121 FERC ¶ 61,062
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 Nos. ER07-478-001 ER07-478-003

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILINGS

(Issued October 19, 2007)

1. On June 18, 2007 and July 16, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted two compliance filings[1] in accordance with the directives of the Commission's May 17, 2007 order,[2] which accepted the Midwest ISO's long-term firm transmission rights (LTTR) proposal, subject to modification. In this order, we accept in part and reject in part the compliance filings, and require a further compliance filing, as discussed below.

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

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[1] June 18, 2007 Compliance Filing in Docket No. ER07-478-001 and July 16, 2007 Compliance Filing in Docket No. ER07-478-003.

[2] *Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007) (LTTR Order).

[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.*

markets to make LTTRs available to all transmission customers. The Final Rule[4] directed these independent transmission organizations to make LTTRs available that satisfy seven guidelines. Transmission organizations subject to Order No. 681 were given 180 days from the date of the Final Rule to make compliance filings regarding LTTRs. On rehearing, the Commission issued Order No. 681-A on November 16, 2006 reaffirming and clarifying the Final Rule.

3. The Midwest ISO, a Commission-approved regional transmission organization (RTO), coordinates the movement of electricity within several Midwestern states and operates an organized electricity market subject to the Final Rule. On January 29, 2007, in response to the Commission's Order No. 681,[5] the Midwest ISO submitted, pursuant to section 205 of the Federal Power Act (FPA), revisions providing for LTTRs.[6] The Midwest ISO also proposed, pursuant to section 205 of the FPA, to modify the rules for allocating short-term transmission rights. The Commission determined that Stage 2 allocation[7] of revenues is reasonable and in compliance with Order No. 681. In the LTTR Order, the Commission accepted the LTTR Proposal, but required the Midwest ISO to make modifications in 30- and 60-day compliance filings.

II. Compliance Filings

4. The Midwest ISO's June 18, 2007 Compliance Filing addresses: (1) point-to-point transmission rights; (2) transmission rights for entities that fund transmission upgrades; (3) term for LTTRs; (4) priority of load serving entities (LSEs) in LTTR allocation; (5) reassignment of LTTRs; (6) allocation of short-term ARRs; and (7) ministerial modifications. The Midwest ISO's July 16, 2007 Compliance Filing addresses: (1) full funding of financial transmission rights (FTRs); and (2) the process by which the feasibility of LTTRs will be incorporated in the Midwest ISO's Transmission Expansion Plan (MTEP).

5. The Midwest ISO requests the following effective dates for its June 18, 2007 Compliance Filing: (1) June 1, 2007 for the ARR and LTTR registration procedures; (2) February 1, 2008 for allocation-related provisions and the annual FTR auction procedures; and (3) May 1, 2008 for the remainder of the proposed tariff sheets. In its

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

[5] Order No. 681, FERC Stats. & Regs. ¶ 31,226.

[6] LTTR Proposal.

[7] Stage 2 allocation is the allocation of short-term Auction Revenue Rights (ARRs).

July 16, 2007 Compliance Filing, the Midwest ISO requests an effective date of January 1, 2008 for the tariff modifications relating to the re-allocation of the monthly FTR Auction residual. In addition, the Midwest ISO proposes an effective date of June 1, 2008 for the tariff revisions that: (1) equitably allocate any shortfalls that may still exist; (2) define the extraordinary circumstances under which full funding of FTRs will be suspended; and (3) expressly define the process by which the feasibility of long-term ARRs on existing transmission capacity is incorporated into transmission planning and expansion processes.

III. Notices of Filings and Responsive Pleadings

6. Notice of the Midwest ISO's June 18, 2007 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 35,457 (2007), with comments, interventions and protests due on or before July 9, 2007. The Midwest TDUs,[8] Manitoba Hydro, and DC Energy Midwest, LLC (DC Energy) filed timely motions to intervene and protests in this proceeding. The Midwest ISO filed an answer to the protests. Manitoba Hydro filed an answer in response to the Midwest ISO's answer, and the Midwest TDUs filed a limited response to the Midwest ISO's answer.

7. Notice of the Midwest ISO's July 16, 2007 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 41,724 (2007), with comments, interventions and protests due on or before August 6, 2007. Integrys Energy Group (Integrys)[9] and DC Energy filed timely motions to intervene and comments. The Midwest ISO filed an answer to the protests.

IV. Discussion

A. Procedural Matters

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

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007) prohibits an answer to a protest or answer unless otherwise

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[8] The 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.

[9] 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.

ordered by the decisional authority. We will accept the answers of Manitoba Hydro, Midwest TDUs and the Midwest ISO because they have provided information that assisted us in our decision-making process.

B. Compliance Filings

10. As discussed below, we accept in part and reject in part the June 18, 2007 Compliance Filing and the July 16, 2007 Compliance Filing.

1. ARR Zone Design

11. In compliance with the requirements of guideline (1) in Order No. 681 that LTTRs should be a point-to-point right that specifies a source and a sink, the Midwest ISO proposed a method of allocating ARRs by eligible sources and sinks in zones based on the location of the market participant's load. In the LTTR Order the Commission required the Midwest ISO to clarify that the TEMT will provide for the designation of separate ARR zones based on contractual arrangements.[10]

12. In its June 18, 2007 Compliance Filing, the Midwest ISO added a sentence to the TEMT stating that a market participant will provide the transmission provider with the specific terms and conditions in such transmission and energy supply arrangements to substantiate the designation of Category 1[11] and Category 2[12] ARR subzones.

a. Protests

13. The Midwest TDUs state that although the Midwest ISO has provided some helpful new language, it inadvertently created a new problem. The Midwest TDUs assert that they understand that some market participants may prefer to retain what they have today and not to have their load defined as a separate Category 2 ARR zone. They state that they do not seek to force those entities to change their status against their will and state that the Commission did not require such change. The Midwest TDUs protest the Midwest ISO compliance language that indicates that the Midwest ISO *will* adopt a Category 2 ARR zone if it determines the tariff criteria have been met, even though earlier the Midwest ISO had agreed to clarify the tariff to assure that each market participant has the option to be designated as a separate ARR zone. To remedy this concern, the Midwest TDUs propose language that states that the Midwest ISO will only define a Category 2 ARR zone if requested by a market participant and that a market participant has the *option* to obtain LTTRs without requiring all qualifying market

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[10] *See* LTTR Order, 119 FERC ¶ 61,143 at P 31.

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

[12] Category 2 is a subzone within Category 1 that meets certain qualification criteria.

participants to become separate Category 2 ARR zones. The Midwest TDUs also ask for clarification that generation resources shared by multiple market participants can be split between multiple ARR zones.

b. Midwest ISO's Answer

14. In response to the Midwest TDUs' request that the Midwest ISO clarify that the establishment of separate Category 2 ARR subzones by qualifying LSEs is an option, not an automatic requirement, the Midwest ISO maintains that the LTTR Order merely directs 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."[13] The Midwest ISO explains that its compliance filing accordingly proposed language that provides for such designation of separate ARR zones, subject to substantiation of contractual terms justifying the designation. It further explains that this makes the submission of subzone qualifying information a market participant obligation, not an option, in order to ensure that all necessary and appropriate information is provided to the Midwest ISO by market participants. The Midwest ISO clarifies that once the transmission provider has determined that a subzone meets the criteria defined in the section, it will be defined as such regardless of whether the relevant market participant requests such a subzone designation.

