

121 FERC ¶ 61,063
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellingshoff.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER07-478-002

ORDER GRANTING IN PART AND DENYING IN PART REHEARING OF LONG-
TERM TRANSMISSION RIGHTS ORDER

(Issued October 19, 2007)

1. On May 17, 2007, the Commission issued an order¹ accepting the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) long-term firm transmission rights (LTTR) proposal, subject to modification. Manitoba Hydro, Strategic Energy, L.L.C. (Strategic Energy), the Midwest TDUs,² and Integrys Energy Group (Integrys) seek rehearing of the LTTR Order. Issues presented on rehearing include: (1) modifications to the Midwest ISO's counter-flow method; (2) advance guarantees of LTTRs; (3) conversion of infeasible Auction Revenue Rights (ARRs) to self-scheduled Financial Transmission Rights (FTRs); (4) cost allocation; (5) LTTRs for new generation interconnecting to the transmission system; and (6) the denial of LTTRs for point-to-point service commencing after the reference year. In this order, the Commission grants in part and denies in part rehearing, as discussed below.

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143 (2007) (LTTR Order).

² Midwest TDUs consists 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, Soyland Power Cooperative, Inc., and Wisconsin Public Power, Inc.

I. Background

2. Consistent with the Energy Policy Act of 2005 (EPAcT 2005),³ Order No. 681 required independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers. The Final Rule directed these independent transmission organizations to make LTTRs available that satisfy seven guidelines.⁴ 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, the Midwest ISO submitted revisions providing for LTTRs,⁵ in compliance with the Commission's Order No. 681. In that filing, the Midwest ISO also proposed to modify the rules for allocating short-term transmission rights. 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. The Commission also determined that the Midwest ISO's Stage 2 allocation of revenues for short-term transmission rights is reasonable and in compliance with Order No. 681. On June 18, 2007 and July 16, 2007, the Midwest ISO made the required compliance filings.⁶

II. Rehearing Requests

4. The parties requesting rehearing generally raise the following issues, which are discussed in more detail in the discussion section below.

³ 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 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.*

⁴ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at 108-428 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201, at P 12-15 (Order No. 681 or the Final Rule).

⁵ LTTR Proposal.

⁶ June 18, 2007 Compliance Filing and July 16, 2007 Compliance Filing, respectively. The Commission is issuing an order on these compliance filings (Companion Compliance Order) concurrently with this order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,062 (2007).

5. The Midwest TDUs, Integrys, and Strategic Energy seek rehearing on the Commission's decision in the LTTR Order regarding the continuation of counter-flow restoration. The Midwest TDUs assert that the Commission erred by approving the LTTR Proposal under which the feasibility and availability of long-term rights depend on the assignment of counter-flow ARR while also indicating that counter-flow ARRs may be terminated in the near future. Integrys requests clarification or rehearing that the Commission agrees that counter-flow LTTRs associated with a retired unit should be cancelled when the unit is retired. Strategic Energy takes issue with the provisions the Commission approved with respect to the assignment of counter-flow directly to load serving entities (LSEs) instead of being uplifted to all zonal load.

6. The Midwest TDUs and Integrys seek rehearing on the Commission's determination in the LTTR Order regarding advance guarantees of LTTRs. The Midwest TDUs assert that the LTTR Order is contrary to Order No. 681 because it does not require the Midwest ISO to make such advance guarantees. Integrys seeks rehearing of the Commission's finding that the Midwest ISO can make an *ex post facto* determination of feasibility after the generation enters service.

7. The Midwest TDUs and Integrys seek rehearing on the Commission's determination regarding conversion of infeasible ARRs to self-scheduled FTRs. The Midwest TDUs assert that the Midwest ISO's proposal violates guideline (7) because it requires market participants to participate in an auction when a long-term ARR becomes infeasible, to obtain the corresponding FTR. Integrys asserts that infeasible ARRs should be convertible to FTRs, and rejects the argument that allowing the conversion of ARRs to infeasible FTRs will create the potential for under-funding of day-ahead FTRs.

8. Integrys seeks rehearing on the LTTR Order's explanation for the Commission's acceptance of the LTTR Proposal to allocate the costs of infeasible Stage 1A ARRs to LTTR holders, and the finding that it is reasonable to assign these costs to the beneficiaries of the funding for infeasible ARRs. Integrys asserts that since all market participants benefit from system improvements, the infeasibility cost should be applied to the entire market.

9. Integrys seeks rehearing on the LTTR Order because it believes the Commission should have rejected the Midwest ISO's proposal to deny LTTRs to new generators that properly obtain Network Resource Interconnection Service (NRI) and subsequently fail a simultaneous feasibility test, thereby forcing the LSE with capacity rights to the new generator into the auction.

10. Manitoba Hydro requests rehearing on the LTTR Order because the Commission did not reject the Midwest ISO's requirement that point-to-point transmission service requests obtained after the reference year are not eligible for ARRs on the same basis as those originating in the reference year. Manitoba Hydro contends that the LTTR Order

should have directed the Midwest ISO to revise its TEMT to treat the eligibility of all point-to-point service for ARR's equally.

III. Discussion

A. Counter-Flow

11. In the LTTR Order, the Commission accepted the Midwest ISO's proposal to continue assessing counter-flow obligations on market participants, stating that counter-flow was approved in the TEMT II Order⁷ for a five year transitional period, ending in 2010.⁸ The Commission further noted that it would not fine-tune the counter-flow method, explaining that those issues were best addressed in the proceedings evaluating the Midwest ISO's future proposal to terminate or extend the counter-flow transition in 2010.

