122 FERC ¶ 61,020
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER08-207-000

ORDER ACCEPTING PROPOSED TARIFF REVISION SUBJECT TO FURTHER COMPLIANCE FILING

(Issued January 11, 2008)

1. On November 13, 2007, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT) pursuant to section 205 of the Federal Power Act (FPA).[1] The proposed revisions are intended to clarify, among other things, that load-serving entities (LSEs) with service obligations have priority access to Stage 1A Auction Revenue Rights (ARRs), *i.e.,* Long-Term Firm Transmission Rights (LTTRs), relative to non-LSEs, with no requirement that LSEs have long-term supply arrangements to qualify for such priority access. For the reasons stated below, we accept the proposed revisions to be effective November 14, 2007, subject to a further compliance filing.[2]

[1] 16 U.S.C. § 824d (2000 & Supp. V 2005).

[2] As noted by Midwest ISO, capitalized terms not otherwise defined have the meanings ascribed to them in section 1 of the TEMT. *See* Midwest ISO November 13, 2007 Transmittal Letter at note 1.

I. **Background**

2. Consistent with the Energy Policy Act of 2005 (EPAct 2005),[3] the Commission issued Order No. 681 to require independent transmission organizations that oversee organized electricity markets to make LTTRs available to all transmission customers.[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. Under guideline (5) of Order No. 681,[5] the Commission determined, among other things, that LSEs with service obligations should be given priority access to LTTRs relative to non-LSEs, with no requirement that LSEs have long-term power supply arrangements.[6] In Order No. 681-A, the Commission also confirmed that LSEs relying on short-term supply arrangements should likewise be given priority access to LTTRs.[7]

4. On January 29, 2007, Midwest ISO submitted proposed revisions to the TEMT to provide for LTTRs, in the form of Stage 1A ARRs, as directed by Order No. 681. On May 17, 2007, the Commission conditionally accepted Midwest ISO's proposed tariff revisions, and directed Midwest ISO to make certain compliance filings within thirty and sixty days of the order.[8] The May 17 Order reaffirmed that in Order No. 681 "the Commission chose not to require that LSEs

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[3] Pub. L. No. 109-58, § 1233, 119 Stat. 594, 958 (2005). Section 217(b)(4) of EPAct 2005 directed the Commission to use its authority to facilitate transmission planning and expansion to meet the reasonable needs of LSEs with respect to meeting their service obligations and, relevant to this filing, securing LTTRs for long-term supply arrangements made, or planned, to meet such obligations. *Id.*

[4] *Long-Term Firm Transmission Rights in Organized Electricity Markets,* Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006). The Commission also required that LTTRs satisfy seven guidelines, some of which will be discussed further herein. *See* Order No. 681 at P 102-03; Order No. 681-A at P 12, 15. These seven guidelines were codified in the Commission's regulations at 18 C.F.R. § 42.1(d) (2007).

[5] *See* 18 C.F.R. § 42.1(d)(5)(2007).

[6] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 62 & 318-325.

[7] *See* Order No. 681-A, 117 FERC ¶ 61,201 at P 65-72.

[8] *See Midwest Independent Transmission System Operator, Inc.*, 119 FERC ¶ 61,143 (2007) (May 17 Order).

with long-term power supply arrangements would have priority over LSEs that prefer short-term power supply arrangements."[9] On October 19, 2007, the Commission concurrently issued two orders that respectively addressed requests for rehearing of the May 17 Order[10] and Midwest ISO's 30-day and 60-day compliance filings.[11]

II. Midwest ISO's Proposal

5. In its November 13, 2007 filing, Midwest ISO notes that during the ARR Registration process it has received requests from some market participants proposing to define Category 2 ARR Zones in a way that would have the effect of eliminating or reducing the access to Stage 1A ARRs of LSEs that do not have long-term power supply arrangements.[12] To address this concern, Midwest ISO proposes revisions to sections 42 and 43.2.4 of the TEMT in order to clarify the consistency of the ARR provisions with guideline (5) of Order Nos. 681 and 681-A, which does not require LSEs to have long-term power supply arrangements before they can be given priority access to LTTRs vis-à-vis non-LSEs.

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[9] *Id.* P 88 & n. 41.

[10] *See Midwest Independent Transmission System Operator, Inc.* 121 FERC ¶ 61,063 (2007) (October 19 Rehearing Order).

[11] *See Midwest Independent Transmission System Operator. Inc.,* 121 FERC ¶ 61,062 (2007) (October 19 Compliance Order).

[12] Midwest ISO notes that section 1.14h of the TEMT defines ARR Zones as: "[g]eographic areas defined for the purpose of allocating ARRs based upon locations where a Market Participant serves Load." The tariff provides for two kinds of ARR Zones, denominated as "Category 1" and "Category 2." Section 42 of the TEMT currently states that, with regard to ARR Zones:

> Category 1 shall consist of Network Integration Transmission Service OASIS reservation Points of Delivery existing during the Reference Year, including external interface Commercial Nodes for Point-To-Point exports. Category 2 shall consist of subzones within the Network Integration Transmission Service Points of Delivery that will be established where supported by transmission and Energy supply arrangements during the Reference Year and that meet the qualification criteria as described in the following paragraphs.

