

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER06-313-001

ORDER DENYING REHEARING

(Issued May 10, 2006)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation) filed requests for rehearing of the Commission's February 7, 2006 Order that rejected proposed revisions to the Midwest ISO's Transmission and Energy Markets Tariff (TEMT).<sup>1</sup> In this order, we deny rehearing as discussed below.

**Background**

2. On August 6, 2004, the Commission issued an order approving Midwest ISO proposed TEMT, which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state region.<sup>2</sup> The Midwest ISO's Day 2 operations include, among other things, day-

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,117 (2006) (February 7 Order).

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g and compliance*, 111 FERC ¶ 61,043 (Compliance Order III), *reh'g denied*, 112 FERC ¶ 61,086, *order on compliance*, 113 FERC ¶ 61,083 (2005).

The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as the Midwest ISO or any successor organization. *See* Module A, section

(continued)

ahead and real-time energy markets and a (Financial Transmission Right) FTR market for transmission capacity. On December 20, 2004, the Commission issued an order requiring the Midwest ISO, among other things, to clarify the relationship between short-term, annual and longer-term network resource designation and eligibility for FTRs.<sup>3</sup> On May 26, 2005, the Commission accepted certain TEMT revisions made by the Midwest ISO in a March 10, 2005 compliance filing and further directed the Midwest ISO to submit a proposal regarding additional flexibility in seasonal and other less-than-annual designations of network resources in light of the Commission's ultimate objective that the Midwest ISO offer nomination for monthly, peak, and off-peak FTRs.<sup>4</sup>

3. On December 9, 2005, the Midwest ISO submitted a filing proposing to accommodate market participants that serve load with less-than-seasonal network resources by allowing these customers to register FTR entitlements at least equal to peak forecast peak load. In the event a market participant did not have long-term qualifying network resources at least equal to forecast peak load, the Midwest ISO proposed to define and register FTR entitlements based upon a pro rata share of all generation nodes in the balancing authority area in which load was located (slice-of-system approach).

4. The February 7 Order rejected the proposed revisions to the TEMT because the proposed revisions would reduce the value of FTRs and the congestion hedge they are intended to provide. The February 7 Order further directed the filing of revisions to the TEMT that would allocate FTRs first to market participants with seasonal or longer-duration designated network resources and would allocate any remaining FTRs to market participants with less-than-seasonal network resources.

## **Requests For Rehearing**

### **Midwest ISO's Request for Rehearing**

5. In its request for rehearing, the Midwest ISO argues there will be few, if any, FTRs remaining after completion of Tiers I through IV of the annual allocation and therefore market participants using less-than-seasonal network resources, most of which

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1.320, Original Sheet No. 133. For clarity, we will refer to the Midwest ISO wherever the TEMT refers to the Transmission Provider.

<sup>3</sup> *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 (2004).

<sup>4</sup> *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,249 (2005) (May 26 Order).

are entities serving load in retail choice states, would be deprived of any significant opportunity to obtain FTRs. The Midwest ISO notes that in the 2004-2005 allocation, the percentage of nominated FTRs allocated included the following amounts: Tier I – 97 percent; Tier II – 92 percent; Tier III – 85 percent; and Tier IV – 52 percent. The Midwest ISO contends that if this declining allocation percentage were extrapolated to a fifth tier, the probable result would be a significantly lower allocation of nominated FTRs.

6. The Midwest ISO faults the February 7 Order for assuming its required allocation would not involve additional modeling requirements since, in actuality, the Midwest ISO has had to manually complete the allocation and eliminate the June 2006 monthly allocation. In comparison, the Midwest ISO claims that the December 9 compliance filing allocation methodology could be implemented consistent with existing procedures and FTR allocation schedules.

7. The Midwest ISO claims that the February 7 Order is unfair and unduly discriminatory because users of less-than-seasonal network resources should be given a fair and comparable opportunity to receive FTRs since they pay for the embedded costs of the transmission system just as other customers using resources of seasonal or greater length, similarly pay for those embedded costs, and the fact that customers use network resources of less than one year's duration does not alter the long-term nature of their transmission service. Also, the Midwest ISO contends that since market participants relying on less-than-seasonal network resources are concentrated in retail choice states, the February 7 Order allocation scheme unjustly, unreasonably, unfairly and unduly discriminates against these market participants. In contrast, the Midwest ISO states that its proposed framework equitably allocates FTR eligibility without undue preference or discrimination, regardless of the terms of the market participants' network resources, and would assure that all load has equal access to the congestion hedge protection provided by FTRs within the current four-tier nomination and allocation process.