15. The Midwest ISO notes that the designation of a Category 2 ARR zone establishes an entitlement to request the allocation of property rights in the form of ARRs and such entitlements are based on the terms and conditions in transmission service contracts in effect during the reference year. Therefore, according to the Midwest ISO, providing a single party the unilateral option to make such a designation could lead to incorrect and inaccurate representations of property rights to the possible detriment of other parties to the contract, resulting in an allocation of ARRs not consistent with the historical rights of market participants, undermining the intent of Order No. 681 to recognize such rights. Thus, the Midwest ISO believes that it is inappropriate to provide the Midwest TDUs, or any other market participant, the option to either use or not use contractual rights involving other parties.

16. The Midwest ISO also clarifies that all entitlements under the TEMT involve the Midwest ISO's administrative determination of compliance with relevant criteria, and therefore it does not agree to the Midwest TDUs' recommendation to state that a subzone would be adopted based on the LSE's qualifications and not on the Midwest ISO's determination of qualifications. The Midwest ISO further indicates that, while not required by the LTTR Order, it is willing to clarify that generation resources shared by multiple market participants can be split between multiple ARR zones if the contracts involve the exact same megawatts (MWs).

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[13] LTTR Order, 119 FERC ¶ 61,143 at P 31.

c. **Commission Determination**

17. We accept the proposed revisions and find that the Midwest ISO has complied with the LTTR Order with respect to ARR zone designation. We reject the Midwest TDUs' requested clarification as beyond the scope of the compliance requirements of Order No. 681, and further note that the Midwest TDUs' requested clarification has the potential to reduce the benefits of the Midwest ISO's method.

18. The Midwest ISO's method of designating zones allows LSEs to obtain LTTRs for the purpose of hedging congestion charges associated with delivery of power from a long-term power supply arrangement to its load and therefore meets the requirements of Order No. 681. To allow market participants to shift their load delivery location or designate multiple load locations, instead of their own native load delivery point, at their option, creates a risk for other market participants that their ARRs to those load locations may be reduced, and hence is contrary to the requirements of Order No. 681 that LTTRs be guaranteed to LSEs for a minimum period of ten years. We also agree with the Midwest ISO that such shifting of load locations undercuts the historical basis for ARRs. We find that the transmission provider is the appropriate entity to make zone determinations and that market participants should not be in a position to self-designate their zones, thereby ensuring that an independent transmission provider is determining congestion hedges and not the entities holding those hedges.

19. We note that the Midwest ISO stated that it is willing to clarify that generation resources shared by multiple market participants can be split between multiple ARR zones. We find this clarification reasonable and direct that the Midwest ISO submit a further compliance filing with this clarification within 30 days of the date of this order.

2. **Full Funding of FTRs**

20. In the LTTR Order the Commission found that the Midwest ISO's proposal was not fully compliant with the requirements of guideline (2) and required the Midwest ISO to file tariff provisions to fully fund FTRs, as required by guideline (2).[14] The Commission explained that the full funding requirement of guideline (2) applies to FTRs and not just to ARRs, and that the Midwest ISO's proposal does not prevent FTR revenue inadequacy in the event that transmission system conditions change, resulting in the set of

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[14] LTTR Order, 119 FERC ¶ 61,143 at P 50. Guideline (2) states 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.

awarded FTRs becoming infeasible.[15] The Commission also explained that the Final Rule gives transmission organizations the discretion to propose methods for allocating full funding uplift and there are a number of reasonable alternative approaches. In addition, the Commission required the Midwest ISO to define the extraordinary circumstances under which full funding of FTRs will be suspended per the requirements of guideline (2).[16]

21. In its July 16, 2007 Compliance Filing the Midwest ISO proposes to amend its TEMT so that FTR auction revenue surpluses will be used to fund FTRs every month. If the surplus exceeds FTR funding needs, the residual surplus shall be accumulated to fund FTR deficiencies that have been carried forward to year-end. If the year-end residual auction revenue surplus exceeds the year-end FTR funding deficiencies, the remaining surplus shall be distributed to Network Integration Transmission Service and firm point-to-point transmission service customers on a *pro rata* basis based on their share of billing determinants for the calculation of charges under Schedule 10 and Schedule 23.

22. The Midwest ISO also proposes to add the following: (1) a new credit representing the amount required to bring the value of FTRs to 100 percent of a target allocation equal to the product of the FTR MW and the congestion price differences between sink and source in the day-ahead energy market; and (2) a new charge type that represents the allocation of full-funding uplift distributed proportional to the market participant's summed transmission congestion credit target.[17] The Midwest ISO explains the target allocation is summed in an hour from FTRs which represent a credit to the holder and that it will charge the full amount of an obligation FTR. The Midwest ISO also states it will not change the existing calculation to determine FTR credits.

23. Explaining that its proposal is similar to a PJM tariff provision approved by the Commission,[18] the Midwest ISO proposes to add a tariff provision that suspends full funding under extraordinary circumstances. These circumstances are defined to be a force majeure event affecting existing or planned transmission facilities the transmission provider determines are likely to result in substantial revenue deficiency relating to the

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[15] *See* LTTR Order, 119 FERC ¶ 61,143 at P 51.

[16] *Id.* at P 52.

[17] The Midwest ISO Market Subcommittee voted 24 for and 4 against a recommendation to fully fund all revenue deficient FTRs by allocating the costs of fully funding all FTRs to all FTR holders on a *pro rata* basis according to the total target allocations for all FTRs held at any time during the relevant planning period, where a target allocation is equal to the product of the FTR MW and the congestion price differences between sink and source that occur in the day-ahead energy market.

[18] *Citing PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,144, at P 88 (2007).

full funding of FTRs. The Midwest ISO further explains that the specific criteria to be applied for purposes of determining whether and to the extent the full funding of FTRs will be suspended will be set forth in the Business Practices Manual.

a. Protests

24. DC Energy argues that the Midwest ISO continues to fail to provide for the full funding of FTRs in direct violation of the LTTR Order and guideline (2). It argues that by focusing exclusively on the mechanisms used by PJM and by failing to seriously consider any of the other mechanisms, the Midwest ISO ignored the guidance provided by the Commission. It maintains that the proposed *pro rata* allocation is unjust and unreasonable since it adopts a PJM allocation that is ill-suited to the Midwest ISO. DC Energy claims that the higher level of FTR under-funding in the Midwest ISO compared to PJM[19] makes adoption of the PJM method unjust and unreasonable. DC Energy notes that the allocation of shortfalls to holders of FTRs has a significant and negative impact on the value of all FTRs when there are substantial shortfalls. Therefore, according to DC Energy, parties bidding on FTRs will have to include a discount to account for uplift and increase the risk premiums to account for volatility in potential uplift, resulting in lower FTR auction revenues and harm to customers. Also, DC Energy states that this methodology will impede the Commission's objectives of increased long-term price signals, liquidity, efficiency, and competition.

25. While supporting the Midwest ISO's proposal to apply FTR auction surpluses toward funding FTR shortfalls, DC Energy argues that this proposal is not enough and that the Midwest ISO should give serious consideration to the NYISO allocation of shortfalls to transmission owners who are the beneficiaries of the Transmission Congestion Contract (FTR equivalent) auction revenues. DC Energy states that the NYISO 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 manner. Also, DC Energy states that the Commission should consider the ISO-NE allocation of shortfalls to ARR holders, since these are the parties who would benefit from auction revenues and are the parties who receive the benefit of excess congestion rents. DC Energy recommends these methods because they result in increased FTR auction revenues and better establish parity between parties who are beneficiaries of increased auction revenues and excess congestion rents, and parties responsible for any uplift associated with funding shortfalls in congestion rents to achieve full funding, thereby ensuring a more robust FTR market that facilitates efficiency, liquidity, and competition.