12. Counter-flow refers to the congestion cost and the FTR impact of generation resources providing energy at a higher cost locational marginal pricing (LMP) than the LMP of the load receipt points. Such resources are necessary to serve loads that cannot be served entirely by lower cost resources due to transmission constraints. In terms of congestion costs and FTRs, counter-flow resources are paid congestion costs, since the source LMP is higher than the sink LMP, and therefore they pay for their FTRs and ARR's. In other words, counter-flow resources do not have congestion costs that must be hedged by FTRs and ARR's, and instead have the opposite circumstance of paying FTRs and ARR's for their congestion payment benefit. The Midwest ISO is able to use the FTR payments of the counter-flow resources to fund the FTR costs of other generation resources with congestion costs, in the restoration process of allocating ARR's. Counter-flow holders receive congestion rents and pay out FTR revenues. Most holders of FTRs pay congestion rents and receive FTR revenues.

1. Requests for Rehearing

13. The Midwest TDUs request clarification or rehearing that all long-term ARR's will be protected for their full term, and recommend that the Commission require transmission

⁷*Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Order).

⁸ Under the Midwest ISO's proposal, counter-flow obligations apply to Stage 1A ARR's not nominated by market participants. Those obligations remain in effect while the market participant has an ownership interest or a contract for supply in a generation source, and that obligation has a maximum term of ten years.

upgrades⁹ and broad uplift mechanisms as remedies to assure that the holders of long-term ARR are fully hedged. In addition, the Midwest TDUs argue that the Commission erred by accepting a proposal that relies on counter-flow ARRs, but also suggesting in the LTTR Order that these counter-flow ARRs may not continue for a ten-year period. Specifically, the Midwest TDUs, noting that the Midwest ISO must make a filing in 2010 to determine whether to continue the counter-flow restoration,¹⁰ object to the Commission's statement in the LTTR Order that "any future decision about the continuation of the restoration could affect the term of the already allocated LTTRs."¹¹ The Midwest TDUs argue that the Commission's approval of the Midwest ISO LTTR Proposal, under which the term of already allocated LTTRs could be affected by any future decision about the continuation of counter-flow LTTRs, is "directly contrary" to Order No. 681, which mandates LTTR terms that are sufficient to hedge long-term power supply arrangements for a minimum of ten years.

14. Integrys requests clarification or rehearing that the Commission agrees in principle that counter-flow LTTRs associated with a retired unit should be cancelled when the unit is retired or, at minimum, the Commission has not definitively decided that counter-flow LTTRs related to a unit may survive the unit's retirement and is requesting that the Midwest ISO provide evidence to prove that any such survival is appropriate. If the Commission does not grant clarification, Integrys seeks rehearing of the Commission's determination regarding retirement of baseload generators¹² because, in Integrys' view, there is no reasonable basis for forcing an LSE to retain counter-flow LTTRs if the generating unit is retired.¹³

15. Strategic Energy requests rehearing because it claims that the Commission acted arbitrarily and capriciously and failed to engage in reasoned decisionmaking in accepting tariff provisions that allow counter-flow. Strategic Energy recommends that

⁹ The Midwest TDUs fault the Commission for declining to require transmission expansion planning to support FTRs in the TEMT II Order.

¹⁰ In the TEMT II Order, the Commission established a five-year period from the start of the Midwest ISO Day 2 market in which the Midwest ISO was required to "restore" counter-flow ARRs as a means to provide LSEs in the Midwest ISO territory with sufficient annual FTRs to meet their baseload needs. TEMT II Order, 108 FERC ¶ 61,163, at P 189, *order on reh'g*, 109 FERC ¶ 61,157 (2004). For further information on the restoration process, *see generally id.*

¹¹ Midwest TDUs Rehearing Request at 14 (*quoting* LTTR Order, 119 FERC ¶ 61,143 at P 149).

¹² LTTR Order, 119 FERC ¶ 61,143 at P 151.

¹³ Integrys Rehearing Request at 17.

counter-flow ARR costs be uplifted to all zonal¹⁴ load since, in Strategic Energy's opinion, assigning counter-flow ARRs to individual LSEs discriminates against LSEs with long-term supply and load contracts that may change over the term of a potential counter-flow ARR assignment. Strategic Energy also claims that assigning counter-flow ARRs to individual LSEs discriminates against LSEs that do not own or control the output of the generation facility at the source of the counter-flow ARR.¹⁵ Strategic Energy explains that without the energy payment for energy injections by the source unit, the hedge assumed against counter-flow obligations does not materialize and gives rise to the potential for the generation owner to operate the unit in a fashion that is not in the best interest of all LSEs with counter-flow obligations. Strategic Energy further contends that the counter-flow provisions do not satisfy guideline (5) since the provisions fail to equitably meet the needs of all LSEs.

16. Strategic Energy notes that LSEs serving competitive retail load typically use the transmission system for less than the ten-year term of the long-term ARR, and counter-flow assignment, and therefore should not be profiled in a manner that presumes their prior uses of the transmission system are indicative of their future use. Strategic Energy states that such LSEs are arbitrarily burdened with counter-flow ARRs long after the long-term supply and service arrangements have ended. Nor, according to Strategic Energy, should LSEs be forced to settle for an inferior opportunity to obtain transmission hedges by foregoing Stage 1A LTTRs or increased risks to cover the potential for counter-flow ARR assignment. Strategic Energy therefore recommends that to the extent a safeguard is necessary to provide all LSEs with requested ARRs, then all zonal load should participate in ensuring such rights. According to Strategic Energy, if zonal transmission capacity is insufficient to assure the allocation of all desired ARRs, then those entities paying for the embedded costs of the transmission system should be responsible for either paying for the additional transmission capacity to sustain the requested ARRs, or sharing in the uplift due to insufficient transmission capacity.