6. In accordance with guideline (5) under Order Nos. 681 and 681-A, Midwest ISO's tariff provides that LTTRs, in the form of Stage 1A ARRs,[13] may be nominated by and allocated to LSEs (*i.e.*, market participants that "serve Load" in their ARR Zones)[14] without requiring such LSEs to have long-term power supply arrangements in order to have access to LTTRs ahead of non-LSEs. Further, Midwest ISO notes that the TEMT does not require an LSE to have long-term supply arrangements as a condition for participating in the Stage 1A nomination and allocation of LTTRs.[15]

7. During the current ARR Registration process, however, Midwest ISO explains that it received requests from some LSEs that have such long-term arrangements to create Category 2 ARR Zones and assign the associated long-term Resources (*i.e.*, RSPs) to the Category 2 ARR Zone in a manner that may unduly block or reduce the LTTR access of other LSEs that do not have such long-term arrangements or interests. Other requests were received to create Category 2 ARR Zones that are inconsistent with the historical delivery locations. According to Midwest ISO, these situations arose after Midwest ISO relaxed its original requirement to define ARR Zones based on historical Load points, and tried to accommodate requests for "slice"-type definitions of Category 2 ARR Zones (*i.e.*, not tied to historical delivery points). Midwest ISO determined that certain requested Category 2 ARR Zone definitions adversely affected the LTTR entitlements of LSEs that do not have long-term supply arrangements. Midwest ISO believes disagreement and/or confusion on this issue exists among certain market participants and that clarification is needed to allow the ARR Registration process to proceed to completion.

8. Midwest ISO proposes to disallow such uses of a Category 2 ARR Zone, and to define Category 1 or Category 2 ARR Zones in order to: (1) avoid adverse effects on the ARR Entitlements of LSEs which neither own nor have long-term contracts with Generation Resources; and (2) be consistent with each market

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[13] Section 1.175a of the TEMT defines LTTRs as "ARRs allocated in Stage 1A of the Annual ARR Allocation process."

[14] Section 43.2.4.a of the TEMT.

[15] Midwest ISO states that while the TEMT has a five-year ownership or contractual interest requirement for a Generation Resource to qualify for inclusion as a Reserved Source Point (RSP) in the pool of Generation Resources, named the Baseload Reserved Source Set (BRSS), that will be used for Stage 1A ARR nominations and allocations, the TEMT does not impose that requirement for an LSE to qualify to have access to LTTRs in the Stage 1A ARR nomination and allocation. *See* Section 43.2.1.a.i and ii of the TEMT.

participant's historical delivery points. Midwest ISO believes this is appropriate because the criteria for the designation of Category 2 ARR Zones[16] are broad enough to include, and in any event should be deemed subject to, the guidelines of Order Nos. 681 and 681-A, which do not condition the priority LTTR access of LSEs on their having long-term supply arrangements. In addition, Midwest ISO states that the October 19 Compliance Order emphasized the importance of Midwest ISO's role in independently evaluating the designation of ARR Zones to avoid adverse effects on the ARR Entitlements of other LSEs.[17]

9. Midwest ISO further notes that in its proposed language the eligibility for defining Category 2 ARR Zones based on state statutory or regulatory jurisdictional requirements will not require any supporting contracts as long as the LSEs involved in the original Category 1 ARR Zone can segregate the Generation Resources and Load points into separate Category 2 ARR Zones according to state boundaries.

10. Finally, Midwest ISO proposes language stating that "LSEs with service obligations shall be entitled to participate in Stage 1A, provided, that, the Transmission Provider may give priority to LSEs with long-term power supply arrangements in Stage 1A when the Transmission Provider needs to limit the amount of existing transmission capacity available for Stage 1A to a level that is []able to support the reasonable needs of all LSEs."[18]

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[16] Section 42 of the TEMT currently states the Category 2 ARR Zone criteria as follows:

> In most cases, the Category 2 criteria will identify valid subzones as follows: (i) 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) and (ii) state regulatory jurisdictional boundaries that separate Load and generation within a single Point of Delivery. In circumstances where the above Category 2 criteria are insufficient to clearly determine whether a proposed ARR Zone qualifies, the zone will be defined based on broader guidelines, as follows: (i) evaluation of contractual arrangements and past scheduling practices; and/or (ii) agreement among affected parties. Once the Transmission Provider has determined that a subzone meets the criteria as defined in this Section, it will be adopted as such.

[17] October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

[18] As indicated later in this order, this language must be corrected.

III. Notice of Filing and Responsive Pleadings

11. Notice of Midwest ISO's filing was published in the *Federal Register*,[19] with protests and interventions due on or before December 4, 2007. Timely motions to intervene were filed by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation), Duke Energy Corporation (Duke), and Exelon Corporation (Exelon). Timely motions to intervene and protests were filed by Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), Midwest TDUs,[20] Ameren Services Company (Ameren), and Consumers Energy Company (Consumers Energy). American Municipal Power – Ohio, Inc. (AMP-Ohio) filed a motion for leave to intervene out of time on December 6, 2007. On December 19, 2007, Midwest ISO filed an answer to the protests. On January 3, 2008, Ameren filed an answer to Midwest ISO's answer.