[19] DC Energy provides data showing FTR funding in PJM over the 2006-07 planning year and the start of the 2007-08 planning year was 100 percent and FTR funding for the Midwest ISO over the same period was 88.5 percent.

26. DC Energy further recommends that the Commission require the Midwest ISO to adopt an approach to the full funding of FTRs on the basis of cost causation and that the Midwest ISO focus on FTR modeling and power flow assumptions as they pertain to loop flow and changes in topology. DC Energy states that it may be necessary for the Midwest ISO to implement enforcement standards with respect to outage scheduling so that the lack of advance planning by a party does not result in uplift to all other parties. DC Energy urges the Commission to require that the Midwest ISO report on the causes of congestion rent shortfalls and the steps the Midwest ISO takes to address them, consistent with the principles of cost causation, in order to facilitate a more robust FTR market. It requests that the Commission require the Midwest ISO to submit a just and reasonable allocation mechanism for FTR under-funding within 90 days. DC Energy claims that the Midwest ISO's inability to achieve FTR funding results comparable to PJM stems from its limited analysis and understanding as to the causes of funding shortfalls.[20]

27. Integrys faults various aspects of the Midwest ISO's transmission expansion planning process, noting that a proper process would reduce the required uplift of unhedged congestion costs by reducing the incidence of unanticipated changes in the transmission grid and providing a method for timely and effective reaction to these changes. Integrys views the *pro rata* allocation as a short-term measure to handle revenue insufficiency during the time required to implement solutions to unanticipated system deficiencies. Integrys recommends that all load should pay for insufficient FTR revenue since it is caused by market deficiencies and not by the holders of long-term FTRs.

b. Midwest ISO's Answer

28. The Midwest ISO responds that the LTTR Order did not direct the Midwest ISO to depart from the PJM model or to adopt models used by other ISOs. The Midwest ISO asserts that the PJM methodology for allocating FTR funding shortfalls has been found to be just and reasonable, and therefore its adoption of this method is likewise just and reasonable. According to the Midwest ISO, the reasonableness of a particular allocation method should not be judged by the size of the expected shortfall, and therefore DC Energy's concerns regarding the alleged level of FTR funding shortfalls is a separate issue from the reasonableness of the allocation of such shortfalls. The Midwest ISO further notes that the LTTR Order only required the Midwest ISO to address the allocation of shortfalls, and that its proposal represents a stakeholder consensus. For these reasons, the Midwest ISO recommends that the Commission reject DC Energy's request for the filing of another shortfall allocation within 90 days.

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[20] DC Energy cites to a Midwest ISO statement that its shortfall driver analysis does not provide clear and/or appropriate allocation methodology based on cost causation. *See* Midwest ISO Markets Subcommittee Presentation, "May 17, 2007 FERC Order Midwest ISO Long-Term Transmission Rights Proposal" at 13 (June 19, 2007).

29. The Midwest ISO also recommends that the Commission reject DC Energy's request to identify and report on the causes of FTR funding shortfalls with greater granularity, since this request is beyond the requirements of the LTTR Compliance Order. In response to DC Energy's request for periodic progress reports, the Midwest ISO notes that it has been providing updates to the Market Subcommittee and will continue to do so.

c. Commission Determination

30. We find the Midwest ISO's proposal to fund FTR revenue insufficiency and to allocate FTR revenue insufficiency costs *pro rata* to all FTR holders to be reasonable and in compliance with our LTTR Order. In the LTTR Order, we required the Midwest ISO to submit a compliance filing setting forth tariff provisions that provide for the full funding of FTRs. In doing so, we recognized that a number of alternative approaches are likely to be reasonable but, contrary to the arguments of DC Energy, we did not require the Midwest ISO to consider all possible mechanisms. Rather, as we also recognized in the LTTR Order, the Final Rule allows transmission organizations the discretion to prepare an allocation methodology. That is exactly what the Midwest ISO has done here. It has proposed an allocation method based on a PJM method that the Commission has found to be just and reasonable and that we conclude is just and reasonable under the circumstances of this proceeding.

31. The set of customers, all FTR holders, to be allocated costs is a large group and therefore the Midwest ISO's method is unlikely to result in unreasonable outcomes that undercut the relative congestion price certainty provided by full funding.[21] We also conclude that it is reasonable to allocate these costs to all FTR holders, long-term and short-term, since this is the group receiving the benefit of full funding.[22] However, to ensure that the allocation results in a reasonable outcome, we will require the Midwest ISO to provide an informational filing, prior to the start of the next annual ARR allocation, on FTR funding with an analysis of the impact of the shortfall allocation on congestion cost coverage. Further, we agree with the Midwest ISO that an FTR funding shortfall analysis requirement goes beyond the Commission's guideline requirements in Order No. 681 and the specific requirements of the LTTR Order. Therefore, we will not adopt DC Energy's recommendations for reports on this analysis. However, we encourage the Midwest ISO to continue stakeholder discussions on this issue.[23]

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

[22] *Id.* at P 177.

[23] We will address the expansion planning issues raised by Integrys in the Transmission Expansion and Planning section of this order.

32. Finally, we find the proposed provision on suspending FTRs in the event of extraordinary circumstances to be compliant with the requirements of the LTTR Order, and therefore we accept the provision.

3. LTTRs For Point-To-Point Service Commencing After the Reference Year

33. The Midwest ISO TEMT specifies that point-to-point service starting with dates after the reference year[24] will not be eligible for conversion of existing rights to ARR entitlements, but will be included in the determination of the Stage 1 nomination cap. In the LTTR Order, the Commission required the Midwest ISO to provide clarification on how Manitoba Hydro would obtain ARRs for transmission service requests made after the reference year.[25]

34. In the June 18, 2007 Compliance Filing, the Midwest ISO added language to its TEMT indicate that point-to-point service starting with dates after the reference year will be eligible for Stage 2 ARRs and clarified in the transmittal letter that inclusion in the Stage 1 nomination cap (and compensation under the Stage 2 cap) will entitle parties with transmission service requests made after the reference year to acquire Stage 2 ARRs.

a. Protest

35. Manitoba Hydro asserts the Commission should reject the Midwest ISO's language since Stage 2 eligibility results in inferior treatment for transmission reservations compared to those that are tied to the reference year. Manitoba Hydro asserts that Stage 2 ARRs are inferior to Stage 1 ARRs since Stage 1 ARRs can be self-scheduled and converted to an FTR, and holding an FTR protects a market participant against congestion costs whereas Stage 2 ARRs do not. Manitoba Hydro also asserts that Stage 2 ARRs only receive a *pro rata* share, if any, of the residual dollars remaining after the seasonal auctions of all Stages 1A and 1B ARRs have been settled. Manitoba Hydro considers such disparate treatment to be unjust and unreasonable because all point-to-point service is charged the same rate for service whereas not all point-to-point service is eligible for Stage 1A allocations.[26] Manitoba Hydro recommends that the Commission order the Midwest ISO to modify the tariff to allow all point-to-point transactions to be eligible for Stage 1A ARRs or, in the alternative, require the Midwest ISO to provide service at discounted rates for transactions that are not eligible for Stage 1 ARRs.

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[24] The reference year is March 1, 2004 to February 28, 2005.

[25] *See* LTTR Order, 119 FERC ¶ 61,143 at P 167.

