



Transmission Business Line (TBL)

FERC Cases Pertinent to Reservation Priority

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This document is posted for information purposes only to facilitate discussion at the TBL Reservation Priority customer workshop on October 20, 2004. The rulings in these FERC cases are included as examples of the decisions that FERC has made in previous actions.

Included are the following rulings:

- El Paso Electric Company, Docket No. ER03-221-000
Order Rejecting Unexecuted Service Agreements (Issued January 24, 2003)
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- Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc., Docket No. EL03-30-000
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COMM-OPINION-ORDER, 102 FERC ¶61,060, **El Paso Electric Company, Docket No. ER03-221-000**, (January 24, 2003)
El Paso Electric Company, Docket No. ER03-221-000

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[¶61,060]

El Paso Electric Company, Docket No. ER03-221-000

Order Rejecting Unexecuted Service Agreements

(Issued January 24, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. In this order, the Commission rejects three unexecuted transmission service agreements for firm point-to-point transmission service under El Paso Electric Company's (El Paso) Open Access Transmission Tariff (OATT) for service to Arizona Public Service Company (Arizona Public Service) and Public Service Company of New Mexico (PNM). The Commission also directs El Paso to submit service agreements for firm service to Arizona Electric Power Cooperative (AEPCO) and TECO Energy Source, Inc. (TES). This order assures that El Paso's OATT is properly implemented and that transmission service is awarded to the appropriate customers.

Background

2. On October 24, 2002, TES submitted for filing three requests for 100 MW of long-term firm transmission service on the Palo Verde-Kyrene path for the period June 1, 2003 through June 1, 2005. Salt River Project Agricultural Improvement and Power District's (SRP) existing firm service of 101 MW on this same path was to expire on January 1, 2003. In order to roll over this existing service, SRP was required to commit to renew the service by November 1, 2002, and match the term and rate of any competing requests.
3. On November 1, 2002, El Paso rejected TES' three requests for service on the basis that SRP had a right of first refusal for the capacity. Moreover, El Paso informed TES that if SRP did not exercise its right of first refusal, bidding for the capacity would commence starting one second after midnight on November 2, 2002. SRP did not exercise its rollover rights. Shortly after midnight, both Arizona Public Service and TECO submitted bids for the 101 MW of released capacity. Arizona Public Service submitted its bid minutes prior to TES submitting a bid. On November 5, 2002, El Paso accepted Arizona Public Service's bid because it was the first one received after SRP's rollover rights terminated.
4. On March 20, 2002, AEPCO submitted to El Paso a request for 50 MW of transmission service for a six-year term (January 1, 2003-December 31, 2008) along the Palo Verde-Westwing path. El Paso's OASIS indicated the availability of 187 MW of transmission capacity starting January 1, 2003. El Paso rejected AEPCO's request because the 187 MW posted on El Paso's OASIS potentially was subject to rollover rights.
5. On October 15, 2002, El Paso posted an additional 46 MW of Palo Verde-Westwing capacity which resulted from a new line rating. PNM submitted a one year bid less than five minutes after El Paso posted the capacity on its OASIS. El Paso awarded the capacity to PNM.
6. SRP did not exercise its rollover right to 124 MW of Westwing capacity. On November 2, 2002, consistent with El Paso's intent to accept bids for this capacity after midnight, both Arizona Public Service

and AEPCO submitted bids shortly after midnight for the Westwing capacity. El Paso awarded the capacity to Arizona Public Service based on the fact that Arizona Public Service submitted its bid about nine-tenths of a second faster than AEPCO.

7. Both AEPCO and TES informed El Paso that they disputed El Paso's interpretation of the rollover and first-come, first-served provisions in its OATT. Both AEPCO and TES believed they were first-in-line for service based on their initial requests and therefore entitled to service. El Paso agreed to file unexecuted service agreements with Arizona Public Service and PNM and let the Commission resolve the dispute.

Notice of Filing and Interventions

8. Notice of the filing was published in the *Federal Register*, 67 *Fed. Reg.* 72,938 (2002), with comments, protests, or interventions due on or before December 16, 2002. Timely motions to intervene and protests were filed by AEPCO and by TECO EnergySource, Inc. and TECO Power Services Corporation (collectively TES). PNM and Arizona Public Service filed timely motions to intervene and comments in support of El Paso's filing. Additionally, El Paso and Arizona Public Service filed answers to the protests of TES and AEPCO. Arizona Public Service also filed a motion for leave to answer. TES filed a motion for leave to answer and an answer.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures, [18 C.F.R. §385.214 LK:NON: FERC-ALL 18CFR385.214](#) (2002), the timely, unopposed motions to intervene serve to make AEPCO, TECO, PNM, and Arizona Public Service parties to this proceeding.

10. Rule 213 of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.213 LK:NON: FERC-ALL 18CFR385.213](#) (2002), generally prohibits the filing of an answer to a protest or an answer to an answer. Accordingly, we will reject the answers filed by El Paso, TES, and Arizona Public Service.

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El Paso's Filing

11. On November 25, 2002, El Paso submitted for filing two unexecuted firm point-to-point service agreements with Arizona Public Service for 101 MW of firm transmission service on the Palo Verde-Kyrene path and 124 MW of service on the Palo Verde-Westwing path. In addition, El Paso submitted for filing an unexecuted firm point-to-point service agreement with PNM for 46 MW on the Palo Verde-Westwing path. El Paso requests that the service agreements be accepted for filing effective January 1, 2003.

12. El Paso claims that its decision to grant Arizona Public Service's requests after SRP failed to exercise its rollover rights, and its decision to award the 46 MW of Palo Verde-Westwing capacity to PNM, were based on its interpretation of the OATT. El Paso argues that a transmission provider is not required by the OATT to hold in abeyance any transmission request that it cannot grant at the time of the request based on the possibility that it might be able to grant it in the future. El Paso states that its interpretation of the OATT is correct whether capacity to satisfy the request becomes available due to an incumbent customer's decision not to exercise its rollover rights, there is a premature termination of existing service on the path, the rated capability of the path increases, or another reason. El Paso claims that in all cases, the transmission provider does not have available capacity to provide the service at the time of the request.

