119 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. Docket No. ER07-478-000

ORDER ACCEPTING LONG-TERM TRANSMISSION RIGHTS PROPOSAL AND REVISIONS TO RULES FOR SHORT-TERM TRANSMISSION RIGHTS, SUBJECT TO MODIFICATION

(Issued May 17, 2007)

1. On January 29, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions, under section 205 of the Federal Power Act (FPA),[1] to its Open Access Transmission and Energy Markets Tariff (TEMT), FERC Electric Tariff, Third Revised Volume No. 1, providing for long-term firm transmission rights (LTTRs), in compliance with the Commission's Order No. 681.[2] The Midwest ISO also proposes to modify the rules for allocating short-term transmission rights. The Midwest ISO requests several effective dates, and the first is June 1, 2007. In this order, the Commission accepts the LTTR proposal and revisions to the rules for allocating short-term transmission rights, subject to modification.

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

[1] 16 U.S.C. § 824d (2000).

[2] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006) (Order No. 681 or the Final Rule).

[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.*

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. The Midwest ISO currently provides participants with a financial hedge against transmission congestion costs in the form of point-to-point Financial Transmission Rights (FTRs) that are directly allocated on an annual basis to eligible market participants. In this filing, it proposes to establish a new procedure for both short-term and long-term rights, in which point-to-point Auction Revenue Rights (ARRs) will be allocated to eligible market participants, who can use these rights to either directly receive equivalent point-to-point FTRs or collect auction revenues.

II. Filing

4. The Midwest ISO's proposal introduces a new framework for the allocation and trade of transmission rights in its markets. Notably, the current approach, under which there is a direct allocation of point-to-point FTRs, will be replaced by the direct allocation of point-to-point ARRs followed by an auction for FTRs. In addition, the annual schedule for ARR allocation and auction of FTRs will be changed. These changes were planned initially to support development of a joint and common market between the Midwest ISO and PJM, which would now share some common market rules for transmission rights and the same calendar for their transmission markets. The Midwest ISO will also adopt certain aspects of PJM's approach to LTTRs, which essentially involves creating a subset of long-term ARRs, although differences will remain. The Midwest ISO states that its LTTR proposal satisfies the guidelines set forth in Order Nos. 681 and 681-A.

5. The Midwest ISO's proposed tariff changes include the rules for implementation of ARRs, and a description of both the ARR-related tariff revisions and the proposed LTTR procedures. Many of the features of the current FTR market design will remain or be modified slightly. For example, the Midwest ISO proposes that the ARRs are point-to-point obligations, covering seasonal as well as on and off-peak periods, just as FTRs are currently defined within the Midwest ISO. As is currently done with FTRs, it plans to

[4] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at 108-428; Order No. 681-A, 117 FERC ¶ 61,201 at P 12-15.

annually allocate ARRs; the ARR recipient can either directly convert the ARR into an FTR with equivalent specifications (called "self-scheduling") or can choose to receive revenues associated with its ARR from the annual auction of FTRs.

6. A significant change from the current FTR market design is that there will now be two classes of ARRs: long-term and short-term. These will be allocated in three stages: Stage 1A, Stage 1B, and Stage 2. In Stage 1A, qualified market participants will nominate baseload ARRs, *i.e.*, entitlements registered to LSEs serving loads in ARR zones during the reference year and sourced at approved baseload Reserved Source Points (RSPs).[5] Stage 1A ARRs can also be specified to match point-to-point transmission service, subject to eligibility. Accepted Stage 1A ARRs are the LTTRs, which will meet the Order No. 681 guidelines. The subsequent stages are for allocation of short-term ARRs, which do not come with the same guarantees of renewal from year to year as the LTTRs. There are two types of short-term rights: "peak" ARRs and seasonal ARRs. Stage 1B will enable qualified market participants to nominate candidate peak ARR rights from approved peak-load RSPs to load. Stage 2 then involves the Midwest ISO's determination of each qualified market participant's *pro rata* share, if any, of the residual revenues from the FTR seasonal auctions.

7. With respect to the key properties of the LTTRs, the Midwest ISO proposes that the Stage 1A ARRs, if nominated for a one-year term, will by default be subject to guaranteed and automatic rollover in the subsequent ten years, thus they satisfy the minimum ten-year length for LTTRs. Additionally, to ensure that sufficient Stage 1A ARRs are available to meet the reasonable needs of LSEs, the Midwest ISO proposes to require some LSEs to take counter-flow Stage 1A ARRs. Over the ten-year period, some allocated Stage 1A ARRs may become infeasible. The Midwest ISO proposes to allocate uplift to make infeasible ARRs whole to all LTTR holders. The Midwest ISO argues that ensuring the feasibility of the initial set of allocated Stage 1A ARRs along with the guarantee to fund infeasible ARRs and transmission planning to support their continued feasibility constitute sufficient funding support for the rights to satisfy Order No. 681.

8. The Midwest ISO requests the following effective dates for its proposal: (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.

[5] Baseload usage is defined as transmission usage that is 50 percent of peak usage. For market participants utilizing point-to-point transmission service, 50 percent of the point-to-point transmission service MW will be assumed to be baseload usage. An ARR zone is the location where a market participant serves load.

III. Notice of Filing and Responsive Pleadings

9. Notice of the Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 6551 (2007), with comments, interventions and protests due on or before February 20, 2007. On February 20, 2007 the Commission granted OMS' request for an extension of time to file motions to intervene and comments until March 22, 2007. Alliant Energy Corporate Services, Inc.; Illinois Municipal Electric Agency; Great River Energy; Exelon Corporation; Coalition of Midwest Transmission Customers; Consumers Energy Company; American Municipal Power-Ohio, Inc.; Southwestern Electric Cooperative, Inc. (Southwestern Electric); Dominion Retail, Inc., Dominion Energy Kewaunee, Inc., and Dominion Energy Marketing, Inc.; Coral Power, L.L.C.; Duke Energy Shared Services, Inc.;[6] Midwest TDUs;[7] Manitoba Hydro; Dynegy Power Marketing, Inc.; and WPS Companies[8] filed timely motions to intervene in this proceeding.

10. Ameren Services Company (Ameren);[9] Wisconsin Electric Power Company (WEPCO); Edison Mission Energy and Edison Mission Marketing & Trading, Inc.; Strategic Energy, L.L.C. (Strategic Energy); Xcel Energy Services, Inc. (Xcel);[10] Detroit Edison Company; Constellation Energy Group Companies and Constellation NewEnergy, Inc.; and Otter Tail Power Company filed timely motions to intervene and comments in this proceeding.

11. D.C. Energy Midwest, LLC (DC Energy) filed a timely motion to intervene and protest. The Organization of Midwest States (OMS) filed a timely motion to intervene and requested extension of the comment deadline.

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[6] Duke Energy filed on behalf of Duke Energy Ohio, Inc.; Duke Energy Indiana, Inc.; and Duke Energy Kentucky, Inc.

[7] 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.

[8] WPS Companies consists of Wisconsin Public Service Corporation; Upper Peninsula Power Company; WPS Energy Services, Inc.; and WPS Power Development, LLC.

[9] Ameren filed on behalf of Central Illinois Light Company d/b/a AmerenCILCO; Central Illinois Public Service Company d/b/a AmerenCIPS; Illinois Power Company d/b/a AmerenIP; Union Electric Company d/b/a AmerenUE; Ameren Energy Marketing Company; and Ameren Energy Generating Company.

[10] Xcel filed on behalf of Northern States Power Company and Northern States Power Corporation.

12. Additional comments were filed by OMS and Southwestern Electric Cooperative, Inc. Additional protests were filed by Manitoba Hydro; Duke Energy; Midwest TDUs; and Integrys Energy Group (Integrys).[11]

13. The Midwest TDUs filed a motion to amend its pleadings to include Southern Minnesota Municipal Power Agency (SMMPA) or in the alternative for SMMPA to intervene out of time individually. The Public Service Commission of Wisconsin filed a motion to intervene out of time.

14. The Midwest ISO filed an answer to the protests and Integrys, Manitoba Hydro and OMS filed answers in response to the Midwest ISO answer. The Midwest ISO then also filed a second answer to respond to the answers filed by Integrys, Manitoba Hydro and OMS.

IV. Discussion

15. 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.

16. We will grant SMMPA's and the Public Service Commission of Wisconsin's motions to intervene out of time, given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

17. 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, Integrys, Manitoba Hydro and OMS because they have provided information that assisted us in our decision-making process.

18. We have evaluated the proposed market rule changes for both short-term rights and LTTRs in accordance with each of the guidelines of Order No. 681 as discussed below. With regard to LTTRs, with one exception regarding guideline (2), we find the Midwest ISO LTTR proposal, as modified, to be just and reasonable, not unduly discriminatory or preferential or otherwise unlawful, and will accept it, to be effective on the dates requested, subject to further filings as discussed below. Regarding guideline (2), we find that the Midwest ISO's proposal does not fully fund FTRs purchased with Stage 1A ARRs, although such FTRs may become revenue insufficient due to changes in

[11] Integrys is the resulting entity from the merger of Peoples Energy and WPS Resources Corp. Integrys is filing its protest on behalf of the former WPS Resources Corp. and its subsidiaries.

the transmission grid that were not anticipated when the FTRs were awarded through the auction and self-scheduling process. Therefore, we require the Midwest ISO to hold discussions with stakeholders to devise a method for allocating uplift to cover this revenue insufficiency to be submitted as a compliance filing with the Commission, within 60 days of the date of this order. In the meantime, the Midwest ISO may begin registering the market participants for the 2008 ARR allocation.

19. The Commission received comments and protests that raise concerns about consistency between the guidelines in the Final Rule and the Midwest ISO's proposal, as well as addressing general concerns about various aspects of the proposal, such as the Midwest ISO's counter-flow restoration process and transmission planning process. We will address adherence to the Order No. 681 guidelines first and then will discuss the general comments on LTTR compliance. Comments on the proposed short-term ARR rules follow the discussion of LTTRs.

A. Compliance with Order No. 681 Guidelines

1. Guideline (1)

> The long-term firm transmission right should be a point-to-point right that specifies a source (injection nodes or node) and sink (withdrawal node or nodes), and a quantity (MW).

20. Guideline (1) is intended to support the ability of LSEs to obtain point-to-point LTTRs that will hedge particular long-term power supply arrangements. In the Final Rule, the Commission concluded that the primary objective of guideline (1), consistent with FPA section 217(b)(4), is to allow an LSE to obtain an LTTR for purposes of hedging congestion charges associated with delivery of power from a long-term power supply arrangement to its load. The Commission expected that guideline (1) would be largely consistent with existing designs already in place in the organized markets operated by transmission organizations.[12]

a. Proposal

21. The Midwest ISO states that all ARRs, including the Stage 1A (long-term) ARRs, shall be specified by source, sink and megawatt quantity, consistent with guideline (1). Market participants with network resources choose the sources for ARRs from a set of RSPs. As further discussed in section IV.5 below, the LTTRs associated with Stage 1A of the ARR allocation can have a source point at any of the RSPs in the Baseload Reserved Source Set (BRSS), subject to feasibility. To qualify for inclusion as a RSP in

[12] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 116.

the BRSS, a market participant must have had a capacity and energy ownership interest in, or a capacity and energy contract with, the supply resource that began in, ended in, or remained in effect throughout, the reference year.[13] This ownership or contractual relationship must be, or have been, of at least five years duration. The proposal allocates ARRs by eligible sources and sinks in zones based on the location of the market participant's load. There are two general categories of ARR zones: Category 1, which encompasses points of delivery reserved on OASIS for network transmission service during the reference year, and Category 2, which are subzones within the Category 1 zones, subject to certain qualification criteria. Market participants with long-term point-to-point transmission service are also eligible to nominate Stage 1A ARRs between the points in their transmission reservations.

b. Comments and Protests

22. Midwest TDUs believe that the intention of the Midwest ISO's proposal is to give each entity that was a Transmission Customer or held a Grandfathered Agreement (GFA) in the reference year the option to define its load as a separate ARR zone. The Midwest TDUs assert that it is not apparent from the proposed tariff language in section 42 how Category 1 ARR zones or Category 2 ARR zones would be defined. In addition, although section 42 states that "Point-To-Point, Network Integration Transmission Service or GFA Service Agreements, and/or identified supply Generation Resources (*e.g.*, listed in power supply contracts or on Network Integration Transmission Service specification sheets)" are among the criteria to qualify to be a Category 2 ARR zone, the Midwest TDUs state that section 42 does not state the significance of those agreements or of "identified supply Generation Resources" for purposes of defining ARR zones. Unless individual TDUs have the option of being a separate ARR zone, the Midwest TDUs state that the Midwest ISO's LTTR proposal does not satisfy the intent of EPAct 2005 and Order No. 681, which envisioned that LSEs would be able to secure LTTRs for their own long-term power supply arrangements.[14]

23. Duke Energy protests that the proposed TEMT differs from the standard OATT in that the TEMT provides that ARRs may be allocated for point-to-point transmission, while the OATT allows customers to redirect firm service to other points of receipt and delivery. Duke Energy states that the Commission should clarify that point-to-point transmission service under the TEMT is eligible for ARRs only along the primary service path, not on a redirected path. Also, Duke Energy asserts that while a network customer is allowed, on a non-firm basis, to utilize resources other than those designated by the

[13] The reference year is March 1, 2004 through February 28, 2005. Resources qualify for inclusion in the BRSS or PRSS provided that deliveries under the contracted for or owned resource began prior to December 31, 2005.

[14] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 119.

network transmission service, those resources should not form the basis for LTTRs. Duke Energy maintains that the Midwest ISO should be directed to clarify that only designated network resources should be eligible for BRSS (and the Peak Reserve Source Set (PRSS) used for short-term ARRs – see Section D below) designation in connection with network transmission service.

24. Duke Energy interprets the Midwest ISO's proposal as requiring that the simultaneous feasibility test for ARR nominations will be conducted within particular zones within the Midwest ISO territory, rather than on a region-wide basis. Duke Energy asks whether, if that is the case, such a zonal approach is consistent, since flows within one zone can have significant effects on feasibility in another zone.

25. Duke Energy seeks clarification on the procedures for an LSE to request that the Midwest ISO define a Category 2 subzone. In particular, Duke Energy seeks clarification that a proposed subzone that meets the criteria in the tariff will be adopted by the Midwest ISO. Additionally, Duke Energy states that the Midwest ISO should clarify how it would map a point-to-point point of receipt to a Category 2 ARR zone.

c. Midwest ISO Answer

26. The Midwest ISO states that it will clarify the definition of ARR zones to eliminate ambiguity and to assure each market participant that had a transmission service agreement during the reference year has the option to be designated a separate ARR zone.

27. The Midwest ISO agrees with Duke Energy's request and will clarify in a compliance filing that the path existing during the reference year will be used to define the LTTR and that the path will not change in subsequent years.

28. In a compliance filing, the Midwest ISO will also clarify that only designated network resources should be eligible for BRSS (and PRSS) designation in connection with Network Integrated Transmission Service (NITS) as suggested by Duke Energy.

29. With respect to Duke Energy's concern about zonal feasibility analysis of ARRs, the Midwest ISO clarifies that the feasibility of the rights will be conducted on a regional basis rather than a zonal basis. The Midwest ISO indicates that it will include this clarification in a compliance filing.

30. The Midwest ISO agrees to clarify in a compliance filing that a Category 2 subzone meets the criteria.

d. Determination

31. We find that the Midwest ISO's proposal, as modified, is consistent with the requirements of guideline (1). We agree with Midwest TDUs that guideline (1) requires

point-to-point transmission rights for LSEs.[15] Therefore, we expect the Midwest ISO to designate ARR zones needed to provide point-to-point rights for market participants. We agree that section 42 needs to be clarified such that it provides for the designation of separate ARR zones based on contractual arrangements and therefore fits the requirements of the Midwest TDUs for designating their own ARR zones. We note that the Midwest ISO agrees to clarify these provisions in a compliance filing and we require that those clarifications be included in the compliance filing to be submitted within 30 days of the date of this order.