[26] Manitoba Hydro notes Commission precedent supports the conclusion that charging all point-to-point transactions the same rate for service is unjust and unreasonable if all transactions are not accorded the same quality of service. *See Northern States Power Co.*, 89 FERC ¶ 61,178 (1999).

b. Midwest ISO's Answer and Manitoba Hydro's Response

36. The Midwest ISO considers Manitoba Hydro's position to be a reiteration of earlier positions the Commission did not accept in the LTTR Order since the Commission neither mandated the Stage 1A ARR eligibility nor directed the discounting of non-reference year ARRs. The Midwest ISO also considers Manitoba Hydro's position to be a rehearing request that is irrelevant to the LTTR Order requirements, and therefore should be addressed on rehearing. The Midwest ISO asserts that Manitoba Hydro's protest is a collateral attack on Order Nos. 681 and 681-A with regard to guideline (5). However, according to the Midwest ISO, those orders recognized the appropriateness of methods that take into account an LSE's historical loads or power supply arrangements in allocating LTTRs. Since Manitoba Hydro did not request rehearing of such statements in Docket No. RM06-8, it should be precluded from arguing similar historical year issues in this proceeding.[27]

37. The Midwest ISO argues that Manitoba Hydro's alternative request for discounted transmission service is without foundation since the Midwest ISO's LTTR proposal has nothing to do with direct physical inferiority or curtailability of the service in the real-time market and, rather, indirectly involves the availability of financial hedging options in the day-ahead energy market. The Midwest ISO also notes that Manitoba Hydro cites no authority for the proposition that variations in eligibility for day-ahead hedging mechanisms should determine the quality or influence the rates of transmission service to be rendered in real-time.

38. Manitoba Hydro answers by noting that the Commission directed the Midwest ISO to clarify how Manitoba Hydro would receive post-reference year ARRs and not whether it would receive ARRs, as the Midwest ISO incorrectly states. Therefore, according to Manitoba Hydro, the Midwest ISO's clarification that post-reference year transmission service requests only are eligible for Stage 2 ARRs fails to provide Manitoba Hydro the opportunity to receive all types of ARRs derived from post-reference year transmission service requests, which is in direct contravention of the LTTR Order. Manitoba Hydro also asserts that the Midwest ISO fails to recognize that pricing of inferior ARRs is not limited strictly to the notion of physical curtailability, and that lack of protection from potential congestion makes the product inferior as well.

39. Manitoba Hydro faults the Midwest ISO for failing to mention that the post-reference year exclusion applies to Stage 1B ARRs as well, which is not addressed in Order Nos. 681 and 681-A and thus the Midwest ISO's exclusion goes beyond what has been mandated by the Commission.

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[27] The Midwest ISO notes the Commission accepted a proposal to use a historical reference year for the allocation of LTTRs in another proceeding. *See PJM Interconnection, LLC,* 119 FERC ¶ 61,144, at P 42-43 (2007).

c. Commission Determination

40. We find that the Midwest ISO has complied with our requirement that it provide clarification on how Manitoba Hydro would obtain ARRs for transmission service requests obtained after the reference year. By asking for clarification on how Manitoba Hydro would obtain ARRs, the Commission was not limiting its request to post-reference year ARRs.[28]

41. The Midwest ISO's additional language to its TEMT complies with our order and reasonably provides how Manitoba Hydro will obtain ARRs. We find the proposed provisions to be reasonable and therefore accept them. As the Commission explained in Order No. 681-A, it is providing flexibility for transmission organizations to propose allocation rules appropriate for their regions and that methods that take account of LSEs' current or historical loads and power supply arrangements would be appropriate in the event scarce long-term firm transmission rights need to be allocated.[29] Here, long-term transmission rights have been scarce in the Midwest ISO since market start and the Midwest ISO expects that scarcity to continue. Accordingly, it is reasonable for the Midwest ISO to establish that LTTRs are not provided to new point-to-point service in order to protect historical LTTRs. Thus, the Midwest ISO's method of providing LTTRs based on the historical ownership of contractual arrangements is appropriate. This method protects LSEs with long-term power supply arrangements, and is not unduly discriminatory. However, we will require the Midwest ISO to evaluate the provision of Stage 1B ARRs for new point-to-point service and to clarify, in a further compliance filing, that point-to-point customers paying for the construction of new transmission capacity will be eligible to receive LTTRs.[30] The Midwest ISO is required to submit this compliance filing within 30 days of the date of this order.

4. Transmission Planning and Expansion

42. In the LTTR Order, the Commission required the Midwest ISO to explicitly define a process by which the feasibility of long-term ARRs on existing transmission capacity will be incorporated into transmission planning and expansion.[31] In its July 16, 2007

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[28] Our silence on Manitoba Hydro's arguments set forth in the LTTR Order was not intended to be an indication that we had rejected Manitoba Hydro's arguments.

[29] *See* Order No. 681-A, 117 FERC ¶ 61,201 at P 70.

[30] We assume new point-to-point service is eligible for LTTRs to the extent the market participant funds network upgrades and the Midwest ISO determines the ARRs are feasible. Our assumption is based on the language of the network upgrade provision which indicates market participants will be allocated LTTRs for network upgrades and puts no limitation on that provision for network upgrades for point-to-point service.

[31] *See* LTTR Order, 119 FERC ¶ 61,143 at P 193.

Compliance Filing, the Midwest ISO proposes to amend Attachment FF so that its transmission planning procedures include dispatch patterns reflective of LTTRs. The Midwest ISO explains that it will treat upgrades identified as necessary to maintain LTTRs as Baseline Reliability Projects (BRPs) in the same manner that it treats upgrades needed to maintain reliability while accommodating the ongoing needs of existing market participants and transmission customers as BRPs.

a. Protest and Midwest ISO's Answer

43. Integrys faults the Midwest ISO's proposal, arguing that it falls short of ensuring that LTTRs will remain feasible over their term as required by Order No. 681.[32] Integrys argues that there is a lack of a real transmission expansion and planning process in the Midwest ISO that will hamper any attempt to maintain feasible LTTRs, and therefore market flaws will likely continue to perpetuate infeasible LTTRs. Integrys asserts that without an improvement to meaningfully engage stakeholder participation in the planning process, the Midwest ISO's proposal will fall short of providing the long-term transmission rights required by LSEs to serve their load safely, reliably and in a cost effective manner.

44. Integrys adds that a proper participant-endorsed planning process is the only way to remove the revenue insufficiency and achieve the objectives of Order No. 890.[33] It asks the Commission to direct the Midwest ISO to resubmit revised proposals in its Attachment K compliance filing under Order No. 890 that requires the establishment of a real transmission expansion and planning process that satisfies all nine Order No. 890 transmission planning principles. Integrys explains that this allocation and filings of Attachment K by the Midwest ISO and transmission owners will provide the economic incentive for the Midwest ISO and its stakeholders to have meaningful stakeholder participation in an expansion planning process that anticipates needed changes and mitigates the frequency and extent of insufficient revenues for long-term FTR coverage.

45. The Midwest ISO submits that the July 16, 2007 Compliance Filing satisfies the Commission's requirement in the LTTR Order to clarify its transmission expansion and planning process and its link to the feasibility of Stage 1A ARRs. The Midwest ISO considers Integrys' recommendations regarding Order No. 890 and Attachment K to be beyond the scope of this proceeding.

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[32] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 453.

[33] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

b. Commission Determination

46. In Order No. 681 the Commission required that transmission organizations implement a transmission system planning process that accommodates long-term transmission rights by ensuring that they remain feasible over their entire term. Furthermore, the Commission noted that appropriate planning for long-term firm transmission rights is essential to ensure that any charges to other market participants to cover revenue shortfalls do not become unjust, unreasonable or unduly discriminatory because they violate the full funding requirement of guideline (2).[34]

47. These requirements can play an important role in the Midwest ISO since infeasibility of LTTRs is built into its proposal, i.e., Stage 1A ARRs that become infeasible will be guaranteed for ten years but their costs must be uplifted to market participants. Expansion planning aimed at ensuring feasibility can reduce or eliminate the infeasibility of LTTRs and the resulting uplift. Expansion planning can also play a role in enabling market participants to convert all of their ARRs into self-scheduled FTRs, a practice that is not possible now as discussed elsewhere in this order. Therefore, expansion planning plays a significant role in ensuring the Midwest ISO LTTR program meets the requirements of Order No. 681 and results in just and reasonable rates.

