

123 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER07-478-006

ORDER ACCEPTING IN PART AND REJECTING IN PART
COMPLIANCE FILING

(Issued May 16, 2008)

1. On November 19, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing¹ with respect to its Open Access Transmission and Energy Markets Tariff (TEMT) in accordance with the directives of the Commission's October 19, 2007 order.² The October 19, 2007 Compliance Order accepted in part and rejected in part the Midwest ISO's filings that were submitted to comply with the order accepting the Midwest ISO's long-term firm transmission rights (LTTRs) proposal,³ subject to modification. In this order, we accept in part and reject in part the compliance filing, and require further modification, as discussed below.

¹ November 19, 2007 Compliance Filing.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,062 (2007) (October 19, 2007 Compliance Order).

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143 (LTTR Order), *order on reh'g*, 121 FERC ¶ 61,063 (2007) (October 19, 2007 Rehearing Order).

I. Background

2. Consistent with the Energy Policy Act of 2005 (EPAct 2005),⁴ Order No. 681 required independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers.⁵ Order No. 681 directed these independent transmission organizations to make LTTRs available that satisfy seven guidelines. Transmission organizations subject to Order No. 681 were given 180 days from the date of the Final Rule to make compliance filings regarding LTTRs. On rehearing, the Commission issued Order No. 681-A on November 16, 2006 reaffirming and clarifying the Final Rule.

3. The Midwest ISO, a Commission-approved regional transmission organization (RTO), coordinates the movement of electricity within several Midwestern states and operates an organized electricity market subject to the Final Rule. On January 29, 2007, in response to the Commission's Order No. 681,⁶ the Midwest ISO submitted, pursuant to section 205 of the Federal Power Act (FPA), proposed revisions to its TEMT providing for LTTRs.⁷ The Midwest ISO also proposed, pursuant to section 205 of the FPA, to modify the rules for allocating short-term transmission rights. The Commission determined in the LTTR Order that Stage 2 allocation⁸ of revenues is reasonable and in compliance with Order No. 681. In the LTTR Order, the Commission accepted the LTTR Proposal, but required the Midwest ISO to make modifications in 30- and 60-day compliance filings.⁹ On June 18, 2007 and July 16, 2007, the Midwest ISO submitted its 30-day (June 18, 2007 Compliance Filing) and 60-day (July 16, 2007 Compliance Filing) compliance filings.

⁴ Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958 (2005). Section 217(b)(4) of EPAct 2005 directed the Commission to use its authority to facilitate transmission planning and expansion to meet the reasonable needs of load serving entities (LSEs) with respect to meeting their service obligations and, relevant to this filing, securing LTTRs for long-term supply arrangements made, or planned, to meet such obligations. *Id.*

⁵ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 108-428, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201, at P 12-15 (2006) (Order No. 681 or the Final Rule).

⁶ Order No. 681, FERC Stats. & Regs. ¶ 31,226.

⁷ LTTR Proposal.

⁸ Stage 2 allocation is the allocation of short-term ARRAs.

⁹ LTTR Order, 119 FERC ¶ 61,143 at P 202.

4. In the October 19, 2007 Compliance Order, the Commission accepted in part and rejected in part the Midwest ISO's June 18, 2007 Compliance Filing and July 16, 2007 Compliance Filing, and directed the Midwest ISO to make certain revisions to the proposed tariff language within 30 days of that order.

II. Compliance Filing

5. The Midwest ISO's November 19, 2007 Compliance Filing addresses: (1) ARR zone design; (2) LTTRs for point-to-point service commencing after the reference year; (3) transmission planning and expansion; (4) defined and transparent processes for granting incremental ARRs; (5) counter-flow obligations for retired baseload generation; and (6) miscellaneous issues and clarifications.

6. The Midwest ISO requests the following effective dates for its November 19, 2007 Compliance Filing: (1) June 1, 2007 for the ARR and LTTR registration procedures; (2) February 1, 2008 for allocation-related provisions and the annual FTR auction procedures; and (3) May 1, 2008 for the remainder of the proposed tariff sheets.

III. Notices of Filings and Responsive Pleadings

7. Notice of the Midwest ISO's November 19, 2007 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 67,928 (2007), with comments, interventions and protests due on or before December 10, 2007. Duke Energy Corp. (Duke Energy) and the Midwest TDUs¹⁰ filed timely motions to intervene and protests in this proceeding. Ameren Services Co. (Ameren) filed a timely motion to intervene and comment. The Midwest ISO filed an answer to the protests and comment. The Midwest TDUs filed an answer in response to the Midwest ISO's answer.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007) prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO and

¹⁰ The Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and Wisconsin Public Power, Inc.

the Midwest TDUs because they have provided information that assisted us in our decision-making process.