2. Commission Determination

17. We deny requests for rehearing concerning approval of counter-flow ARRs in the LTTR Order, and affirm that the Midwest ISO's proposal meets the requirements of Order No. 681, and that its counter-flow method does not result in violations of the guidelines. As the Commission stated in the LTTR Order, the Midwest ISO's counter-flow method ensures sufficient revenues to fund the ten-year LTTRs that are required by

¹⁴ ARRs are allocated by eligible sources and sinks in zones based on the location of the market participant's load.

¹⁵ Strategic Energy notes that competitive retail LSEs typically do not own or control generation and, as a result, the rationale upon which the Commission based its assessment of the equity of counter-flow ARRs in the LTTR Order fails.

Order No. 681.¹⁶ While recognizing that it would be ideal to have all funding provided by new system expansions, in the LTTR Order, the Commission agreed to allow the counter-flow method as a transition mechanism to ensure sufficient funding of FTRs for a defined transition period.¹⁷ Considering the benefits provided by counter-flow, such as increasing the total amount of available FTRs, and the Commission's reasoned approach for a transition process,¹⁸ we do not consider the counter-flow method to be arbitrary or capricious. Therefore, contrary to Strategic Energy's contention that the counter-flow provisions do not satisfy guideline (5) because they fail to equitably meet the needs of all LSEs, we find that guideline (5) is satisfied because counter-flow ARRAs ensure that enough LTTRs are available to cover 50 percent of LSEs' peak load obligations.¹⁹ Inasmuch as the sole purpose of this proceeding is to ensure compliance with Order No. 681, we affirm that we will not, here, reject the counter-flow method, but will instead leave this issue for resolution in the proceeding evaluating the Midwest ISO's proposal to extend, revise, or terminate the counter-flow method upon its expiration in 2010. When the Commission reassesses the counter-flow method in that future proceeding, the Commission will consider Order No. 681, including the Final Rule's requirements concerning firmness of LTTRs, before ruling on the fate of the counter-flow method and associated issues. Consequently, we find the Midwest TDUs' objection concerning possible future termination of counter-flow ARRAs to be speculative and premature at this point in time.

18. Inasmuch as we are affirming that the counter-flow method does not violate Order No. 681, we will not require alternative methods, such as the broad uplift mechanisms suggested by the Midwest TDUs, to fund ARRAs.

19. We similarly deny Strategic Energy's request for rehearing with respect to the Commission's acceptance of the Midwest ISO's assignment of counter-flows directly to LSEs instead of all zonal load. As we state above, we will not here consider other counter-flow methods, such as the assignment of counter-flow costs to zonal load. The accepted method remains in place until expiration of the transition period. Furthermore, as the Commission noted in the LTTR Order,²⁰ the assignment of counter-flow to other market participants is unfair because the assignment of these costs to zonal load or a market-wide allocation can reduce the value of the LTTR hedge to other entities, thereby reducing the benefit of Order No. 681.

¹⁶ We note that the Midwest ISO LTTRs were approved with a ten-year guarantee.

¹⁷ LTTR Order, 119 FERC ¶ 61,143 at P 147-49.

¹⁸ *See generally* TEMT II Order, 108 FERC ¶ 61,163.

¹⁹ *See* LTTR Order, 119 FERC ¶ 61,143 at n.5.

²⁰ *See id.* at P 178.

20. We also deny Strategic Energy's request for rehearing because we do not see any basis to conclude that the counter-flow provisions are onerous for retail competitive suppliers. We disagree with Strategic Energy's assertion that this assignment method is discriminatory. LTTRs, including counter-flow LTTRs, obtained by these LSEs are point-to-point rights between specified sources and sinks. Under guideline (6) and section 43.7.2 of the Midwest ISO TEMT, to the extent the retail competitive supplier no longer serves a load during the ten-year term of the LTTR, that LTTR goes to the supplier that subsequently serves the load.²¹ Therefore, we find no basis in the Midwest ISO tariff that would result in the competitive retail supplier being left with an LTTR for a load it no longer serves, as Strategic Energy fears. We also find that there is no basis under which a competitive retail supplier could obtain LTTRs for source-to-sink paths on which the competitive retail supplier had no ownership or contractual relationship with the source. Pursuant to the terms of the Midwest ISO's tariff, assignment of an LTTR requires a qualified source, and a qualified source must have an ownership or contractual nexus to the LTTR holder.

21. In addition, we deny the Midwest TDUs' request for rehearing concerning requiring transmission construction to maintain the feasibility of long-term ARRs. Order No. 681 does not mandate that the Commission require the construction of transmission facilities, as the Commission made clear in Order No. 681 and Order No. 681-A.²² EPAct 2005 and Order No. 681 do, however, require the Commission to facilitate the planning and expansion of transmission facilities so that LSEs can secure firm transmission rights, and to implement a planning process that will accommodate LTTRs that are awarded by ensuring they remain feasible over their entire term.²³ The Commission intends to vigilantly carry out this objective. To this end, we note that we are requiring, in the Companion Compliance Order, that the Midwest ISO incorporate provisions into its tariff to ensure that its transmission planning process identifies, evaluates, and analyzes expansions designed to guarantee that the transmission system can support the simultaneous feasibility of all Stage 1A ARRs over their full term, and that these expansions be included in the MTEP.²⁴ However, these requirements are planning requirements only, and therefore do not encompass a construction requirement.