32. We note that the Midwest ISO will clarify in the compliance filing that the path existing during the reference year will be used to define the LTTR and that the path will not change in subsequent years. Also, the Midwest ISO agrees to clarify that only the designated network resources should be eligible for BRSS (and PRSS) designation. We find these clarifications to be consistent with Order No. 681 and require that they be incorporated into the compliance filing to be submitted within 30 days of the date of this order.

33. We note also that the Midwest ISO has indicated that it will clarify that analysis of the feasibility of the full set of allocated ARRs will take place on a regional rather than zonal basis. Thus, we require the Midwest ISO to submit such clarification in a compliance filing to be submitted within 30 days from the date of this order.

34. With respect to Duke Energy's request for clarification on how to define a subzone, we find these clarifications reasonable, and require the Midwest ISO to make the necessary changes in a compliance filing to be submitted within 30 days of the date of this order.

2. Guideline (2)

> The long-term firm transmission right must provide a hedge against locational marginal pricing congestion charges or other direct assignment of congestion costs for the period covered and quantity specified. Once allocated, the financial coverage provided by a financial long-term transmission right should not be modified during its term (the "full funding" requirement) except in the case of extraordinary circumstances or through voluntary agreement of both the holder of the right and the transmission organization.

35. Guideline (2) responds to the requirement in FPA section 217(b)(4) that LSEs with service obligations be able to obtain firm transmission rights or equivalent financial or tradable rights on a long-term basis. As stated in the Final Rule, the Commission

[15] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 119.

interpreted "firmness" in the context of LTTRs to refer primarily to two properties of such rights: (1) stability in the quantity of rights that an LSE is allocated over time; and (2) price certainty for the LSE that seeks to hedge congestion charges associated with a particular generation resource or transmission path by requiring that the rights are fully funded.

a. Proposal

36. The Midwest ISO proposes to comply with guideline (2) through several measures. First, the Midwest ISO states that, once awarded, the Stage 1A ARRs would carry a megawatt (MW) quantity guarantee in the next annual allocation to the extent that they are re-nominated. Second, the Midwest ISO states that the award of Stage 1A ARRs will be subject to a simultaneous feasibility test, which ensures subsequently that the payments made by buyers of FTRs in the auction (which is also subject to a simultaneous feasibility test) will be at least equal to the revenues collected by ARR holders (as discussed below under guideline (5), those awarded ARRs could include counter-flow ARRs directly assigned to LSEs). Third, any ARRs awarded that become infeasible in subsequent years within their term will continue to be funded via an uplift assigned to the holders of LTTRs on a *pro rata*, basis. However, any such infeasible ARRs will not be allowed to be converted into FTRs. Fourth, the Midwest ISO states that the feasibility of renewed Stage 1A ARRs going forward will be linked to the transmission planning process, thus further ensuring their revenue adequacy.[16]

37. We note that the Midwest ISO does not propose to modify the funding of FTRs purchased through the auction.

38. Because it does not propose to fully fund the FTRs, the Midwest ISO does not propose tariff revisions to modify the full funding requirements in the event of "extraordinary circumstances," as required by the Final Rule.

b. Comments and Protests

i. Full Funding of FTRs

39. DC Energy, Edison Mission, and Southwestern Electric note that FTRs are not fully funded and the Midwest ISO will continue to allocate unpredictable levels of congestion rent shortfalls to FTR Holders. They assert that this resulting lack of price certainty is in direct violation of guideline (2). According to DC Energy, there are many

[16] We note here that the allocation of counter-flow Stage 1A ARRs is discussed under guideline (5) below and is raised in the context of guideline (2) insofar as this provision also supports the fixed quantity of LTTRs from year to year.

causes of FTR under-funding, including planned and forced transmission outages as well as loop flows. DC Energy affirms that there are two detrimental side effects of the lack of full funding: (1) the valuation of future FTRs will be decreased; and (2) the availability of effective hedges for congestion risk is significantly impaired. Moreover, according to DC Energy, the risk premiums mask the true value of the FTRs.

40. DC Energy further states that there are several full funding solutions available to the Midwest ISO, two of which are deployed by the NYISO and ISO-NE.[17] DC Energy argues that much of the Midwest ISO FTR market was modeled on a flawed PJM FTR market design, and they believe that there is no need to perpetuate the allocation of congestion rent shortfalls to FTR Holders as PJM has inappropriately done. Rather, DC Energy argues that the Midwest ISO should be required to allocate such shortfalls to ARR holders. According to DC Energy, this method would achieve full funding of FTRs through a very broad uplift mechanism to those entities who receive the revenues of FTR auctions. Alternatively, DC Energy contends that the Midwest ISO could allocate the uplift to all network load and point-to-point transmission load and achieve similarly just, reasonable and non-discriminatory results with symmetry between the parties benefiting from full funding through increased auction revenues and the obligation to fully fund the shortfalls.

41. Edison Mission comments that the Commission should direct that the Midwest ISO use the period prior to implementation to develop through the stakeholder process a proposal for full funding of FTRs and require that the Midwest ISO, like PJM, submit a compliance filing for Commission approval. Edison Mission states that the Commission should use this proceeding to ensure that the Midwest ISO complies with the Commission's requirements and provides full funding of FTRs.

ii. Funding of Infeasible ARRs

42. The Midwest TDUs note that the Midwest ISO stated that "most, if not all, of LSEs in each ARR zone are expected to opt for LTTRs based on their ARR Entitlements. Thus, the set of LTTR Holders to which the costs would be assigned would not be so

[17] DC Energy notes that NYISO allocates congestion rent shortfalls to the transmission owners who are the beneficiaries of the higher Transmission Congestion Contract (FTR equivalent) auction revenues and provides incentives for transmission owners to properly report planned outages as well as adhere to such schedules and to restore their transmission lines in the most efficient process. DC Energy also asserts that ISO-NE's Compliance Filing includes full funding through allocation of shortfalls to ARR holders, again the parties who would benefit from higher auction revenues and also the same parties who receive the benefit of excess congestion rents under the stakeholder-supported ISO-NE funding mechanism.

small as to result in an inequitable allocation of such costs to the holders of LTTRs that are infeasible."[18] However, the Midwest TDUs assert that the Midwest ISO does not provide any explanation or basis for its expectation that a large number of LSEs will hold LTTRs, or its implicit assumption that those LSEs will hold LTTRs in sufficient quantities to adequately dilute the impact of uplift charges associated with the allocation of infeasible Stage 1A ARRs. To assure that the Midwest ISO's stated expectations match reality, the Midwest TDUs request that the Midwest ISO be directed to submit an annual report to the Commission that identifies the number of MWs of LTTRs that have been allocated, the amount of any uplift costs associated with the allocation of infeasible Stage 1A ARRs, and the dollar amounts assessed to each LSE.

43. Integrys believes that the Midwest ISO's proposed section 43.2.4.a.v unreasonably uplifts the cost of any allocated infeasible ARRs to all LTTR holders. Integrys maintains that any infeasibility that is not rectified with the assignment of counter-flow is due to modeling issues, loop flow, unplanned transmission outages, failure of the transmission planning and expansion process to provide an adequate transmission system, or inappropriate application of the ARR process. According to Integrys, these issues are associated with the market as a whole and the planning, construction and configuration of the transmission system. Integrys argues that they are not the result of actions of LTTR holders, who do not have control over these aspects of the market or the transmission system. Integrys believes that the Midwest ISO should allocate the costs of infeasible ARRs to all loads in the market while the Midwest ISO improves the transmission planning and construction to provide an adequate level of service.

44. Integrys and Southwestern believe that the TEMT should allow conversion of "infeasible" ARRs to FTRs. Integrys contends that such a provision would be consistent with the Commission's guideline (2) that the allocation of ARRs should provide for a congestion hedge. It also would be consistent with the Integrys' proposal to allocate "infeasible" ARRs when there is a breakdown in the Midwest ISO's own generation interconnection rules, transmission planning, or construction. Integrys states that the Midwest ISO's proposed section 44.4(A).1.a.vii prohibits this conversion because of potential under-funding of the day-ahead FTRs. According to Integrys, this potential under-funding of the day-ahead FTRs is the result of a market flaw, and is not the fault of the holder of the infeasible FTRs. Consequently, Integrys states that the under-funding should be corrected with an uplift of this under-funding to all the Midwest ISO loads until the Midwest ISO's transmission planning and expansion process provides an adequate transmission system.

45. In its answer, Integrys contends that infeasibility is not the fault of an LTTR holder, who does not have control over issues that are associated with the market as a

[18] Midwest ISO January 29, 2007 Compliance Filing at 12.

whole and the planning, construction, and configuration of the transmission system aspects of the market or the transmission system. As a result, Integrys asserts that it would be inequitable to have only LTTR holders pay for the costs of infeasible ARRs. According to Integrys, all loads in the market should bear the costs while the Midwest ISO improves the transmission planning and construction to provide an adequate level of service.

46. Integrys further states that the transmission system should already be constructed to meet the simultaneous feasibility test. If that resource subsequently fails the simultaneous feasibility test, Integrys states that that fault does not rest with that resource but with the generation interconnection provisions of the TEMT, the transmission planning and expansion process, the simultaneous feasibility test, or all of these processes. Therefore, Integrys argues that it would not be unduly preferential for a new or replacement Baseload Supply Resource that has obtained NR Interconnection Service to be guaranteed a Stage 1A LTTR in order to provide the LSE with the long-term hedge envisioned in Order No. 681. If for some reason simultaneous feasibility is violated, Integrys maintains that resource should qualify for an allocation of an infeasible Stage 1A LTTRs, with any costs associated with the infeasibility allocated to all market participants. According to Integrys, allocating the infeasibility to all market participants ensures that the failure within the process is corrected and that sufficient transmission is built to support simultaneous feasibility in a timely manner.

c. Midwest ISO Answer

i. Full Funding of FTRs

47. The Midwest ISO states that the current process of pro-rating FTR payments uplifts the congestion rent shortfalls to all FTR holders and any shortfalls in annual FTR auction revenues result in pro-ration of payments to ARR holders. The Midwest ISO submits that this process is consistent with cost causation principles.

ii. Funding of Infeasible ARRs

48. The Midwest ISO also responds to Integrys by stating that since the purpose of allocating infeasible ARRs is to guarantee the rights of the LTTR holders, the Midwest ISO believes it is equitable to assign the cost to the LTTR holders alone.

49. In its second answer, the Midwest ISO explains that the rationale for allocating infeasible ARRs is to guarantee the rights of the LTTR holders; the benefit is to LTTR holders. As such, the Midwest ISO asserts that it is appropriate to allocate the costs to LTTR holders. In addition, the Midwest ISO maintains that all LTTRs are subject to feasibility under the simultaneous feasibility test and thus to guarantee Stage 1A LTTRs to capacity right holders of replacement Baseload Supply Resources and new Baseload Supply Resources would result in special treatment for those resources.

d. Determination

i. Full Funding of FTRs

50. We find that the Midwest ISO's proposal is not fully compliant with the requirements of guideline (2) because it does not fully fund the FTRs available to long-term ARR holders and other parties through the FTR auctions and because it does not specify the "extraordinary circumstances" under which full funding of such FTRs would be suspended. We note first that the Midwest ISO's proposal is in partial compliance with guideline (2) because it ensures that once the quantity of LTTRs is awarded, it remains fixed for the term of the LTTR. The Midwest ISO's proposed rule results in a ten-year guarantee for the quantity of awarded Stage 1A ARRs. Moreover, it links the simultaneous feasibility of the Stage 1A ARRs to the transmission planning and expansion process. Thus, we find that the Midwest ISO's proposal satisfies the requirement of guideline (2) for long-term stability of the quantity of rights awarded. However, we note that we will require further details on the link between the feasibility of the Stage 1A ARRs and the transmission planning process, as discussed in section IV.8 below.

51. Guideline (2) further states that the full funding requirement applies to LTTRs once they have been allocated. The Midwest ISO argues that because it will apply the simultaneous feasibility test to any allocated ARRs and uplift the costs to fund infeasible ARRs, that its proposal satisfies guideline (2). However, we note that in this context the full funding requirement of guideline (2) applies to FTRs and not just to ARRs. While it is true that the simultaneous feasibility test, as applied to the allocated ARRs and to the FTR auction, is a necessary requirement for revenue adequacy of the FTRs, it does not prevent FTR revenue inadequacy in the event that transmission system conditions change such that the set of awarded FTRs become infeasible. For example, a transmission line modeled in the ARR allocation and FTR auction could go out of service. In that case, the transmission organization would not collect sufficient revenues from transmission users to pay holders of FTRs. Currently, in the event of such revenue insufficiency, the Midwest ISO first draws down any congestion surplus payments that it holds to pay FTR holders, and, when those are not available, it pro-rations payments to FTR holders. It has not proposed to modify this rule. However, for those parties that convert ARRs to FTRs as their long-term hedge, guideline (2) requires full funding of FTRs and thus we will require the Midwest ISO to propose tariff provisions in compliance with the requirements of the rule. We require the Midwest ISO to make a compliance filing within 60 days of the date of this order.

52. In the Final Rule, we allowed transmission organizations the 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.[19] As commenters suggest, there are a number of alternative approaches for allocating uplift to support full funding that are likely to be reasonable: to holders of FTRs on a dollar value basis;[20] to market participants on a load-ratio share basis; to ARRs, if those exist, again on a dollar value basis or MW ratio share basis; to transmission owners; or to some combination of the above.[21]

53. Guideline (2) also requires the transmission organization to define the extraordinary circumstances under which full funding of FTRs will be suspended. We will require the Midwest ISO to specify these conditions in a compliance filing to be submitted within 60 days of the date of this order.

ii. Funding of Infeasible ARRs

54. With respect to the allocation of uplift from the initial allocation of ARRs to LTTR holders, we agree with the Midwest ISO that it is reasonable to assign these costs to the beneficiaries of the funding for infeasible ARRs and therefore they should be responsible for the costs. We also agree with the Midwest TDUs that the allocation among LTTR holders should be equitable, and therefore, to confirm this outcome, we require the Midwest ISO to report on the allocation of infeasible ARR costs after the completion of the first annual ARR allocation.

55. We do not consider the Midwest ISO's proposal to prohibit conversion of infeasible ARRs to self-scheduled FTRs to be a violation of guideline (2). Market participants with infeasible ARRs are receiving a congestion hedge, with fixed properties for ten years. Each year, they will receive the revenues from the infeasible ARRs for that year, which will be the market's estimate of the value of the congestion between the source and sink points in the ARR. Those revenues are guaranteed to flow each year because they will be uplifted to the set of LTTR holders. The holder of an infeasible ARR may then purchase feasible FTRs with the auction revenues. We further note that, as filed, the Midwest ISO has not requested that FTRs be fully funded. Thus, if a market participant were allowed to convert its infeasible ARR to a self-scheduled infeasible FTR

[19] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 176.

[20] This is the approach recommended by the OMS. It is also possible that uplift could be assigned to FTR holders on a MW ratio share basis.

[21] We note that PJM has proposed to initially assign the uplift to long-term FTR holders on a dollar value basis, but is initiating a stakeholder process to determine whether to allocate it on a load-ratio share basis in the future. PJM Interconnection, LLC July 3, 2006 Compliance Filing, Docket No. ER06-1218-000. In contrast, CAISO has proposed to allocate the uplift on a load ratio share basis. California Indep. Transmission Sys. Operator, Inc. January 29, 2007 Compliance Filing, Docket No. ER07-475-000.

under the proposed rules, there would be no guarantee that it would be fully funded. In this order we are requiring the full funding of FTRs. However, we still prefer that infeasible FTRs are not created so as not to create two types of full funding requirements – those for infeasible FTRs, which could require hourly uplift; and those for feasible FTRs that become revenue insufficient. The approach of funding infeasible ARRs, but not allowing infeasible FTRs, is less complicated and more transparent and should lead to the same congestion hedge result.

3. Guideline (3)

> Long-term transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions.