13. In support of its decision rejecting AEPCO's and TECO's initial service requests, El Paso argues that Commission precedent indicates that it is optional whether to accept requests for transmission service that

are filed prior to the expiration or exercise of rollover rights. El Paso states that in *Commonwealth Edison Company*, [96 FERC ¶61,158, at p. 61,690 LK:NON: FERC-ALL 96FERCP61158PAGE61690](#) (2001) (*Commonwealth Edison*), the Commission stated that Commonwealth Edison “may post the associated capacity on its OASIS and accept competing reservations until the time that the existing customer chooses to roll over its contract by exercising its right of first refusal.” El Paso contends that by using the word “may” the Commission did not require that Commonwealth Edison accept a reservation prior to the expiration or exercise of rollover rights by the existing customer.

14. El Paso argues that its interpretation of the OATT is reasonable.¹ El Paso states that TECO's approach would require transmission providers to maintain all transmission requests and then look backward at all previously denied requests whenever capacity later becomes available due to an existing customer's failure to exercise rollover rights. El Paso claims that TECO has not suggested any reasonable time period for which transmission providers must continue to maintain unmet requests, nor does the OATT specify any. El Paso states that under TECO's approach, no decision on a request for transmission service would become final until the applicable rollover rights are exercised. Additionally, El Paso argues that TECO's interpretation suggests that a transmission provider might be required to re-conduct system studies of previously unmet transmission service requests whenever system changes occur, simply because the unmet requests remain pending in the queue in case future rollover rights are not exercised.

TES' and AEPCO's Protests

15. Both AEPCO and TES argue that El Paso violated the terms of its OATT in denying their separate requests for transmission service. As more fully set forth herein, AEPCO and/or TES argue that El Paso: (1) improperly rejected their competing requests for transmission capacity subject to a rollover right; (2) improperly created and self-implemented an open season to award available transmission capacity; (3) improperly ignored the first-come, first-served provision of the El Paso OATT; (4) failed to implement all OATT provisions and procedures for addressing requests for service; and (5) incorrectly interpreted the Commission's order in *Commonwealth Edison*.

16. AEPCO and TES contend that Section 2.2 (Reservation Priority For Existing Firm Service Customers) of El Paso's OATT does not limit when a competing request may be submitted for capacity subject to rollover rights. AEPCO states that the existing customer's ability to wait until 60 days prior to the end of its contract before making its rollover election has no bearing on when other parties may submit a service request. TES asserts that neither Commission policy nor El Paso's OATT permit El Paso to reject a request for transmission service on the grounds that the existing firm customer may exercise its rollover right and match any competing offer for service. As a result, AEPCO and TES note that under El Paso's interpretation of its OATT, an existing customer would never have to match a competing offer because El Paso would have already rejected any competing request for the subject capacity.

17. Both AEPCO and TES argue that El Paso's OATT does not contain provisions for implementing an open season to allocate available transmission capacity resulting from an existing customer's election to terminate service rather than to exercise its rollover right. Accordingly, they contend that El Paso violated Section 2.2 of its OATT by creating an *ad hoc* open season to reserve capacity. Moreover, TES states that the Commission should not permit El Paso to self- implement an open season.

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18. AEPCO and TES also argue that El Paso violated OATT provision Section 13.2 (Reservation Priority For Existing Firm Service Customers) which provides that long-term firm service be made available on a first-come, first-served basis. They note that Section 13.2 does not specify any starting point or limitation on when requests may first be submitted. Accordingly, they argue El Paso should have not rejected their initial service requests. Therefore, AEPCO and TES argue that their requests were first-in-time in El Paso's

queue and El Paso should have granted their initial requests for transmission service.

19. TES further contends that El Paso failed to comply with numerous other application procedures in its OATT addressing requests for transmission service. Specifically, TES identifies the following sections: (1) Section 15.2 (Determination of Available Transmission Capability); (2) Section 19.1 (Notice of Need for System Impact Study); (3) Section 19.7 (Partial Interim Service); and (4) Section 13.5 (Transmission Customer Obligation for Facility Additions or Redispatch Costs). TES argues that if El Paso had properly followed its tariff, TES's October 24, 2002 request would have remained pending when SRP decided not to rollover its service on November 1, 2002. TES argues that these provisions are not optional, and that TES, rather than El Paso, must make a business decision on the economics of paying for facility studies, facility additions and redispatch costs.

20. Finally, AEPCO argues that El Paso's interpretation of *Commonwealth Edison* is contrived. AEPCO and TES argue that the language in *Commonwealth Edison* actually supports the position that rollover capacity should be posted on OASIS and competing reservations accepted up until the time that the incumbent customer decides to rollover its capacity.

Discussion

21. The Commission finds that El Paso did not properly implement its OATT provisions in regard to AEPCO's and TES's separate requests for long- term firm transmission service. Accordingly, we reject for filing the three unexecuted service agreements El Paso submitted for Arizona Public Service and PNM. We also direct El Paso to submit, within 15 days of the date of this order, service agreements for transmission service to AEPCO and TES.²

22. El Paso posted on its OASIS capacity currently held by SRP that was available commencing January 1, 2003, if SRP did not exercise its rollover rights. Consistent with the application procedures of El Paso's OATT, TES submitted a competing request for SRP's Palo Verde-Kyrene capacity and AEPCO submitted a competing request for SRP's Palo Verde-Westwing capacity. El Paso rejected both requests on the basis that the only available capacity at that time was reserved for SRP's rollover rights. We find that El Paso's rejection of AEPCO's and TES's competing requests was not consistent with the provisions of Section 2.2 of El Paso's OATT governing competing requests for transmission service subject to rollover rights. Pursuant to Section 2.2, an existing firm customer may roll over its existing service by matching competing requests for service.³ The Commission has determined that customers with rollover rights must exercise those rights at least 60 days prior to expiration of its contract.⁴ Accordingly, a customer with rollover rights must have notice of what competing offers are outstanding prior to the 60th day in order to make an economic decision on whether to rollover the contract. In addition, rejecting until an existing long-term customer has decided not to exercise roll over rights makes it impossible to ever have a competing request.

