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. ER06-666-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued April 20, 2006)

1. On February 24, 2006, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revision to sections 39.3.4.c.i and 39.3.4.c.ii of its Open Access Transmission and Energy Markets Tariff (TEMT) [1] that would clarify language regarding the year-end distribution of the Excess Congestion Charge Fund (Excess Congestion Fund). The Midwest ISO requests a waiver of the 60-day filing requirement and an effective date of February 25, 2006. In this order, we conditionally accept the proposed revisions. The Commission grants waiver of the 60-day prior notice requirement and makes the revisions effective on February 25, 2006, as requested.

[1] *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*, 111 FERC ¶ 61,043 (2005) (Compliance Order III). By these orders, the Commission approved Midwest ISO's proposed TEMT. Pursuant to the TEMT, Midwest ISO was able to initiate Day 2 operations in its 15-state region. Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity. 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 Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to Midwest ISO wherever the TEMT refers to the Transmission Provider.

I. Background

2. The Midwest ISO has proposed revisions to sections 39.3.4.c.i and 39.3.4.c.ii of the TEMT in order to clarify language related to the year-end distribution of the Excess Congestion Fund. Under the TEMT, the Excess Congestion Fund represents, in the aggregate, the difference between the total of all Transmission Congestion Payments for a given hour and the hourly transmission congestion charges. On a monthly basis, the Excess Congestion Fund is used to fund any deficiency in the share of Transmission Congestion Credits received by each Financial Transmission Rights (FTR) Holder. To the extent that FTRs are fully funded and there is a surplus in the Excess Congestion Fund after the monthly distribution to FTR holders, such excess funds are carried forward to the end of the year.

3. At the end of the year, the Excess Congestion Fund is used to fund any deficiency in the share of Transmission Congestion Credits received by each FTR Holder. To the extent that FTRs are fully funded and a surplus remains in the Excess Congestion Fund after this yearly distribution to FTR Holders, such surplus funds are then distributed to Network Integration Transmission Service (NITS) and Firm Point-To-Point Transmission Service customers. This year end distribution of the Excess Congestion Fund is accomplished through distribution of the remainder of the fund on a *pro rata* share of the NITS and Firm Point-To-Point Transmission Service customers billing determinants used in calculating the Schedule 10 charges and Schedule 23 charges under the TEMT associated with such Transmission Service taken during the same calendar year. The Midwest ISO proposes revisions in this instant filing in order to clarify this distribution.

II. Proposed Revisions to Midwest ISO's TEMT

4. The Midwest ISO proposes to clarify language related to the year-end distribution of the Excess Congestion Fund. The Midwest ISO notes that the current TEMT language describing the disbursement states that they shall be distributed, "in proportion to their charges for Network Integration Transmission Service and their charges for Point-To-Point Firm Transmission Service, regardless of whether these Transmission Customers hold FTRs for their Transmission Service." According to the Midwest ISO, the intent of this statement is to indicate that the Midwest ISO will distribute the funds based on a *pro rata* share of their MW billing determinants consistent with the Midwest ISO disbursement of similar fund excesses; however, the use of the term "charge" in the TEMT language creates an ambiguity that could lead the reader to believe that the Midwest ISO will distribute the funds based on a *pro rata* share of the total dollar amount charged for either NITS or Firm Point-To-Point Transmission Service. The proposed revision to section 39.3.4.c.ii reads as follows:

> After the end of each calendar year, aggregate remaining excess revenues attributable to the year-end Excess Congestion Charge Fund will be

> distributed to all Transmission Customers taking Network Integration Transmission Service or Firm Point-To-Point Transmission Service based on a *pro rata* share of their billing determinants used in calculating the Schedule 10 charges and Schedule 23 charges associated with such Transmission Service taken during the same calendar year, regardless of whether these Transmission Customers hold FTRs for their Transmission Service.

5. According to the Midwest ISO, the proposed change to section 39.3.4.c.ii is intended to clarify that the distribution methodology for the year-end distribution of the Excess Congestion Fund amounts shall be performed pursuant to a *pro rata* share of the NITS and Firm Point-To-Point Transmission Service customer's billing determinates used in calculating the Schedule 10 charges and Schedule 23 charges. The Midwest ISO asserts that this clarification is entirely consistent with the language describing the disbursement of FTR Auction Residual amounts as is contained and set forth in section 45.6 of the TEMT.

6. The Midwest ISO also proposes a change to section 39.3.4.c.i to specify that monthly FTR funding is restricted to funds collected for Operating Days during the month in question and then distributed after the end of each month. The proposed revision to section 39.3.4.c.i reads as follows:

> The Transmission Provider will distribute the amounts accumulated in the Excess Congestion Charge Fund collected for Operating Days during the Month in question after the end of each Month to each FTR Holder in proportion to the difference between Transmission Congestion Credits received by the FTR Holder during that Month and its total Transmission Congestion Credit Target Allocations for the Month. If insufficient funds exist in the Excess Congestion Charge Fund to satisfy all deficiencies, then deficiencies will carry forward to the end of the Year.

7. Furthermore, the Midwest ISO notes that pursuant to the Midwest ISO's stakeholder process, the Midwest ISO distributed the proposed revisions to its Tariff Working Group on February 22, 2006, and received one comment from the Tariff Working Group on the proposed revisions. The comment contained multiple suggested revisions and the Midwest ISO asserts that it has included most of those recommended changes in its proposal.