56. The purpose of guideline (3) is to award transmission rights to entities that fund transmission upgrades and expansions through direct cost assignment and not to rights related to upgrades that are rolled into transmission rates.

a. Proposal

57. The Midwest ISO states that market participants that directly fund transmission system upgrades and expansions will be eligible to nominate Stage 1A ARRs based on the capacity added by such upgrades and expansions.

58. If a qualified market participant wishes to fund the transmission upgrades necessary to make feasible otherwise infeasible ARRs, the Midwest ISO states that it will provide the qualified market participant a detailed description of the upgrades that would be necessary to achieve the desired ARR feasibility to the extent that this is not currently provided for under the TEMT or the Midwest ISO procedures. The Midwest ISO states that the market participant may then utilize existing tariff provisions in Attachment FF[22] to be compensated for the upgrade.

59. The Midwest ISO amended section 46 of its TEMT, "Network Upgrades," to include the issuance of LTTRs with FTRs by the transmission providers to market participants. Section 46 indicates that entities eligible to receive LTTRs and FTRs are permitted to elect any set of ARR receipt points and delivery points, so long as the market participants do not receive credits under Attachment R[23] and Attachment X.[24]

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[22] Attachment FF is the Midwest ISO transmission expansion planning protocol.

[23] Attachment R specifies generation interconnection procedures for interconnection in the Midwest ISO.

Also, the Midwest ISO added a section discussing LTTRs and FTRs for network upgrades, describing when and how market participants can request LTTRs and FTRs. Under section 46.1, market participants request LTTRs by following the timeline set forth by the transmission provider when the network upgrade becomes effective. LTTRs associated with the network upgrade remain in effect from the time the network upgrade becomes effective to the end of the current allocation period. Such LTTRs are to be considered prior-year allocated LTTRs in the upcoming ARR allocation. Section 46 further provides that market participants can request FTRs associated with the network upgrade for the balance of the current annual allocation period. The transmission provider will perform simultaneous feasibility tests for the requested LTTRs and FTRs.

b. Comments and Protests

60. The Midwest TDUs believe that the Midwest ISO's LTTR proposal lacks a clear procedure for an LSE to obtain crucial certainty regarding congestion cost risks before investing in capital-intensive new generation or committing to long-term power purchases. Part of that procedure pertains to obtaining ARRs for upgrades (as discussed in this section) and part pertains to ARRs for existing capacity when baseload generation resources are changed (as discussed in section IV.5 below).

61. With regard to transmission upgrades, the Midwest TDUs note that the Midwest ISO's proposal includes no detailed provisions describing the "Feasibility Upgrade Process" mentioned in section 43.6.1 and newly defined in section 1.98a. The Midwest TDUs state that it may be that the Midwest ISO intends section 46 to be the "Feasibility Upgrade Process." However, the Midwest TDUs believe that section 46 is limited to participant-funded network upgrades and does not identify any way to tie even those limited upgrades to the specific source-to-sink LTTRs needed to provide delivered price certainty. The Midwest TDUs assert that an LSE that seeks to build new baseload generation could be required: (1) to invest capital to construct the new resource; and (2) potentially pay to build network upgrades to satisfy the Midwest ISO's aggregate deliverability requirement, as well as additional network upgrades as part of an undefined "Feasibility Upgrade Process." The Midwest TDUs assert that the Midwest ISO should be planning its grid to accommodate new baseload units, and it should be directed to develop procedures that will allow an LSE to add a baseload resource that is designed to qualify as a Stage 1A ARR resource, and to have confidence - before the LSE finances and invests in the new generation - that it will be allocated Stage 1A ARRs for the resource when it begins to take service from the resource.

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[24] Attachment X specifies large generator interconnection procedures for interconnection in the Midwest ISO.

62. The Midwest TDUs further state that the Midwest ISO distinguishes between "Replacement" of resources[25] and "Designation of New" resources.[26] However, the Midwest TDUs state that the differences between those two processes - and the advantages of one versus the other - are not explained. The Midwest TDUs assert that the Midwest ISO should fully explain its ARR allocation processes for replacing existing resources and designating new resources, and allow this to be done in advance, on an integrated basis and coordinated with planned upgrades (whether participant-funded or not).

63. Integrys believes that it is unjust and unreasonable for the Midwest ISO to deny Stage 1A LTTRs for replacement or new Baseload Supply Resources because they may fail the Midwest ISO's simultaneous feasibility test through no fault of their own. Under the Midwest ISO's proposed ARR process, Integrys contends that there is no guarantee that a replacement or new Baseload Supply Resource that has followed the Midwest ISO's Network Resource (NR) Interconnection Service process, paid for interconnection, and paid 50 percent of the cost of network upgrades, as required by the Midwest ISO's TEMT, will receive a Stage 1A LTTR. According to Integrys, an LSE with a new Baseload Supply Resource that desires Stage 1A LTTRs that fail the Midwest ISO's simultaneous feasibility test is forced into the auction to obtain an FTR, which is not a long-term product but a short-term right with a maximum duration of one year. Consistent with the Midwest ISO's TEMT, Integrys asserts that there should not be a reduction of the FTRs awarded for replacement or new Baseload Supply Resources that obtain NR Interconnection Service and are claimed by an LSE as a long-term capacity resource based on the simultaneous feasibility test.

64. Integrys states that the transmission system already should be constructed to meet the simultaneous feasibility test and provide transmission service for the new Baseload Supply Resources that is comparable to the service that is provided to existing Baseload Supply Resources. Integrys maintains that all such generators should have Stage 1A rights. If the replacement or new Baseload Supply Resource is determined to be infeasible, Integrys argues that it should be granted infeasible Stage 1A ARRs and the costs of the infeasible ARRs should be uplifted to the entire Midwest ISO load until Midwest ISO corrects the inadequate planning and construction of the grid. Integrys affirms that this resolution is consistent with the Commission's LTTR guideline (3), which provides that LTTRs "made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions."

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[25] Midwest ISO TEMT, at section 43.6.1.

[26] Midwest ISO TEMT, at section 43.6.2.

65. Otter Tail notes that funding of network upgrades is not defined in the TEMT, and the proposed revisions do not even refer to another section of the TEMT under which funding may occur. Consequently, Otter Tail states that it is unclear under the Midwest ISO's proposal exactly what constitutes "funding" and how this provision will be implemented. Otter Tail maintains that the Midwest ISO's proposed revisions to section 46.1 do not provide greater transparency for transmission customers, since they do not put those entities affected by the TEMT on notice as to when a market participant will be eligible for LTTRs. Otter Tail argues that specificity is especially important to entities involved in discussions with others in the region regarding transmission upgrades, such as Otter Tail, who need to know the impact of their investment decisions.

66. Southwestern Electric contends that proposed section 46 is not consistent with guideline (3) since it restricts the term of any LTTRs associated with network upgrades to a one-year allocation period thereby unnecessarily limiting the benefit of LTTRs to an LSE that commits funds to the transmission upgrades needed to get the generation delivered to the transmission network as well as to the LSE's sink, thereby impeding transmission investment and impairing the development of new generation resources.

67. Duke Energy asserts that the Commission should direct the Midwest ISO to clarify that FTRs granted for new service will terminate when the ARRs allocated in the process for the next year take effect and the holder of the FTRs may request new ARRs in the allocation process for the next year on the same basis as anyone else requesting new ARRs.

68. WEPCO notes that the last sentence of section 46 provides that "[t]he Market Participant can then use the newly created CP Nodes as the ARR receipt points and Delivery Points." WEPCO is concerned that this sentence could be misinterpreted to allow the market participant to use any newly created CP node in the model, and not just those the market participant created. WEPCO requests that the sentence be modified to provide that "[t]he Market Participant can then use the newly created CP Nodes <u>that it requested</u> as the ARR Receipt Points and Delivery Points."

69. Constellation further states that the proposed restrictions on changing the BRSS should be incorporated into the TEMT itself. Constellation argues that tariff restrictions should be imposed to preclude the changing of the BRSS without the consent of all the LSEs in the load ARR zones in general.

c. <u>Midwest ISO Answer</u>

70. The Midwest ISO states that it will clarify the proposed procedures for upgrades associated with replacing existing resources and designating new resources for purposes of ARR allocation in a compliance filing as suggested by the Midwest TDUs.

71. The Midwest ISO also agrees to clarify exactly what constitutes "funding" and how this provision will be implemented for the incremental transmission capacity created by network upgrades, as requested by Otter Tail. The Midwest ISO agrees to clarify its proposal concerning market participants' rights to obtain LTTRs for incremental transmission capacity for network upgrades that they fund.

72. In response to Duke Energy, the Midwest ISO states that it will clarify in a compliance filing that FTRs granted for new service will only extend until the end of the current allocation year. In subsequent years, the Midwest ISO states that the new service will only be eligible for compensation in Stage 2, since the new service will not qualify as an historical service during reference year.

d. Determination

73. We find that the Midwest ISO's proposal, as modified, is consistent with the requirements of guideline (3). While we agree with the Midwest TDUs that the Midwest ISO is required to plan for generation expansions, Order No. 681 does not require the Midwest ISO to provide advance guarantees of LTTRs for incremental participant funded upgrades before the generation facilities go into service.[27] While the Midwest ISO in its transmittal letter outlines a process for providing market participants with a forward-looking description of the upgrades necessary to achieve a desired level of ARR feasibility for transmission upgrades funded by market participants, we note that the Midwest ISO does not have a defined and transparent process in its TEMT for granting incremental ARRs for all market participants including those that build new baseload generation, and therefore we require that the Midwest ISO submit a defined and transparent process in the 30-day compliance filing.[28] We note that the Midwest ISO has indicated that it will also provide, in a compliance filing, additional clarifications on issues raised by commenters on the proposed provisions regarding expansions and their impacts on LTTRs. We direct the Midwest ISO to submit such a compliance filing within 30 days of the date of this order.

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[27] *PJM Interconnection LLC*, 117 FERC ¶ 61,220, at P 46 (2006) (The guideline, as written, clearly states that incremental rights awarded by directly funded upgrades must be feasible. We agree with PJM that if requests were granted that cannot be supported by the capacity of the system, the market would be undermined since they could not be financially supported by congestion costs and inequities would occur among market participants. We also note that the Final Rule states that parties that fund directly assigned upgrades are not entitled to rights to existing transmission capacity that is held by others.).

[28] *See Id.* at P 47.

74. With regard to the issue of the term of the LTTR for network upgrades, we find that the Midwest ISO's proposal is not in violation of guideline (3). The Midwest ISO proposes to provide feasible LTTRs for network upgrades that are then eligible for conversion to ARRs in the next ARR allocation. Once the ARR is nominated and accepted as a Stage 1A ARR, the Midwest ISO automatically rolls the ARR over each year in the ARR allocation. Thus, the term of the ARR would last as long as the generation unit is used as a baseload unit. In the Final Rule, the Commission determined that transmission organizations and stakeholders would determine the appropriate terms for network upgrades or expansions.[29] The Midwest ISO has accordingly made a determination on term, as the Final Rule allows, and its proposal provides long-term ARRs for network upgrades and expansions.

75. We note that the Midwest ISO has agreed to clarify that FTRs granted for new service will only extend until the end of the current allocation year and that, in subsequent years, new service will only be eligible for compensation in Stage 2 since the new service will not qualify as a historical service during the reference year. While the Midwest ISO's clarification appears to be consistent with Order No. 681, we require the Midwest ISO to further explain the historical service reference in its response. We note that the section referenced by Duke Energy, section 43.5.1, refers to point-to-point transmission service and that the assignment of ARRs for point-to-point service does not necessarily require the identification of historical resources.[30]

76. We further find the clarification recommended by WEPCO to be reasonable and consistent with the requirements of Order No. 681 and require the Midwest ISO to file the revised tariff provision in the compliance filing to be submitted within 30 days of the date of this order. We note that the tariff language on restrictions on changing the BRSS explained in the Midwest ISO's compliance filing[31] is incorporated into section 43.6.1 and therefore further clarification is not needed.

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[29] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 212.

[30] *See* section 43.2.4.a.i(b), which states:

> For point-to-point transmission service or network resources external to the transmission provider region, the holder of the service may opt to use the above process *to the extent that the supply resource behind the Transmission Service can be identified, or the holder may opt to use the scheduling factor of the Transmission Service.*

Midwest ISO TEMT, at section 43.2.4.a.i(b) (emphasis added).

[31] Midwest ISO January 29, 2007 Compliance Filing at 7.

4. Guideline (4)

> Long-term firm transmission rights must be made available with term lengths (and/or rights to renewal) that are sufficient to meet the needs of load serving entities to hedge long-term power supply arrangements made or planned to satisfy a service obligation. The length of the term of renewals may be different from the original term. Transmission organizations may propose rules specifying the length of terms and use of renewal rights to provide long-term coverage, but must be able to offer firm coverage for at least a ten-year period.

77. The Commission stated that it will allow regional flexibility in defining the terms of LTTRs that are offered and will permit substantial latitude to determine how to achieve long-term coverage through combinations of transmission rights of specific terms and renewal rights along with transmission planning and expansion procedures that support long-term rights. However, the Final Rule requires that transmission organizations make available transmission rights and renewal rights that provide coverage for a period of at least ten years so that transmission rights offered meet the reasonable needs of LSEs to obtain transmission service for long-term power supply arrangements used to meet service obligations while allowing transmission organizations and their stakeholders flexibility in designing rights that suit regional needs.

a. Proposal

78. The Midwest ISO states that the long-term nature and duration of long-term Stage 1A ARRs shall be ensured through automatic annual rollover of Stage 1A ARRs nominated long-term. The Midwest ISO proposes to offer an annual ARR with fixed renewal rights for ten years as its LTTR.

b. Comments and Protests

79. DC Energy argues that the purpose of owning either LTTRs or long-term ARRs is to provide market participants with a congestion hedge for at least a ten-year period. DC Energy contends that the Midwest ISO fails to provide a long-term hedge tool against congestion costs for a sizeable portion of the market. DC Energy requests that the Midwest ISO provide an FTR auction for a portion of the system capability for longer terms, such as five to ten years, and to permit long-term ARR holders to offer their rights into the auction for longer than one year at a time. DC Energy maintains that the absence of these options is unduly discriminatory in light of the preferential access to long-term rights granted to other market participants. DC Energy believes that there is no reason to limit ARR holders to offering their capacity into the FTR auctions on only a one-year basis.

80. Likewise, DC Energy sees no need to limit the rest of the market to only short-term FTRs. DC Energy asserts that the incorporation of a long-term auction would also serve to rectify market participants' ability to acquire FTRs via the auction.

81. Integrys believes that the Midwest ISO's proposed auction process falls short of guideline (4) because it only allows an LSE to purchase an FTR with a maximum duration of one year (consisting of four seasonal products). Integrys contends that there is no ability to roll these FTRs over annually. Thus, Integrys states that there is no certainty or even any slight indication of the availability of the LTTR for more than one year and consequently there is no indication of the auction clearing price that would be required to obtain the LTTRs after the first year.

82. Xcel comments that the Midwest ISO should clarify that the five-year minimum contract or ownership requirement in section 43.2.1.a.i extends beyond the reference year, which appears to be the Midwest ISO's intent.

c. Midwest ISO Answer

83. In response to Xcel, the Midwest ISO agrees to make a compliance filing clarifying, with respect to section 43.2.1.a.i, that the requirement that a party have an interest in a resource for at least five years in order for that resource to qualify for inclusion as an RSP in the BRSS or PRSS can be satisfied after the end of the reference year; and that objective criteria should be established for determining whether such an interest will ultimately satisfy the five-year requirement.

d. Determination

84. We find that the Midwest ISO's proposal, as modified, is consistent with the requirements of guideline (4). Although the FTRs have only a one-year term, the renewal properties of the ARRs ensure that the exact same FTR is valid for up to ten years, as required under guideline (4). The long-term ARR recipient can either directly convert the ARR into an FTR with equivalent specifications (called "self-scheduling") or can choose to receive revenues associated with its ARR from the annual auction of FTRs. The market participant can continue to obtain FTRs with allocated ARRs that are guaranteed through an automatic renewal every year for ten years, with subsequent renewal available subject to feasibility tests. Accordingly, we consider the Midwest ISO's provisions to be consistent with guideline (4) since they provide a long-term hedge.