23. El Paso should have treated AEPCO's and TES' applications as pending, competing requests for service up until the time SRP was required to make a decision regarding its rollover rights. We agree with AEPCO and TES that El Paso's OATT neither establishes a time frame for submitting a competing request nor limits the time period within which a competing request may be submitted. Furthermore, once the capacity was posted on its OASIS, El Paso should have reasonably expected that potential customers would submit competing requests. When SRP declined to roll over its existing service, Section 13.2 of El Paso's OATT required El Paso to award the capacity on a first-come, first-served basis to the potential new customers in El Paso's queue. Based on the facts presented in this proceeding, AEPCO and TES were first-in line for service and should have received the released capacity.

24. Further, we do not agree with El Paso's interpretation of *Commonwealth Edison* that it is optional for a transmission provider to accept early transmission capacity requests that are filed prior to the expiration or exercise or rollover rights where, as here, a transmission provider posts on its OASIS transmission capacity that is subject to rollover.⁵ Moreover, El Paso's OATT does not contain a provision which grants El Paso this option. El Paso's OATT clearly sets forth the

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procedures it is to follow when addressing requests for transmission service. The confusion in this proceeding results from El Paso's failure to follow its existing OATT provisions and its attempts to implement new provisions not set forth in its OATT.⁶

The Commission orders:

(1) The Commission rejects the unexecuted transmission service agreements filed by El Paso Electric Company, as discussed in the body of this order.

(2) El Paso is directed within fifteen (15) days of this order to submit service agreements to AEPCO and TES for transmission service, as discussed in the body of this order.

¹ El Paso states in its transmittal letter that it will promptly submit a service agreement to TES if the Commission agrees with TES' interpretation of El Paso's OATT.

² This is consistent with El Paso's commitment to promptly submit a service agreement to TES if the Commission agrees with TES' interpretation of El Paso's OATT.

³ Section 2.2 provides in relevant part: "If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term of at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service."

⁴ *Entergy Power Marketing Corporation v. Southwest Power Pool, Inc. et al.*, [91 FERC ¶61,276 LK:NON:FERC-ALL 91FERCP61276](#) (2000).

⁵ In *Commonwealth Edison*, the Commission explained that "the potential that a transmission customer will [exercise its right to roll over its service] does not require Com Ed to 'remove[] the associated capacity from its OASIS forever, restoring it only if the customer declines to exercise its option at some future period.' ComEd may post the associated capacity on its OASIS and accept competing reservations until the time that the existing customer chooses to roll over its contract by exercising its right of first refusal." [96 FERC at p. 61,690 LK:NON:FERC-ALL 96FERCPAGE61690](#) [citation omitted]. Where, as here, a transmission provider posts on its OASIS transmission capacity that is subject to rollover, the transmission provider is expected to consider whether any requests for such transmission capacity constitute competing requests for purposes of Section 2.2 of its OATT.

⁶ El Paso may submit to the Commission a Section 205 filing to codify in its OATT any modifications which it believes are consistent with or superior the *pro forma* tariff.

COMM-OPINION-ORDER, 103 FERC ¶61,289, **El Paso Electric Company, Docket No. ER03-221-001**, (June 5, 2003)
El Paso Electric Company, Docket No. ER03-221-001

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El Paso Electric Company, Docket No. ER03-221-001

Order Granting in Part and Denying in Part Rehearing

(Issued June 5, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. In an order issued on January 24, 2003,¹ the Commission rejected three unexecuted service agreements El Paso Electric Company (El Paso) submitted for Arizona Public Service Company (Arizona Public Service) and Public Service Company of New Mexico (PNM). The Commission found that El Paso did not properly implement its Open Access Transmission Tariff (OATT) with respect to separate requests for long-term firm transmission service by Arizona Electric Power Cooperative (AEPSCO) and TECO Energy Source, Inc., (TES). El Paso and PNM seek rehearing as to the Commission's rejection of two of these service agreements, involving capacity on the Palo Verde-Westwing (PV-Westwing) path. As discussed below, we grant in part and deny in part rehearing.

Background

2. On March 20, 2002, El Paso's OASIS indicated the availability of 187 MW of transmission capacity on the Palo Verde-Westwing path starting January 1, 2003, subject to existing customers exercising their rollover rights. Also, on March 20, 2002, AEPSCO submitted to El Paso a request for 50 MW of transmission service on the PV- Westwing path for a six-year term (January 1, 2003-December 31, 2008). El Paso rejected AEPSCO's request because the 187 MW posted on El Paso's OASIS potentially was subject to rollover rights. Salt River Project Agricultural Improvement and Power District (Salt River) had an existing firm long-term transmission service agreement for 124 MW under which it was required to commit to renew the service by November 1, 2002, and match the term of any competing requests. The remaining 63 MW was subject to a PNM right of first refusal.

3. On October 15, 2002, El Paso posted an additional 46 MW of Palo Verde-Westwing capacity that resulted from a new line rating. PNM requested the additional 46 MW of capacity shortly after El Paso posted the capacity on its OASIS. PNM requested the capacity for a one- year term commencing on January 1, 2003. El Paso awarded the capacity to PNM, although AEPSCO claims it was first in line based on its March 20, 2002 request.

4. On October 24, 2002, TES submitted three requests for 100 MW of long-term firm transmission service on the Palo Verde-Kyrene (PV- Kyrene) path for the period June 1, 2003 through June 1, 2005. On November 1, 2002, El Paso rejected TES' requests because Salt River had a right of first refusal for the capacity. El Paso also informed TES that if Salt River did not exercise its rollover right, bidding for the capacity would commence starting one second after midnight on November 2, 2003.