B. Compliance Filings

10. As discussed below, we accept in part and reject in part the November 19, 2007 Compliance Filing effective (1) June 1, 2007 for the ARR and LTTR registration procedures; (2) February 1, 2008 for allocation-related provisions and the annual FTR auction procedures; and (3) May 1, 2008 for the remainder of the proposed tariff sheets as requested by the Midwest ISO.

1. ARR Zone Design

11. In compliance with the requirements of guideline (1) in Order No. 681 that an LTTR should be a point-to-point right that specifies a source and a sink, the Midwest ISO proposed a methodology of allocating ARRs by eligible sources and sinks in zones based on the location of the market participant's load. In the LTTR Order, the Commission required the Midwest ISO to clarify that the TEMT will provide for the designation of separate ARR zones based on contractual arrangements.¹¹ In order to comply with the LTTR Order, the Midwest ISO's June 18, 2007 Compliance Filing proposed adding a sentence to section 42 of the TEMT stating that a market participant will provide the transmission provider with the specific terms and conditions in such transmission and energy supply arrangements to substantiate the designation of Category 1¹² and Category 2¹³ ARR subzones. In its July 25, 2007 answer to protests (July 25, 2007 Answer), the Midwest ISO stated that it would be willing to clarify that generation resources shared by multiple market participants can be split between multiple ARR zones and the market participant that contracted with the Generation Resource most recently will be given priority if the contracts involve the exact same megawatts (MWs).¹⁴ The Commission found that clarification reasonable and directed the Midwest ISO to submit a further compliance filing with that clarification.¹⁵

¹¹ See LTTR Order, 119 FERC ¶ 61,143 at P 31.

¹² Category 1 is a subzone that encompasses points of delivery reserved on OASIS for network transmission service during the reference year.

¹³ Category 2 is a subzone within Category 1 that meets certain qualification criteria.

¹⁴ Midwest ISO's July 25, 2007 Answer at 10.

¹⁵ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 19.

12. To comply with the Commission's directives in the October 19, 2007 Compliance Order, the Midwest ISO revises section 43.2.1.a.i of the TEMT to clarify that "[i]f two Market Participants have contracts that meet all of the...qualification requirements for the same Generation Resource, such that the exact same megawatts (MWs) from the Generation Resource would otherwise qualify as a Reserved Source Point for more than one ARR Zone, then the Market Participant that contracted with the Generation Resource most recently will be given priority in determining the ARR Zone for which the Generation Resource will serve as a Reserved Source Point."¹⁶

13. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order. We accept this revision since it is consistent with the original purpose of this provision, as accepted by the Commission, to provide a priority for the market participant that contracted most recently for the generation resource, and to base the sharing of generation resources among ARR zones on the proportion of the ownership or contractual interest in the generation resource.

2. LTTRs for Point-to-Point Service Commencing After the Reference Year

14. In the LTTR Order, the Commission required the Midwest ISO to provide clarification on how Manitoba Hydro would obtain ARRs for transmission service requests made after the reference year.¹⁷ In its June 18, 2007 Compliance Filing, the Midwest ISO added language to its TEMT to indicate that point-to-point service starting with dates after the reference year will be eligible for Stage 2 ARRs and clarified in the transmittal letter that inclusion in the Stage 1 nomination cap (and compensation under the Stage 2 cap) will entitle parties with transmission service requests made after the reference year to acquire Stage 2 ARRs. In the October 19, 2007 Compliance Order, the Commission accepted the Midwest ISO's clarification, but required the Midwest ISO to evaluate the provision of Stage 1B ARRs for new point-to-point service and to clarify, in a further compliance filing, that point-to-point customers paying for the construction of new transmission capacity will be eligible to receive LTTRs.¹⁸

15. The Midwest ISO states that it has evaluated the provision of Stage 1B ARRs for new firm point-to-point transmission service and the provision of LTTRs to point-to-point customers paying for the construction of new transmission capacity. The Midwest ISO revises section 43.5.3.b, section 43.6.1, section 43.6.2 and section 46 of its TEMT to

¹⁶ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Original Sheet No. 609B.

¹⁷ The reference year is March 1, 2004 to February 28, 2005. *See* LTTR Order, 119 FERC ¶ 61,143 at P 167.