85. We do not consider self-scheduled FTRs to be a short-coming of the Midwest ISO's proposal. Market participants holding FTRs have the right to self-schedule and Order No. 681 does not require that they auction those rights in order to ensure a larger FTR auction market.

86. We agree with Xcel that the five-year interest requirement can be satisfied after the end of the reference year (*i.e.*, part of the five-year period extends past 2005) so that the five-year requirement is determined by five years prior to the first annual allocation and note that the Midwest ISO agrees to make this clarification in a compliance filing, which we will require to be submitted within 30 days of the date of this order.

87. While the Final Rule does not require multi-year auctions for FTRs, we encourage the Midwest ISO and stakeholders to evaluate multi-year auction options. We require the Midwest ISO to report back to the Commission in six months on the status of its discussions.

5. Guideline (5)

> Load-serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing transmission capacity. The transmission organization may propose reasonable limits on the amount of existing transmission capacity used to support long-term firm transmission rights.

88. Guideline (5) gives protection to LTTRs used to satisfy native load service obligations. In the Final Rule, the Commission chose not to require that LSEs with long-term power supply arrangements would have priority over LSEs that prefer short-term power supply arrangements; that is, LSEs are on equal footing, unless an alternative rule is agreed to by stakeholders. The Final Rule also stated that non-LSEs eligible for allocation of transmission rights should be given access to any LTTRs available following the allocation to LSEs.

89. The Final rule allows that the transmission organization and its stakeholders should be given flexibility to determine the level at which an LSE may nominate LTTRs as long as that level does not fall below the "reasonable needs" of the LSE.[32] The Commission thus provided for transmission organizations to propose reasonable limits on the amount of transmission capacity made available for LTTRs, noting that this level can be expressed as a straightforward measure of load, such as minimum daily peak load or 50 percent of maximum daily peak load, for example. The Final Rule also provides the transmission organization and its stakeholders with flexibility to propose an approach for incorporating load growth in the allocation process.

[32] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 323.

a. Proposal

90. As noted above, the Midwest ISO proposes to offer an annual ARR with fixed renewal rights for ten years as its LTTR. Such ARRs will then be converted into FTRs voluntarily by LSEs (see discussion of guideline (7) below). The Midwest ISO states that LSEs will have priority over non-LSEs in the allocation of such long-term ARRs. The proposed annual allocation for both short-term and long-term ARRs will consist of three stages: Stage 1A, Stage 1B, and Stage 2.[33] In Stage 1A, qualified market participants will nominate baseload ARR rights – *i.e.*, entitlements registered to LSEs serving loads in ARR zones during the reference year. Market participants with long-term point-to-point transmission service are eligible to nominate Stage 1A ARRs for up to 50 percent of their MW amount (with the remainder eligible for short-term ARRs). Accepted Stage 1A ARRs are the LTTRs. The subsequent stages are for allocation of short-term ARRs, as discussed in section D of this order.

91. As noted above, nominations for Stage 1A ARRs are restricted to sources in the BRSS. The Midwest ISO proposes that in order to qualify for inclusion as a source in the BRSS, a qualified market participant must have had a capacity and energy ownership interest in, or a capacity and energy contract with, the supply resource that either began in, ended in, or remained in effect throughout the reference year for the applicable ARR zone. If for such owned or contracted for resources, the Midwest ISO explains that the transmission service was approved but not yet in service during the reference year the resource will qualify for inclusion in the BRSS provided that deliveries under the contracted for or owned resource began prior to December 31, 2005. The Midwest ISO asserts that only the capacity and energy MW amount owned or contracted for qualifies, not the entire MW capacity of the resource should it be greater than the owned or contracted for MW amount for a duration of at least five years. The Midwest ISO also proposes that the reference year for all initial ARR zones at the start of this process shall be comprised of the four seasons starting on March 1, 2004 and ending February 28, 2005.

92. A major component of the Midwest ISO LTTR proposal under guideline (5) is meeting the reasonable needs of LSEs. When the Midwest ISO markets were being proposed, a market participant issue was that when initially allocating FTRs (on an annual basis), there was not always sufficient transmission transfer capability based on submitted FTR nominations to allow certain LSEs to acquire sufficient FTRs to meet congestion coverage for their baseload if other LSEs did not also nominate FTRs with their historical generators as source points. A key reason for this was that the historical Midwest power flow pattern that the FTR nominations were attempting to replicate relied on "counter-flow," essentially the effect that transmission transfer capability is increased

[33] Midwest ISO TEMT, at section 43.2.4.

when injections and withdrawals net each other out over a particular transmission facility. However, some FTRs that provide counter-flow result in net negative payment obligations, although these are typically offset by positive congestion payments.[34] Thus, some LSEs did not want to nominate FTRs that would result in such payments, so as to increase their energy market revenues. However, by not nominating such counter-flow FTRs, they would reduce the set of FTRs available for others. As part of its decision to start the Midwest ISO market with sufficient safe-guards, the Commission approved a five-year "safe-guard" to require LSEs in the Midwest ISO to take assigned counter-flow FTRs if those counter-flows were needed to provide another LSE with its historical baseload FTRs (*i.e.*, from its network resources to its network load).[35] This was called "restoration." At the end of this five-year period, the assignment of such counter-flow FTRs was to terminate and the Midwest ISO LSEs were encouraged to build transmission capacity and take other steps to ensure that their FTR coverage would remain sufficient after the safeguard phase.

93. In complying with guideline (5), the Midwest ISO has proposed to continue its assignment of counter-flow transmission rights, although now as point-to-point ARRs and with some different rules than before, so as to provide LSEs that seek LTTRs with their reasonable needs. That is, without such counter-flow ARRs, some LSEs would not be able to acquire baseload congestion hedges.

94. Another issue under guideline (5) concerns the different classes of LSEs that currently hold transmission rights in the Midwest ISO market and how they transition into the LTTR rules. LSEs in the Midwest ISO either hold FTRs or one of several different types of GFAs. As the GFAs expire, their holders will be eligible to nominate LTTRs.

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[34] An FTR is specified from a source point to a sink point. To illustrate the financial aspects of a counter-flow obligation, assume that the holder of the FTR is operating a generator at the source point and has load at the sink point. If the LMP at the source point is lower than the LMP at the sink point, then the holder of the FTR is getting paid positive revenues from the FTR, but owes the difference in the LMPs in congestion costs. On the other hand, if the LMP at the source point is higher than the LMP at the sink point, then the holder of the FTR is in a "counter-flow" situation and owes the difference between the two prices. At the same time, the generator at the source point is getting an LMP payment that is higher than the LMP at the sink point, and this congestion payment offsets the FTR obligation. Thus, as long as the holder of the counter-flow FTR has a generator at the source point, it is hedged against counter-flow FTR obligations.

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

b. Comments and Protests

i. Assignment of Counter-flow ARRs

95. Commenters generally support the use of counter-flow ARRs to allow for LSEs to obtain an allocation of ARRs that supports coverage of expected baseload congestion charges. However, commenters differ on whether those counter-flow ARRs should be assigned directly to LSEs based on historical transmission usage or whether any payments associated with them should be uplifted to LTTR holders as a whole.[36] Commenters also argue that the rules to identify counter-flow ARR requirements should be modified. Commenters are also concerned with costs that may be incurred by parties that hold counter-flow ARRs when their generation unit is retired or is on outage.

96. Turning first to the assignment of costs of counter-flow ARRs, Detroit Edison and Strategic argue that any counter-flow ARRs should be assigned to the broader class of LTTR holders, rather than to individual LSEs. Detroit Edison requests that the Commission require that counter-flow costs be uplifted to all LTTR holders within the Midwest ISO footprint. In short, Detroit Edison believes that cost socialization is the only way to recognize that all LTTR holders (not just those assigned counter-flow obligations) benefit by the increase in LTTR availability created by counter-flow assignments. Detroit Edison disagrees with the Midwest ISO's assertion that its proposal to allocate counter-flow costs only to selected ARR holders "is consistent with long term rights based on historical firm transmission service and follows cost causation and benefit-receipt principles."[37] Detroit Edison asserts that "benefit-receipt principles" support just the opposite of what the Midwest ISO has proposed – an uplift of such costs to all LTTR holders that benefit. Detroit Edison further argues that principles of "cost causation" do not justify the Midwest ISO's proposal, as the LSEs directly assigned counter-flow ARRs clearly cannot be accused of "causing" the loop flow or other factors underlying the congestion giving rise to counter-flow costs. Given the lack of empirical support for any "incentive-based" rationale, Detroit Edison argues that such reasoning cannot be relied on to justify the imposition of counter-flow costs on a selected group of ARR holders who, by virtue of their counter-flow obligation, provide Midwest ISO-wide

[36] Note that any uplift associated with counter-flow ARRs is different from uplift to support full funding of FTRs, as discussed under guideline (2). Uplift to support counter-flow ARRs would accumulate in every hour that there was a negative price difference between the source and sink point on the ARR. Uplift to support full funding of FTRs would accumulate if changes in transmission network conditions made the allocated set of FTRs infeasible.

[37] Midwest ISO January 29, 2007 Compliance Filing at 12.

ARR benefits. Detroit Edison also argues that the assignment of counter-flow ARRs to particular LSEs unfairly penalizes market participants who are literally forced to accept counter-flow obligations.

97. Detroit Edison submits that entities forced to take assignment of counter-flow ARRs, *i.e.*, entities that did not want the ARRs in the first place, should not be forced to share the cost of infeasible ARRs not offset by counter-flow ARRs. Accordingly, Detroit Edison requests that the Commission require the Midwest ISO to exclude entities that have been assigned mandatory ARR counter-flow obligations from those responsible for payment of ARR infeasibility costs not offset by counter-flow.

98. Similarly, Strategic objects to the assignment of counter-flow ARRs since they present a long-term, unhedgeable risk that inequitably discriminate against the interests of competitive retail suppliers and the proposed tariff revisions fail to provide equitable measures for the transfer of ARRs and counter-flow risk in the event the load switches suppliers. Strategic recommends the cost of assuring simultaneous feasibility of Stage 1A ARRs should rest with the load in the ARR zone and not the load servers. Strategic also argues a *pro rata* uplift of restoration costs is a more equitable means of allocating the risk that the transmission system is insufficiently robust to maintain simultaneous feasibility of all long-term rights.

99. Integrys states that the requirement for a generator owner to hold a long-term counter-flow transmission right after the generator is retired is inconsistent with the Midwest ISO's responsibility to incorporate generation retirement into the transmission expansion plan and construction. If the transmission planning process should fail to properly account for the Baseload Supply Resource retirement, Integrys argues that such failure should not be borne by the entity that previously held rights to the resource. Likewise, Integrys asserts that the holder of the long-term Stage1A ARR that relies upon the counter-flow of the retired resource should not suffer as a result of an inadequate transmission planning process. Therefore, Integrys states that the costs of assigning counter-flow ARRs to restore infeasible rights in Stage 1A should be uplifted to all LTTRs.

100. In contrast to Detroit Edison and Strategic, Duke Energy supports the assignment of any allocated counter-flow ARRs to particular LSEs as a means to minimize uplift to the market as a whole (although, as discussed below, it has comments on the method by which this is done). Duke Energy is concerned that if such counter-flow ARRs are not assigned to particular LSEs, the alternative approach which might be considered by the Commission is to create infeasible ARRs whose costs are uplifted to the market. Duke Energy argues that such a result would be unduly discriminatory.

101. Duke Energy states that counter-flow ARR assignments should not occur where such assignment will not allow restoration of material ARRs, and there should be some

proportionality between the size of the counter-flow ARR and the restoration it enables. While section 43.2.5.a of the TEMT contains a formula for calculating the quantity of counter-flow ARR assignment, Duke Energy notes that the formula does not have a threshold to establish a set of candidate ARRs that are eligible for counter-flow assignment with respect to the binding constraint. Duke Energy believes that the Midwest ISO should be required to propose such a threshold or, at minimum, to explain what limits it would use to prevent such an obviously disproportionate assignment from occurring. Duke Energy recommends that a threshold of three percent or more should be used in establishing the eligible set of counter-flow ARRs. Under that threshold, Duke Energy explains that an eligible base ARR would be subject to counter-flow assignment only if it provides three percent or more of relief to the constraint.

102. OMS comments that it would be more equitable to reflect the economic value of the LTTR in the uplift calculation. OMS states that the full-funding guarantee of LTTRs benefits the LTTR holders so that it is logical that this group should be the one to bear the risk of sharing in the cost of the uplift. Also, OMS contends that if the FTR auction value of the counter-flow ARR is negative, and uplift is needed to maintain the feasibility of the prior year's set of LTTRs, that uplift should be apportioned based on the FTR auction value of the LTTR, rather than the megawatts. OMS maintains that the result will be that the value of the counter-flow ARR would be subtracted from the liability that entity has for uplift charges. Additionally, OMS argues that it is not equitable to assign an entity an instrument that has a negative value and then use that same instrument as a means to add additional downside risk to that same entity.

103. In its answer, OMS notes that the Midwest ISO's answer did not address the issue regarding the allocation of uplift charges that might result from the Midwest ISO allocating LTTRs that are infeasible. It appears to OMS that the Midwest ISO argues that since the obligation of having to take a counter-flow ensures that all LSEs obtain LTTRs, then those who have to take the counter-flow ARRs have received some benefit for which they must pay. OMS asserts that this argument does not rebut the fact that, if a counter-flow ARR has a negative value (as determined in the Annual FTR Auction), those being assigned counter-flow ARRs have been assigned a potential liability. OMS asserts that it is not equitable to allocate additional costs to an entity that has already been allocated an ARR having negative value.

104. The Midwest TDUs contend that the Midwest ISO's counter-flow ARR proposal would force an LSE that is changing its baseload resources to choose between two potentially risky alternatives: (1) give up its Stage 1A ARR hedge ten years *before* an existing baseload resource is scheduled to end and face congestion charges without LTTRs during that ten-year period; or (2) face potential counter-flow ARR liability for up to ten years *after* the baseload resource ends, which could expose the LSE to significant congestion charges without a generator located at the counter-flow ARR receipt point producing energy to offset those congestion charges. If the counter-flow

ARR requirement is not completely eliminated, at minimum, the Midwest TDUs argue that the Midwest ISO LTTR proposal should be modified to accommodate the legitimate needs of LSEs that are changing their power supply arrangements. The Midwest TDUs affirm that the need for "stability and certainty in the feasibility and funding of the set of LTTRs,"[38] which the Midwest ISO cites to justify the ten-year counter-flow ARR requirement, is equally satisfied if the Midwest ISO receives adequate notice of future changes to the Stage 1A ARR set.

105. The Midwest TDUs believe that the Midwest ISO should be planning for the region's baseload generation. The Midwest TDUs assert that the Midwest ISO should modify its LTTR proposal, so that a transmission customer also has the right to terminate Stage 1A ARRs with no subsequent counter-flow ARR exposure, provided that the customer gives the Midwest ISO notice consistent with the Midwest ISO's planning process (now five years). At minimum, the Midwest TDUs state that customers who notify the Midwest ISO ten years in advance should not be subject to residual counter-flow liability. According to the Midwest TDUs, this change would retain potential sufficient advanced notice to the Midwest ISO that they wish to terminate their Stage 1A ARRs, while also accommodating market participants who plan their power supply in advance and hold LTTRs that hedge their specific baseload resources – *i.e.*, the entities that new section 217(b)(4) of the FPA and the Final Rule were specifically designed to protect.