A. Protests

12. Ameren expresses concern that Midwest ISO's proposal will result in a definition of ARR Zones that will reduce the Stage 1A ARRs (*i.e.*, LTTRs) available to LSEs from their historical resources used to serve load under long-term supply arrangements.

13. Ameren argues that the fundamental flaw with the proposal is that ARR Zones are defined in a way that would allow certain LSEs to obtain ARRs from RSPs that the LSEs have not historically used, to the detriment of the LSEs who have historically used those resources under long-term supply arrangements. Ameren believes that the proposed change to section 42 can have the effect of reducing the ARRs available for certain LSEs from the RSPs that are their historical resources, which would also reduce the LSE's ability to obtain FTRs

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[19] 72 Fed. Reg. 65,718 (2007).

[20] Midwest TDUs consist 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, and Wisconsin Public Power Inc.

needed to hedge against day-ahead congestion when it utilizes those RSPs.[21] According to Ameren, the proposed language is also inconsistent with LTTR guideline (7) [22] because without these ARRs, LSEs will be unable to self-schedule them and would be forced to obtain the FTRs needed to hedge the day-ahead congestion costs through the auction process. Ameren further believes that such a reduction in ARRs is inconsistent with LTTR guideline (4)'s requirement that LTTRs be for sufficient lengths and/or include sufficient renewal rights in order for LSEs to satisfy their need to hedge long-term supply arrangements made to meet a load obligation and FPA section 217(b)(4).[23]

14. Ameren also argues that Midwest ISO's proposed tariff language is inconsistent not only with the process that many stakeholders voted to approve through the Market Subcommittee of Midwest ISO's Advisory Committee, but also guideline (4) and FPA section 217(b)(4) by focusing only on the past and ignoring the future.[24] According to Ameren, this language forces multiple LSEs to be within a single ARR Zone and could interfere with the ability of each of those LSEs to hedge made or *planned* long-term power supply arrangements. In an example, Ameren asserts that it is possible that in the future an LSE in the ARR Zone (LSE 1) will construct a new plant to supply its load while another LSE (LSE 2) will obtain its long-term supply from a different plant, possibly within a different state. Ameren states that Midwest ISO's process will result in LSE 1 receiving ARRs from the RSP that LSE 2 acquired and LSE 2 will receive ARRs from the RSP that LSE 1 built. Ameren states that this will result in both LSEs not

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[21] Ameren Protest at 9. Ameren refers to the following proposed language in section 42:

> Requests to establish two or more ARR Zones that share identical or nearly identical EPNode definitions will not be permitted unless such definition is clearly supported by the effective transmission service agreements and any supporting documentation.
>
> If the Transmission Provider determines that the establishment of a Category 2 ARR Zone will preclude or limit a Market Participant(s) that otherwise qualifies to request or receive LTTRs, the request will be denied.

[22] *See* 18 C.F.R. § 42.1(d)(7) (2007) ("The initial allocation of the long-term firm transmission rights shall not require recipients to participate in an auction.")

[23] *See* 18 C.F.R. § 42.1(d)(4) (2007).

[24] Ameren Protest at 11. *See supra* note 3.

obtaining ARRs (and FTRs through self-scheduling) that are sufficient to meet their need to hedge planned long-term power supply arrangements. Thus, Ameren maintains that Midwest ISO should allow an LSE to be its own ARR zone even if the Elemental Pricing Node (EPNode) definition is identical or nearly identical.

15. Regarding section 43.2.4 of the TEMT, Ameren asserts that LSEs with long-term supply arrangements should be given a preference over LSEs with short-term supply arrangements in the allocation of ARRs when there are insufficient ARRs.[25] Ameren states that this language is consistent with guideline (5) and the Commission's statements in Order No. 681-A.[26] However, Ameren is concerned that the TEMT does not provide any clear guidance as to how ARRs are to be allocated in such situations.

16. Ameren recommends to the Commission a two-step approach to allocate Stage 1A ARRs to address what Ameren describes as an improper dilution of ARRs. In step one of Ameren's recommendation, ARR Zones are defined to grant LTTRs from the RSPs in the BRSS to LSEs with long-term supply contracts first.[27] In step two, the remaining LSEs that utilized short-term supply contracts should be able to obtain LTTRs from any unused portion of the RSPs in the BRSS subject to passing a simultaneous feasibility test. According to Ameren, LSEs that have short-term supply contracts would be put in separate ARR Zone(s) and be limited to the remaining unused portion of the appropriate RSPs in the BRSS located in the geographic area that corresponds to the ARR Zone where the LSE with short-term supply has load connected. Ameren submits that this approach would result in all LSEs being allocated LTTRs where feasible. When there is a scarcity of LTTRs, Ameren states that those LSEs that had long-term supply would be able to meet their reasonable needs to procure ARRs which could be converted into FTRs to hedge day-ahead congestion from their resources before LTTRs are granted to LSEs having short-term supply arrangements. Ameren

[25] Ameren Protest at 12. Specifically, Ameren refers to the following proposed language in section 43.2.4: "[m]arket Participants representing LSEs with service obligations shall be entitled to participate in Stage 1A, provided, that, the Transmission Provider may give priority to LSEs with long-term power supply arrangements in Stage 1A when the Transmission Provider needs to limit the amount of existing transmission capacity available for Stage 1A to a level that is unable to support the reasonable needs of all LSEs."