²¹ Guideline (6) states that a long-term transmission right held by a load-serving entity to support a service obligation should be re-assignable to another entity that requires that service obligation. The Midwest ISO TEMT provides that ARRs will be re-assigned to reflect load shifting.

²² See Order No. 681-A, 117 FERC ¶ 61,201 at P 97 (The Commission stated in the Final Rule that it was not, through the long-term firm transmission rights regulations, imposing a new "obligation to build" that does not already exist under Order No. 888.).

²³ See Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 453.

²⁴ See Companion Compliance Order, 121 FERC ¶ 61,062 at P 48.

22. We grant rehearing on Integrys' concerns regarding the counter-flow obligations for retired generation units. We reject the Midwest ISO's proposal that the counter-flow obligation continue after the generation resource is retired. The Commission explained in the LTTR Order that the retirement of a baseload generator within the ten-year period creates financial problems for holders of counter-flow ARR holders since they must continue to pay the counter-flow cost, but are no longer receiving any off-setting congestion revenues.²⁵ Without a generation resource, these counter-flow ARR holders no longer have the ability to hedge congestion by producing energy. Inasmuch as the value of this counter-flow obligation is based on the difference between the clearing prices at the delivery point and the receipt point, logically the obligation applies to market participants that transact in the energy market on the path between these points. Once the generation resource is no longer in service, its relevant transactions along this path cease. Accordingly, we find the Midwest ISO's proposal to continue assessing counter-flow obligations after the generation source has been retired to be unreasonable since holders of counter-flow ARRs no longer have the ability to hedge congestion by producing energy.

23. We recognize that this finding has implications for the feasibility of LTTRs; namely, that the revenues originally provided by these obligations must now be uplifted from LTTR holders to the extent the retirements and termination of counter-flow obligations result in infeasible ARRs over their guaranteed term. We also recognize that this finding could create an incentive for generators to retire prematurely. Nonetheless, on balance, continuing a counter-flow obligation after the market participant can no longer provide energy and obtain the congestion payment is unreasonable.²⁶

B. Advance Guarantees of LTTRs

24. In the LTTR Order, the Commission found that advance guarantees of LTTRs, i.e., guarantees of LTTRs before generation facilities go into service, are not required by Order No. 681. The Commission further found that it is not possible to predict the amount of feasible LTTRs that will be available until after a feasibility test has been run and a transmission system evaluation has been made based on the most up-to-date system topology.²⁷

1. Requests for Rehearing

25. Integrys claims that the Commission's finding that the Midwest ISO can make an *ex post facto* determination of feasibility after the generation enters service is unreasoned

²⁵ LTTR Order, 119 FERC ¶ 61,134 at P 151.

²⁶ See Companion Compliance Order, 121 FERC ¶ 61,062 jnat P 81.

²⁷ LTTR Order, 119 FERC ¶ 61,143 at P 155.

and fails to recognize that the crucial point in power system development is when the construction commitment is made or the long-term contract commitment is made.

26. The Midwest TDUs request rehearing on the Commission's statements in the LTTR Order that Order No. 681 does not require the Midwest ISO to provide advance guarantees of LTTRs before generation facilities go into service. They cite to the statements in Order No. 681 that assume the issuance of LTTRs at the time of financing (and before commencement of operations) as proof the LTTR Order is contrary to the requirements of Order No. 681. The Midwest TDUs also point to the directive in Order No. 681 to enable LSEs to secure firm transmission rights for planned long-term power supply arrangements in section 217(b)(4) of the EPAct 2005, as proof that the LTTR Order findings are contrary to EPAct 2005.

27. The Midwest TDUs recommend that the Commission require the Midwest ISO to develop procedures for LSEs to secure LTTRs for their planned power supply arrangements, which necessarily require advance commitments. The Midwest TDUs contend that the unavailability of a mechanism to secure, on a planned basis, long-term transmission rights to support delivery to load of resources at a predictable price undermines their ability to make and finance investments, or to enter into long-term power purchase commitments. They also assert that the high installed cost of generation cannot be justified if the inability to obtain an LTTR from source to loads, and the risk of intervening congestion, leave the LSE exposed to paying gas-based LMPs for the baseload generator's energy output.

2. Commission Determination

28. In order to provide some context for this issue, we note that generators typically have information on the transmission system capabilities, and therefore the likely level of congestion cost coverage, before the unit goes into service. They obtain this information when the Midwest ISO provides them with an analysis of system capabilities to accommodate the additional MW being offered into the market under various scenarios, as required by the Commission's interconnection procedures.²⁸ Also, the Midwest ISO TEMT Attachment FF expansion planning provisions incorporate generation interconnects into the plans for new transmission capacity. Lastly, as the Midwest ISO clarifies in its June 18, 2007 Compliance Filing, prior to the in-service date, the Midwest ISO will provide a detailed description of upgrades necessary to ensure feasibility if the

²⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

market participant cannot obtain its entire requested transfer capability.²⁹ We consider this range of information to be sufficient for market participants to develop new projects, and find that the Midwest ISO procedures provide increased certainty regarding congestion costs, thereby helping load serving entities make new investments and other long-term power supply arrangements.³⁰

29. We also do not consider the Midwest TDUs' interest in an advance binding commitment to be practical. The Midwest ISO will plan for the needs of LSEs and will provide detailed analyses of the network upgrades necessary to provide LTTRs, and hence provide the new generator with substantial certainty regarding the congestion hedge expected for the new unit. However, other factors that cannot be predicted or planned for, such as loop flow, will impact the actual LTTRs that can be made available when the unit goes into service. We do not consider it 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.