### **Constellation's Request for Rehearing**

8. Constellation cites to the Midwest ISO conclusion that there will be few, if any, remaining FTRs for market participants with less-than-seasonal network resources, thereby depriving them of any meaningful opportunity to obtain any FTRs, and argues that the February 7 Order is contrary to previous Commission findings that all network integration transmission service (NITS) customers including those relying on short-term

network resources should be allocated FTRs.<sup>5</sup> Constellation explains that the Commission has repeatedly confirmed that all NITS customers are deemed to have long-term service arrangements whether they choose to meet their resource adequacy obligations through the designation of annual, seasonal or less-than-seasonal network resources and notes that all NITS customers pay for the embedded costs of the transmission system, regardless of the length of their network resource designations. Therefore, contends Constellation, users of shorter-term resources should be given a fair and comparable opportunity to receive FTRs. However, the February 7 Order extends an undue preference to NITS customers that use longer-term resources. Constellation faults the Commission for its decision that provides a residual entitlement to market participants with less-than-seasonal network resources that is meaningless because there will be no FTRs left to allocate.

9. Constellation claims the Energy Policy Act of 2005 (EPAAct 2005), Pub. L. No. 109-58, § 1233, 119 Stat. 594, 957 (2005), does not condone discrimination, contrary to the Commission's conclusion in the February 7 Order. According to Constellation, EPAAct 2005 does not require the Commission to extend a discriminatory preference to long-term power supply arrangement versus shorter-term power supply arrangements that a Load Serving Entity (LSE) may choose. Constellation argues EPAAct 2005 requires the Commission to be proactive in ensuring that all LSEs have access to the transmission rights necessary to satisfy their service obligations and nothing in EPAAct 2005 contemplates that LSEs with resources of one year should be extended a preference at the expense of LSEs that use shorter-term resources. Furthermore, Constellation asserts that there is nothing in EPAAct 2005 that contemplates LSEs that meet their obligations through resources with a duration of one year should be extended a preference at the expense of LSEs that meet their obligations with shorter-term resources. Also, Constellation contends that section 217(b)(4) of EPAAct 2005 focuses on policies that facilitate planning and expansion, and therefore it is wrong to suggest that EPAAct 2005 requires the Commission to take away the opportunity for LSEs that rely on shorter-term resources to obtain FTRs in order to increase the opportunity of LSEs that rely on longer-term resources to obtain FTRs. Instead, EPAAct 2005 requires the Commission to take affirmative steps to meet both the needs of LSEs with shorter-term resources and LSEs with long-term resources without undue preference or discrimination, according to Constellation.

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<sup>5</sup> *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 (2004) at P 79, 82, *order on reh'g*, 111 FERC ¶ 61,043 at P 27 (2005), *order on compliance filing*, 111 FERC ¶ 61,249 at P 29–32 (2005).

### Discussion

10. We deny the requests for rehearing of the Midwest ISO and Constellation. Since the inception of the Midwest ISO energy market, FTRs, subject to the test of simultaneous feasibility and the granularity allowed by the number of sub-periods of the year being modeled, have been insufficient to meet all demands. However, the allocation has generally provided sufficient FTRs to offer a robust congestion hedge against Locational Marginal Pricing congestion charges. The choice before us in this proceeding is whether customers with longer-term network resources must lose FTRs for the entire year (the “slice of system” method) to provide FTRs to parties with less than seasonal network resources, or whether to restrict the FTRs available to the market participants with less-than-seasonal network resources to FTRs that are not used by the annual or seasonal FTR holders. The Commission’s decision in the original order was to adopt the latter approach and preserve the annual or seasonal FTRs available to the existing FTR holders (we also suggested to the Midwest ISO that it pursue other methods to assign FTRs to parties with monthly network resources, such as a monthly re-assignment of FTRs roughly equivalent to the quantity of monthly NITS – with or without FTR reconfiguration – from those entities that are selling short-term network resource contracts to those buying them). In this balance of equities, our premise is that there is a value in not degrading a longer-term congestion hedge for market participants with long-term network resources so that these market participants do not lose FTRs in all months under the slice-of-the-system approach to accommodate market participants that need a congestion hedge for only one month. By preserving the congestion hedge for these customers, the FTR allocation will facilitate planning and expansions for long-term supply arrangements.