5. On November 2, 2002, sixty days prior to expiration of the existing firm agreements, Salt River elected not to exercise its rollover right to 124 MW of PV-Westwing capacity.² Also, on November 2, 2002, consistent with El Paso's announcement to accept bids for this capacity after midnight, both Arizona Public Service and AEPSCO submitted bids for the PV-Westwing capacity. El Paso awarded the capacity to

Arizona Public Service based on the fact that Arizona Public Service submitted its bid first.

6. AEPCO and TES informed El Paso that they disputed El Paso's interpretation of the rollover and first-come, first-served provisions in its OATT. Both AEPCO and TES believed they were first-in-line for service based on their initial requests and therefore entitled to service. El Paso agreed to file unexecuted service agreements with Arizona Public Service and PNM and let the Commission resolve the dispute.

The Commission's January 24 Order

7. In the January 24 Order, the Commission found that El Paso did not properly implement its OATT provisions in regard to AEPCO's and TES' capacity requests for long-term firm transmission

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service. The Commission explained that El Paso's rejection of AEPCO's request was not consistent with the provisions of Section 2.2 of El Paso's OATT governing competing requests for transmission service subject to rollover rights.

8. The Commission stated that an existing customer must be aware of any competing requests at least 60 days prior to expiration of its contract in order to make an economic decision on whether to roll over the contract. Thus, the Commission reasoned, rejecting requests for the capacity until an existing long-term customer has decided not to exercise its rollover rights makes it impossible to ever have a competing request. The Commission determined that El Paso should have treated AEPCO's and TES' applications as pending, competing requests for service up until the time Salt River was required to make a decision regarding its rollover rights.

9. The Commission concluded that when Salt River declined to roll over its existing service, Section 13.2 of El Paso's OATT required El Paso to award the capacity on a first-come, first-served basis to the potential new customers in El Paso's queue. Based on the facts presented, the Commission determined that AEPCO and TES were first in line for service and should have received the released capacity.

10. El Paso and PNM filed requests for rehearing. AEPCO filed an answer to PNM's rehearing request and on March 10, 2003, El Paso filed an answer to AEPCO's answer.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.213 LK:NON:FERC-ALL 18CFR385.213](#) (2003), generally prohibits the filing of an answer to a request for rehearing or the filing of an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to accept the answers filed by AEPCO and El Paso, and therefore will reject them.

Discussion

AEPCO's Request for PV-Westwing Service

12. El Paso explains in its rehearing request that pursuant to the Commission's January 24 Order, TES would be the first-in-time applicant for 100 MW of PV-Kyrene service, but that AEPCO would not be the first-in-time for PV-Westwing service. It further explains that there were several pre-November 2, 2002 requests for PV-Westwing service, in addition to AEPCO's. Thus, El Paso seeks clarification that it is to offer the PV-Westwing service to the first-in-time applicant, including requests previously refused due to the pendency of Salt River's rollover rights, and, if such customer is no longer interested, turn to the second-in-time applicant.

Commission Conclusion

13. The Commission will grant El Paso's requested rehearing in part. El Paso must offer the PV-Westwing rollover capacity to the first-in-time applicant, including requests previously refused due to the pendency of Salt River's rollover rights. However, any requests for transmission service made prior to the time El Paso posted the 187 MW of capacity on its OASIS must be considered rejected and not in the queue for the rollover capacity. We also note that the Salt River capacity became available on January 1, 2003 and that AEPCO's request for long-term firm service using that capacity was to commence on January 1, 2003. Thus, if any of the prior requests for transmission service were to commence prior to January 1, 2003, they should be considered rejected and AEPCO would be the first-in-time applicant.

46 MW of Non-Rollover Capacity

14. El Paso seeks clarification regarding PNM's October 15, 2002, request for 46 MW of PV-Westwing service. El Paso states that it is uncertain whether the previously refused PV-Westwing requests, which are to be considered in the queue for the 124 MW of released capacity, are also to be considered to be in the queue for the 46 MW of new non-rollover capacity. It reasons that but for the possibility of rollover capacity becoming available, these requests would not be in the queue at all. Thus, El Paso asserts that it does not believe that these requests should be considered to be in the queue for non-rollover capacity that becomes available while they are waiting for rollover capacity to become available.

15. PNM also seeks rehearing with respect to its request for the 46 MW of PV-Westwing service. It states that the January 24 Order does not discuss or rule on which customer has rights to service using capacity that becomes available as a result of a new rating for existing transmission equipment. It asks the Commission to clarify that its resolution of the dispute concerning competing transmission service requests does not affect PNM's priority and right to service using newly available capacity. PNM argues, as El Paso does, that but for the possibility of rollover capacity becoming available, none of the other requests would be in the queue, but would have been rejected or accepted as appropriate soon after they were made. It maintains that newly available capacity should be subject to requests that are first in time after El Paso posted the 46 MW of capacity on its OASIS.

Commission Conclusion

16. We will deny El Paso's and PNM's requests. An applicant in the queue for rollover capacity should also be considered eligible for any non-rollover capacity that becomes available up to and including the date the rollover capacity becomes available. The applicant is seeking service along a specified path for a specified period of time and is indifferent whether the service is rendered from rollover or non-rollover capacity. Here, PNM requested the 46 MW of capacity for a one- year period commencing on January 1, 2003, while AEPCO earlier had requested 50 MW of capacity for a six-year term (January 1, 2003-December 31,

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2008). While AEPCO and others may just fortuitously be in the queue for rollover capacity, it would defy reason to have El Paso provide the transmission capacity to PNM for a lesser amount and period of time than offered to AEPCO (or another applicant in the queue).³ Thus, under the circumstances of this proceeding, we will require El Paso to offer, on a first-in-time basis, the 46 MW of non-rollover PV-Westwing capacity to the previously refused applicants for PV-Westwing capacity considered in the queue for the 124 MW of rollover capacity.

The Commission orders:

The requests for rehearing are hereby granted, in part, and denied, in part, as discussed in the body of this order.

¹ [102 FERC ¶61,060 LK:NON: FERC-ALL 102FERCP61060](#) (2003) (January 24 Order).

² PNM exercised its rollover right for 63 MW of transmission service.