[26] Order No. 681-A, 117 FERC ¶ 61,201 at P 65.

[27] For these purposes, long-term supply contracts have a term of longer than one year and short-term supply contracts have a term of one year or less. *See* November 13, 2007 filing at 4, note 18.

explains that this is consistent with the Commission's approval of the allocation methods currently used by some transmission organizations for the initial allocation of short-term firm transmission rights that take account of an LSE's current or historical loads and power supply arrangements.[28]

17. Ameren asserts that Midwest ISO should be required to clarify in section 42 that nothing in the proposed language is intended to preclude a market participant that has load zones segregated by state boundaries from having RSPs that support that load located in multiple states. Ameren also states that if more time is needed to clarify the methods for ARR allocation and ARR Zone definition, the Commission should delay the initial ARR allocation. Ameren also expresses concern that ARRs are being allocated and ARR Zones defined under Business Practices Manuals and ARR Registration guidelines that are evolving and still being developed, meaning Midwest ISO lacks any fixed rules for its allocation process or rules that have been submitted for Commission review and approval.

18. Consumers Energy argues that Midwest ISO is attempting to limit certain market participants' ability to establish a separate ARR Zone. Consumers Energy contends that Midwest ISO does not identify what the problem is, or the other solutions it has considered to fix the alleged problem. Consumers Energy urges the Commission to reject Midwest ISO's quick fix and require Midwest ISO to find a solution to the problem just as it ultimately did with Jointly Owned Units (JOUs).[29]

19. Consumers Energy also asserts that the current tariff properly allocates the cost of counter-flow ARRs needed to make LTTRs available to the market participant in the ARR Zone who controls the resource and did not nominate them. Consumers Energy asserts that this approach is just and reasonable since the costs

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[28] *See PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,073, at P 7, n.9 (2007) (*PJM*).

[29] According to Consumers Energy, in a similar situation, Midwest ISO experienced difficulty with its tariff language that provided JOU owners with the ability to dynamically schedule the JOU. Initially, Midwest ISO proposed to delete the tariff language without providing an alternative for market participants. *See Michigan Public Power Agency v. Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,083 (2007); and First Ancillary Service Market Filing, Docket No. ER07-550-000 (February 15, 2007). Ultimately, Midwest ISO developed alternatives to merely deleting the tariff language. *See* Compliance Filing of Midwest Independent Transmission System Operator, Inc., Docket No. EL06-80-002 (filed September 11, 2006); and Second Ancillary Service Market Filing, Docket No. ER07-1372-000 (September 14, 2007).

go back to the market participant which traditionally controlled the resource. With the proposed limitation on a market participant's ability to establish an ARR Zone, Consumers Energy argues that a market participant will be unnecessarily exposed to costs for counter-flow ARRs for resources that it does not control or have offsetting transactions in the market to cover the costs.

20. Consumers Energy further maintains that Midwest ISO fails to demonstrate that any LSEs with long-term commitments are being denied ARRs. Even if Midwest ISO could establish that a problem exists, Consumers Energy asserts that Midwest ISO has failed to present a just and reasonable solution to the problem in that when two market participants are in the same ARR Zone, market participants no longer have a clean hedge and may be exposed for counter-flow ARRs on resources they do not control.

21. Hoosier also disagrees with Midwest ISO's proposal to prohibit LSEs from requesting "slice of system" definitions for Category 2 ARR Zones. Hoosier asserts that Midwest ISO has not provided an explanation as to how providing "slice of system" definitions to LSEs that have requested such definitions, such as Hoosier, would in fact adversely affect other LSEs.

22. Hoosier asserts that the process of obtaining historical load on a nodal basis, as required by Midwest ISO's proposal, would be extremely time-consuming and labor intensive, assuming that it could in fact be done at all, and is simply unnecessary. Hoosier believes that the same overall result could be obtained by permitting Hoosier and the neighboring utilities with which it is interconnected to identify the EPNodes within each control area that each entity serves and to uniformly spread each entity's loads across those EPNodes. Hoosier understands that Midwest ISO is concerned that, under certain circumstances, this methodology might adversely affect competitive retailers. Hoosier notes, however, that Indiana, where all of Hoosier's members' loads are located, does not provide for retail competition. Therefore, Hoosier asserts that its method would help support long-term power supplies, which is the purpose of providing LTTRs,[30] and comply with LTTR guideline (1).[31] Hoosier also states that Midwest ISO's proposal represents a significant change from the method used in previous annual FTR allocations.