¹⁸ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 41.

clarify the following: (1) new yearly or longer-term firm point-to-point transmission services commencing after the reference year can be added to Stage 1B for the upcoming annual ARR allocation, subject to a simultaneous feasibility test, with or without replacement of an existing firm point-to-point transmission service; and (2) only newly confirmed yearly or longer-term firm point-to-point transmission service customers paying for the construction of new transmission capacity will be eligible to receive LTTRs for the upcoming annual ARR allocation through the provisions associated with network upgrades pursuant to section 46 and the replacement of an existing firm point-to-point transmission service in Stage 1A pursuant to section 43.6.1.

16. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

3. Transmission Planning and Expansion

17. In the LTTR Order, the Commission required the Midwest ISO to explicitly define a process by which the feasibility of LTTRs for existing transmission capacity will be incorporated into transmission planning and expansion.¹⁹ In its July 16, 2007 Compliance Filing, the Midwest ISO proposed to amend Attachment FF so that its transmission planning procedures include dispatch patterns reflective of LTTRs.

18. In the October 19, 2007 Compliance Order, the Commission required the Midwest ISO to revise its TEMT to provide that its transmission planning process will identify, evaluate, and analyze expansions designed to ensure the transmission system can support the simultaneous feasibility of all Stage 1A ARRs over their full term. In its November 19, 2007 Compliance filing, the Midwest ISO revises Attachment FF of its TEMT to state that its transmission planning process will identify, evaluate, and analyze expansions designed to ensure the transmission system can support the simultaneous feasibility of all Stage 1A ARRs over their full term. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

4. Defined and Transparent Process for Granting Incremental ARRs

19. In the LTTR Order, the Commission required a defined and transparent process for granting incremental ARRs for all market participants, not just for market participants building new baseload generation. In response, in its June 18, 2007 Compliance Filing the Midwest ISO noted that section 43.6.1 of its TEMT specifies procedures by which a market participant could free up system capability to increase the feasibility of ARRs for a new reserved source point (RSP) as a replacement for an existing ARR entitlement. The Midwest ISO proposed several revisions and additions in its answer to the Midwest TDUs' protest to the Midwest ISO's June 18, 2007 Compliance Filing. The revisions and

¹⁹ See LTTR Order, 119 FERC ¶ 61,143 at P 193.

additions included provisions for an annual allocation period, designation of a new source point, replacement of a source point, the feasibility upgrade process, and treatment of external loads. In the October 19, 2007 Compliance Order, the Commission found the proposed revisions responsive and conditioned its approval on the Midwest ISO making a further compliance filing incorporating the proposed revisions and additions.

20. The Midwest ISO revised its TEMT as discussed below.

a. **Reference Year vis-à-vis Subsequent Annual Allocation Period**

21. In its July 25, 2007 Answer to protests, the Midwest ISO agreed that for the purpose of determining resource qualification requirements, the reference year should be replaced by the annual allocation period subsequent to the year of the request for new or replacement RSP.²⁰ The October 19, 2007 Compliance Order found this revision to be responsive, and the Commission accepted the tariff revisions subject to a further compliance filing.²¹ In its November 19, 2007 Compliance Filing, the Midwest ISO modifies sections 43.6.1 and 43.6.2 to clarify that the determination of resource qualification requirements for new or replacement RSPs shall use the annual allocation period rather than the reference year.

22. The Midwest TDUs contend that under this provision new baseload plants will not have ARR or LTTR protection when they begin commercial operation unless a plant's commercial operation fortuitously coincides with June 1, when the allocation year for ARRs or LTTRs begins. If not, the Midwest TDUs maintain that a baseload unit would not be eligible until the following June 1.

23. The Midwest TDUs further assert that long-term delivered price certainty is crucial for the development and financing of the types of baseload units that would qualify for LTTRs under the Midwest ISO's system. According to the Midwest TDUs, the Midwest ISO's proposed restriction is also unnecessary because the commercial operation of a new baseload or peaking resource will not be a last-minute surprise for the Midwest ISO. While the specific start date for a unit may change or slip, depending on construction progress and the results of final equipment testing, that margin of error should be relatively narrow during the last stages before commercial operation.

24. The Midwest TDUs argue that the Midwest ISO should be directed to modify its proposed procedures, so that ARRs (including LTTRs) are available for a new generating unit no later than the first season after the unit starts commercial operation. The Midwest TDUs also believe that the same basic approach should be used for new long-term power

²⁰ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 65.