³ Had PNM requested the 46 MW of capacity for transmission service to commence prior to January 1, 2003, we would have considered it first in time with respect to AEPCO or any other customers in the queue for the PV-Westwing rollover capacity.

COMM-OPINION-ORDER, 102 FERC ¶61,095, **Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc., Docket No. EL03-30-000**, (January 30, 2003)
Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc., Docket No. EL03-30-000

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[¶61,095]

Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc., Docket No. EL03-30-000

Order Granting Complaint

(Issued January 30, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. In this order, the Commission grants the complaint by Tenaska Power Services Company (Tenaska). Tenaska alleges that the Midwest Independent System Operator, Inc. (Midwest ISO) incorrectly declined to displace requests for short-term firm transmission service with Tenaska's competing requests for long-term firm transmission service. This order benefits customers by providing certainty to Midwest ISO's customers concerning the processing of long-term firm transmission service requests.

Background

2. On September 25, 2002, Tenaska placed requests on Midwest ISO's Open-Access Same-time information system for two blocks of long-term firm transmission service, from the American Electric Power source Control Area to the Michigan-Ontario Independent Electricity Market Operator (MI-IMO) border. One block was for service commencing on December 1, 2002; the other was for multiple service requests commencing on January 1, 2003. Several entities had previously placed short-term firm transmission service requests to the MI-IMO border from various source Control Areas. Midwest ISO determined that Tenaska's long-term firm transmission service requests were not competing requests with the short-term firm transmission service requests and that they therefore could not bump the short-term requests.

Complaint

3. Tenaska says that Midwest ISO initially gave the short-term firm transmission service customers the opportunity to match the term of Tenaska's long-term firm transmission service requests. Tenaska argued to Midwest ISO that Section 13.2 of the Midwest ISO OATT treats long-term and short-term requests differently, and does not give a short-term firm transmission service customer the right to match a request for long-term firm transmission service.¹ Tenaska referenced, among other things, *Madison Gas & Electric Company v. Wisconsin Power & Light Company*,² to point out that Section 13.2 does not allow a short-term transmission service request to bump a long-term transmission service request, and that the matching provisions apply only when both competing requests are short-term. By an e-mail message of November 15, 2002,³ Midwest ISO stated its agreement with Tenaska's interpretation of Midwest ISO's OATT.

4. However, Tenaska explains, Midwest ISO subsequently determined that Tenaska's requests could not preempt the short-term requests because Tenaska's requests did not have the same source Control Area as

the short-term requests, and Midwest ISO therefore did not consider Tenaska's requests to compete with the short-term requests. In support, Midwest ISO cited Section 6.8.1 of its Business Practices Manual.⁴

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5. Tenaska argued to Midwest ISO that it interpreted competing requests too narrowly and that the requests at issue were competing requests: the transactions shared the same points of delivery, the point of delivery was the constraining facility, and the transactions had similar effects on Midwest ISO's transmission system. Tenaska then contacted the Commission's Enforcement Hotline Staff. Tenaska asserts that Midwest ISO apparently recognized that its interpretation was too narrow and stated that it would propose a modification to its Business Practices.

6. Tenaska then states that Midwest ISO, without providing notice, apparently modified its method of evaluating transmission service requests. Tenaska states further that, on November 22, 2002, Tenaska noted that Midwest ISO had accepted several similar requests that were behind Tenaska in the queue. Tenaska continues that when it contacted Midwest ISO about this, Midwest ISO said that it had made a mistake, that it had changed its method of evaluating transmission service requests, and that Tenaska should re-submit its requests on November 25, 2002.

7. Tenaska continues that it submitted its requests and that, on November 27, 2002, Midwest ISO accepted 310 MW of Tenaska's requests, with service commencing January 1, 2003, and counter-offered another request for 28 MW with service commencing December 1, 2002. Later that day, explains Tenaska, Midwest ISO retracted the acceptances with the comment, "NO ATC [available transfer capability] on MECS [Michigan Electric Coordinated Systems]-IMO interface." Tenaska states that, apparently, Midwest ISO returned to its original interpretation of Business Practices Manual Section 6.8.1.

8. Tenaska challenges Midwest ISO's assertion that Tenaska's long-term firm transmission service requests are not competing requests with the short-term firm transmission service requests at issue. It asserts that Midwest ISO misinterprets its own Business Practices Manual and ignores Commission precedent on what constitutes a competing request.

9. Tenaska argues that the proper interpretation of Section 6.8.1 of Midwest ISO's Business Practices Manual is that the Section applies only when Midwest ISO evaluates whether to preempt one short-term firm request with a longer-term short-term firm request; the Section does not apply when a long-term firm transmission service request is displacing a short-term firm request. Tenaska continues that, in any event, Midwest ISO cannot rely on its Business Practices, which have never been filed with or reviewed by the Commission. Tenaska urges that Commission precedent is the proper source for guidance, and that the Business Practices must be consistent with the Midwest ISO OATT.⁵

10. Tenaska argues that existing Commission precedent indicates that Midwest ISO's interpretation is too narrow and contravenes prior Commission decisions. Tenaska points out that the issue of competing requests comes up in two places in the Midwest ISO OATT, Section 2.2, which concerns the right of first refusal and rollovers, and Section 13.2, which concerns priority of service requests.

11. In the context of Section 2.2, Tenaska cites Order No. 888-A, where the Commission stated, "[b]ecause the purpose of the ... provision is to be a tie-breaker, the competing requests should be substantially the same in all respects."⁶ Tenaska observes that this sentence has little applicability to the instant dispute because Section 2.2 deals with tie-breakers while Section 13.2 deals with priority of service requests. More importantly, continues Tenaska, the Commission has never clarified the meaning of the phrase, "substantially the same in all respects."

12. Tenaska maintains that other Commission orders suggest that the determination of whether transmission requests are competing should be based on the transmission provider's ability to accommodate both requests, looking at the effects of the requests and not solely at the source and sink Control Areas.