30. We deny the Midwest TDUs' request for rehearing on the Commission's determination in the LTTR Order regarding advance guarantees of LTTRs. The Midwest TDUs' primary interest is that new baseload generators be given a claim on capacity, such that their estimated congestion hedge is undisturbed by other generators that are built later but go into service sooner than the first generator.³¹ EPAct 2005 does not require such a result. Section 217(b)(4) requires the Commission to enable LSEs to secure firm transmission rights for long-term power supply arrangements that are made, or planned, to meet their reasonable needs. We expect, based on the Midwest ISO's description of its analysis process, that the Midwest ISO's process will evaluate all system activities of LSEs, including the construction of other generation, in its analysis of the network upgrades necessary to provide LTTRs to new generation. Therefore, the Midwest ISO is acting, as EPAct 2005 requires.

C. Conversion of Infeasible ARR to Self-Scheduled FTRs

31. In the LTTR Order, the Commission found that the Midwest ISO's proposal to prohibit conversion of infeasible ARRs to self-scheduled FTRs was not a violation of guideline (2) since market participants with infeasible ARRs are receiving a congestion hedge, with fixed properties for ten years.³²

²⁹ See June 18, 2007 Compliance Filing at 7.

³⁰ See Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 16.

³¹ See Midwest TDUs Request for Rehearing at 12.

³² See LTTR Order, 119 FERC ¶ 61,143 at P 55.

32. In addition, guideline (7) states that the initial allocation of the LTTRs shall not require recipients to participate in an auction. In the LTTR Order, the Commission accepted the Midwest ISO's proposal to not require LSEs to submit bids in an auction in order to receive Stage 1A ARR, and to allow market participants to convert feasible Stage 1A ARR into FTR by self-scheduling these rights in the annual FTR auction.³³

1. Requests for Rehearing

33. The Midwest TDUs seek rehearing of the Commission's conclusion that the Midwest ISO tariff provisions satisfy the requirements of guideline (7), since market participants holding infeasible long-term ARR must participate in an auction and place a winning bid to obtain the FTRs that correspond to their long-term ARR. This occurs, according to the Midwest TDUs, because ARR that become infeasible after the initial allocation cannot be converted into self-scheduled FTRs, per the Midwest ISO tariff provisions. The Midwest TDUs contend that the Final Rule did not suggest allocating ARR – as opposed to auctioning ARR – could satisfy the requirements of the guideline and argue that the Final Rule specifically envisioned that ARR should be capable of being converted into FTRs without participation in an auction.³⁴ The Midwest TDUs claim that guideline (7) implicitly recognizes that the right to ARR revenues from an annual auction does not produce the same congestion hedge result as an FTR that perfectly hedges congestion charges as they change over time, contrary to the Commission's conclusion in the LTTR Order.³⁵

34. The Midwest TDUs aver that the Midwest ISO's proposal violates guideline (7) unless each holder of a long-term ARR that becomes infeasible may bid into an annual auction as a "price-taker" for FTRs with the assurance that it will win the auction and the winning bid will be equal to the auction revenues received by virtue of holding the long-term ARR. The Midwest TDUs claim that the Midwest ISO's FTR auction protocols do not allow for this option for the following reasons: (1) FTR bidders and offerors must enter a specific dollar price; (2) auction procedures do not allow holders of long-term

³³ *See id.* at P 185.

³⁴ *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 361, 385-86 (the Commission proposed to require that any long-term rights allocated as ARR be capable of being directly converted to transmission rights without participation in the auction).

³⁵ LTTR Order, 119 FERC ¶ 61,143 at P 55.

ARRs to submit “price-taker” bids for FTRs; and (3) credit rules prohibit long-term ARR holders from submitting explicit FTR bids in excess of their available credit.³⁶

35. For these reasons, the Midwest TDUs recommend that the Commission reject the mandatory auction requirement for long-term ARRs that become infeasible and direct the Midwest ISO to adopt and implement procedures giving each holder of long-term ARRs the right to submit price-taker bids for FTRs associated with its ARRs. The Midwest TDUs also recommend that the Commission direct the Midwest ISO to file revised credit provisions that reflect that there is no actual net credit exposure for FTR bids that match long-term ARRs. The Midwest TDUs conclude that it is unjust and unreasonable to strip transmission-dependent LSEs of their long-term rights that they have relied on in making their power supply decisions, by putting the risk and financial burden of unanticipated changes in the grid, on those least able to correct the transmission system problems that resulted in the long-term ARR infeasibility problem.

36. Integrys seeks rehearing of the Commission’s decision to adopt the Midwest ISO’s proposal to prohibit conversion of infeasible ARRs to self-scheduled FTRs, and contends that this prohibition is inconsistent with guideline (2). Integrys rejects the argument that allowing the conversion of ARRs to infeasible FTRs will create the potential for under-funding of day-ahead FTRs since under-funding is the result of a market flaw, i.e., the breakdown of generation interconnect rules, transmission planning, or construction. Integrys recommends correcting potential under-funding by uplifting the funding deficiency to all Midwest ISO loads until the Midwest ISO is able to correct the market flaws.