²¹ *Id.* at P 69.

supply contracts that go into effect in the middle of an ARR allocation year, but are associated with existing generation resources. The Midwest TDUs maintain that this procedure would enable the Midwest ISO to grant a mid-year RSP designation for the new contract holder, as well as allocate nominated ARRs or LTTRs for those seasons.

25. The Midwest ISO explains in its Answer that in its market design LTTRs take the form of ARRs, which are only allocated on an annual basis.²² Further, the Midwest ISO asserts that ARRs only derive value when allocated and settled in conjunction with the annual FTR auction. The Midwest ISO states that an allocation of ARRs for the balance of the congestion year would be of \$0 value because there would be no FTR auction from which to derive a value. The Midwest ISO contends that because the LSE's current ARR allocation was based on the current year's expected peak load, and because the addition of a new resource does not increase the load service requirement, the LSE should have sufficient flexibility to reconfigure its FTR holdings in the monthly FTR auctions to give them sufficient congestion hedges until the next annual process.

26. The Midwest TDUs respond that the tariff language at issue concerns only the RSP addition process, not the ARR allocation process. The Midwest TDUs explain that they are not proposing that the Midwest ISO conduct new ARR allocations and auctions at the beginning of each season. Rather, the Midwest TDUs propose that, as part of the existing annual ARR allocation and auction process, a market participant with a new resource that will start commercial operation after June 1 (i.e., the first day of the ARR allocation year) should be eligible to seek RSP designation for that new resource for that part of the year that the resource will be in place. Provided that the market participant seeking to add the new long-term resource submits the necessary information to the Midwest ISO so that the required RSP addition studies can be completed in time, the Midwest TDUs maintain that the market participant should be eligible in the annual ARR allocation to nominate and receive seasonal ARRs (including LTTRs) for the period starting the next season after the new resource begins. The Midwest TDUs explain that this modification would allow market participants with units scheduled to begin commercial operation in July to request designation of a new RSP and ARRs or LTTRs for that RSP for fall, winter, and spring – just as market participants with units scheduled to go commercial in May can request RSP designation and ARRs or LTTRs for all four seasons.

27. We deny the Midwest TDUs' request that a market participant with a new resource that will start commercial operation after June 1 be eligible to seek RSP designation for that new resource for that part of the year that the resource will be in place. We interpret the Midwest TDUs' position to be that they should receive ARRs in advance of their commercial operation date, a position the Midwest TDUs have raised earlier in this proceeding and which has been rejected by the Commission. As the

²² Midwest ISO's December 26, 2007 Answer at 8.

Commission has stated, it is not equitable to guarantee LTTRs that turn out to be unavailable when the units go into service, requiring other market participants to bear the cost of infeasibility.²³ While the Midwest TDUs characterize their position as a request for seasonal ARRs, these ARRs can only be obtained in the annual ARR allocation and therefore represent LTTRs for each season, as explained by the Midwest ISO in its answer. We also agree with the Midwest ISO that the LSE should have sufficient flexibility to reconfigure its FTR holdings in the monthly FTR auctions to give them sufficient congestion hedges until the next annual process. Therefore, we accept the Midwest ISO's revisions and find that the Midwest ISO has complied with the October 19, 2007 Compliance Order.

b. New Reserved Source Points

28. In the October 19, 2007 Compliance Order, the Commission required the Midwest ISO to clarify that a new source point can be designated either as an addition to the set of source points, without terminating, retiring or otherwise replacing any of the existing source points, or as a replacement of an existing RSP that would be terminated or retired.²⁴ In its November 19, 2007 Compliance Filing, the Midwest ISO revises section 43.6 to clarify that under section 43.6.2 a "new" RSP can be designated either as (1) a pure addition to the current set of RSPs, without terminating, retiring or otherwise replacing any of the existing RSPs, or (2) as a replacement of an existing RSP that would be terminated or retired. The Midwest ISO states that the "new," i.e., newly designated, RSP can either be an existing or new generation resource. The Midwest ISO explains that if the request for designation is a new generation resource, then that generator should be commercially operational by the start of the new allocation year for which that request was made. The Midwest ISO states that section 43.6.1 involves the process for replacing an RSP, which may or may not be retired. On the other hand, the Midwest ISO states that section 43.6.4 concerns the retirement of an RSP, which may or may not be replaced. The Midwest ISO explains that whenever the replacement of an RSP pursuant to section 43.6.1 involves a retiring or retired RSP, the replacement process would combine an RSP's retirement and its replacement with a new RSP. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

c. Replacement of Reserved Source Points

29. In its July 25, 2007 Answer, the Midwest ISO stated that it would revise the proposed tariff provisions regarding the simultaneous feasibility test for replacement RSPs to clarify that the termination of ARRs and LTTRs with existing source points, and the insertion of new ARRS and LTTRs with replacement source points, will be subject to

²³ October 19, 2007 Rehearing Order, 121 FERC ¶ 61,063 at P 29.