III. Notice, Interventions and Comments

8. Notice of the Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 12,351 (2006), with motions to intervene and protests due no later than March 17, 2006. American Municipal Power-Ohio, Inc., Midwest Stand-Alone Transmission Companies,[2] and WPS Companies[3] filed timely motions to intervene. Wisconsin Electric Power Company (Wisconsin Electric) filed a timely motion to intervene and comments that conditionally support the Midwest ISO's proposal.

Comment to Midwest ISO's Proposal

9. Wisconsin Electric states that it does not object to the clarifications proposed by the Midwest ISO in the instant filing. Nevertheless, Wisconsin Electric believes that further clarification and modification to the TEMT is necessary. It appears to Wisconsin Electric that the Midwest ISO intends for the applicable TEMT provisions, as amended, to require the allocation of the remaining balance at the end of the year in the Excess Congestion Fund to NITS and Firm Point-To-Point customers, only after first fully funding any FTR deficiencies, which balances will be carried forward during a given calendar year pursuant to the proposed amendment to section 39.3.4.c.i. Wisconsin Electric maintains that this is the proper result, that is, any deficiencies carried forward to the end of the year should be fully funded from the Excess Congestion Fund prior to any further distribution of the Excess Congestion Fund balances to the NITS and Firm Point-To-Point customers. However, in clarifying section 39.3.4.c.i to provide that deficiencies for a given month are only to be resolved from excess FTR charges collected during that same month and any remainder is to be carried forward the end of the year, Wisconsin Electric asserts that an additional step is now required which cannot clearly be gleaned from the tariff language itself.

10. Specifically, Wisconsin Electric requests that the Commission require that the Midwest ISO modify its proposal to include language that clearly provides that, at the end of the year, the Midwest ISO will first allocate the balance in Excess Congestion Fund to fully fund any FTR monthly deficiencies carried forward to the end of the year before any allocation of excess funds to NITS and Firm Point-To-Point customers.

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[2] The Midwest Stand-Alone Transmission Companies include American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission LLC.

[3] WPS Companies include Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services Inc., and WPS Power Development, LLC.

According to Wisconsin Electric, no end-of-the-year allocation of the Excess Congestion Fund to the NITS and Firm Point-To-Point customers should be permitted unless and until the carried forward FTR deficiencies have been eliminated. Wisconsin Electric contends that if there are not sufficient funds in the Excess Congestion Fund to eliminate all FTR deficiencies carried forward during the year, then the fund should be allocated on a *pro rata* basis solely to the FTR holders with such deficiencies.

11. Wisconsin Electric notes that its suggested modification is just and reasonable and will ensure the equitable allocation of the Excess Congestion Fund first to those who held FTRs but, for the lack of adequate funding on a monthly basis, were not afforded the benefit of the FTRs they held, resulting in the unanticipated incurrence of congestion charges. Accordingly, Wisconsin Electric asserts that only after those FTR holders have been made whole should the remaining funds be allocated as proposed. Wisconsin Electric believes that the proposed modification is consistent with what the Midwest ISO intended in its proposal, but this intent is not clearly set forth in the tariff itself.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission's Determination

13. We will accept the Midwest ISO's proposed revisions, subject to the revisions discussed below. While we do not have a problem in theory with the changes as described by the Midwest ISO, we share Wisconsin Electric's concern that the proposed tariff modifications do not faithfully reflect the approach outlined in the Midwest ISO's filing. Specifically, the Midwest ISO states that "[t]o the extent that FTRs are fully funded[,] there is a surplus of funds in the Excess Congestion Charge Fund **subsequent to the yearly distribution to fund deficiency in Transmission Congestion Credits among FTR Holders,** such funds are distributed to Network Integration Transmission Service ("NITS") and Firm Point-To-Point Service customers."[4] This description makes it clear that the funds are first and foremost to fund the deficiencies in Transmission Congestion Credits among FTR Holders. The further distribution to NITS and Firm Point-To-Point customers is to take place only FTR Holders have been compensated. The proposed tariff changes do not make that point clear, creating an ambiguity. We find that the proposed revisions would be more appropriate if they clarified this issue.

[4] Midwest ISO Feb. 24, 2006 filing at p. 2 (emphasis added).

14. Additionally, we believe that the Midwest ISO needs to provide language explaining how it will handle the situation where there are not sufficient funds in the Excess Congestion Fund to eliminate all such FTR deficiencies carried forward during the year. Therefore, we require the Midwest ISO to further clarify the allocation methodology (*e.g.*, *pro rata*) for the year-end distribution of the Excess Congestion Fund in a compliance filing.

15. The Midwest ISO requests waiver of the 60-day prior notice requirement to allow the proposed revisions to become effective February 25, 2006, the day after it was filed. In support of its request, the Midwest ISO states that waiver is justified because it will provide market participants with clear language regarding the methodology for the year-end distribution of the Excess Congestion Fund amounts. According to the Midwest ISO, the change will clarify current ambiguities in the provisions. We will waive the prior notice requirement and allow the changes to become effective on February 25, 2006, as requested given that the proposed changes as modified by this order will not change how these funds are distributed and will not have a rate impact.[5]

The Commission orders:

The proposed tariff revisions filed by the Midwest ISO are hereby conditionally accepted, and the Midwest ISO is hereby directed to submit a compliance filing, as discussed in the body of the order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[5] *See Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,974, *order on reh'g*, 64 FERC ¶ 61,081 (1993) ("waiver of notice generally will be appropriate when an uncontested filing has no rate impact," *citing Central Hudson Gas & Electric Corp. et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992)).