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

[31] *See* 18 C.F.R. § 42.1(d)(1) (2007) ("The long-term firm transmission right should specify a source (injection node or nodes) and sink (withdrawal node or nodes), and a quantity (MW).")

23. Midwest TDUs assert that the proposed language in section 42 of the TEMT appears to give Midwest ISO broad discretion to deny Category 2 ARR Zone designation to any and all LSEs that seek to have their loads designated as a separate ARR Zone.[32] Based on its understanding of a Midwest ISO stakeholder conference call held two days after Midwest ISO submitted its November 13 filing, Midwest TDUs assert that the purpose of this proposed new language is much narrower, *i.e.*, to limit the creation of separate, overlapping Category 2 ARR Zones associated with multiple competitive retail suppliers that serve within the same delivery area. Midwest TDUs assert that Midwest ISO should be directed to identify the specific, narrow circumstances in which it is intended to apply, and to explain how Midwest ISO's discretion to deny requests for Category 2 ARR Zones has been tailored to address those particular circumstances and is consistent with Order Nos. 681 and 681-A.

24. Midwest TDUs explain that if a transmission dependent utility's (TDU) request for a separate Category 2 ARR Zone is denied and the TDU is placed in an ARR Zone with its host Transmission Owner, the sources and sinks of the TDU's LTTRs will primarily match the Transmission Owner's sources and sinks, not the TDU's.[33] Midwest TDUs assert that this is often a problem, because the Transmission Owner's resources may be significantly different from the resources actually used by the TDU, especially if (as is often the case) the TDU relies on resources outside the Transmission Owner's transmission system. Moreover, Midwest TDUs state that the LMP at the TDU's load zone may be significantly different from the LMP for the load zone within which it is embedded. Accordingly, Midwest TDUs note that ARRs sinking at the Category 1 ARR Zone may not provide a satisfactory hedge for the congestion charges that the TDU will actually face in serving its load.

B. Answers

25. Midwest ISO disagrees with Ameren's arguments, which Midwest ISO claims are premised on a belief that an LSE's reasonable needs for LTTRs are determined by the full capacity of a particular RSP or the full extent of the Load served thereby. Instead, assuming such Load represents peak usage, Midwest ISO states that guideline (5) allows an LSE's reasonable need for LTTRs to be limited

[32] *See supra* note 21.

[33] Section 43 of the TEMT provides that for each transmission customer in an ARR Zone, allocated ARRs will be limited to a *pro rata* share ("based on [the customer's] proportion of peak Load in the ARR Zone") of the ARRs available from each Reserved Source Point qualified for the ARR Zone.

to half of peak Load and,[34] accordingly, under Midwest ISO's tariff, an LSE is only entitled to LTTRs for half of its peak load.[35] As such, Midwest ISO asserts that an LSE's non-receipt of LTTRs for the other half does not involve any violation of guideline (7) (which precludes a requirement that LSEs obtain their LTTRs via auction), because this guideline applies only to the portion of peak Load for which an LSE is entitled to LTTRs. Furthermore, Midwest ISO maintains that guideline (4)'s reference to the long-term hedging needs of LSEs is likewise subject to guideline (5)'s determination that the reasonable level of such needs may be defined as 50 percent of peak load. Midwest ISO affirms that guideline (4)'s mention of "made or planned" long-term supply arrangements pertains to the length of LTTRs, which the Commission has found to be sufficient in the TEMT,[36] whereas the quantity of LTTRs [in terms of capacity] more properly pertains to guideline (5), which allows an LSE's "reasonable needs" for LTTRs to be pegged at 50 percent of peak Load.

26. Midwest ISO states that its focus on historical usage is mandated by the Commission directives concerning LTTRs.[37] Midwest ISO also notes that the October 19 Compliance Order approved the reliance on historical Load locations, and was not supportive of market participants' departures from historical delivery points.[38] With regard to Ameren's example involving LSE 1 and LSE 2, Midwest ISO asserts that the LTTR system in its currently effective tariff allocates entitlements based on historical uses of the transmission system, not the ownership of Resources or their pairing with particular Loads. Midwest ISO notes that the existing tariff's LTTR allocation framework is already in place, and its November 13 filing clarifies its implementation. Moreover, Midwest ISO argues that Ameren's example, in which a new long-term supply Resource constructed by LSE 1 uses the Transmission System to supply LSE 1's Load, has no immediate relevance to ARR Entitlements based on the historical Reference Year for the initial ARR allocation. Nonetheless, Midwest ISO states that LSE 1 would be entitled to LTTRs only for transmission usage for 50 percent of peak Load, and

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[34] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 322; May 17 Order, 119 FERC ¶ 61,143 at P 89.

[35] Section 43.2.4.a of the TEMT.

[36] *See* May 17 Order, 119 FERC ¶ 61,143 at P 84.

[37] *Id.* P 205 and P 212.

