by the Protestors, which have not been adequately addressed by the Midwest ISO's filing. Moreover, this proposed treatment of non-firm transmission service requests that source and sink within the ATCLLC's footprint appears to contradict the Midwest ISO's OATT. The OATT requires that all transmission requests that source in a control area within the Midwest ISO and sink in another control area within the Midwest ISO, or in a control area external to the Midwest ISO (or vice versa), are, prior to approval, scrutinized pursuant to a flow-based analysis. Additionally, it is not clear what effect this exemption will have on other non-firm transmission requests or whether other non-firm transmission transactions will become more prone to TLR procedures.

24. Therefore, we will reject this particular provision without prejudice to the Midwest ISO refiling it with appropriate support.

The Commission orders:

The Midwest ISO's proposed revisions are hereby accepted in part to become effective on May 29, 2003, and rejected in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.