48. While the proposed Midwest ISO tariff provision appropriately integrates planning for LTTRs in its expansion planning process, the proposal does not include a commitment to plan for the simultaneous feasibility of LTTRs over their full term as Order No. 681 requires.[35] For these reasons, we will require the Midwest ISO to revise its proposal to explicitly state that its transmission planning process will identify, evaluate, and analyze expansions designed to ensure the transmission system can support the simultaneous feasibility of all Stage 1A ARRs over their full term, and that these expansions will be included in the MTEP.[36] We require this revision to be submitted in a compliance filing to be submitted within 30 days of the date of this order.

49. We agree with the Midwest ISO that Intergys' arguments concerning Order No. 890 are beyond the scope of this proceeding and accordingly, we reject them.

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[34] *Id.*

[35] *Id.* at P 455 (Accordingly, the transmission organization must include, along with upgrades needed for system reliability, any upgrades needed to support the long-term firm transmission right over its full term in its base plan for system expansion).

[36] Schedule 6 of the PJM Operating Agreement is an example of approved tariff provisions that appropriately address the Order No. 681 transmission planning requirement.

5. Multiple Rounds in the FTR Auction

50. In the LTTR Order, the Commission required the Midwest ISO to clarify or revise its use of the term "multiple rounds" in the FTR auctions.[37] In the June 18, 2007 Compliance Filing the Midwest ISO deleted the reference to multiple rounds in its tariff and indicated that software system issues prevent multiple rounds. Therefore, the Midwest ISO states that it will conduct a single round in 2007 and expects to make system improvements that will allow it to conduct more than one FTR auction round in 2008.

a. Protest and Midwest ISO's Answer

51. DC Energy asserts that multiple rounds in FTR auctions aid in transparency and price discovery, complementing the maximization of LTTR value resulting from robust auctions. DC Energy contends that multiple rounds allow market participants to utilize price discovery in future rounds, yielding substantially greater efficiencies.[38] DC Energy also notes other eastern ISOs, such as PJM and NYISO, have multiple rounds for long-term and short-term FTR auctions, further noting that similar FTR auction procedures for PJM and the Midwest ISO would advance the synergies between the ISOs. Accordingly, DC Energy recommends that the Commission require the Midwest ISO to provide status reports in regular intervals, notifying the Commission of its progress towards resolving the system constraints preventing implementation of multiple rounds. Specifically, DC Energy suggests requiring a report by January 1, 2008 to either supplement the Midwest ISO's compliance filing or a report indicating why it cannot implement multiple rounds, when it anticipates being able to do so, and what steps it will take in the interim. Following that date, DC Energy recommends that the Midwest ISO be required to make reports in regular intervals, such as sixty days, until it is able to implement the requisite changes.

52. The Midwest ISO answers that its compliance response indicates that it is committed to resolving system constraints and to making a section 205 filing for multiple round auctions as soon as system capabilities permit. The Midwest ISO's current assessment is that it will not be able to make the system changes required to accommodate multiple round auctions for the spring 2008 auction and expresses its belief that multiple rounds will be available for the spring 2009 auction. The Midwest ISO agrees to filing six-month status reports on progress towards implementing multiple round auctions.

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[37] LTTR Order, 119 FERC ¶ 61,143 at P 214.

[38] DC Energy cites to Commission recognition of the value of auctions in Order No. 681. *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 389.

b. Commission Determination

53. We accept the Midwest ISO's tariff revision to be in compliance with our requirement in the LTTR Order and to be a reasonable approach given its inability to implement multiple rounds at this time and its commitment to implement this market feature as soon as system capabilities permit. We also agree with DC Energy and will require the Midwest ISO to make progress reports to the Commission and its customers every six months that specify the expected date of completion and reasons for changes in the date in the event it is revised, until multiple rounds are implemented.

6. Advance Guarantees of LTTRs for Incremental Participant-Funded Upgrades

54. The Commission in the LTTR Order did not require the Midwest ISO to provide advance guarantees of LTTRs for incremental participant funded upgrades before the generation facilities go into service. Also, the LTTR Order required the Midwest ISO to submit a defined and transparent process in its TEMT for granting incremental ARRs for all market participants including those that build new baseload generation.[39] The Midwest ISO in its June 18, 2007 Compliance Filing proposes to modify section 46 by adding the following new paragraph:

> If a qualified Market Participant funds the Network Upgrades necessary to make feasible otherwise infeasible ARRs, the Transmission Provider will provide the qualified Market Participant with a detailed description of the upgrades necessary to achieve the desired ARR feasibility, to the extent that this description is not currently provided for under the Tariff or Transmission Provider procedures. The Market Participant may then utilize existing Tariff provisions in Attachment FF to be compensated for the upgrade or request FTRs and LTTRs in accordance with this Section.[40]

a. Protest and Midwest ISO's Answer

55. The Midwest TDUs argue that the only way to provide an assurance of long-term transmission availability at a predictable cost at the time a long-term power contract is signed is to require advance guarantees of LTTRs. Thus, as argued in their rehearing request, the Midwest TDUs believe the Commission should broadly require mechanisms that provide LSEs with advance certainty as to the availability of long-term ARRs needed to support development of new baseload resources. Even if the Commission does not grant the Midwest TDUs' rehearing request, the Midwest TDUs maintain that the

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[39] *See* LTTR Order, 119 FERC ¶ 61,143 at P 73.

[40] *See* June 18, 2007 Compliance Filing at 5.

Midwest ISO should be required to revise the procedures proposed in its June 18, 2007 Compliance Filing to hold the Midwest ISO accountable in at least the limited circumstances where it is granting new long-term ARRs to market participants in connection with network upgrades.

56. Specifically, the Midwest TDUs state that the Midwest ISO's June 18, 2007 Compliance Filing gives no assurance that the requested ARRs will be allocated - even if the market participant exactly follows the Midwest ISO's network upgrade instructions. Instead, the Midwest TDUs believe that section 46 defaults to the vague procedures of the Midwest ISO's LTTR Proposal, which provide that LTTRs from participant-funded network upgrades will not be assured and allocated until "the Network Upgrade becomes effective."[41] Thus, the Midwest TDUs assert that the Midwest ISO's June 18, 2007 Compliance Filing fails to hold the Midwest ISO accountable to the LSEs who followed the Midwest ISO's directions with regard to funding upgrades to secure ARRs. The Midwest TDUs affirm that the Midwest ISO should be held accountable for its analysis and instructions in the context of participant-funded network upgrades, and required to provide advance assurance that the originally requested ARRs will be available to the market participant if it builds the network upgrades the Midwest ISO tells it to build.

57. The Midwest ISO states that the LTTR Order's ruling against "advance guarantees" of upgrade-related LTTRs is not based on whether or not upgrades were directed or identified by the transmission provider, but rather on the need to defer the determination of simultaneous feasibility until the upgrade facilities "go into service." Thus, the Midwest ISO asserts that the Midwest TDUs' contention is in the nature of a rehearing argument that should be disregarded in the evaluation of the Midwest ISO's compliance with the LTTR Order.

b. <u>Commission Determination</u>

58. We accept the Midwest ISO's tariff revision as in compliance with our requirement in the LTTR Order and as a reasonable approach to making ARRs available to market participants that fund transmission system upgrades. The Midwest TDUs' primary interest appears to be that new baseload generators be given a claim on capacity, such that their estimated congestion hedge is undisturbed by other generators that are built later but go into service sooner than the first generator.[42] EPAct 2005, however, does not require such a result. Section 217(b)(4) requires the Commission to enable LSEs to secure firm transmission rights for long-term power supply arrangements that are made, or planned, to meet their reasonable needs. We expect, based on the Midwest ISO's description of its analysis process, that the Midwest ISO process will evaluate all system activities, including the construction of other generation, in its analysis of the

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[41] *See* TEMT at section 46.1.