Tenaska references Order No. 638 as recognizing that the key to determining whether bids are competing is whether they crowd each other out, and cites the order's guideline, "Competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity."⁷

13. Tenaska also cites the Commission's holding in *Mid-Continent Area Power Pool*,⁸ where the Commission rejected a proposal that would permit a longer-term service to bump a shorter term service only when the competing services used identical points of receipt and delivery.

14. Tenaska further argues that because of the location of the MI-IMO interface relative to the Midwest ISO system, Tenaska's long-term requests and the short-term requests are affected by the same constraining facility (the MI-IMO interface) and have similar impacts on the constrained facility. Tenaska urges that no matter which stan

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ard is applied —substantially similar or inability to accommodate both sets of requests —the Commission should consider Tenaska's long-term requests as competing requests that should bump the short-term requests. Tenaska also asks the Commission to clarify the standard that Midwest ISO should use in the future to determine what is a competing request.

Notice of Complaint and Responsive Pleadings

15. Tenaska's complaint was published in the *Federal Register*, 67 *Fed. Reg.* 78,223 (2002), with Midwest ISO's answer and all comments and interventions due on or before January 6, 2003. On January 6, 2003, Midwest ISO filed its answer. MidAmerican Energy Company and Wisconsin Electric Power Company filed timely motions to intervene. Dynegy Power Marketing, Inc. (Dynegy), PSEG Energy Resources and Trade LLC (PSEG), and Reliant Energy Services, Inc. (Reliant) filed timely motions to intervene and comments. On January 17, 2003, Tenaska filed a motion to lodge a decision by the United States Court of Appeals for the District of Columbia Circuit.

Midwest ISO's Answer

16. Midwest ISO asserts that Tenaska's complaint should be dismissed. Midwest ISO explains that it determines transfer capability and evaluates requests for transmission service by using a flow- based analysis that monitors flows on constrained facilities (flowgates) and on interfaces known to experience loading. On a first-come, first-served basis, Midwest ISO measures the effects of each individual transmission service request on each flowgate or interface. If the resultant loading exceeds the rating of the flowgate or interface, Midwest ISO will not accept subsequent transmission service requests unless it can reduce the loading level on the constrained facility, such as by allowing a higher priority transmission service request to preempt a lower priority request.

17. Midwest ISO states that OATT Section 13.2 is intended to accommodate the greatest number of longer-term firm transmission service requests in the event that the transmission system becomes oversubscribed. It points out that if canceling a shorter-term firm request does not relieve the constrained facility utilized by the subsequent, longer-term firm request, then to allow such preemption does not achieve the purpose of OATT Section 13.2.

18. Midwest ISO continues that OATT Section 13.2 does not mandate how to determine when two requests compete for common constrained facilities. Midwest ISO indicates that, since beginning operations, it has used the methodology in Business Practices Manual Section 6.8.1 to determine when a longer-term firm request and a shorter-term firm request are competing requests for purposes of preemption under OATT Section 13.2. Midwest ISO says that requiring competing requests to share the same sink/source Control

Areas ensures that the preemption methodology is consistent with Midwest ISO's flow-based method for evaluating and granting transmission service. Midwest ISO urges that to expand this methodology to include other sink/source Control Areas would adversely impact transmission service on facilities having minimal or no effect on the constrained facilities, and would preempt a large number of transmission reservations whose contributions to the flowgate loading may be only minimal.

19. Midwest ISO says that Tenaska mis-interprets Business Practices Manual Section 6.8.1 when arguing that the Section applies only to competing short-term firm transmission service requests. Midwest ISO says that the Section deals with any longer-term request (long-term request or longer-term short-term request) preempting any shorter-term request.

20. Midwest ISO argues that its same-source- and-sink Control Area methodology does not contravene Commission precedent. Midwest ISO says that the cited Order No. 638 guideline, that competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity, represents a minimum requirement that competing bids must vie for the same available transmission capacity. Midwest ISO adds that the proper interpretation of Order No. 638's discussion of competing bids is that competing requests must not only seek the same capacity but also share the same contract path.

21. Midwest ISO distinguishes *Mid-Continent* from the instant case by pointing out that the Commission rejected Mid-Continent's proposed tariff language because Mid-Continent had not justified the proposal. Midwest ISO maintains that effective, non-discriminatory administration under Midwest ISO's flowgate model is justification for requiring all competing requests to share the same source and sink Control Area. Midwest ISO further justifies its methodology by urging that expansion of the preemption methodology to include other source and sink Control Areas would impair transmission service. Midwest ISO continues that such an expanded methodology could result in preemption of transmission reservations that contribute only minimally to flowgate loading, be impossible to manage, and adversely affect the market for short-term transmission service.

22. Midwest ISO concludes that the issues raised by Tenaska are best resolved by the Midwest ISO's stakeholders because any change will affect a large number of them and must be crafted to ensure that the result is administratively feasible and not unduly discriminatory. Midwest ISO asks that the Commission permit its Business Practices Working Group, which is currently evaluating the Business Practices, to continue to evaluate modification of the existing preemption methodology, and not short-circuit its deliberative process.

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Intervenors' Positions and Tenaska's Motion to Lodge

23. Dynegy states that it, too, has been affected by Midwest ISO's preemption and bumping practices, and asks the Commission to clarify what constitutes a competing request with respect to, among other things, the product, point of receipt, and point of delivery.

24. PSEG supports Tenaska's complaint and requests timely resolution of the issues. It cites the immediate need for transparent, orderly procedures for transmission subscription on Midwest ISO's system so that both Midwest ISO staff and market participants have clear understanding of the priority among long-term and short-term transmission requests.

25. Reliant also supports Tenaska's complaint. It requests clarification of the language in OATT Sections 2.2 and 13.2 involving the issue of "competing requests." Regarding Section 13.2, Reliant asks the Commission to clarify first that the relief requested by Tenaska applies not only to a long-term request for transmission service competing against a short-term request but also to preemption of a short-term request

by a short-term request of longer duration, and second that Section 13.2 does not require the longer-term, short-term request to have the identical point of receipt and point of delivery to be considered competing. Regarding Section 2.2, Reliant asks the Commission to state that this Section uses the same definition of “competing request” as Section 13.2. Also regarding Section 2.2, Reliant asks the Commission to require Midwest ISO to adopt tariff language that requires the competing customer to execute a binding service agreement before an existing customer is forced to match the duration of the longer-term competing request.