2. Commission Determination

37. We deny the Midwest TDUs’ request for rehearing with respect to the Commission’s determination that the Midwest ISO’s LTTR Proposal satisfies the requirements of guideline (7). The Midwest TDUs’ primary concern is that infeasible ARRs cannot be converted to self-scheduled FTRs and that, if an LSE wishes to obtain the FTRs that correspond to the infeasible ARRs, it must participate in an auction. The Midwest TDUs contend that this approach violates guideline (7), which prohibits mandatory auctions, and threatens the full funding of LTTRs.³⁷

³⁶ The Midwest TDUs presume the Midwest ISO credit policy would limit the amount the market participant could bid for FTRs associated with long-term ARRs, making it impossible for a long-term ARR holder to bid high enough to ensure it receives those FTRs in the annual auction. The Midwest TDUs protest this outcome since the value of the long-term ARR should exactly cover the FTR cost, resulting in a net zero credit exposure.

³⁷ Midwest TDUs Request for Rehearing at 2.

38. First, we note that the Midwest TDUs' arguments are largely a restatement of previous protests that this provision violates guideline (2). Second, we find that the prohibition on converting infeasible ARRs into FTRs does not implicate guideline (7) directly. Nothing in guideline (7) requires the transmission organization to create or allocate infeasible FTRs, the funding of which would require additional uplift payments by other market participants. Thus, we affirm our previous finding that the proposal is consistent with the requirements of guideline (7).³⁸

39. We deny Integrys' request for rehearing with respect to its argument that the LTTR Order's prohibition of converting infeasible ARRs to self-scheduled FTRs violates guideline (2). Rather, we affirm our finding in the LTTR Order that the Midwest ISO's proposal complies with guideline (2) since it provides a congestion hedge with fixed properties for ten years.³⁹ Furthermore, we disagree with Integrys' characterization of infeasibility as a symptom of market breakdown. The Midwest ISO has committed to plan expansions to meet the reasonable needs of LSEs, as discussed above. The fact that generation interconnects and transmission expansions take time to complete does not indicate that the Midwest ISO is violating the requirements of Order No. 681, and therefore, we do not consider the time taken to construct new facilities to be unreasonable. Since we have found the provision to be in compliance with Order No. 681, we see no need to revise the Midwest ISO's proposal and require uplift of FTR infeasibility costs.

D. Other Issues

1. Cost Allocation

a. Requests for Rehearing

40. Integrys seeks rehearing of the Commission's explanation for accepting the Midwest ISO LTTR Proposal's allocation of costs of infeasible Stage 1A ARRS to LTTR holders.⁴⁰ Integrys faults the Commission for not providing a reasoned, record-based explanation for its acceptance and argues that the Commission's finding is inconsistent with cost causation and Order No. 890. Integrys recommends that the Midwest ISO uplift the costs of infeasible ARRs to all Midwest ISO load. Integrys contends that the infeasibility is not caused by LTTR holders, but rather by system-related changes that the Midwest ISO had not anticipated in the planning process, such as modeling issues, loop flow, unplanned transmission outages, inadequacies of transmission system planning as a whole, or other causes. Therefore, according to Integrys, under traditional cost-of-service principles, these costs should be spread among all Midwest ISO loads.

³⁸ LTTR Order, 119 FERC ¶ 61,143 at P 185.

³⁹ LTTR Order, 119 FERC ¶ 61,143 at P 50.

⁴⁰ *Id.* at P 54.

41. Integrys also asserts that all market participants are the beneficiaries of system improvements, and therefore the infeasibility cost should be applied to the entire market. Integrys avers that allocation of infeasibility solely to LTTR holders means they are not fully funded against congestion costs, and therefore the Midwest ISO allocation is inconsistent with the following: the section 217 requirement that the availability of transmission rights meet LSE long-term service obligations; guideline (2) and planning requirements to provide LTTRs and a transmission system that are a complete hedge against congestion; and guideline (4) requirements to provide feasible FTRs to cover the congestion cost associated with long-term power obligations. Finally, Integrys faults the Midwest ISO's allocation since it will not motivate those entities that have the responsibility and authority to correct the causes of revenue inadequacy because they will not be charged for the revenue deficiency.

b. Commission Determination

42. We deny Integrys' request for rehearing with respect to the Commission's decision regarding cost allocation and we affirm the Commission's finding that the Midwest ISO's proposed allocation to LTTR holders is reasonable. As an initial matter, we affirm that the cost assignment does not result in violations of Order No. 681. While we understand this cost assignment could dilute the full and complete hedge that customers desire, we believe that the Midwest ISO's proposal to link the simultaneous feasibility of Stage 1A ARRs to the transmission expansion planning process will minimize this risk. Therefore, this assignment does not violate guideline (2).⁴¹ We also find the assignment does not violate guideline (4) since this provision does not implicate the term of LTTRs or renewal rights.