106. Although the Midwest ISO's proposed allocation methodology appropriately assigns counter-flow ARRs to restore infeasible rights in Stage 1A, Integrys asserts that the methodology in section 43.2.5.e fails to recognize that the counter-flow ARR holder loses its ability to physically hedge that ARR once its Baseload Supply Resource is retired. Integrys states that the requirement for a generator owner to hold a long-term counter-flow transmission "right" after the generator is retired is inconsistent with the Midwest ISO's responsibility to incorporate generation retirement into the transmission expansion plan and construction. Integrys argues that the proposed section 43.2.5.e also is inconsistent with the Commission's orders accepting the Midwest ISO's restoration of FTRs by counter-flows, which is based on the ability of the Baseload Supply Resource owner to physically hedge that counter-flow. Integrys maintains that counter-flow FTRs are allocated directly to the market-participant that was eligible to nominate them. According to Integrys, a more appropriate and consistent application of ARR restoration is to recognize that once a Baseload Supply Resource retires, the holder of the candidate Stage 1A ARR from that resource no longer has the ability to physically hedge the counter-flow obligation. Additionally, Integrys states that the transmission planning and expansion process should account for the retirement and appropriately expand the transmission system to maintain reliability and the feasibility of the remaining LTTRs. If

[38] Midwest ISO January 29, 2007 Compliance Filing at 11.

the transmission planning process should fail to properly account for the Baseload Supply Resource retirement, that failure should not be borne by the entity that previously held rights to that resource. Likewise, Integrys asserts that the holder of the long-term Stage 1A ARR that relies upon the counter-flow from the retired resource should not suffer as a result of an inadequate transmission planning process.

107. Otter Tail disagrees with the Midwest ISO's proposal to implement counter-flow LTTRs and ARRs with respect to units that are unavailable, either because they are offline (due to a scheduled or forced outage, for example) or retired since they ultimately require these market participants to incur financial obligations associated with counter-flow LTTRs and ARRs without any offsetting benefits to the market participant with the unavailable unit. Otter Tail states that this violates cost causation principles, which dictate that costs should be assigned to those who cause or benefit from such costs. However, where the Midwest ISO mandates market participants to hold counter-flow LTTRs or ARRs, Otter Tail believes that the Midwest ISO should excuse market participants whose units are off-line or retired from having to make payments associated with those counter-flow LTTRs and ARRs. If a unit is off-line for maintenance or other long-term outage, Otter Tail asserts that it should be relieved of any financial obligation it has under a counter-flow LTTR or ARR. Further, in the event that a unit is retired (for example, due to catastrophic failure or environmental legislation making it uneconomic), Otter Tail argues that it is inequitable to make a market participant responsible for funding a path for which it no longer has a counter-flow payment. In this situation, Otter Tail maintains that a market participant should be relieved of any obligations under a counter-flow LTTR or ARR.

ii. Other Issues in the Assignment of LTTRs

108. The Midwest TDUs believe that the Midwest ISO's compliance filing provides inadequate procedural mechanism to assure that LSEs can obtain LTTRs for new or changed baseload resources. The Midwest TDUs explain that sections 43.6.1 and 43.6.2 describe procedures to replace existing resources or designate new resources for including in an ARR zone's BRSS and PRSS – the sets of resources qualified to be the source of an ARR in the Midwest ISO's annual ARR allocation process. Although the Midwest TDUs do not oppose the Midwest ISO's proposed treatment of residual transmission capacity and capacity released by the withdrawal of existing resources from the BRSS, an LTTRs regimen that simply reallocates existing transmission capacity among market participants, and provides LSEs with no advance assurance that such capacity and LTTRs will be available for planned new resources, will not satisfy the intent of Congress and the Commission that LSEs be able to obtain long-term rights for their planned long-term power supply arrangement. The Midwest TDUs assert that the Midwest ISO should be required to plan for the region's next generation of baseload resources, and to assure that transmission capacity and LTTRs sufficient to support those resources are available for LSEs that invest in new, capital-intensive generation.

109. Integrys states that the FTR allocation process already in use by the Midwest ISO determined that a 70 percent capacity factor cutoff is appropriate when determining the Eligible Base Resources. In contrast, Integrys asserts that the Midwest ISO's proposed 50 percent capacity factor cutoff for designation of a generator as Baseload Supply Resource is unjust and unreasonable because it will lead to more resources qualifying for Stage 1A than are needed to supply Stage 1A load. Integrys argues that it will result in more resources qualifying for assigned counter-flow in the restoration of more resources than are needed to serve 50 percent of the peak load. Integrys maintains that it is not necessary to establish a 50 percent capacity factor cutoff in order to ensure that sufficient resources are designated to serve Stage 1A load. If a 70 percent capacity factor cutoff does not result in designation of enough resources for Stage 1A load, then Integrys states that resources qualifying for Stage 1B should be made eligible for Stage 1A, in capacity factor order, to provide sufficient resources to serve the Stage 1A load.

110. Ameren submits that if a point-to-point transmission service request (TSR) is allocated ARRs in Stage 1A, then the entitlement definition should not change each season or time period. Ameren asserts that the same source and sink should be used; otherwise it would not qualify as a BRSS with a 50 percent scheduling factor (excluding redirects).

111. Xcel interprets section 43.2.1.a to mean that an RSP that exists in only one season each year for a total of five years will qualify to receive an annual ARR allocation, noting that it is unclear whether RSPs must cover the same season for five years or whether the megawatt amount of seasonal RSPs can vary from year to year. Xcel states that, if the amount of seasonal RSPs can vary annually, it is unclear how the Midwest ISO will determine the applicable amount of RSPs or the season for which the reserve source point applies.

112. Ameren believes that the Midwest ISO should clarify that ARRs associated with a TSR can be nominated in Stage 1A only if the TSR is associated with delivery from a resource where the LSE has a capacity and energy interest via contract or ownership and the capacity factor of the resource is at least 50 percent or the scheduling factor of the transmission service is at least 50 percent (excluding redirects). Ameren asserts that the tariff language filed by the Midwest ISO can be interpreted to mean that ARRs can be nominated in Stage 1A up to 50 percent of the MW quantity for any firm point-to-point TSR that is annual or longer.

113. Ameren also contends that the Midwest ISO should clarify that the simultaneous feasibility test will protect all Stage 1A and Stage 1B ARRs that were feasible in the most recent ARR annual allocation, not just the ones in the ARR zone where the addition is being made to the BRSS or PRSS.

114. Ameren states that the Midwest ISO should not provide LTTRs in perpetuity from resources that were utilized under short-term contracts. According to Ameren, this potentially harms the resource owner or any LSE that contracts from this resource in the future. Ameren believes that the one-year exception should be either eliminated or at most a transitional mechanism to protect those who used short-term contracts to supply their load during the test year. If a transition period is used, Ameren maintains that it should be for two to five years to allow market participants time to replace these resources in the PRSS with new resources that meet the Resource Qualification Requirements. At the end of the transition period, Ameren states that the RSP that are in the PRSS of a holder of short-term supply contracts should be available to be added to any market participant's BRSS or PRSS, provided that the BRSS and PRSS meet the necessary Resource Qualification Requirements and pass the simultaneous feasibility test.

115. One member of the Midwest TDUs, MJMEUC, is a Midwest ISO market participant, and a number of its members are (and were during the reference year) Midwest ISO network transmission service customers. However, the load of the Missouri Public Energy Pool (MoPEP) is dynamically scheduled to Westar, which is located in the Southwest Power Pool (SPP). The Midwest TDUs assert that all MJMEUC members within the Midwest ISO footprint, including MoPEP loads, should be allowed to participate in the Midwest ISO's LTTR allocation process as separate ARR zones, and with the same rights to nominate and receive ARRs for their loads as other LSEs whose loads are not dynamically scheduled out of the Midwest ISO. Given its ongoing reliance on the Midwest ISO grid, and need for FTRs not for financial speculation but rather to hedge congestion of committed power supply resources, the Midwest TDUs note that MJMEUC's situation presents what the Commission has recognized as a "legitimate need" for FTRs (even assuming the MJMEUC load were deemed external).[39] Under the complex terminology used in the LTTR proposal, the Midwest TDUs are unclear whether load of MJMEUC members that is dynamically scheduled to Westar would qualify as Midwest ISO load for purposes of the ARR allocation process.

116. Duke Energy also states that the Midwest ISO TEMT is not sufficiently clear as to how the Midwest ISO will consider a partial allocation of resources that are either being added as new resources or as substitution resources pursuant to section 43.6. To the degree that the entire amount of a request for an addition or substitution of resources in either the BRSS or the PRSS cannot be granted, Duke Energy asserts that the Midwest ISO should allow for the market participant to consider adding or substituting the "partial" amount that could be granted subject to the simultaneous feasibility test.

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[39] *See California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 766-69 (2006) (finding that "external loads" deserve the "opportunity, upon successful demonstration of legitimate need, to participate in the CRR allocation process as if they were LSEs serving internal load").

iii. Conversion of GFAs to LTTRs

117. Duke Energy states that the Commission previously determined that the Midwest ISO's tariff should accord preferential congestion hedges to Option B and carved-out GFAs. However, Duke Energy notes that the Midwest ISO's proposal for Option B and carved-out GFAs is a preferential allocation of *long-term* rights to Option B and carved-out GFAs while other LSEs receive the leftovers in the form of ARRs. Duke Energy submits that this new preference is unlawful for a new reason particular to LTTRs in that it discriminates between classes of LSEs.[40] In reviewing proposed guideline (5) in Order No. 681, Duke Energy asserts that the Commission decided to eliminate language that would have limited availability of LTTRs to companies with long-term supply contracts.[41] Duke Energy submits that the Midwest ISO should be required to pro-rate long-term congestion hedges for Option B and carved-out GFAs just as it would for any nominated, qualified LTTR in the allocation process.

118. Southwestern expresses concern that the Midwest ISO proposal will not allocate sufficient ARRs to LSEs with new generation units since Option B GFAs are allowed 100 percent of their transmission capacity entitlements in the Stage 1A process. Southwestern also argues that Order No. 681-A clarifies that GFAs do not have any priority to LTTRs as GFAs, but they are also required to satisfy the Commission's guidelines to receive LTTRs and therefore an equitable approach would be for GFAs to be assigned transmission capacity in an amount less than or equal to their baseload usage on any path.

119. Duke Energy fully supports the conversion of GFAs to TEMT service, but it must be TEMT service taken on the same terms and conditions – including access to ARRs – as the service accorded to any other transmission customer, particularly after the term of the GFA expires. Duke Energy states that it is not clear that the TEMT as proposed would require converted GFAs to take ARRs on the same basis as everyone else. At a minimum, Duke Energy asserts that the Midwest ISO should be required to explain in clear terms whether and how Option B and carved-out GFAs can be converted to ARRs.

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[40] Duke Energy states that the preferential treatment of Option B and carved-out GFAs also is unduly discriminatory and unlawful with regard to their relationship with LTTRs for all the same reasons they were unlawful with regard to their relationship to FTRs. Duke Energy notes that the Midwest ISO's proposal would not take effect until May of 2008, which is after the sunset date for the Midwest ISO's current discriminatory treatment of GFAs.

[41] Order No. 681 states that "EPAct 2005 should not be construed to require that a preference be given to this class of load serving entities at the expense of load serving entities that prefer short-term power supply arrangements." Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 319.

Duke Energy notes that it is possible that the Midwest ISO deleted the provision because it believes the provision is redundant, and that an Option B or carved-out GFA could not convert to ARRs extending beyond the term of the GFA, which would need to be clearly explained. Finally, Duke Energy notes that its concern over GFA conversion would be moot if the Commission directs the Midwest ISO to pro-rate GFA congestion hedges on the same basis as ARRs during the ARR allocation process.

120. Ameren asserts that the proposed tariff provisions are unclear as to whether GFAs deemed "Option B" or carved-out GFAs are eligible to receive ARRs in Stage 2. Ameren states that no money from the Stage 2 allocation should be distributed to market participants for Option B GFAs or carved-out GFAs. Because Option B GFAs are eligible for a full refund of the day-ahead congestion costs and carved-out GFAs do not pay day-ahead congestion costs, Ameren maintains that to pay them additional money from Stage 2 would amount to double-dipping for these GFAs since they would receive more money than required to hedge them against congestion costs.

121. Furthermore, Duke Energy states that because Option B and carved-out GFAs are fully hedged, there are no leftover FTRs that are appropriately assigned to such GFAs. Thus, Duke Energy argues that they should not receive any revenues associated with the auction of such GFAs. Duke Energy asserts that the Midwest ISO should be directed to amend the TEMT to clarify that Option B and carved-out GFAs are not entitled to Stage 2 revenues unless the Commission directs the Midwest ISO to pro-rate GFA congestion hedges on the same basis as ARRs during the ARR allocation process, in which case the participation of GFAs in Stage 2 would be appropriate.

122. The Midwest TDUs, Ameren, Duke Energy and Xcel request that the Midwest ISO be directed to clarify the language in sections 43.2.1.a.ii, 43.6.1, and 43.6.2 of the TEMT.

iv. Eligibility of non-LSEs for LTTRs

123. Manitoba Hydro contends that the Midwest ISO's proposal provides preferential treatment to market participants that serve load in Stages 1A and 1B, while other market participants are relegated to Stage 2 and therefore are disadvantaged even though they pay the same rates for transmission. Such preference is contrary to the Commission's initiative to reform Order No. 888, according to Manitoba Hydro. Manitoba Hydro states that since it does not directly serve load within the Midwest ISO it will no longer receive an FTR congestion hedge. Manitoba Hydro asserts that the Midwest ISO's proposal makes transmission service reservations obtained after the reference year ineligible to receive an allocation of ARRs and therefore the values of the transmission service will be less than in the past. Manitoba Hydro argues the result of the Midwest ISO's proposal will be inefficiencies since higher cost generators with congestion hedges will be chosen ahead of resources without congestion protection and contract renegotiation. Manitoba

Hydro recommends that the Commission require the Midwest ISO to provide a mechanism that permits non-LSEs with contracts to provide energy or capacity to LSEs to be allocated LTTRs. If the Commission does not direct this requirement on the Midwest ISO, Manitoba Hydro recommends that the Commission order the Midwest ISO to discount point-to-point transmission service to reflect the additional risk and cost of not being awarded ARRs.

124. Southwestern Electric argues that the procedures allow market participants, and not only LSEs to receive Stage 1A ARRs. According to Southwestern Electric, this practice fails to provide the requisite priority to LSEs and could limit the amount of ARRs allocated to LSEs.

c. Midwest ISO Answers

i. Assignment of Counter-flow ARRs

125. The Midwest ISO does not support Detroit Edison's suggestion because the proposed approach was adopted to meet stakeholder concerns that uplifting the costs of counter-flow ARRs to all LTTR holders will result in cost responsibility for counter-flow and redispatch shifted from those that have historically paid these costs to all LTTR holders. In response to Detroit Edison's suggestion to allocate all ARR holders the costs associated with infeasible ARRs not offset by counter-flow ARRs, the Midwest ISO asserts that counter-flow ARRs are assigned to LSEs that did not nominate certain entitlements on which they previously requested long-term rights. The Midwest ISO states that this procedure tends to ensure LTTR rights for all LSEs. Due to this obligation, the Midwest ISO affirms that it is equitable to include the counter-flow ARRs in the assignment of costs associated with infeasible ARRs.

126. The Midwest ISO further maintains that uplifting the costs of counter-flow ARRs to all Midwest ISO load where a generation resource is unavailable would result in preferential treatment. The Midwest ISO believes that such costs would be uplifted to all LTTR holders (including the owners of retired or unavailable generation units), in part, because the generation owner of a generation unit is in the best position to take appropriate steps. The Midwest ISO believes that acceptance of Integrys' proposal would result in an inequitable cost shift between some generation owners and LTTR holders because a generation owner normally should be able to take steps to mitigate risks, for example, by not seeking LTTRs for a unit that will be retired in the near future. Similarly, the Midwest ISO argues that the owner of a generation unit would be in the best position to know when its unit will be unavailable for a long period of time and thus should be encouraged to take appropriate steps to mitigate the consequences of LTTR procedures, as opposed to shifting these economic costs to the other LTTR holders.

127. The Midwest ISO does not agree to the Midwest TDUs' requested modification to the counter-flow ARR requirement, but will clarify that no special processing will be needed and the market participant will automatically stop receiving the counter-flow ARRs according to the current rules if they stop nominating at the same time as the change of power supply arrangements.