²⁴ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 69.

simultaneous feasibility tests that maximize the allocation of the replacement ARR and LTTRs.²⁵ The Midwest ISO also agreed to further clarify in its TEMT that market participants would request the termination and replacement of ARRs and LTTRs, indicating the order in which they need to be studied, and the request for replacement source point requests will indicate that the market participant is making an advance commitment to accept the simultaneous feasibility test results. The Midwest ISO clarified that those ARRs and LTTRs not requested for replacement will be terminated and the study will be performed on a first-come, first-served basis. In the October 19, 2007 Compliance Order, the Commission directed the Midwest ISO to make a further compliance filing incorporating its proposed revisions and additions to the TEMT. In its November 19, 2007 Compliance Filing, the Midwest ISO revises its tariff to incorporate the required language. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

d. Feasibility Upgrade Process

30. In its July 25, 2007 Answer to protests, the Midwest ISO offered to revise its tariff to make the feasibility upgrade process applicable to replacement source points also applicable to new source points.²⁶ The October 19, 2007 Compliance Order found this revision to be responsive, and the Commission accepted the tariff revisions subject to a further compliance filing.²⁷ In its November 19, 2007 Compliance Filing, the Midwest ISO revises section 43.6.2 to make the feasibility upgrade process applicable to replacement source points also applicable to new source points. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

e. External Loads

31. In its July 25, 2007 Answer to protests, the Midwest ISO offered to revise its tariff to provide a preference for external loads in LTTR allocation if they have an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region.²⁸ The October 19, 2007 Compliance Order found this revision to be responsive and directed a further compliance filing to incorporate it in the TEMT.²⁹ In its November 19, 2007

²⁵ Midwest ISO's July 25, 2007 Answer at 13.

²⁶ *Id.* at n.30.

²⁷ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 69.

²⁸ *Id.* P 68.

²⁹ *Id.* P 69.

Compliance Filing, the Midwest ISO makes those revisions to its TEMT. The Midwest ISO further explains that the LSE with an obligation to serve the external load will be eligible to receive LTTRs through Stage 1A of the Annual ARR Allocation process by virtue of having a Network Integration Transmission Service (NITS) agreement with the Midwest ISO. The Midwest ISO states that its proposed tariff revisions also provide that such an LSE may receive LTTRs in the absence of a NITS agreement if the LSE meets the eligibility pursuant to section 42 by virtue of holding qualifying point-to-point transmission service. Furthermore, the Midwest ISO states that tariff revisions provided for in section 43.1.1 allow provision of LTTRs for point-to-point customers paying for the construction of new transmission capacity. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

5. Counter-flow Obligations for Retired Baseload Generation

32. In the LTTR Order, the Commission required the Midwest ISO to clarify the conditions under which an LSE that is retiring a resource eligible for Stage 1A ARRs, and thus also Stage 1A counter-flow ARRs, can turn back its counter-flow rights upon retirement of the resource.³⁰ In its June 18, 2007 Compliance Filing, the Midwest ISO clarified that in section 43.2.5.e of its TEMT the counter-flow obligation is for ten years. The Midwest ISO stated that if a party knows ten years in advance that it will be retiring a unit, the party can stop nominating a Stage 1 ARR entitlement and can then be assured of not being assigned counter-flows on the entitlement after the unit is retired. In the October 19, 2007 Compliance Order, the Commission rejected the Midwest ISO's proposal that the counter-flow obligation continue after the generation resource is retired, and directed the Midwest ISO to revise its tariff to terminate the counter-flow obligation upon termination of service with no continuing notice obligations. In its November 19, 2007 Compliance Filing, the Midwest ISO revises section 43.2.5.e of its TEMT and makes corresponding revisions to section 43.6.4 to terminate counter-flow obligations upon retirement of a generation resource underlying an ARR.