26. In its motion to lodge, Tenaska asserts that the reasoning and holding in *Idaho Power Company v. FERC*, 312 F.2d 454 (D.C. Cir. 2002) (*Idaho Power*), supports its position. It recognizes that *Idaho Power* was in the context of Section 2.2 of that company's OATT, whereas its complaint in the instant proceeding concerns Section 13.2 of the Midwest ISO's OATT. Tenaska maintains that, nevertheless, the court's discussion of what constitutes a “competing request” is applicable to the facts in this case. Tenaska argues that the court's statement, “the language of the tariff suggests that two offers are competing if there is an inability to accommodate both,”⁹ supports Tenaska's argument that the requests at issue are “competing requests,” and that Tenaska's long-term firm transmission service requests should have priority over the short-term firm transmission service requests.

Discussion

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We grant Tenaska's motion to lodge the Idaho Power decision.

28. We find that Midwest ISO's practice of allowing longer-term firm transmission service requests to preempt short-term firm service transmission requests only when the source and sink Control Areas match is contrary to the terms and conditions of its OATT. In addressing a similar issue, in *Mid-Continent*, the Commission found that “services can be competing services even though they do not have the same points of receipt and delivery.”¹¹ Thus, the Commission explained that “the pro forma tariff does not require that the points be identical and MAPP has not justified the additional condition,” and directed MAPP to remove this condition. Here, services can be competing services even when they do not share the same source and sink Control Areas. Therefore, Midwest ISO's practice suffers from the same flaw as MAPP's proposal to limit the right of preemption to services with identical points of receipt and delivery.

29. We are not persuaded that Midwest ISO has justified the reasonableness of its practice. Midwest ISO argues that expansion of preemption rights to transactions with other source and/or sink Control Areas could result in preemption of a large number of short-term reservations whose contributions to the flowgate loading may only be minimal. However, Midwest ISO unreasonably assumes that transactions with other source and/or sink Control Areas will tend to have a lesser impact on the flowgate loading, when there is an equal chance that these transactions will have a greater impact on the flowgate loading. In addition, Midwest ISO argues that expansion of preemption rights to transactions with other source and/or sink Control Areas will adversely affect the market for short-term transmission service. However, Midwest ISO's practice adversely affects the market for long-term service, in conflict with the purpose of the bumping procedures in the *pro forma* tariff. The bumping procedures were included in the *pro forma* tariff to ration limited resources by giving a priority to such resources to those customers who are willing to reserve and pay for long-term service.

30. We are also not persuaded that expansion of preemption rights to transactions with other source and/or sink Control Areas would be impossible to manage. While Midwest ISO's practice may make it easier for Midwest ISO to administer its tariff, this is no basis for overturning a Commis

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sion determination and tariff requirement that long-term firm transmission service requests must be able to

bump a short-term firm transmission service request without the limitation that the requests must be for the same points of receipt and points of delivery. Midwest ISO has failed to explain what constraints would prevent it from implementing this fundamental provision of the *pro forma* tariff.

31. Accordingly, we direct Midwest ISO, within 30 days of the date of this order, to revise its procedures for evaluating transmission requests pursuant to Section 13.2 of its OATT to eliminate the condition that “competing requests” must have the same source and sink Control Areas. We further direct Midwest ISO, at the time that it eliminates this condition, to reconsider Tenaska's requests for long-term firm transmission service, as well as any other transmission requests that were rejected due to Midwest ISO's incorrect practice without the limitation that “competing requests” must have the same source and sink Control Areas. If Midwest ISO cannot provide firm transmission service for the full amount of Tenaska's requests, but can provide service for a lesser amount, we direct Midwest ISO to offer Tenaska transmission service for the amount that it can provide. Additionally, we direct that any firm transmission service provided to Tenaska for the remaining term of its requests be treated as a long-term firm transmission service reservation with a right of first refusal pursuant to Section 2.2 of Midwest ISO's OATT. We also direct Midwest ISO, in determining Tenaska's place in the queue, to take into account the date on which Tenaska first made its requests for transmission service. The Midwest ISO should follow this same procedure in addressing any other firm transmission service requests that were rejected due to Midwest ISO's incorrect practice.

32. We remind Midwest ISO that it must implement its Business Practices consistent with its Commission-accepted OATT¹² and must comply with our “rule of reason” policy regarding filing requirements under Section 205 of the Federal Power Act.¹³ In addition to being inconsistent with Midwest ISO's OATT, the condition that competing requests must have the same source and sink Control Areas is a practice that affects the terms and conditions of service significantly and therefore, pursuant to the Commission's “rule of reason” policy, should have been filed under Section 205 of the Federal Power Act. If Midwest ISO's stakeholder process develops a revised procedure for processing transmission service requests that is inconsistent with the discussion in this order, Midwest ISO must file the revised procedure pursuant to Section 205 of the Federal Power Act.¹⁴

33. With regard to Reliant's requests, they are beyond the scope of this proceeding and we therefore reject them.

The Commission orders:

(A) Tenaska's complaint is hereby granted, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to revise its procedures, within 30 days of the date of this order, for evaluating transmission requests so as to eliminate the condition that “competing requests” must have the same source and sink Control Areas, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to reconsider Tenaska's requests for transmission service, as well as any other transmission service requests that were rejected due to Midwest ISO's procedures, as discussed in the body of this order.

(D) Reliant's requests are hereby rejected, as discussed in the body of this order.

¹ Section 13.2 of the Midwest ISO OATT, “Reservation Priority,” like the *pro forma* tariff, states, in pertinent part: “If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to [certain deadlines]... . A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request... .”