[42] *See* Midwest TDUs Protest to June 18, 2007 Compliance Filing at 16.

network upgrades necessary to provide LTTRs to new generation and that the Midwest ISO therefore is planning to provide the firm transmission rights being requested, as EPAct 2005 requires.

59. We also do not consider the Midwest TDUs' interest in an advance binding commitment to be practical. The Midwest ISO will plan for the needs of LSEs and will provide detailed analyses of the network upgrades necessary to provide LTTRs, and hence provide a new generator with substantial certainty regarding the congestion hedge expected for the new unit. However, other factors that cannot be predicted or planned for, such as loop flow, will impact the actual LTTRs that can be made available when the unit goes into service. Thus, any guarantee of LTTRs that turn out to be unavailable when the units go into service will necessarily require other market participants to bear the cost of infeasibility.

7. Defined and Transparent Process For Granting Incremental ARRs

60. The LTTR Order required a defined and transparent process for granting incremental ARRs for all market participants, not just for market participants building new baseload generation. In response, the Midwest ISO in its June 18, 2007 Compliance Filing noted that section 43.6.1 specifies procedures by which a market participant could free up system capability to increase the feasibility of ARRs for a new reserved source point as a replacement for an existing ARR entitlement.[43]

a. Protest

61. The Midwest TDUs fault the June 18, 2007 Compliance Filing for not sufficiently describing the process for transmission customers to obtain new LTTRs when they change their power supply arrangements. The Midwest TDUs note that it is unclear whether and how substitutions of long-term resources would be treated, how requests for incremental ARRs could be coordinated with requests to retire and substitute existing long-term resources, and how the tariff provisions for replacing and designating new source points interact with provisions for participant-funded upgrades. The Midwest TDUs also assert that several aspects of the provisions for replacing and designating new source points are unclear, as they pointed out in their protest to the initial compliance filing by the Midwest ISO. In addition, the Midwest TDUs request clarification on the interactions of these provisions with the provisions on registration of existing entitlements.

62. The Midwest TDUs also object to references to resources historically used by a market participant in the definition of reserved sources, noting that these references are contrary to the LTTR Order requirement that the Midwest ISO establish mechanisms to

[43] *See* June 18, 2007 Compliance Filing at 4.

designate new resources as reserved source points and to expand and change the set of resources included. The Midwest TDUs recommend clarification of tariff language throughout the tariff to reflect the availability of procedures to designate new reserved source points and to add new resources.

63. The Midwest TDUs also fault the proposed tariff language on network upgrades, stating that it provides no new details on the replacement and addition process, and therefore it is not possible for market participants to know how the treatment of new baseload resources will operate in practice and for the Commission to determine if the June 18, 2007 Compliance Filing is just, reasonable and nondiscriminatory and in compliance with Order No. 681. They recommend that the Midwest ISO be held accountable for its analysis and instructions in the context of participant-funded network upgrades, and be required to provide advance assurance that the originally requested ARRs will be available to the market participants if it builds the network upgrades the Midwest ISO tells it to build. The Midwest TDUs provide proposed tariff language that allows market participants, at their option, to request and receive specific ARRs that formed the basis for the transmission provider's detailed description of necessary upgrades.

64. The Midwest TDUs further argue that the defined and transparent process for adding new and replacement resources must include mechanisms for LSEs with load outside of the Midwest ISO to obtain new LTTRs, noting that it is unfair to restrict new LTTRs based on the Midwest ISO footprint since it unduly restricts power supply choices and creates unnecessary barriers to the broad competitive markets that Congress and the Commission seek to promote and exacerbate RTO seams problems.[44]

b. Midwest ISO's Answer

65. The Midwest ISO proposes to replace its compliance filing reference to the registration tariff provisions with the statement that, for the purposes of determining resource qualification requirements, the reference year shall be replaced by the annual allocation period subsequent to the year of the request for new or replacement reserved source point (RSP). The Midwest ISO hopes this change will clarify that the intent of the June 18, 2007 Compliance Filing was to replace the reference year with the upcoming ARR allocation year. The Midwest ISO further clarifies and offers to submit new tariff language that a new source point can be designated either as an addition to the set of source points, without terminating, retiring or otherwise replacing any of the source points, or as a replacement of an existing RSP that would be terminated or retired.

[44] The Midwest TDUs cite to the Order No. 681-A finding that LSEs with load outside an RTO are entitled to a preference in the allocation of LTTRs when they have an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region. *Citing* Order No. 681-A, 117 FERC ¶ 61,201 at P 79.

According to the Midwest ISO, a new source point can either be an existing or new generation resource, and that a request for designation as a new generation resource should be made when the generator will be commercially operational by the start of the new allocation year for which the request is made. Whenever the replacement of a source point involves a retiring or retired source point, the replacement process would combine the source point's retirement and its replacement with a new source point.

66. The Midwest ISO also offers to revise the proposed tariff provisions to clarify that the termination of ARRs and LTTRs with existing source points, and the insertion of new ARRs and LTTRs with replacement source points, will be subject to simultaneous feasibility tests that maximize the allocation of the replacement ARRs and LTTRs. The simultaneous feasibility test for new or replacement baseload generation resources, conducted on a market-wide basis, will protect the feasibility of all Stage 1A ARRs of the most recent ARR annual allocation without infeasible ARRs; the simultaneous feasibility test for non-baseload resources will use Stage 1 of the most recent ARR annual allocation without infeasible ARRs.

67. The Midwest ISO further clarifies that market participants would request the termination and replacement of ARRs and LTTRs, indicating the order in which they need to be studied, and the request for replacement source point requests will indicate that the market participant is making an advance commitment to accept the simultaneous feasibility test results. Those ARRs and LTTRs not requested for replacement will be terminated and the study will be performed on a first-come, first-served basis. Finally, the Midwest ISO offers to revise the tariff to make the feasibility upgrade process applicable to replacement source points also applicable to new source points.

68. With respect to external loads, the Midwest ISO offers to clarify its tariff to provide a preference for external loads in LTTR allocation if they have an existing agreement with the transmission organization to pay a share of the embedded costs of the transmission system on a long-term basis to support load outside the region, as Order No. 681-A provides.[45] The Midwest ISO notes that Order No. 681-A states that absent such an agreement, such LSEs do not have preferred access to LTTRs.[46] The Midwest ISO notes that Order No. 681 and Order No. 681-A have already rejected the Midwest TDUs' broader argument that external load should have the same preference as internal Midwest ISO load in the allocation of LTTRs,[47] and for this reason the Midwest ISO recommends these arguments be rejected here as well.

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[45] *See* Order No. 681-A, 117 FERC ¶ 61,201 at P 79.

[46] *Id.* at P 80.

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

c. Commission Determination

69. We find that the Midwest ISO's June 18, 2007 Compliance Filing and answer are responsive to the Commission's request for a clear and transparent process for granting incremental ARRs for transmission upgrades, as well as situations involving the replacement, termination, retirement, and addition of generation sources. Therefore, we accept the tariff revisions as responsive to prior orders but condition approval on the Midwest ISO making a further compliance filing incorporating its proposed revisions and additions to its tariff, as described in its answer, in a compliance filing to be submitted within 30 days of the date of this order.