33. The Midwest TDUs argue that the Midwest ISO's tariff language is ambiguous and may fail to eliminate continuing counter-flow ARR exposure for market participants after they no longer have their long-term resource and "are no longer receiving any off-setting congestion revenues."³¹ The Midwest TDUs contend that the tariff language might be interpreted to limit the new counter-flow ARR termination right to the permanent retirement of specific generating units, and not to include the termination of long-term power supply contracts which in effect retires the underlying RSPs with respect to the particular market participant. Specifically, the Midwest TDUs assert that the tariff should be clarified to provide that the right of market participants to

³⁰ See LTTR Order, 119 FERC ¶ 61,143 at P 51.

³¹ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 80.

immediately terminate counter-flow obligations, upon request, “with the retirement of the RSP at which the ARR is sourcing,”³² applies to both the termination of a long-term power supply contract that supported the LTTR, as well as permanent retirement of the underlying generating unit.

34. The Midwest ISO responds to the Midwest TDUs, stating that its tariff language regarding the ability of market participants to terminate counter-flow obligations is sufficiently clear.

35. We disagree with the Midwest TDUs’ argument that the Midwest ISO’s tariff language is ambiguous and may fail to eliminate continuing counter-flow ARR exposure for market participants after they no longer have their long-term resource. We find that the Midwest ISO’s proposed language for section 43.2.5.e of the TEMT explicitly provides that the termination of counter-flow occurs upon termination of service as required by the October 19, 2007 Compliance Order. Accordingly, we accept the Midwest ISO’s tariff language as consistent with the requirements of the October 19, 2007 Compliance Order.

36. The Midwest TDUs’ request for clarification that counter-flow obligations terminate with the termination of a long-term power supply contract that supported the LTTR is denied. As we explain in the order in Docket No. ER07-478-005 being issued concurrently with this order, the Commission accepted the Midwest ISO’s proposal for counter-flow obligations to ensure the funding of LTTRs, but recognized a necessary exception – retired generators should be exempt from continued payment of counter-flow obligations. Such counter-flow ARR holders would no longer have the ability to hedge congestion without a generation resource because once a generator is retired, transactions between the delivery point and the receipt point cease, and congestion revenues cease. Therefore the Commission has found it reasonable that counter-flow obligations consequently cease. Long-term power supply contracts differ because alternative transactions can potentially continue after the termination of the contract and therefore market participants can continue to receive the benefits of congestion revenues.³³ Accordingly, we deny the Midwest TDUs’ request.

³² TEMT at section 43.2.5.e.

³³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,178 (2008).

6. Other Issues and Clarifications

a. Non-Subordination of New Baseload Resources to Short-Term ARRs

37. As required by the October 19, 2007 Compliance Order, the Midwest ISO revises section 43.6.2 of its TEMT to clarify that new baseload resources are not subordinate to short-term ARRs in the annual allocation. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

b. Peak Usage

38. In the October 19, 2007 Compliance Order, the Commission directed the Midwest ISO to clarify that peak load usage is based on the average of three-year actual peak loads. In its November 19, 2007 Compliance Filing, the Midwest ISO revises the definition of “Peak Usage” in section 1.238b of its TEMT.³⁴ The Midwest ISO also revises section 43.6.6 to make the tariff consistent with the new definition of “Peak Usage.”

39. Duke Energy faults the Midwest ISO for not explaining why the Midwest ISO turned a directive to change the definition of “Peak Usage” into a substantive change to section 43.6.6 to include the term “Peak Usage.” Duke Energy contends that prior to this change load growth was to be determined, as it always has been, based upon the LSE’s estimate of its load growth, including adjustments for aberrant weather or known additions or subtractions of “lumpy” loads, such as large industrial customers.

40. In addition, Duke Energy notes that the newly proposed language for section 1.238b provides no detail on how the three years’ worth of data will be used. Duke Energy maintains that the Midwest ISO should incorporate the explicit details of its mechanism to predict load growth into its TEMT, in a filing subject to full notice and comment, after a stakeholder process.