128. The Midwest ISO states that it will agree to the Midwest TDUs' suggestion of an annual report by posting this information following each annual allocation subject to applicable confidentiality requirements, but does not believe that a report needs to be filed with the Commission on this topic.

129. In its second answer, the Midwest ISO asserts that it does not necessarily disagree with OMS' position with regard to uplift charges; however, the Midwest ISO believes that OMS' proposal is not necessarily superior to the procedures that received consensus approval from the stakeholders. The Midwest ISO affirms that it would be willing to put the OMS' proposal before the Midwest ISO stakeholders for their consideration as an amendment to the LTTR filing, after Commission approval of the proposal developed by the stakeholders.

130. The Midwest ISO disagrees with Otter Tail's belief that, if a unit is off-line for maintenance or other long-term outage, it should be relieved of any financial obligation it has under a counter-flow LTTR or ARR. The Midwest ISO rejects this proposal because it provides preferential treatment to those LSEs that still own or have contractual rights for the resources that had similar rights during the reference year. The Midwest ISO also asserts that the proposal is impracticable for other LSEs that have changed their power supply arrangements after the reference year.

ii. Other Issues in the Assignment of LTTRs

131. As suggested by the Midwest TDUs, the Midwest ISO states that it will clarify the proposed procedures for replacing existing resources and designating new resources for purposes of baseload ARR allocation in a compliance filing.

132. The Midwest ISO considered Integrys' request that the TEMT should guarantee Stage 1A LTTRs to capacity rights holders of replacement Baseload Supply Resources and New Baseload Supply Resources but is unable to grant such a guarantee because all LTTRs are subject to feasibility under the simultaneous feasibility test and such a guarantee would provide preferential treatment for new resources.

133. The Midwest ISO agrees to address, in a compliance filing, Ameren's suggestion that the Midwest ISO clarify that if a point-to-point TSR is allocated ARRs in Stage 1A, then the entitlement definition should not change each season or time period thereafter. The Midwest ISO notes that Ameren's proposal would be appropriate where a TSR was

consistent in all seasons, however, some annual TSRs have been granted different capacities in different months due to system constraints. In such instances, the Midwest ISO asserts that seasonal flexibility may be preferable to forcing the Midwest ISO to select the minimum TSR entitlement for the entire year.

134. The Midwest ISO agrees to make, in a compliance filing, Xcel's requested clarification that the Resource Qualification Requirements for RSPs are valid for less than all four seasons of the annual allocation period.

135. The Midwest ISO agrees with Ameren's capacity factor concern and will clarify that ARRs associated with a Designated Network Resource Transmission Service Request can be nominated in Stage 1A only if the TSR is associated with delivery from a resource where the LSE has a capacity and energy interest via contract or ownership and the capacity factor of the resource is at least 50 percent or the scheduling factor of the transmission service is at least 50 percent (excluding redirects).

136. In response to Ameren's request that the Midwest ISO not provide LTTRs in perpetuity from resources that were utilized under short term contracts, the Midwest ISO states it will clarify in a compliance filing that resources that were utilized under short-term contracts will not be eligible to receive LTTRs.[42]

137. In its answer to MJMEUC, the Midwest ISO explains that it treats pseudo-tied loads under NITS on the same footing as the load electronically in the Midwest ISO region.

138. The Midwest ISO states that it will make a clarification in a compliance filing on how it will consider a partial allocation of resources that are either being added as new resources or as substitution resources pursuant to section 43.6.4.

iii. Conversion of GFAs to LTTRs

139. The Midwest ISO has reviewed Ameren's proposal to clarify that GFAs that are deemed Option B or carved-out GFAs are not eligible to receive ARRs in Stage 2, and the Midwest ISO agrees to make this clarification in a compliance filing. The Midwest ISO agrees with Duke Energy that conversion of GFAs to TEMT service should not yield preferential service, but notes that existing procedures for conversion of GFAs is based on TEMT procedures for granting NITS, which assures comparable treatment for existing and new TEMT transmission service. The Midwest ISO will clarify in a compliance filing that Option B and carved-out GFAs will be provided a full congestion hedge

[42] Midwest ISO Answer at 11.

through settlement mechanisms, but the Midwest ISO will not limit the ARR allocation to LSEs by holding the ARRs (held by the Midwest ISO representing Option B and carved-out GFAs) at their maximum amounts as under the current FTR allocation procedures.

140. The Midwest ISO indicates that it will address the issues raised by Midwest TDUs, Ameren, Duke Energy and Xcel with regard to sections 43.2.1, 43.6.1 and 43.6.2 in a compliance filing.

iv. Eligibility of non-LSEs for LTTRs

141. The Midwest ISO responds to Manitoba Hydro by explaining that point-to-point TSRs are eligible for ARRs regardless of whether any external load is served using those requests. The Midwest ISO does not believe that a mechanism that permits non-LSEs with contracts to provide energy or capacity to LSEs to be allocated LTTRs would be consistent with the overall consolidated stakeholder settlement of LTTR issues or with the LTTR guidelines established by the Commission in Order Nos. 681 and 681-A.

142. In its answer, Manitoba Hydro states it believes that allocating ARRs regardless of whether any external load is served is unduly discriminatory because it benefits only market participants who are inside the Midwest ISO footprint since those market participants are eligible for an allocation of ARRs (and LTTRs) regardless of whether they serve load within the footprint, or export energy to an external entity using point-to-point transmission service. However, Manitoba Hydro notes that a market participant outside the Midwest ISO footprint that desires to import energy into the Midwest ISO footprint and that indirectly serves load is not allocated a share of ARRs pursuant to the Midwest ISO's ARR allocation process.

143. Manitoba Hydro also states that it is not advocating that all load outside the Midwest ISO region be allocated ARRs. Manitoba Hydro acknowledges that the Midwest ISO does not control load or transmission service outside its footprint. However, Manitoba Hydro is advocating that transmission service administered by the Midwest ISO inside the Midwest ISO footprint that is used indirectly to serve load be granted ARRs in a similar fashion as ARRs being allocated to market participants within the Midwest ISO's footprint and in a manner that is consistent with the existing FTR allocation process.

144. Manitoba Hydro states that Order Nos. 681 and 681-A do not preclude market participants that utilize point-to-point transmission service to import energy from being allocated ARRs. Manitoba Hydro argues that nowhere does the Commission mention limiting LTTRs to LSEs. According to Manitoba Hydro, the Midwest ISO's proposal represents a major overhaul of its annual FTR allocation methodology that is inconsistent with Order Nos. 681 and 681-A and that discriminates against certain market participants

who are eligible for an allocation of FTRs under the currently-effective allocation methodology, but who, under the proposed ARR allocation process, would be denied the opportunity to be allocated ARRs and LTTRs.

145. In its second answer, the Midwest ISO disagrees with Manitoba Hydro's position. The Midwest ISO believes that allocating ARRs to all load outside the Midwest ISO footprint (or permitting the allocation of LTTRs to non-LSEs with contracts to provide energy or capacity to LSEs) would not be consistent with the stakeholder settlement reached with regard to LTTR issues or with the Commission's directives, as expressed in Commission Order Nos. 681 and 681-A.

d. Determination

146. We find that the Midwest ISO's proposal for guideline (5) provides a priority in the allocation of LTTRs for LSEs and also has procedures for ensuring that the reasonable needs of such LSEs for LTTRs are met. In addition, the Midwest ISO has agreed to clarify a number of commenters' concerns. With these clarifications, we find that the proposal is consistent with the primary requirements of guideline (5).

i. Assignment of Counter-flow ARRs

147. In the TEMT Order,[43] we 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 FTRs as a means to provide LSEs in the Midwest ISO territory with sufficient annual FTRs to meet their baseload needs.[44] This period was chosen to provide market participants experience with LMP and FTRs, as well as to allow time for regional transmission planning and expansion under the new market design. The counter-flow FTRs were assigned to LSEs that had not nominated counter-flow FTRs matching their historical transmission usage, and whose counter-flows were required to restore the FTR nominations of other LSEs. Guideline (5) requires that LSEs obtain LTTRs to meet their reasonable needs and we accept the Midwest ISO's interpretation that reasonable needs is a measure of baseload transmission usage. Thus, in contrast to the TEMT Order, the assignment of counter-flow ARRs and infeasible ARRs is now tied to meeting the reasonable needs of LSEs.

148. While Order No. 681 changes the justification for restoration of counter-flow ARRs and creation of infeasible ARRs, we continue to be concerned, as we were in the TEMT Order, that the continued congestion risk sharing established by these measures

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[43] *See generally Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004).

[44] *Id.* at P 189.

will inhibit transmission planning and expansion that would reduce and eventually eliminate the need for such measures. No other organized market has restoration measures. And while we recognize that each market under Order No. 681 has specific regional design requirements that reflect the state of its transmission infrastructure and pre-existing uses of the network, we approved the use of restoration measures in 2004 in part on the basis of expectations that Midwest parties would "make transmission upgrades and other investments to reduce congestion."[45] That is, the restoration was expected to be temporary and would probably not be considered under Order No. 681 did it not pre-exist. Thus, we strongly encourage the Midwest ISO to hold stakeholder discussions to address issues raised by commenters and to develop alternative solutions. We require the Midwest ISO to make an information filing within six months of the date of this order to update the Commission on the status of discussions and annually thereafter until the end of the transition period.

149. We recognize that the transition period for counter-flow restoration expires April 2010. Accordingly, to the extent the Midwest ISO desires to continue the counter-flow restoration, we expect it will make a filing to propose continuation. We note also that any future decision about the continuation of the restoration could affect the term of the already allocated LTTRs.

150. With respect to Detroit Edison and Strategic's arguments regarding which market participants pay the costs of counter-flow Stage 1A ARRs, we do not consider it onerous to have LSEs with long-term supply arrangements pay counter-flow ARR costs that reflect their congestion payment benefit to those counter-flow supply resources through the energy market.

151. However, we do agree with Midwest TDUs and Integrys that retirement of a baseload generator within the ten-year period potentially creates financial problems for holders of counter-flow ARRs. As they note, the daily hedging of a counter-flow position ideally requires having a resource that can inject power at the source location specified in the ARR. We note that the Midwest ISO has noted that an LSE retiring a generator can simply not nominate for ARRs and will then not receive counter-flow ARRs. However, we do not fully understand this provision and will require 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. We require the Midwest ISO to make such clarification in a compliance filing to be submitted within 30 days from the date of this order.

152. We do not consider it appropriate at this time to fine tune the current counter-flow method. Our ruling in this order requires the Midwest ISO to work with stakeholders to

[45] *Id.*

address counter-flow issues, and therefore parties should discuss their concerns with the Midwest ISO.

153. We also do not consider the OMS allocation proposal for infeasible ARRs to be appropriate. The OMS proposal to allocate the shortfall based on economic value results in a lower allocation to market participants with counter-flow since counter-flow has a negative ARR, on the reasoning that this allocation better reflects the beneficiaries of LTTRs and ARRs and that the Midwest ISO's method adds additional downside risk on market participants with counter-flow obligations.[46] However, the customers without counter-flow did not cause the shortfall. As OMS notes, the remaining infeasibility that results in the shortfall is caused by factors such as loop flow or transmission outages that cannot be assigned to customers. Therefore, we consider the assignment of additional infeasibility costs to market participants with counter-flow obligations to be reasonable since these entities are sharing in costs that provide benefits to all holders of congestion hedges and are not caused by a particular market participant or group of market participants.

154. Also, in response to Otter Tail, we agree with the Midwest ISO that outages do not constitute an unhedgeable risk for holders of counter-flow ARRs, as market participants do have empirical data on planned and unplanned generation outages as well as the LMPs and thus can seek to hedge their potential counter-flow obligations in the event of a generator outage.

ii. Other Issues in the Assignment of LTTRs

155. With respect to future assignments of LTTRs for new or changed baseload supply arrangements, we note that the Midwest ISO has agreed to clarify its rules to address the Midwest TDU's concerns. As we noted above with respect to rights for upgrades, while we agree with the Midwest TDUs that the Midwest ISO is required to plan for generation expansions, Order No. 681 does not require the Midwest ISO to provide advance guarantees of LTTRs before the generation facilities go into service. This applies also to rights over existing transmission capacity. Clearly, in addition to any incremental upgrades, new generation capacity will require a transmission system evaluation to determine the additional transmission capacity required and a simultaneous feasibility test will be needed to determine the feasible ARRs available for allocation, as the Midwest

[46] Additional down-side risk refers to the fact that market participants with counter-flow obligations already pay a portion of the cost of infeasible ARRs with their negative ARRs, and then are assigned a portion of the remaining infeasibility even after accounting for counter-flow restoration of ARRs, that is assigned to all Stage 1A ARR holders.

ISO explains in its answer.[47] We find it reasonable that the system evaluation and simultaneous feasibility tests are done when the unit goes into service and therefore is eligible to obtain baseload ARRs in the next allocation.

156. We have no basis to assume that the 50 percent capacity factor requirement for baseload resources will result in excess resources and higher counter-flow costs. While more resources may qualify as baseload and counter-flow resources, the amount of resources actually nominated is determined by load requirements. Load will be nominating supplies to meet 50 percent of their peak load Stage 1A baseload requirements, and this is similar to the baseload allocation rules under the current tariff. Counter-flow, or the Stage 1A ARRs that a market participant does not nominate, therefore is also expected to be similar to previous levels. Consequently, we do not expect a significant difference in the baseload supplies nominated to be Stage 1A resources or counter-flow costs compared to the previous allocations.

157. With regard to seasonal allocations, we consider the Midwest ISO responses to Ameren and Xcel to be reasonable. We agree that the fact that certain TSRs have been granted different capacities in different months is a reasonable basis for seasonal entitlements. We note that the Midwest ISO has indicated that it will address the qualification for seasonal RSPs in annual ARRs in a compliance filing.

158. The Midwest ISO has also agreed to clarify that ARRs associated with a designated network resource TSR can be nominated in Stage 1A only if the TSR is associated with delivery from a resource where the LSE has a capacity and energy interest via contract or ownership and the capacity factor of the resource is at least 50 percent or the scheduling factor of the transmission service is at least 50 percent. We also note that the Midwest ISO has agreed to clarify in a compliance filing that the simultaneous feasibility test will protect all feasible Stage 1A and 1B ARRs and not just the ARRs in the ARR zone where the addition is being made to the BRSS or PRSS. We find these clarifications consistent with Order No. 681 and Order No. 681-A and require the Midwest ISO to incorporate these provisions in the compliance filing ordered below.

159. We note the Midwest ISO has agreed to clarify that short-term resources would not obtain LTTRs. We find this clarification reasonable and consistent with the Final Rule and require that the clarification be made in a compliance filing.

160. With respect to MJMEUC's concerns, we find the treatment noted in the Midwest ISO's answer reasonable, and expect, therefore, that MJMEUC will be able to participate in the LTTR process and require that the Midwest ISO make a clarification in a compliance filing.

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[47] Midwest ISO Answer at 13.

161. We also note that the Midwest ISO will be making clarifications on simultaneous feasibility tests and partial allocation of resources, and we expect those clarifications to be included in the compliance filing to be submitted within 30 days of the date of this order.

iii. Conversion of GFAs to LTTRs

162. With regard to the impact of Option B and carved-out GFAs on available ARRs, we note that the Midwest ISO's proposal is essentially to continue the same allocation it has used for two years. We have no evidence and no party has indicated that this allocation has resulted in an allocation of ARRs below the reasonable needs of LSEs.[48] Accordingly, we find no basis to require a change in the ARR allocation. Additionally, Southwestern misunderstands Order No. 681-A's treatment of GFAs.[49] The referenced statement left it at the option of the ISO as to how to treat GFAs and their LTTRs. The Midwest ISO has chosen not to change its treatment of GFAs and their rights, and Order No. 681 does not require a change.