70. We do not consider it necessary to eliminate the tariff provision that prohibits the addition of a new source point if MW from an old source point are being removed and substituted with MW being added to a different, existing, or new source point in the baseload reserved source set (BRSS), as the Midwest TDUs recommend. This tariff provision ensures that all the procedures in the section on the designation of new reserved source points apply only to new source points and not to replacement source points already covered in a different section.

71. We also do not consider the definitions of source points and source sets to be contrary to the requirements of the LTTR Order, and therefore no further clarification is needed. All resources, whether existing, replacement, or new resources, must meet qualification requirements to be included as a source point. Specifically, all resources must have a historical record of ownership or a contract in order to be qualified. We consider the tariff provisions on procedures to designate source points and to add new resources to be clear, and find nothing inconsistent with this qualification requirement and the procedures for designating new or replacement source points. We consider the Midwest TDUs' recommendation for advance assurances of ARRs for participant-funded upgrades to be a rehearing request, and, to the extent raised, we will address their issues in the Rehearing Order being issued concurrently with this order.

72. We consider the Midwest ISO's proposed revision on LTTR allocations for external load, provided in its answer, to be consistent with Commission policy and therefore appropriate for inclusion in its tariff. We require this revision to be submitted in a compliance filing within 30 days of the date of this order. The arguments raised by the Midwest TDUs for a general preference for external loads have already been addressed and rejected by the Commission in both Order Nos. 681 and 681-A,[48] and are, in effect, collateral attacks on those orders to which we will not respond.

[48] Order No. 681, FERC Stats. & Regs. ¶ 31,226; Order No. 681-A, 117 FERC ¶ 61,201.

8. Counter-Flow Obligation For Retired Baseload Generation

73. In the LTTR Order,[49] the Commission required the Midwest ISO to clarify the conditions under which an LSE that is retiring a resource eligible for Stage 1A ARRs, and thus also Stage 1A counter-flow ARRs, can turn back its counter-flow rights upon retirement of the resource. The Commission required the Midwest ISO to submit a compliance filing to reflect this clarification.[50]

74. The Midwest ISO, in its June 18, 2007 Compliance Filing, clarifies how a retiring LSE resource eligible for ARRs and counter-flow ARRs can turn back its counter-flow rights upon retirement of the resource. As set forth in section 43.2.5.e of the TEMT, the Midwest ISO explains that the counter-flow obligation is for a maximum of ten years. If a party knows ten years in advance that it will be retiring a unit, then the Midwest ISO asserts that it can stop nominating a Stage 1 ARR entitlement and can then be assured of not being assigned counter-flows on the entitlement after the units retire because counter-flows can only be assigned for a maximum of ten consecutive years.

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

a. Protest

76. The Midwest TDUs, as they originally requested in their protest to the Midwest ISO LTTR's Proposal, assert that the Midwest ISO should be directed to 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).[51] The Midwest TDUs state that the Midwest ISO appeared to concede this point

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[49] *See* LTTR Order, 119 FERC ¶ 61,143 at P 51.

[50] *Id.* at P 151.

[51] Midwest TDUs March 22, 2007 Protest at 4-5, 10-12.

in its answer,[52] and the Commission directed clarification in the LTTR Order. However, the Midwest TDUs notes that in its June 18, 2007 Compliance Filing, the Midwest ISO has taken the position that market participants that do not want ten years of counter-flow ARR exposure should stop nominating the resource ten years before it is scheduled to go out of service (and, presumably, face unhedged congestion charges during that ten-year period). At minimum, the Midwest TDUs assert that customers who notify the Midwest ISO ten years in advance should not be subject to residual counter-flow ARR liability. According to the Midwest TDUs, this change would retain potential residual counter-flow ARR liability for market participants who choose not to provide sufficient advance notice to the Midwest ISO that they wish to terminate their Stage 1A ARRs. At the same time, this change would accommodate 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.

b. Answers

77. In response to the Midwest TDUs' assertion that the June 18, 2007 Compliance Filing improperly requires market participants that do not want ten years of ARR counter-flow exposure to stop nominating the relevant resource ten years before it is scheduled to go out of service, the Midwest ISO maintains that the LTTR Order did not direct the Midwest ISO to do anything in particular in this regard. The Midwest ISO further argues that the June 18, 2007 Compliance Filing is consistent with the Midwest ISO's earlier clarification that "the Market Participant will automatically stop receiving the counter-flow A[R]Rs according to the current rules if they (sic) stop nominating at the same time as [the] change of power supply arrangements."[53]

78. The Midwest ISO also clarifies that market participants can request to terminate the ARRs and LTTRs with the retirement of the generator resource. All ARRs and ARR entitlements that source at the retired generator resource will cease to exist in the allocation years subsequent to the year in which the request was made, with the exception of LTTRs. The LTTRs will remain in future allocation years to the extent required for counter-flow assignment and eligibility for the counter-flow obligation shall terminate per the terms of the tariff.

79. The Midwest TDUs respond and object to an open-ended obligation to take on a ten-year, unhedged congestion price risk if LTTRs are used during the last ten years before an existing baseload resource is retired or terminated, even where the LTTR holder has provided the Midwest ISO with sufficient notice. The Midwest TDUs disagree with the Midwest ISO's assertion that the Midwest ISO need not do anything

[52] Midwest ISO April 6, 2007 Answer at 6.

[53] Midwest ISO July 25, 2007 Answer at 6.

with respect to this issue, and argue that the Commission did not approve the post-resource termination counter-flow methodology. The Midwest TDUs believe that the Midwest ISO's proposal makes LTTRs effectively unusable by the specific entities and long-term power supply arrangements that Order No. 681 and 681-A were intended to protect.

c. **Commission Determination**

80. We reject the Midwest ISO's proposal that the counter-flow obligation continue after the generation resource is retired. The Commission explained in the LTTR Order that the retirement of a baseload generator within the ten-year period creates financial problems for holders of counter-flow ARRs since they must continue to pay the counter-flow cost, but are no longer receiving any off-setting congestion revenues.[54] Inasmuch as the value of this obligation is based on the difference between the clearing prices at the delivery point and the receipt point, logically the obligation applies to market participants that transact in the energy market on the path between these points. Accordingly, we find the Midwest ISO's proposal to continue assessing counter-flow obligations after the generation source has been retired to be unreasonable since holders of counter-flow ARRs no longer have the ability to hedge congestion costs by producing energy.

81. We recognize that this finding has implications for the feasibility of LTTRs; namely, that the revenues originally provided by these obligations must now be uplifted from LTTR holders to the extent the retirements and termination of counter-flow obligations result in infeasible ARRs over their guaranteed term. We also recognize that this finding could create an incentive for generators to retire prematurely. Nonetheless, on balance, continuing a counter-flow obligation after the market participant can no longer provide energy and obtain the congestion payment is unreasonable.[55]

82. While transition alternatives, such as a five-year notice requirement, have appeal as a way to manage feasibility, we are concerned that they extend this inequitable obligation past the 2010 transition period deadline. Therefore, we consider the better course to be termination of the counter-flow obligation upon termination of service, and no continuing notice obligations. Thus, we require the Midwest ISO to revise its tariff and submit a further compliance filing within 30 days of the date of this order.

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[54] LTTR Order, 119 FERC ¶ 61,143 at P 151.

[55] See order in Docket No. ER07-478-002 being issued concurrently with this order that addresses the same issue. *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,063 at P23 (2007).