41. Ameren states that it is concerned that the proposed language for “Peak Usage” may be inadequate to account for predicted incremental load growth and may conflict with other provisions of the TEMT. Ameren notes that determining Total Forecasted Peak Load by averaging load for the last three years, or calculating the load growth as the

³⁴ The Midwest ISO proposes to define peak usage in section 1.238b as “A Market Participant’s Total Forecasted Peak Load usage in a given ARR Zone for the upcoming Annual ARR Allocation Period calculated using the immediate prior three year actual peak Loads. The Total Forecast Peak Load is the sum of the forecast Network Integration Transmission Service peak Load for the upcoming allocation period plus peak Load served by Option A – Grandfathered Agreements plus peak Load served by Option B – Grandfathered Agreements.”

change in actual load as section 1.238b seems to require, could fail to account for predicted incremental load growth. Ameren contends that the Midwest ISO should be required to clarify that in determining both “Peak Usage” and Total Forecasted Peak Load, the Midwest ISO will start with each market participant’s actual loads for each of the prior three years, weather normalize those loads, and then calculate average load growth over that time period. According to Ameren, the Midwest ISO should further be required to adjust these amounts for any discrete load additions or subtractions for new load (not load switching) to develop the forecast for an ARR zone. If a load switches from one market participant to another, then that transfer should be reflected in each market participant’s forecast. However, Ameren asserts that any such adjustment would not be expected to change the ARR zone forecast except in very rare circumstances.

42. The Midwest ISO answers by clarifying that its modification to section 43.6.6 is part of an effort to conform that portion of the TEMT to the clarification of the definition of “Peak Usage.” The Midwest ISO further notes that, contrary to Duke Energy’s claim, the Midwest ISO’s revised Business Practices Manual regarding ARRs does not preclude consideration of other factors in addition to three years of load data in the determination of load growth.

43. Moreover, the Midwest ISO states that the November 19, 2007 Compliance Filing’s language only differs from the October 19, 2007 Compliance Order in that the order uses the phrase “based on” (in reference to the use of load data of the three prior years), while the compliance filing uses the word “using.”³⁵ The Midwest ISO clarifies that the November 19, 2007 Compliance Filing’s adoption of the word “using” essentially means the same thing as “based on.”

44. The Midwest ISO further submits that the proposed language adequately reflects the core concept of taking into consideration the load data of the three prior years, while leaving the details of such determination to other operational documents. In this regard, the Midwest ISO is willing to study Ameren’s recommended approach for determining Peak Usage and Total Forecasted Peak Load. Nonetheless, even if adopted, the Midwest ISO asserts that the details of such an approach need not be included in the TEMT, and are best left to an appropriate Business Practices Manual.

45. We find that the Midwest ISO has complied with our requirement to revise the definition of “Peak Usage” to clarify that such a peak load usage would be based on the average of three-year actual peak loads. We disagree with Duke Energy’s argument against the change to include the term “Peak Usage” in section 43.6.6. We find that the Midwest ISO’s revision to section 43.6.6, while not explicitly required by the Commission in the October 19, 2007 Compliance Order, makes that portion of the TEMT consistent with the clarification of the definition of Peak Usage and is accepted. We also

³⁵ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 84.

reject Duke Energy's request that an explanation of how the three years' worth of data will be used be incorporated in the TEMT. We find that the Business Practices Manual, which is for operating procedures, is the appropriate place for the Midwest ISO to explain those specific details.³⁶

46. We also encourage the Midwest ISO to study Ameren's recommended approach for determining Peak Usage and Total Forecasted Peak Load.

c. Non-Curtailment of Prior Year's Stage 1 ARRs

47. In the October 19, 2007 Compliance Order, the Commission directed the Midwest ISO to modify section 43.2.4.a.i.c to clarify that the previous year's Stage 1A ARRs shall not be curtailed.³⁷ In the November 19, 2007 Compliance Filing, the Midwest ISO revises section 43.2.4.a.i.c of the TEMT to state that Stage 1A ARRs allocated the previous year would not be curtailed, so as to be consistent with section 43.2.4.a.v. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

d. Option B and Carved-Out GFAs

48. In the October 19, 2007 Compliance Order, the Commission directed the Midwest ISO to revise section 38.8.4 of the TEMT to clarify that Option B and carved-out GFAs would be provided "a full congestion hedge," but the Midwest ISO would not limit ARR allocation to LSEs holding the ARRs at maximum amounts.³⁸ In response, the Midwest ISO adds a new sentence to section 38.8.3.b.ii and section 38.8.4.2:

38.8.3.b.ii ...FTR Auction processes, but shall not actually allocate ARRs or assign FTRs to the GFA Responsible Entity. The Transmission Provider

³⁶ The Midwest ISO also acknowledges that the second sentence of the definition of "Peak Usage" should be revised to change the word "Forecast" to "Forecasted," to be consistent with the first sentence's use of the word "Forecasted." In addition, the Midwest ISO proposes to change "Total" to "total" and to delete the existing definition of "Total Forecast Peak Load" in section 1.311 (Sheet No. 130), and the reference to that term in section 43.2.1a.iv (Sheet No. 609D). The Midwest ISO states that these changes would conform to the Midwest ISO's intentions in its LTTR Proposal, to use the term "Peak Usage" uniformly, instead of "Total Forecast Peak Load." The Midwest ISO states that it will make a separate section 205 filing proposing these changes in the near future.