163. Since carved-out GFAs are receiving a full congestion hedge, it is our expectation that they will receive ARRs that fully hedge their congestion upon conversion per the process defined in section 43.1.2.b. Such an expectation is consistent with the express intent of section 43.1.2.a that states: "Such converted Grandfathered Agreements shall be comparable to the Transmission Service received by such parties under their existing Grandfathered Agreements. Under Option A, transmission rights under GFAs are converted in their entirety to ARRs."[50] Therefore, we find it consistent with our understanding of conversion to delete the sentence "The amount of FTRs awarded following such belated conversion is subject to availability." Keeping the phrase in the TEMT as Duke Energy recommends would create confusion and not accurately reflect the conversion process. We do not consider the congestion hedge provided to these

[48] *See* Midwest ISO Informational Filing, Docket No. ER04-691-083 at 6 (The Midwest ISO has not found any instances when a *pro rata* reduction of FTRs were significantly reduced by carved-out GFAs.).

[49] Order No. 681-A, 117 FERC ¶ 61,201 at P 87.

[50] We note that this statement, with the exception of the deletion of the word "FTR" and replacement with "ARR," has been part of the accepted Midwest ISO TEMT since the start of the market.

entities to be unduly discriminatory.[51] As the Commission has stated previously, such treatment is necessary to preserve the contractual rights of GFA holders.[52]

164. We note that the Midwest ISO has agreed to clarify in a compliance filing that GFAs deemed to be Option B or carved-out GFAs are not eligible to receive ARRs in Stage 2. We find this clarification reasonable, since these entities are already receiving a full congestion hedge, and therefore require the clarification in the compliance filing to be submitted within 30 days from the date of this order.

165. We will not disqualify market participants paying discounted transmission rates from receiving a preference for acquiring LTTRs. As the Commission stated in the Final Rule, the standard for not providing a preference to LTTRs is that the entity has neither an obligation to serve load nor an obligation to pay the embedded costs of the system.[53] Therefore, the sole fact that an entity pays discounted rates does not mean that it should be denied a preference.

166. We note that the Midwest ISO's answer indicates that it will address the issues raised by Midwest TDUs, Ameren, Duke Energy, and Xcel with regard to sections 43.2.1.a.ii, 43.6.1 and 43.6.2 in a compliance filing. We require the Midwest ISO address those issues in a compliance filing to be submitted within 30 days from the date of this order.

iv. Eligibility of non-LSEs for LTTRs

167. We disagree with Manitoba Hydro's assessment that the Midwest ISO's proposal excludes market participants not directly serving load from being eligible to nominate Stage 1A and 1B ARRs. As the Midwest ISO answer indicates, section 43.2.4.a.i of the TEMT allows market participants with point-to-point service to nominate these ARRs based on the reservation MW quantity of the service, and therefore Manitoba Hydro would be eligible to nominate. With its ARRs, Manitoba Hydro can purchase FTRs. Therefore, Manitoba Hydro will receive Stage 1A ARRs in the same way other market participants receive them and, as such, there is no undue discrimination in the Midwest

[51] We recognize the current treatment of GFAs in the Midwest ISO energy and FTR markets expires in 2008. Treatment of the FTR rights for GFAs after the transition period ends will be dependent on the outcome of the proceeding in Docket No. ER07-532-000 that address future treatment of GFAs. Provisions relating to FTR treatment for GFAs will be subject to the outcome of those proceedings, and therefore future modifications may be made to these provisions.

[52] *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,042 at P 94 (2005).

[53] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 328.

ISO's method. With regard to the reference year issue raised by Manitoba Hydro, we require the Midwest ISO to provide clarification on how Manitoba Hydro would obtain ARRs for transmission service requests obtained after the reference year. The Midwest ISO must submit this clarification in a compliance filing to be submitted within 30 days from the date of this order.

168. With regard to the issues raised by Southwestern Electric, the Midwest ISO's proposal allocates ARRs to entities with baseload supplies and point-to-point transmission service. Inasmuch as Order No. 681 anticipated that both types of service would receive ARRs, we do not consider the Midwest ISO's proposed allocation to be in violation of guideline (5). Also, the requirement of guideline (5) is that the reasonable needs of LSEs be met, and we have no basis to conclude that the Midwest ISO allocation does not meet the reasonable needs of LSEs.

6. Guideline (6)

> A long-term transmission right held by a load-serving entity to support a service obligation should be re-assignable to another entity that acquires that service obligation.

169. The Commission stated that guideline (6) is intended to comply with section 217(b)(3)(A) of the FPA which required transmission rights be transferable to successors ensuring that they follow migrating load. Noting that rules governing the reassignment of firm transmission rights that follow migrating load already exist, the Final Rule provides transmission organizations and stakeholders flexibility to determine the specific rules. The Final Rule states that this reassignment issue relates to transmission rights that are allocated preferentially to an LSE in accordance with guideline (5) and not to rights acquired by an LSE via auction or direct assignment of funding an upgrade.[54] Guideline (6) also stated that it allows for the trading of transmission rights.

a. Proposal

170. The Midwest ISO states that Stage 1 ARRs will follow the load through any shifts or switches in the entity serving such load. ARRs will be reassigned on a daily basis. Reassigned ARRs will entitle the holder to revenue based on the clearing prices in the monthly FTR auctions, based on the ARR specifications. LSEs that lose load are required to fund the reassigned ARRs on the basis of a *pro rata* share of their ARR holdings.

[54] *Id.* at P 357.

b. Comments and Midwest ISO Answer

171. Several commenters are concerned about how the value of the reassigned ARRS due to load-shifting will be determined. Constellation argues that the Midwest ISO's proposal transfers both positive and negative ARR values. Constellation asserts that the transfer of negative ARR values would impose a significant and unhedgeable risk on the market participant acquiring the load. Constellation believes that the Commission should require an ARR allocation system such as that utilized by PJM, wherein only net positive ARR values are transferred. Alternatively, Constellation contends that the Commission could mandate that a mix of all the positive and negative ARRs serving the load, taken together, should be distributed *pro rata* among market participants acquiring and losing the load within a particular ARR zone. Similarly, Strategic argues that the proposed tariff revisions fail to provide equitable measures for the transfer of ARRs and counter-flow risk in the event the load switches suppliers.

172. In its answer, the Midwest ISO argues that the LTTR allocation procedures should, to the maximum extent possible, protect the simultaneous feasibility of LTTRs, and asserts that Constellation's proposal is inconsistent with this principle. The Midwest ISO affirms that the new LSE will need to make a conscious decision while taking over new load considering the net values of the ARRs that they will receive along with the load.

173. Constellation believes that the Midwest ISO failed to include tariff language concerning how ARRs will be allocated without either the market participant acquiring the load or the market participant losing the load having notified the Midwest ISO when retail load switching takes place under a retail choice program. Constellation states that the Commission found that the transfer of ARRs resulting from load switching is not voluntary.[55] Constellation asserts that the Midwest ISO should be directed to revise its tariffs in its LTTR proposal to include an automated verification system, to go into effect no later than January 2008. According to Constellation, such an automated process will allow the Midwest ISO to obtain this information directly from the electric distribution companies.

174. In its answer, the Midwest ISO states that it will address Constellation's issue in a compliance filing to clarify the procedures for reporting retail load switching to the Midwest ISO. In response to Constellation's proposal to modify the ARR allocation system wherein only net positive ARR values are transferred when load shifting takes place, the Midwest ISO believes that the LTTR allocation procedures should, to the maximum extent possible, protect the simultaneous feasibility of LTTRs, and affirms that

[55] *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,093 (2006).

Constellation's proposal is inconsistent with this principle. The Midwest ISO affirms that the new LSE will need to make a conscious decision while taking over new load considering the net values of the ARRs that they will receive along with the load.

175. OMS notes that section 43.7.2, which has not been revised, provides load-serving entities that gain load with a right to receive revenue based on the monthly FTR auctions. OMS assert that there are two concerns related to this section. First, the Midwest ISO's existing TEMT uses the term ARRs to describe the rights when load switches suppliers. OMS states that the Midwest ISO's proposed TEMT has introduced a second application of the term ARR, and by using the same term to apply to two distinct applications may result in confusion. Secondly, OMS argue that the revised TEMT defines ARR values as being determined in the annual FTR auction. Yet OMS maintains that section 43.7.2 still states that the load serving entity that gains load during the ARR period will be allocated ARRs whose value will be based on the monthly FTR auctions. OMS affirms that it is not clear why ARRs in both applications should not be based on the value determined from the annual auction.

176. In its answer, the Midwest ISO agrees to respond, in a compliance filing, to the OMS regarding why the previously defined ARRs should be valued by monthly FTR auctions rather than by the annual FTR auction.

c. Determination

177. We find that the Midwest ISO's proposal is consistent with the requirements of guideline (6) since it ensures Stage 1 ARRs follow the load through any changes in the entity serving such load.

178. We agree generally with the Midwest ISO's response regarding the reassignment of Stage 1A ARRs to retail suppliers; given the involuntary nature of some of the counter-flow ARR allocations, it would be unfair for a competitive retail supplier to be able to pick out only positive value ARRs from the portfolio of the LSE losing load. Thus, we would agree that the competitive supplier should obtain a share of the total ARR position of the LSE losing load, including some negatively valued ARRs if they exist. However, competitive suppliers should not have to find out the value of the ARRs that are being made available after the fact. Thus, the Midwest ISO must develop some process by which competitive suppliers can obtain information on the ARR net values held by LSEs for whose load they are competing. We will require the Midwest ISO to address this issue in a compliance filing.

179. With regard to the OMS' requests for clarification, we require the Midwest ISO to address these clarifications in a compliance filing to be submitted within 30 days from the date of this order.

7. Guideline (7)

> The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.

180. Guideline (7) does not preclude a transmission organization from using an auction to allocate LTTRs; rather, it only precludes requiring an LSE to submit a winning bid in an auction in order to acquire LTTRs. The Final Rule described a number of different methods for allocating LTTRs, including the ARR allocation procedure used by PJM, where each LSE may, at its option, convert its auction revenue rights directly into annual FTRs with identical sources and sinks. In this way, LSEs that are obligated to pay the embedded costs of the transmission system should be able to receive an equitable share of LTTRs without having to submit a competitive bid for those rights.

a. Proposal

181. LSEs will not be required to submit bids in an auction in order to receive Stage 1A ARRs. Market participants will be able to convert feasible Stage 1A ARRs into FTRs by self-scheduling these rights in the annual FTR Auction.

b. Comments and Protests

182. Southwestern Electric comments that LSEs opting for LTTRs or ARRs should not be required to register and participate every year in the annual ARR allocation. If an LSE does not register and/or participate in the annual ARR auction process, that LSE should get the same allocation as it received in the previous year.

183. Integrys asserts that LTTR guideline (7) precludes requiring an LSE to submit a winning bid in an auction in order to acquire LTTRs.

184. DC Energy notes that ARR holders can simply self-schedule ARRs into the auction to acquire FTRs. As a result, DC Energy states that the quantity of FTRs that can be acquired in a single annual auction is considerably reduced.

c. Determination

185. We find that the Midwest ISO's proposal is consistent with the requirements of guideline (7). Contrary to Southwestern Electric's argument, the proposal simply makes registration an administrative formality, not an auction or a bidding procedure.

186. We note that guideline (7) does not preclude auctions for allocating LTTRs – it only precludes requiring an LSE to submit a winning bid in auction to acquire LTTRs.[56] We affirm that the Midwest ISO's proposal meets this requirement since its LTTR assignment and subsequent ARR allocation process is an allocation, and not an auction, and the allocation of LTTRs and ARRs is determined by the simultaneous feasibility test and a determination of baseload resources that does not assign ARRs based on a winning bid. Also, new service is assigned LTTRs based on a simultaneous feasibility test analysis and therefore is not based on an auction.

187. We agree with DC Energy that self-scheduling FTRs may lead some LSEs to bypass the auction and thus reduce auction volume. However, that is the purpose of guideline (7): to give LSEs the choice not to participate in the auction if that is their preference. We note that not participating in the auction implicitly values the FTRs at the resulting auction clearing prices. By observing those prices over time, LSEs can gain additional experience with FTR valuation and we anticipate that the auction volume will increase accordingly.

8. Transmission Planning and Expansion

188. In the Final Rule, the Commission requires each transmission organization to implement a planning process that will accommodate the long-term rights that are awarded by ensuring that they remain feasible over their entire term. The Commission also indicates that appropriate planning for LTTRs is essential to ensure that any charges to market participants to meet the full-funding requirement of guideline (2) do not become unjust, unreasonable, or unduly discriminatory.[57] The Commission also requires each transmission organization to make its planning and expansion practices and procedures publicly available.

a. Proposal

189. The Midwest ISO states that the simultaneous feasibility of Stage 1A ARRs will be "assessed and addressed in relation to the Transmission Provider's transmission expansion process."[58]

b. Comments and Protests

190. OMS comments that the Midwest ISO states in its filing that it would include in its transmission expansion plan transmission upgrades needed to maintain the feasibility of

[56] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 385.

[57] *Id*. at P 453.

[58] Midwest ISO January 29, 2007 Compliance Filing at 12-13.

LTTRs. However, OMS points out that the Midwest ISO did not include any changes to the Attachment FF tariff language attached to the filing. Additionally, OMS states that the Midwest ISO's changes to section 46 of its TEMT only deal with the assignment of LTTRs to entities that fund transmission upgrades, which is not consistent with the Midwest ISO's filing. OMS further contends that it is unaware that the Midwest ISO's Regional Expansion Criteria and Benefits (RECB) Task Force and the Midwest ISO's stakeholders have discussed how the Midwest ISO will determine upgrades needed to maintain feasibility of LTTRs and whether this is an appropriate criteria for system expansion. OMS recommends that the Commission direct the Midwest ISO to engage in stakeholder discussions prior to making any decisions on the issue of the Midwest ISO's planned transmission expansion to maintain feasibility of LTTRs.

191. OMS recommends that the Commission direct the Midwest ISO to engage in stakeholder discussions prior to making any decisions on the issue of the Midwest ISO's planned transmission expansion to maintain the feasibility of LTTRs, and that the RECB Task Force would be the most likely forum. OMS notes the Midwest ISO has not made any changes to Attachment FF regarding its transmission expansion policy intentions and did not provide tariff language to explain its intent to maintain LTTR feasibility through transmission expansion.

192. The Midwest ISO also agrees to continue to discuss this issue with stakeholders to ensure that it has been adequately vetted through the stakeholder process and to make appropriate clarifications to the TEMT. The Midwest ISO states that it agrees with the OMS that the proposed tariff language should memorialize its intent to maintain the feasibility of LTTRs through transmission upgrades as part of the Midwest ISO Transmission Expansion Plan.

c. Determination

193. On review of the proposed revised TEMT, in particular section 46, we find that while a process for awarding ARRs for upgrades is included, the Midwest ISO has not explicitly defined a process by which the feasibility of long-term ARRs on existing transmission capacity will be incorporated into transmission planning and expansion.[59] Thus, we will require the Midwest ISO to submit such a tariff provision in a compliance filing to be submitted within 60 days of the date of this order.

[59] In addition the matter of the feasibility of employing demand response resources as a cost-effective part of transmission infrastructure investment and what mechanisms (*e.g.*, market or regulated) should be considered for compensating such demand resources is under consideration on a generic basis in Docket No. AD07-11.

D. Issues with the Allocation and Auction of Short-Term Transmission Rights

194. As discussed above, the Midwest ISO is also revising its rules for the allocation of short-term ARRs. Following the allocation of long-term ARRs in Stage 1A, peak ARRs will be allocated in Stage 1B and ARRs for the auction of seasonal FTRs will follow in Stage 2. However, unlike the long-term baseload ARRs, the quantity (MW) awarded under these ARRs will vary from year to year. As with long-term ARRs, holders of such ARRs will be eligible to purchase FTRs in the annual FTR auction. The Midwest ISO will also revise section 43.2.1.a.ii to clarify that any resources added to the PRSS under this exception are not eligible for nomination in Stage 1A of the ARR allocation and thus will not receive LTTR status.