9. Other Issues and Clarifications

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

83. As required by the LTTR Order,[56] the Midwest ISO proposes to revise the provisions on designation of new reserved source points to protect the simultaneous feasibility of all Stages 1A and 1B ARRs and to conduct the simultaneous feasibility tests on a market-wide, non-ARR zone basis. The Midwest TDUs object to these revisions, arguing that the changes go beyond the requirements of the LTTR Order and subordinate new baseload resources to shorter-term Stage 1B ARRs. In its answer, the Midwest ISO agrees to revise this section to clarify that new baseload resources are not subordinate to short-term ARRs in the annual allocation. We find the proposed revision of the Midwest ISO, as modified in its answer, to be reasonable and in compliance with the requirements of the LTTR Order, as well as Order No. 681. Accordingly, we require the Midwest ISO to submit a compliance filing, within 30 days of the date of this order, setting forth its proposed revision.

b. Peak Usage

84. In the June 18, 2007 Compliance Filing, the Midwest ISO defines "Peak Usage" in response to the Commission's acceptance of proposed revisions by Southwestern Energy to clarify that peak load usage is based on the average of three year actual peak loads.[57] The Midwest TDUs state that the proposed change does not address the Commission's concern. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise section 1.238b. We find the proposed revision of the Midwest ISO, as modified in its answer, to be reasonable and in compliance with the requirements of the LTTR Order. Accordingly, we require the Midwest ISO to submit in a compliance filing, within 30 days of the date of this order, setting forth its proposed provision.

c. Scope of Simultaneous Feasibility Test

85. The Midwest TDUs note that the transmittal letter for the June 18, 2007 Compliance Filing includes different language than the attached tariff sheets in section 43.2.4.a.iv.[58] As the language that appears in the transmittal letter does not address the problem that the Commission directed the Midwest ISO to correct, the Midwest TDUs assume that the version included in the replacement tariff sheets is the actual proposed tariff language, and that the language in the transmittal letter is an error that should be ignored. In its answer, the Midwest ISO confirms that section 43.2.4.a.iv

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[56] *See id.* at P 146.

[57] *Id.* at P 215.

[58] June 18, 2007 Compliance Filing Transmittal Letter at 3.

of the TEMT, which states that the simultaneous feasibility tests shall be performed on a "market-wide, non-ARR Zone basis," prevails over any allegedly inconsistent statement in the June 18, 2007 Compliance Filing's transmittal letter. We agree and accept the proposed tariff language as in compliance with the requirements of the LTTR Order.

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

86. The Midwest TDUs note that the LTTR Order stated that the Commission "agree[d] with the Midwest TDUs' 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."[59] The Midwest TDUs assert that the Midwest ISO's June 18, 2007 Compliance Filing, however, does not include that change, and request that this omission be corrected. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise this section. We find this proposed revision reasonable and accept the revised language subject to the Midwest ISO submitting a further compliance filing within 30 days of the date of this order.

e. Option B and Carved-Out GFAs [60]

87. In the LTTR Order, we noted the Midwest ISO's agreement to clarify that GFAs deemed to be Option B or carved-out GFAs are not eligible to receive ARRs in Stage 2.[61] We directed the Midwest ISO to make this clarification in a compliance filing,[62] which the Midwest ISO submitted in its June 18, 2007 Compliance Filing.[63] The Midwest TDUs believe that the Midwest ISO's proposed language regarding Option B and carved-out GFAs in section 38.8.4 does not address the Commission's directive in the LTTR Order[64] and may have unintended and unexplained consequences for the status of Option B and carved-out GFAs. The Midwest TDUs further state that the June 18, 2007 Compliance Filing changes should be rejected, and that the Midwest ISO should be directed to adopt language that responds to the Commission's specific concerns, as expressed in the LTTR Order.

88. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise this section 38.8.4 to clarify that Option B and carved-out GFAs shall be provided "a full

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[59] LTTR Order, 119 FERC ¶ 61,143 at P 213.

[60] Grandfathered Agreements (GFAs).

[61] LTTR Order, 119 FERC ¶ 61,143 at P 164.

[62] *Id.*

[63] June 18, 2007 Compliance Filing at 12.

[64] LTTR Order, 119 FERC ¶ 61,143 at P 164.

congestion hedge," but the Midwest ISO will not limit ARR allocation to LSEs by holding the ARRs at maximum amounts.[65] We find this proposed revision reasonable and accept the revised language subject to the Midwest ISO submitting a further compliance filing within 30 days of the date of this order.

f. Baseload Supply Resources

89. The Midwest TDUs note that "Baseload Supply Resource(s)" is defined as "[t]he portion of a Market Participant's historic Load…."[66] The Midwest TDUs state that because a "Resource" is not a "Load," it is unclear what this definition means, and it should be clarified. In addition, the Midwest TDUs note that the Midwest ISO envisions the addition of new resources to the BRSS, so Baseload Supply Resources are not necessarily restricted to historic, reference year resources. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise this section. We find this proposed revision reasonable and accept the revised language subject to the Midwest ISO submitting a further compliance filing within 30 days of the date of this order.

g. Determination of ARR Value

90. According to the Midwest TDUs, the description of the Midwest ISO's present practice for determining posted auction clearing prices in section 42.4 is precisely backwards. As a result, the description implies positive value when the actual value is negative, and vice versa. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise this section. We find this proposed revision reasonable and accept the revised language subject to the Midwest ISO submitting a further compliance filing within 30 days of the date of this order.

h. Network Upgrade

91. The Midwest TDUs recommend that language be reinserted into the network upgrade provisions in section 46 of the tariff, stating that this correction is needed since the last sentence refers to two conditions that were deleted in the LTTR Proposal. In its answer, the Midwest ISO agrees with the Midwest TDUs and offers to revise this section. We find this proposed revision reasonable and accept the revised language subject to the Midwest ISO submitting a further compliance filing within 30 days of the date of this order.

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[65] Midwest ISO's Answer Regarding June 18, 2007 Compliance Filing at 19.

[66] *See* TEMT at section 1.18f.

i. Reference Year Path and Eligibility for BRSS Clarifications

92. In the LTTR Order, we directed the Midwest ISO to clarify 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.[67] Also, we ordered the Midwest ISO to clarify that only the designated network resources should be eligible for BRSS (and Peak Reserve Source Set) designation.[68] In the June 18, 2007 Compliance Filing, the Midwest ISO responded by proposing to modify sections 43.2.1.a and 43.2.1.a.i as follows:

> 43.2.1.a…Stage 1 nomination cap and eligibility for Stage 2 ARR participation level. The path which existed during the Reference Year will be used to define the LTTR and will not change in subsequent years. 43.2.1.a.i…for the applicable ARR Zone. Only designated Network Resources are eligible for BRSS and PRSS designation in connection with Network Integration Transmission Service.

We find these proposed revisions acceptable.

j. Ministerial Modifications

93. In the LTTR Order, we directed the Midwest ISO to make the clarifying changes listed in the Attachment to the LTTR Order.[69] The Midwest ISO has failed to make the majority of these changes, and we require them to make these changes and submit them in a further compliance filing within 30 days of the date of this order. The remaining changes are listed in Attachment 1 to this order.

94. We accept the clarifications and changes the Midwest ISO has made to comply with the LTTR Order.

The Commission orders:

(A) The Midwest ISO's June 18, 2007 and July 16, 2007 compliance filings are hereby accepted in part and rejected in part, as discussed in the body of this order.

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[67] LTTR Order, 119 FERC ¶ 61,143 at P 32.

[68] *Id.*

[69] LTTR Order, 119 FERC ¶ 61,143 at P 211.

(B) The Midwest ISO is hereby directed to make a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting 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 43.2.5.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 44.1	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 44.6	"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."