43. We disagree with Integrys' conclusion that the entire market benefits from these costs. The costs at issue here are LTTR revenue insufficiency costs, not system improvement costs, and therefore we do not consider it appropriate to allocate costs to the entire market on the assumption that the entire market benefits from the system improvements that might be encouraged by the uplift of infeasibility costs. With regard to the reasonableness of the Midwest ISO allocation, we find that while other allocations

⁴¹ The Commission does not consider the guideline (2) requirement to be a perfect hedge. *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 174 (We do not envision full funding to be a perfect hedge) and P 170 (“If the rights are financial, which they are in almost all organized electricity markets, the latter property [price certainty] essentially requires *minimizing* the uncertainty in the ability of the rights' holders to cover congestion charges with the revenue from their transmission rights over the term of their rights.”) (emphasis added).

may be reasonable, as the Commission cited in the LTTR Order,⁴² the Midwest ISO allocation to beneficiaries is a method that the Commission has found to be reasonable and we conclude is reasonable in this proceeding.⁴³ This allocation is particularly suitable, as in this case, when there is no basis for a cost allocation based on cost causation. Some of the causes of infeasibility cited by the Midwest ISO are changes in topology and parallel path flows, or loop flows.⁴⁴ No customer causes loop flow or controls system planning for the Midwest ISO,⁴⁵ and therefore cost causation cannot play a role in determining the cost allocation for infeasible ARR costs.⁴⁶ Therefore, it is reasonable to base the cost allocation on another method, such as assigning costs to the beneficiaries. The beneficiaries of infeasible ARR costs are the LTTR holders themselves since they are the only entities receiving the long-term congestion hedge provided by ARRs and are receiving the guaranteed ten-year ARRs that result in infeasible ARR costs.

2. LTTRs for New Generation Interconnecting to the Transmission System

a. Requests for Rehearing

44. Integrys seeks rehearing of the Commission's acceptance of the Midwest ISO's proposal not to allocate fully-funded ARRs to new generation interconnecting to the transmission system⁴⁷ when the new generation's simultaneous feasibility analysis

⁴² See LTTR Order, 119 FERC ¶ 61,143 at P 52 (“In the Final Rule, we allowed transmission organizations discretion to propose methods for allocating full funding uplift, but we did preclude unreasonable outcomes that would result in some holders of LTTRs being exposed to unreasonable charges that would undercut the goal of relative congestion price certainty.”).

⁴³ As an example of “beneficiary pays” cost allocation, the Commission approved this method in the ongoing regional transmission expansion planning cost allocation proceeding. See *PJM Interconnection, LLC*, 119 FERC ¶ 61,067 (2007).

⁴⁴ Midwest ISO LTTR Proposal at 12.

⁴⁵ Transmission outages are not a cause of Stage 1A ARR infeasibility since they only affect the availability of FTRs.

⁴⁶ Since no customer causes these costs, we do not expect that assignment of these costs to all market participants can provide a motivation to correct the causes of revenue inadequacy.

⁴⁷ Integrys cites specifically to new generation complying with Attachment X or R interconnection procedures that incur costs for interconnecting new baseload generation.

indicates that the ARR may be infeasible. Integrys asserts that this proposal conflicts with Order No. 681, and specifically with the guideline (3) provision that parties funding transmission enhancements are entitled to the LTTRs made possible by the enhancement. Integrys faults the LTTR Order for diluting LSEs' economic access to required generation to meet the reasonable, long-term needs of consumers and faults the Commission for ignoring guideline (7), which requires that LSEs not be forced into an auction to obtain adequate LTTRs to serve their load. Integrys recommends that LSEs be granted fully-funded Stage 1A ARRs to such generators that are convertible to FTRs even if the simultaneous feasibility test shows that the ARRs are infeasible.

45. Integrys further explains that this Commission's finding is in conflict with guideline (3) because LSEs must pay 50 percent of the transmission upgrade cost in order to interconnect, as required by Midwest ISO TEMT Attachments X and R, and therefore they are bearing the financial burden of the expansion and should receive LTTRs. Integrys submits that the Attachment X or R test is the only test a new generator should be required to satisfy in order to qualify for Stage 1A ARRs.

46. Integrys asserts that since FPA section 217 states LSEs are entitled to obtain long-term transmission rights to facilitate their ability to serve loads, and Order No. 681 was issued to ensure that LSEs could obtain LTTRs to cover the cost of congestion,⁴⁸ both Congressional mandate and Commission policy establish that LSEs are entitled to receive an allocation of fully-funded LTTRs on a long-term basis. This allocation will provide sufficient revenue to fully offset LSEs' congestion payment obligations that arise because of their obligation to serve load. Integrys faults the Commission for failing to explain its deviation from the section 217 mandate and the Commission's policy in Order No. 681.

47. Integrys argues that achieving compliance with Attachment X or R should signify that the Midwest ISO has planned to ensure the system is capable of delivery of the generation to the LSE load. According to Integrys, a determination that the system does not have simultaneous feasibility when a generator enters service is due to factors such as changes in loop flow or system topology, none of which is the fault of the generator or LSE, and may be the fault of inadequate planning, by the Midwest ISO. Integrys contends that system flaws do not take away the LSEs' entitlement to the financial equivalent of firm network interconnection service, and therefore necessitates an allocation of fully-funded Stage 1A ARRs.