195. With respect to rights used to serve load from network resources, peak ARR rights are specified as a source, sink, and MW quantity, where the eligible quantity is equal to each eligible market participant's peak usage (which is their total load in an ARR zone remaining after baseload usage). RSPs for the peak ARRs in Stage 1B can be chosen from peak or baseload RSPs. To qualify for inclusion as a peak RSP, a market participant must have had a capacity and energy ownership interest in, or remained in effect throughout, the reference year.[60] This ownership or contractual relationship must be, or have been, for the duration of at least five years, although this requirement can be relaxed under certain conditions. When the nominating source points for peak ARRs lie outside the Midwest ISO footprint, capacity can be reserved on interfaces.

1. Comments and Protests

196. DC Energy notes that in the Midwest ISO's proposed Stage 1B ARR allocation process, market participants are eligible to nominate candidate ARRs up to 100 percent of the sum of their forecasted peak loads. As a result, DC Energy argues that market participants who are allocated ARRs in Stage 1B up to 100 percent of their peak load are over-hedged most of the time. To the extent these market participants convert their ARRs to FTRs, DC Energy notes that these FTRs are not available to the market, thereby reducing the robustness of the FTR market and decreasing auction revenues. While some LSEs may prefer to hold these FTRs, DC Energy asserts that they should not be permitted to do so, on the basis of an administrative over-allocation of ARRs. While the Commission's guideline (5) indicates that LSEs should be "first in line" for LTTRs when existing capacity is limited, DC Energy affirms that this same guideline does not go on to

[60] The reference year is March 1, 2004 through February 28, 2005. Resources qualify for inclusion in the BRSS or PRSS provided that deliveries under the contracted for or owned resource began prior to December 31, 2005.

say that over-allocations to the exclusion of all other entities are appropriate. Nor does guideline (5), according to DC Energy, direct the Midwest ISO to create financial windfalls for LSEs.

197. DC Energy also requests that the Midwest ISO modify the proposed method of allocating ARRs in Stage 1B to impose monthly or seasonal peak load limitations on the ARRs an LSE may acquire outside of the non-discriminatory auction process. DC Energy states that to do otherwise would be to condone a clearly avoidable undue preference in favor of LSEs and against other market participants. According to DC Energy, imposition of a proportionality requirement would also have the desirable effect of reducing FTR funding shortfalls.

198. DC Energy also believes that the Midwest ISO's proposed method for allocating ARRs in Stage 2 is plagued with financial windfalls and increased funding shortfalls. In Stage 2, DC Energy explains that the Midwest ISO informs each market participant of the quantity of its Stage 2 allocation that results in up to 100 percent of the sum of their peak load. As a result, DC Energy asserts that market participants who are allocated ARRs in Stage 2 up to 100 percent of their peak load are once again over-hedged. DC Energy believes that the solution to these continued inequities lies in the use of an alternative definition of the nomination cap. DC Energy urges the Commission to redefine the Stage 1 nominating cap to be 100 percent of a given market participant's monthly or seasonal peak load rather than 100 percent of its annual peak load.

199. Integrys asserts the Midwest ISO's proposed Stage 2 is not an allocation of ARRs; it is an allocation of residual auction revenue that remains after paying the Stage 1A ARR holders. If new and replacement Baseload Supply Resources do not receive Stage 1A LTTRs, Integrys states that the Midwest ISO's proposed Stage 2 precludes capacity rights holders from obtaining an allocation of ARRs and forces them into the auction. Integrys argues that Stage 2 should have an allocation process that allows those capacity rights holders who were unable to obtain Stage 1A ARRs to have another opportunity to receive ARRs. According to Integrys, any allocation of residual auction revenue should be removed from Stage 2 and instead should be used to correct any revenue insufficiency resulting from an under-collection of congestion revenue in the day-ahead market used to pay FTR holders.

200. Integrys also states that Stage 2 unfairly denies the ability of short-term rights holders to secure a hedge outside of the auction process. As described in section 43.2.1.a.i of the proposed TEMT language, Integrys notes that only those generation resources that meet the Resource Qualification Requirements are valid ARR source points in Stage 1A and Stage 1B. Therefore, Integrys asserts that short-term rights holders are unable to receive Stage 1A or Stage 1B candidate rights. Integrys contends that this forces short-term rights holders into Stage 2, which only allocates residual

auction revenue. Integrys maintains that this does not provide the congestion hedge sought by the LSE with a short-term firm resource; in fact, if the residual auction revenue is either small or nonexistent, the short-term rights holder is left empty handed.

2. Determination

201. Turning to the distribution of ARRs stemming from the sequence of Stage 1A, 1B and 2 allocations, we disagree with DC Energy's contention that the Midwest ISO's proposal will result in excessive over-allocation of ARRs, in violation of guideline (5). The Midwest ISO is not changing its market rules in this case, since this is what eligible market participants are allowed to nominate under the current tariff. DC Energy has not demonstrated that FTRs are currently over-allocated, resulting in harm to the Midwest ISO market. Thus, it is not clear why they will be over-allocated under the proposed rules. Therefore, we do not find an annual peak allocation to be undue discrimination and thus do not see the need to require monthly or seasonal peak load limitations.

202. We consider the Stage 2 allocation of residual revenues to be reasonable. To the extent additional auction revenues are left after the Stage 1A and 1B allocations, that amount should be allocated to market participants that have not received ARRs up to their nomination cap. To pay that amount to FTR holders would result in payments to market participants that may already have a total congestion hedge, and thus would amount to a subsidy. Stage 2 does not force market participants into an auction, but rather it is an option available to market participants to obtain revenues to purchase ARRs. We also consider the section 43.2.1.a.i requirement reasonable that resources have a contract during the reference year in order to be eligible for Stage 1A and 1B ARRs. We do not consider this provision to be unduly discriminatory to short-term resources since the provision allows for contracts that begin in the reference year, and thus by definition are short-term. Therefore, we verify that Stage 2 is in compliance,[61] and it is inaccurate to say that short-term rights holders can only obtain a hedge in an auction.

E. Clarifications

1. Comments and Protests

203. Many of the comments and protests filed in response to the Midwest ISO's proposal included requested changes to the proposed TEMT. The requested changes vary in nature from general to extremely specific. Some commenters suggest language

[61] We note that the contract term requirements of the Midwest ISO's proposal do not violate Order No. 681. *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 321 (However, as revised, guideline (5) neither requires nor prohibits the consideration of power supply arrangements in determining this priority).

changes to specific sections of the TEMT to clarify terms. Others raise issues regarding inconsistencies or outdated references in the Midwest ISO tariff filing including: incorrect numbering conventions; outdated references; typographical errors; and wording.

204. Specific requests for clarification were also submitted by several parties. Ameren requests other clarifications to the TEMT:

Replace Stage 1A with Stage 1B in January 29 Filing at 8, section II.A.2.b, fourth paragraph:

> "Furthermore, the removal of MWs from a RSP cannot result in a net reduction of MW eligible to be requested from all RSPs in ~~Stage 1A~~ Stage 1B unless all Market Participants serving load in that ARR Zone agree to this outcome."

205. Ameren also requests that the Midwest ISO clarify in TEMT section 1.14e, sheet no. 50.01, in the definition of ARR receipt point that a receipt point could include a load zone. Additionally, Ameren requests that the Midwest ISO add language to TEMT section 43.2.4.a.v, sheet no. 620A, to clarify that infeasible ARRs cannot be self-scheduled in annual FTR auctions. Lastly, Ameren requests that the Midwest ISO modify TEMT section 43.2.5.d, sheet no. 627A to ensure that all historical uses are registered as entitlements during the first year.

206. The Midwest TDUs state that section 43.2.4.a(i)(c) of the TEMT should be clarified to state that Stage 1A ARRs allocated the previous year will *not* be curtailed, consistent with section 43.2.4.a.v.

207. The Midwest TDUs state that the Midwest ISO creates a new term, eligible base ARRs, in the context of counter-flow ARRs, by modifying the old FTR restoration provisions in a confusing and inconsistent way.[62] As renewal of prior-year Stage 1A ARRs is already guaranteed under the Midwest ISO's LTTR proposal, the Midwest TDUs assert that the significance of these provisions is unclear. It is possible that the Midwest ISO intends this provision to limit the resources for which counter-flow ARRs can be directly assigned; but if so, the Midwest TDUs maintain that the proposed tariff text should be clarified.

208. Duke Energy points out that the Midwest ISO has not defined certain terms even though they are used in the TEMT. These terms include: "Forecasted Peak Load," "Baseload RSP," and "Peak Reserved Source Set." Duke Energy requests that the Midwest ISO clarify the definition of "Non-Points of Delivery." Also, Duke Energy points out that section 44.1 uses the words "multiple rounds," apparently in reference to

[62] *See* Midwest ISO TEMT, at sections 1.46a, 1.76a, 1.77a, 43.2.5.

multiple rounds of the annual FTR Auctions, and requests that the number of rounds be specified. Additionally, Duke Energy states that the discussion of "self-scheduled FTRs corresponding to the ARRs allocated for the Option B and carved-out GFAs in section 44.1 is inaccurate because Option B and carved-out GFAs are not "allocated" ARRs, and they do not "self-schedule" FTRs. Duke Energy suggests describing the adjustment to transfer capability would be to exclude "transfer capability allocated to Option B and carved-out GFAs in the simultaneous feasibility test."

209. Southwestern Electric states that the Midwest ISO needs to clarify that an LSE is not obligated to pay two transmission service charges – one for the point-to-point service and another for network service – for two loads included in the LSE's baseload usage. Also, Southwestern Electric states that with respect to a Generation Resource with Ownership or Contractual right for a minimum of five years, the Midwest ISO must give preference to LSEs with long-term ownership or contractual rights. Additionally, Southwestern Electric takes issue with the Midwest ISO's definition of baseload usage because the use of 50 percent of the point-to-point service load would favor customers with point-to-point and network integration service since their baseload usage could exceed 50 percent of their total load. Southwestern Electric requests that this definition specify that the first sentence relates to Network Service load rather than a continuation of network service and point-to-point loads. Lastly, Southwestern Electric requests that peak load usage be based on the average of three year actual peak loads because otherwise the definition of baseload usage and peak usage are subject to manipulation as the forecasted peak load does not specify the period for which forecasts are to be made and the parameters for the forecasting methodology.

2. Midwest ISO Answer

210. The Midwest ISO generally states in its Answer that it will make any typographical changes directed by the Commission in a compliance filing.

3. Determination

211. We direct the Midwest ISO to make the clarifying changes requested by the parties, listed on the Attachment to this order, as well as the clarifications discussed below. Also, the Midwest ISO is directed to make the changes to correct numbering conventions, delete outdated references, and correct typographical errors, as identified in the protests. The Midwest ISO must make these changes in the compliance filing to be submitted within 30 days from the date of this order.

212. With respect to Ameren's request for clarification in section II.A.2.b of the Midwest ISO's compliance filing, we disagree that such clarification is needed. The language in the Midwest ISO's filing appears in TEMT section 43.6.1. We agree with Ameren's comment regarding TEMT section 1.14e, and direct that the Midwest ISO clarify that the ARR receipt point could include a load zone. Also, regarding Ameren's

comment on section 43.2.4.a.v, this section does not need clarification as the clarification Ameren suggests is already in section 44.4(A)1.iii. Lastly, we agree with Ameren that the Midwest ISO should make certain that section 43.2.5.d is clear that all historical usages are registered as entitlements during the first year.

213. We agree with the Midwest TDU's suggestion that section 43.2.4a.i should be clarified to state that Stage 1A ARRs allocated the previous year will *not* be curtailed, so it is consistent with section 43.2.4.a.v. We also direct the Midwest ISO to clarify its tariff language regarding the direct assignment of counter-flow ARRs and its intent to limit the resources for which such direct assignment can occur.

214. We agree with Duke Energy that the Midwest ISO needs to define the terms "Forecasted Peak Load," "Baseload RSP," and "Peak Reserved Source Set." The Midwest ISO also needs to clarify its definition of "Non-Points of Delivery" in section 42. We agree that "multiple rounds" is a confusing formulation that the Midwest ISO needs to clarify or revise. We also agree that Option B and carved-out GFAs are not allocated ARRs. Therefore, we require the Midwest ISO to revise section 44.1 to more accurately characterize the impact of Option B and carved-out GFAs on the transfer capability in the annual FTR auctions.

215. We agree to accept the clarifications proposed by Southwestern Electric except for its second proposal regarding the description of Generation Resource Qualification for LTTRs.[63] Order No. 681 does not require preference for long-term ownership rights.[64] Therefore, there is no basis for preference for new generation.

The Commission orders:

(A) The Midwest ISO's proposed LTTR tariff revisions are hereby accepted, as modified, as discussed in the body of this order.

(B) The Midwest ISO's proposed revisions to its rules for the allocation of short-term ARRs are hereby accepted, as modified, as discussed in the body of this order.

(C) The Midwest ISO is hereby directed to submit compliance filings, per the requirements specified in the body of this order, within 30 days and 60 days of the date of this order.

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[63] Southwestern Electric Comment at P 30.

[64] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 319.

(D) The Midwest ISO is hereby directed to make an informational filing regarding multi-year auctions and counter-flow restoration alternatives within six months of the date of this order.

(E) The Midwest ISO is hereby directed to report on the allocation of infeasible ARR costs within 30 days after the completion of the first annual ARR allocation.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Philis J. Posey,
Deputy Secretary.

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 1.29	Definition of "Candidate FTR"	Needs to be removed because it is no longer used in the TEMT.
section 1.77	Definition of "Eligible Base CFTR"	Needs to be removed because it is no longer used in the TEMT.
sections 4.24 and 4.25	These sections follow section 42.3	Need to be renumbered sections 42.4 and 42.5.
section 42	Contains term "non-points of delivery"	Term needs to be defined and language needs clarification.
section 43.2.1.a.i	"Under the Generation Resource Qualification Requirements, in order for a supply Generation Resource to qualify…"	"Under the Generation Resource Qualification Requirements, in order for a ~~supply~~ Generation Resource to qualify…"
section 43.2.4	"all Grandfathered Agreements for all Point-to-Point Transmission Service"	"all Grandfathered Agreements ~~for~~ and all Point-to-Point Transmission Service"
section 43.2.5.d	"d. In year 1 of the Annual ARR Allocation, Counterflow ARRs can be assigned from any of the un-nominated Stage 1A ARR Entitlements or any portion thereof and that meets the Eligible Base Criteria. In the year 2 Annual ARR Allocation and beyond, counterflow ARRs can be assigned only to non-nominated allocated Stage 1A ARRs from the prior year's Annual ARR Allocation (the prior year's LTTRs)."	"d. In year 1 of the Annual ARR Allocation, Counterflow ARRs can be assigned from any of the un-nominated Stage 1A ARR Entitlements or any portion thereof and that meets the Eligible Base Criteria. In the year 2 Annual ARR Allocation and beyond, counterflow ARRs can be assigned only to ~~non-nominated allocated Stage 1A ARRs from the prior year's Annual ARR Allocation (the prior year's LTTRs).~~ ARRs that were allocated as LTTRs in the previous year, but are not nominated in Stage 1A in the current year."
section 43.6.1	"Megatwatts"	"Mega~~t~~watts"
	First sentence of second paragraph.	Add an "or" between "Baseload" and "non-Baseload."
section 43.6.4	"Market Participants cannot nominate from the ARR	"Market Participants cannot nominate from the ARR Entitlements once a

Tariff Section	Description	Correction Needed
section 43.6.4 cont'd.	Entitlements once request for retirement."	request has been received for retirement."
section 43.7.2	Title reads: "FRR Re-Assignment to Reflect Load Switching."	"~~F~~ARR Re-Assignment to Reflect Load Switching."
section 44	"Buyor"	"buy or"
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 ARRs 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 SFT."
section 44.4.1.a	"in any rounds"	"in any round~~s~~"
section 44.6	"The Transmission Provider shall pay or collect the FTR Auction Market Clearing Practices."	"The Transmission Provider shall pay or collect the FTR Auction Market Clearing ~~Practices~~ Prices."
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."
section 46	Text in second paragraph on Sheet No. 674: "ommercial"	"c ommercial"