11. We do not consider the result to be an undue preference, for two reasons. First, the method chosen by the Commission maintains the value of FTRs to the market participants in the Midwest ISO that have long-term network resources, rather than reduce their congestion hedge. We consider the alternative choice -- reducing FTRs to all market participants with longer-term network resources -- to be more disruptive and to unduly prefer market participants with less-than-seasonal service. That is, existing market participants with long-term network resources would lose a portion of the value of their congestion hedge and this might reduce any incentive to contract for long-term supplies.

12. Second, while we agree with Constellation that users of shorter-term resources should be given an opportunity to receive FTRs, we consider the argument that market participants with less-than-seasonal network resources are still long-term transmission customers and therefore deserving of equal treatment in receiving FTRs to be beside the point. By paying for transmission service, market participants receive access to the

transmission grid. Their payment for transmission service is not a guarantee of an FTR award.

13. As Constellation is aware, since the start of the Midwest ISO energy market, participants with long-term network resources with high historical capacity factors have always received the first priority for restoration of FTRs nominated but not allocated.<sup>6</sup> In the Midwest ISO FTR allocation framework, market participants -- including those market participants with less-than-seasonal network resources -- are along a continuum that starts with the highest capacity factor long-term network resources receiving full restoration and continues through less than full restoration for generation above the base-load tiers. In this sense, market participants utilizing less-than-seasonal network resources are not treated any differently than market participants utilizing peak resources in which each successive tier is left with a smaller FTR pool for allocation. Hence, we do not consider our decision in this proceeding to represent a change in policy with regard to the Midwest ISO FTR allocation method.

14. In contrast, the Midwest ISO proposal would take FTRs away from all market participants in the balancing authority, including FTRs that have been reserved for base-load generation and that have been relied on by market participants with long-term generation resources consistent with the terms of the TEMT approved by the Commission. Therefore, the Midwest ISO approach could be disruptive and would represent a change in the Commission's policy toward FTR allocation in the Midwest ISO. We also consider the additional modeling and the elimination of the June monthly FTR allocation cited by the Midwest ISO to be less disruptive and less harmful to customers than adopting the alternative allocation.

15. We are not persuaded by arguments by the Midwest ISO and Constellation that the resulting FTR allocation would limit the available FTRs for market participants with less-than-seasonal network resources. We have no basis to conclude that the FTRs left to be allocated would be meaningless, *i.e.*, zero FTRs, as is claimed by Constellation, or would result in only some small extrapolated amount, as is claimed by the Midwest ISO. Rather, the more reasonable expectation would be that the allocation of FTRs to those with less-than-seasonal network resources would be similar to the allocation of the last peak tier for long-term network resources, *i.e.*, a reduction in the allocation percentage compared to the 90 percent and higher allocations for the first tiers for base-load generation, but not zero or de minimis.

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<sup>6</sup> This restoration process is premised on the principle that FTRs from base load generation to load should be made available to the extent feasible. TEMT, Module C, Second Revised Sheet No. 615.

16. It is also important to consider that any FTRs awarded the parties with monthly network resources would be providing revenues for a year or a season, whereas the monthly transmission usage, and hence the need for a congestion hedge, would only cover one month. So it is possible that sufficient FTR revenues would be recovered from an FTR allocation that is less than the actual monthly use of the transmission grid.

17. We also consider the arguments raised by Constellation regarding EAct 2005 to be inapposite. The original order, and this order are based on the facts and customer impacts of this proceeding only. The footnote in the original order simply identified the consistency of our ruling with EAct 2005.

18. For these reasons, we deny rehearing.

The Commission orders:

The Midwest ISO's request for rehearing is hereby denied, for the reasons discussed herein.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.