⁴⁸ Integrys asserts guideline (2) specifies the amount of the hedge must be sufficient to completely cover the cost of congestion, guideline (4) recognizes parties that pay for construction of the transmission, or LSEs, are entitled to receive feasible, fully-funded LTTRs to cover the congestion cost associated with long-term power supply relied on to serve native load, and guideline (7) clarifies that the auction obligation would not result in price uncertainty or LTTR unavailability to prevent an LSE from receiving a full hedge of its congestion cost.

b. Commission Determination

48. We deny Integrys' request for rehearing regarding full-funding of ARR to new generation interconnecting to the transmission system. We interpret Integrys' primary concern to be that the Midwest ISO's expansion planning process should ensure new generation receives all the LTTRs they request to fully offset their congestion payment obligations, and therefore to the extent there is infeasibility, and therefore fewer LTTR, this is a problem caused by the Midwest ISO. While Order No. 681 requires the transmission organization to plan to provide adequate LTTRs to new generation and the Midwest ISO Attachment FF provisions plan expansions for generation interconnects, it does not require the guarantee of LTTRs. As stated elsewhere in this order, guideline (2) does not mandate a complete congestion hedge and the granting of LTTRs is subject to feasibility. Also, under guideline (3), a generation interconnection is not a transmission upgrade that requires the assignment of LTTRs. The upgrades contemplated in Order No. 681 are transmission system upgrades and nowhere in those orders are generation interconnections referenced as transmission upgrades.

49. We do not consider the Midwest ISO's inability to provide every requested LTTR to new generation to be a failure of the Midwest ISO. The Midwest ISO has planning procedures to accommodate new generation and has detailed provisions for allocating LTTRs for new and replacement generation, and its planning process evaluates loop flow and topology changes. Therefore, the Midwest ISO is making every effort to provide adequate LTTRs for new generation and it has committed to manage feasibility issues in the planning process.

50. We also deny rehearing of Integrys' assertion that the Commission ignored guideline (7) in approving the LTTR Order's provisions for assignment of LTTRs to new generation.⁴⁹ We do not consider the new generation LTTR assignment process to be a violation of guideline (7). Considering that the Midwest ISO has an extensive and detailed process to identify the network upgrades to provide LTTRs for new generation and an expansion planning process to ensure those facilities are built, we expect market participants will be able to obtain the LTTRs they desire.

⁴⁹ We note that we address Integrys' concerns regarding the allocation of infeasible ARRs and the conversion of infeasible ARRs to FTRs in previous sections of this order.

51. We also note that the Attachments R and X interconnection procedures themselves have no applicability to transmission service.⁵⁰ Accordingly, we see no basis for assuming that an interconnection request would be equivalent to a request for LTTRs. As discussed earlier in this order, we find that the tariff procedures for replacing or adding generation and the additional clarification of the Midwest ISO in its recent compliance filing to be responsive to the needs of LSEs in obtaining LTTRs for new generation. These procedures will provide feasible LTTRs for new generation, and therefore provide a framework for LSEs to obtain the congestion hedge envisioned by EPA Act 2005 and Order No. 681.

52. To grant Integrys' request would be to allow the award of LTTRs that could result in infeasible ARRs, resulting in inequities to other market participants. We do not consider it a failure of the Midwest ISO that LSEs may not obtain every LTTR they request upon the commencement of service from a new generator. The Midwest ISO has committed to ensuring its expansion planning process addresses simultaneous feasibility issues, and is therefore committed to addressing the needs of LSEs, and meeting the requirements of Order No. 681. The Commission is also committed to ensuring the expansion planning process addresses simultaneous feasibility issues. In the Companion Compliance Order we are requiring the Midwest ISO to revise its proposal to explicitly state that its transmission planning process will identify, evaluate and analyze expansions designed to ensure that the transmission system can support the simultaneous feasibility of all Stage 1A ARRs over their full term, and that these expansions will be included in the MTEP.

3. Point-to-Point Transmission

53. Manitoba Hydro requests clarification and, in the alternative, rehearing of the requirement in the LTTR Order that the Midwest ISO modify the tariff to provide that point-to-point service obtained after the reference year⁵¹ has the same right to obtain Stage 1A ARRs as point-to-point service that is tied to the reference year. Manitoba Hydro contends that the Midwest ISO interprets section 43.2.1.a to prohibit market participants with transportation service requests that are not tied to the reference year from being able to obtain Stage 1A ARRs, and therefore post-reference year transmission service will be relegated to Stage 2 of the ARR allocation process. Manitoba Hydro

⁵⁰ Section 3.2.2 of Attachment R states that neither the Midwest ISO nor a transmission owner make any representations regarding the availability of transmission service and section 2.4 of Attachment X state that nothing in the interconnection procedures shall constitute a request for transmission service or confer upon the interconnection customer any right to receive transmission service.

⁵¹ Reference year is the year used by the Midwest ISO to determine the initial ARR zones and ARR entitlements for existing customers.

considers such a result to be unjust and unreasonable because all point-to-point service is charged the same rate for the service, but not all point-to-point service is eligible for Stage 1A ARR allocations. Manitoba Hydro also notes that the Commission stated the assignment of ARRs for point-to-point service does not necessarily require the identification of historical resources and cites to Commission precedent that charging all point-to-point transactions the same rate for service is unjust and unreasonable if all transactions are not accorded the same quality of service.⁵²

54. We deny Manitoba Hydro's request for rehearing because in the LTTR Order, the Commission required the Midwest ISO to clarify how Manitoba Hydro would obtain ARRs for transmission service requests obtained after the reference year.⁵³ The Midwest ISO has provided a response, and we address the issue in the Companion Compliance Order.

The Commission orders:

(A) The requests for rehearing of the Midwest TDUs, Manitoba Hydro, and Strategic Energy are hereby denied, as discussed in the body of this order.

(B) The request for rehearing of Integrys is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

⁵² *Northern States Power Co.*, 89 FERC ¶ 61,178 (1999).

⁵³ *See* LTTR Order, 119 FERC ¶ 61,143 at P 167.