[38] *See* October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

LSE 1 is not entitled to claim for itself any residual value of the Transmission System.[39]

27. Midwest ISO asserts that it would be inappropriate to adopt Ameren's suggested two-step process because it prefers LSEs with long-term supply arrangements, whereas the Commission has declined to require LSEs to have such long-term arrangements before they could have priority access to LTTRs under guideline (5).[40] Midwest ISO also notes that the PJM case cited by Ameren did not involve a two-step approach that would process long-term before short-term arrangements.[41] Instead, PJM proposed therein a full-funding procedure for "both short-term and long-term" ARRs and FTRs.[42]

28. Midwest ISO agrees with Ameren that its proposal was not meant to prevent an LSE from having RSPs in two or more states to support Load located in Load Zones segregated by state boundaries. Midwest ISO asserts, however, that the proposed tariff language is sufficiently clear on this point, and therefore need not be modified.

29. Midwest ISO maintains that it is neither necessary nor appropriate to delay the initial ARR allocation. To the extent that some implementation issues may have to be clarified through tariff revisions, Midwest ISO states that it can properly address such clarifications through expedited filings with the Commission.

30. In response to Consumers Energy's arguments that Midwest ISO did not identify the alleged problems, or the other solutions considered, regarding the creation of Category 2 ARR Zones, Midwest ISO reiterates that some market participants sought to define Category 2 ARR Zones in a manner that, in effect, could eliminate or reduce the LTTR access of LSEs that do not have long-term supply arrangements. Midwest ISO explains that its proposal would help prevent potential violations of guideline (5), which also aims to protect the priority LTTR

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[39] Midwest ISO asserts that if LSE 1 also funds transmission upgrades that increase the capacity of the Transmission System, it would have an independent basis to claim additional ARR Entitlements.

[40] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 62 & 318-25; Order No. 681-A, 117 FERC ¶ 61,201 at P 65-72; May 17 Order, 119 FERC ¶ 61,143 at P 88.

[41] *See supra* note 28.

[42] *See PJM*, 121 FERC ¶ 61,073 at P 7.

access of LSEs that use short-term supply arrangements. According to Midwest ISO, the November 13, 2007 filing addresses the LTTR needs of LSEs with short-term arrangements.

31. In answer to Consumer's suggestion that the proposed limitations on creation of ARR Zones would expose market participants to costs for counter-flow ARRs for resources they do not control, Midwest ISO argues that its LTTR process produces an equitable distribution of transmission rights (of both positive and negative value) among LSEs serving load within the same ARR Zone. According to Midwest ISO, other methods are less satisfactory because they might enable certain LSEs to "cherry pick" transmission rights based on expected value – leaving other LSEs serving Load within the ARR Zone with entitlements to paths of significantly lower or even negative value. Midwest ISO believes that Consumers Energy and Ameren's examples fail to acknowledge that, as explained above, the Commission has approved Midwest ISO's proposal to define an LSE's level of reasonable need for LTTRs as 50 percent of peak Load. Midwest ISO reiterates that the Commission only requires that LSEs be given an opportunity to obtain a reasonable hedge up to half of peak Load, not a perfectly "clean" hedge for 100 percent of peak Load.

32. In response to Hoosier's arguments, Midwest ISO states that the October 19 Compliance Order already confirms Midwest ISO's authority to ensure that ARR Zones are defined based on historical usage, rather than on any other basis (including slice-of-system approaches).[43] Midwest ISO contends that the primacy of historical usage in the definition of LTTR entitlements, as determined within the Reference Year, is a core feature of the tariff provisions already approved by the May 17 Order, as well as by the October 19 Rehearing and Compliance Orders. Accordingly, Midwest ISO maintains that the currently effective tariff properly precludes slice-of-system ARR Zone definitions that are inconsistent with historical usage, as evidenced by applicable Transmission Service and supply agreements. Of course, where such agreements do support proposed slice-of-system definitions, Midwest ISO states that it can properly approve them, and the Midwest ISO affirms it has done so in some cases.

33. Midwest ISO clarifies that ARR Zone definitions that uniformly spread Loads across EPNodes may be permissible if supported by Transmission Service agreements, and if the relevant LSE can be reasonably described as serving a portion of the Load at each EPNode. Midwest ISO notes that while the specification of Load on a nodal basis takes time and effort as Hoosier states, it is definitely achievable, and market participants have been able to complete this task with Midwest ISO's assistance.

[43] *See* October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

34. Midwest ISO further asserts that the tariff's requirement that the definition of ARR Zones be supported by Transmission Service agreements applies to all Loads in all states. Midwest ISO explains that this requirement helps ensure that each LSE's claim of transmission entitlements is based on historical usage, and does not improperly infringe on the entitlements of other LSEs, including those that rely on short-term supply arrangements.

35. Midwest ISO argues that none of the LTTR guidelines, including guideline (1), identifies the requirements that a transmission organization may impose with regard to LTTRs. Midwest ISO states that Order No. 681 indicates that the guidelines are basic frameworks that each transmission organization has the flexibility to flesh out and adapt to fit its own market design.[44] According to Midwest ISO, the restrictions on slice-of-system approaches are consistent with the Commission's indication in guideline (1), that an LSE should not be allowed to define its LTTR entitlement in a manner that prejudices the rights of other LSEs. Midwest ISO asserts that it can appropriately use ARR Zone criteria that would help prevent any LSE from defining ARR Zones in a way that harms its fellow LSE's LTTR rights.