³⁷ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 86.

³⁸ *Id.* P 88.

shall not provide a preference to ARR or FTRs associated with the Option B Grandfathered Agreements and held by the Transmission Provider.

38.8.4.2 FTR and ARR Treatment...reflects expected transmission usage under the Carved-Out GFAs. The Transmission Provider shall not provide a preference to ARR or FTRs associated with Carved-Out GFAs.

49. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

e. Baseload Supply Resources

50. The October 19, 2007 Compliance Order directed the Midwest ISO to clarify the definition for “Baseload Supply Resource(s)” since a “Resource” is not a “Load.”³⁹ In its November 19, 2007 Compliance Filing, the Midwest ISO modifies the definition of Baseload Supply Resource(s) to clarify that such Resources are technically not “Load,” and are not necessarily limited to Reference Year Resources.⁴⁰ We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

f. Determination of ARR Value

51. The October 19, 2007 Compliance Order determined that the present description for determining posted auction clearing prices in section 42.4 was backwards.⁴¹ In its November 19, 2007 Compliance Filing, the Midwest ISO revises section 42.4 of the TEMT to clarify that an ARR obligation’s value is positive when the auction clearing price at the ARR receipt point is greater than that at the ARR delivery point. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

g. Network Upgrade

52. The October 19, 2007 Compliance Order required the Midwest ISO to revise section 46 of its TEMT since the last sentence refers to two conditions that were previously deleted. In response, the Midwest ISO revises section 46 of the TEMT to instead cite section 46.1 as the provision that sets forth the two conditions applicable to the creation of FTRs based on network upgrades (i.e., not to exceed the incremental

³⁹ *Id.* P 89.

⁴⁰ The Midwest ISO proposes to define Baseload Supply Resource(s) in section 1.18f of the TEMT as “~~The portion of a~~ Generation Resource associated with serving a Market Participant’s historic Base Load Usage and that is used for Baseload Reserved Source Point calculations.”

⁴¹ October 19, 2007 Compliance Order, 121 FERC ¶ 61,062 at P 90.

capability created by the network upgrades and to be consistent with continued feasibility of previously issued Stage 1A ARR's). We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

h. Ministerial Modifications

53. In the October 19, 2007 Compliance Order, the Commission directed the Midwest ISO to make the clarifying changes listed in Attachment 1 of the order. The Midwest ISO has made most of the minor tariff revisions listed in Attachment 1. However, the Midwest ISO has failed to make some of the required changes, and we direct the Midwest ISO to make these changes and submit them in a further compliance filing within 30 days of the date of this order. The remaining changes to be made by the Midwest ISO are listed in Attachment 1 of this order.

54. We accept the unopposed revised language as in compliance with the October 19, 2007 Compliance Order.

The Commission orders:

(A) The Midwest ISO's November 19, 2007 Compliance Filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(B) The 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Attachment 1

TABLE: Minor Tariff Revisions

The following table lists the minor tariff revisions, including clarifying changes and changes to correct numbering conventions, delete outdated references, and correct typographical errors. We direct the Midwest ISO to make the edits listed in this table.

Tariff Section	Description	Correction Needed
section 42	Contains term “non-points of delivery”	Term needs to be defined and language needs clarification.
section 44.1	Words “multiple rounds” in first sentence.	If the intent is to refer to multiple rounds of annual FTR Auctions (or anything else), the tariff should be precise as to how many rounds.
	Discussion of “self-scheduled FTRs corresponding to the ARR allocated for the Option B and Carve-Out.”	Discussion is inaccurate because Option B and Carve-Out GFAs are not “allocated” ARRs, nor do they “self-schedule” FTRs. Exclude “transfer capability allocated to Option B and Carve-Out GFAs in the simultaneous feasibility test.”
section 44.7.b	“An FTR Offer may not specify a minimum quantity offered but may specify a minimum quantity offered but may specify a reserve price, below which the FTR Holder does not wish to sell the FTR.”	“An FTR Offer may not specify a minimum quantity offered but may specify a minimum quantity offered but may specify a reserve price, below which the FTR Holder does not wish to sell the FTR.”