36. In response to Hoosier's assertion that Midwest ISO's proposal departs from the Commission's expectation that the LTTR process "will not be substantially different" from current FTR procedures, Midwest ISO answers that its FTR and ARR process are based upon the Commission's pertinent orders. While the Midwest ISO's FTR allocation takes into account the expected future uses of the Transmission System, the Commission's LTTR directives preserve the historical uses of the Transmission System by requiring that LTTRs be allocated based on such past usage.

37. In response to Midwest TDUs, Midwest ISO states that its discretion is not unbounded, as the tariff lays down the general criteria for defining ARR Zones. Midwest ISO maintains that the proposed tariff revisions seek to clarify such criteria. In contrast, Midwest ISO states that there is a greater risk of inequitable outcomes if LSEs were allowed to unilaterally define ARR Zones.[45]

38. Midwest ISO states that the two general purposes of its proposal are: (1) to reinforce the requirement that ARR Zone definitions be supported by and consistent with firm Transmission Service agreements; and (2) to clarify that Midwest ISO would not permit ARR Zones with no qualifying RSPs. Midwest ISO argues that these purposes should not be unduly narrowed as Midwest TDUs

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[44] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 100-02.

[45] October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

have requested, lest the Midwest ISO lose the flexibility needed to handle the potentially wide variety of circumstances that could arise in the implementation of the LTTR requirements.

39. Lastly, in response to Midwest TDUs, Midwest ISO clarifies that if a TDU's Transmission Service Agreement specifies delivery locations different from those of the host Transmission Owner, and the TDU has its own RSPs, then the TDU can be allowed to define its Load within the separate ARR Zone that includes such delivery locations. However, if the agreements and RSPs otherwise warrant, Midwest ISO states that the TDU and its host Transmission Owner would typically and appropriately need to be placed in the same ARR Zone.

40. In its answer, Ameren states that it understands that Midwest ISO is only obliged to provide Stage 1A ARRs for up to 50 percent of an LSE's peak Load. The main point, according to Ameren, is that placing another LSE (LSE 2) in an ARR Zone in which LSE 2 did not have any historical resources can diminish the ARRs that LSE 1 would receive. Ameren states that this is true regardless of whether the ARRs that LSE 1 would have otherwise received are based on 100 percent of its peak load or 50 percent of its peak load. Thus, Ameren claims, the reduction in ARRs will also occur in the future for any LSE that shares an ARR Zone with other LSEs and adds an RSP to their BRSS due to the addition of a new base-load plant.

41. Ameren believes that the Commission should require Midwest ISO to include in the TEMT an explanation of how it will give priority to LSEs with long-term supply arrangements when Stage 1A ARRs cannot meet the needs of both LSEs with long-term supply arrangements and LSEs with short-term supply arrangements. Ameren insists that this is too important to leave to a business practices manual. According to Ameren, LSEs need to understand how Midwest ISO will implement this priority allocation at least two weeks prior to requiring LSEs to nominate Stage 1A ARRs. Ameren asserts that this will permit LSEs to develop an appropriate strategy for nominating ARRs, considering that the results of their strategy may impact them for at least ten years.

IV. Discussion

A. Procedural Matters

42. 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. We will grant AMP-Ohio's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

43. 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 an answer to an answer unless otherwise ordered by the decisional authority. We will accept Midwest ISO's and Ameren's answers because they have provided information that assisted us in our decision-making process.

B. <u>Commission Determination</u>

44. We find that Midwest ISO's proposed tariff revisions are just and reasonable and consistent with the requirements of LTTR guideline (5), as discussed below. We agree that the proposed tariff revisions should preclude nominations in which one LSE would define its entitlements in a manner that prejudices the rights of other LSEs. In doing so, we disagree with protesters' arguments that would 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, as this would: (1) create risk for other market participants; (2) is contrary to the requirements of Order No. 681; (3) and undercuts the historical basis for ARRs.[46] We also note that the proposed tariff language allows the Midwest ISO to give priority to LSEs with long-term power supply arrangements in Stage 1A should the Transmission Provider need to limit the amount of existing transmission capacity available for Stage 1A to a level that is []able to support the reasonable needs of all LSEs.[47] Accordingly, we will accept Midwest ISO's proposed tariff revisions for filing to be effective November 14, 2007, as requested.[48]

45. We disagree with arguments made by various parties that Midwest ISO's proposed tariff revisions are inconsistent with guidelines (4) and (7) and are inadequate to completely hedge an LSE's reasonable needs for LTTRs. Midwest ISO's proposed language provides flexibility to the transmission provider to prioritize LSE's with long-term arrangements over those with short-term arrangements should the transmission provider need to limit the transmission

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[46] *Id.*

[47] We note that the proposed tariff language incorrectly states: "to a level that is unable to support the reasonable needs of all LSEs." We will require Midwest ISO to submit a compliance filing, within 30 days of the date of this order, that corrects this language to read: "to a level that is able to support the reasonable needs of all LSEs."

[48] We find that waiver of the Commission 60-day notice requirements is warranted in order to provide stability to the expectations of LSEs and other market participants during the ARR registration process.

capacity at the Stage 1A level to that necessary to support the reasonable needs of all LSEs. We expect that Midwest ISO's implementation of its proposed tariff language will address these concerns. Thus, we will not require Midwest ISO to include in its tariff an explanation of how it will give priority to LSEs with long-term supply arrangements over LSEs with short-term supply arrangements when it needs to limit the transmission capacity at the Stage 1A level to that necessary to support the reasonable needs of all LSEs. Similar to the registration procedures, we find that these procedures are best described in the Business Practices Manual as they deal with operating protocol.

46. We disagree with Ameren's argument that focusing on past usage forces multiple LSEs to be in a single ARR Zone, interfering with their ability to hedge made or planned long-term supply arrangements. We note that Ameren previously requested Midwest ISO to ensure that all historical uses are registered as entitlements during the first year.[49] In the October 19 Compliance Order, we supported a reliance on historical Load locations in the definition of ARR zones when we stated that the "shifting of load locations undercuts the historical basis for ARRs."[50] The proposed tariff language also provides Midwest ISO flexibility to approve requests for two or more ARR Zones that share identical or nearly identical EPNode definitions when such definition "is clearly supported by the effective transmission service agreements and any supporting documentation."

47. We decline to adopt Ameren's two-step approach for prioritizing allocation of Stage 1A ARRs when transmission capacity is scarce. We find that Ameren's proposal would always favor LSEs with long-term arrangements (even when the transmission provider has not identified that a problem exists), whereas guideline (5) does not require LSEs to have long-term arrangements before they can have priority access to LTTRs.[51] We also find that the PJM case cited by Ameren is not relevant to this proceeding as it did not require processing ARRs for LSEs with long-term arrangements over those with short-term arrangements. Instead, the PJM case provides for a full-funding procedure for both short-term and long-term ARRS and FTRs.[52]

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[49] *See* May 17 Order, 119 FERC ¶ 61,143 at P 205 and 212.

[50] October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

[51] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 62; Order No. 681-A, 117 FERC ¶ 61,201 at P 65-72; May 17 Order, 119 FERC ¶ 61,143 at P 88.

[52] *See PJM*, 121 FERC ¶ 61,073 at P 7.

48. We disagree with Consumer's argument and find that the proposed limitations on the creation of ARR Zones will not unnecessarily expose market participants to costs for counter-flow ARRs for resources they do not control or for which they do not have offsetting transactions to cover the costs.

49. We disagree with Hoosier that the process of obtaining historical load on a nodal basis is unnecessary or unattainable, and therefore, we find that no further clarification is needed. We further note that Midwest ISO has assisted Hoosier as well as other market participants in this regard. Thus, we believe that this argument is without basis.

50. We further agree that the requirement that the definition of ARR Zones be supported by Transmission Service agreements should apply to all Loads in all states. This requirement ensures that each LSE's claim of transmission entitlements is based on historical usage, and does not improperly infringe on the entitlements of other LSEs, including those that rely on short-term supply arrangements. We disagree with Hoosier's argument and will not limit this application to the retail choice context – this principle is articulated in our previous orders and will be applied pursuant to the tariff.[53] As stated previously, Midwest ISO will, as required, assist market participants in implementation, and thus we do not believe that it is burdensome for Hoosier to be subject to such criteria even if its members' Loads are located in a state that does not provide for retail competition. Furthermore, we find that Midwest ISO's proposal is already consistent with guideline (1), so there is no need to adopt a new method.

51. We disagree with Midwest TDUs that the proposal gives too much discretion to deny ARR Zone designations to Midwest ISO. We previously determined that there is a greater risk of inequitable outcomes if LSEs were allowed to unilaterally define ARR Zones.[54] We also note that the tariff provides criteria for defining ARR Zones, preventing Midwest ISO from having unlimited discretion. There is no need to further narrow Midwest ISO's discretion. Midwest ISO needs to have flexibility in order to handle the various circumstances that could arise in the implementation of the LTTR requirements. In addition, the proposed language provides that if the agreements and RSPs otherwise warrant, the TDU and its host Transmission Owner may be placed in the same ARR Zone. We further note that Midwest ISO clarified in its answer that if a TDU's Transmission Service Agreement specifies delivery locations different from those of the host Transmission Owner, and the TDU has its own RSPs, then the TDU

[53] *See* October 19 Compliance Order, 121 FERC ¶ 61,062 at P 18.

[54] *Id.*

can be allowed to define its Load within the separate ARR Zone that includes such delivery locations.

52. We find that it is unnecessary to clarify the tariff to state that market participants with Load Zones segregated by state boundaries are not precluded from having RSPs in multiple states to support Load in such zones. The tariff language is sufficiently clear on this point.

The Commission orders:

(A) Midwest ISO's proposed amendments are hereby conditionally accepted, effective November 14, 2007, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.