² *Madison Gas & Electric Company v. Wisconsin Power & Light Company*, [80 FERC ¶61,331, at p. 62,103](#)

LK:NON: FERC-ALL 80FERCP61331PAGE62103 (1997), *reh'g denied*, 82 FERC ¶61,099 LK:NON: FERC-ALL 82FERCP61099 (1998).

³ Tenaska's Complaint at Attachment B.

⁴ This Section provides, in pertinent part, "Requests for longer-term service may preempt requests for shorter-term service up to the following deadline... . This right of preemption only applies, however, if the longer-term service involves the same source and sink Control Area as the shorter term service."

⁵ Tenaska cites *Dynegy Power Marketing, Inc. v. Southwest Power Pool, Inc.*, 96 FERC ¶61,275, at p. 62,048 LK:NON: FERC-ALL 96FERCP61275PAGE62048 (2001) (*Dynegy*) (SPP must implement its Business Practices consistently with Commission-approved OATT).

⁶ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888-A, *order on reh'g, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶31,048 LK:NON: FERC-ALL P31048 (1997) (Order No. 888-A).

⁷ *Open-Access Same-time Information System and Standards of Conduct*, Order No. 638, *FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶31,093, at p. 31,462 LK:NON: FERC-ALL P31093PAGE31462, Section 4.4, "Negotiations —With Competing Bids for Constrained Resources" (Order No. 638).

⁸ *Mid-Continent Area Power Pool*, 91 FERC ¶61,065 LK:NON: FERC-ALL 91FERCP61065 (2000) (*Mid-Continent*).

⁹ 312 F.2d at 462.

¹⁰ 18 C.F.R. §385.214 LK:NON: FERC-ALL 18CFR385.214 (2002).

¹¹ 91 FERC at p. 61,230 LK:NON: FERC-ALL 91FERCPAGE61230. *See also, Idaho Power* (while addressing a different section of the OATT, the court addressed the term "competing request" and found that "the language of the tariff suggests that two offers are competing if there is an inability to accommodate both").

¹² *See, e.g., Dynegy*, 96 FERC at p. 62,048 LK:NON: FERC-ALL 96FERCPAGE62048.

¹³ *See, e.g., Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, at pp. 61,986-89 LK:NON: FERC-ALL 64FERCP61139PAGE61986, *order on reh'g*, 65 FERC ¶61,081 LK:NON: FERC-ALL 65FERCP61081 (1993); *Pacific Gas and Electric Company, et al.*, 80 FERC ¶61,128, at p. 61,423 LK:NON: FERC-ALL 80FERCP61128PAGE61423 (1997).

¹⁴ 16 U.S.C. §824d LK:NON: FERC-ALL 16USC824D (2000).

COMM-OPINION-ORDER, 103 FERC ¶61,049, **Tenaska Power Services Company v. Midwest Independent Transmission Operator, Inc., Docket No. EL03-30-001**, (April 14, 2003)
Tenaska Power Services Company v. Midwest Independent Transmission Operator, Inc., Docket No. EL03-30-001

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[¶61,049]

**Tenaska Power Services Company v. Midwest Independent Transmission Operator, Inc.,
Docket No. EL03-30-001**

Order on Clarification

(Issued April 14, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. On March 3, 2002, the Midwest Independent Transmission System Operator (Midwest ISO) filed a request for clarification of the Commission's January 30, 2003 order in this proceeding

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(January 30 Order).¹ As described below, we require Midwest ISO to revise its procedures for evaluating transmission requests.

Background

2. Our January 30 Order granted a complaint by Tenaska Power Services Company (Tenaska) that Midwest ISO had improperly declined to displace requests for short-term firm transmission service with Tenaska's competing requests for long-term firm transmission service. Tenaska had submitted to Midwest ISO two requests for long-term firm transmission service that shared the same point of delivery, at the same constrained interface, with existing short-term firm transmission service requests. Midwest ISO had refused to allow Tenaska's requests to bump these short-term firm requests because, it asserted, Section 6.8.1 of its Business Practices Manual, implementing Section 13.2 of the Midwest ISO Open Access Transmission Tariff (OATT), required requests for transmission service to have both the same source and sink Control Areas in order to be considered competing requests.

3. The January 30 Order referenced our policy that, under the *pro forma* tariff, services can be competing services even though they do not have identical points of receipt and delivery, and found that Midwest ISO had not justified the additional conditions.² The order directed Midwest ISO to take two actions within 30 days of the date of the order: (1) revise its procedures for evaluating transmission requests, pursuant to Section 13.2 of its OATT,³ to eliminate the condition that competing requests must have the same source and sink Control Areas; and (2) at the time it eliminates the condition, reconsider Tenaska's requests for transmission service, as well as any other transmission service requests that Midwest ISO had rejected due to its incorrect practice, without the limitation that "competing requests" must have the same source and sink Control Areas.⁴

Clarification Request

4. On March 3, 2002, Midwest ISO filed a motion for clarification of the January 30 Order. In its filing,

Midwest ISO outlines the changes that it has made to its Business Practices Manual, and requests clarification that these changes comply with the January 30 Order. Midwest ISO states that the language in Section 6.8.1 of its Business Practices Manual, requiring that transmission service requests must share the same source and sink Control Areas in order to be considered competing requests, will be replaced with new criteria for determining whether transmission service requests are competing requests, “based on a determination whether the requests share the same source or sink Control Area, or controllable device/contract path interfaces.”⁵

5. In addition, Midwest ISO states that it has commenced reconsideration of Tenaska's requests for long-term firm transmission service, as well as any other requests that were rejected based on application of the same source and sink Control Area methodology for determining competing requests. According to Midwest ISO, all such requests are being reconsidered consistent with the new methodology described above, and it will make any necessary changes to its transmission service queue as soon as possible.⁶

6. To help avoid potential disputes or disruptions to customers, Midwest ISO asks the Commission to clarify that the Midwest ISO's new approach for determining competing requests is consistent with the January 30 Order.

7. On March 13, 2003, Tenaska filed an answer supporting Midwest ISO's motion.

Discussion

8. Midwest ISO's motion indicates that it is not in full compliance with the January 30 Order, which found that Midwest ISO's same source and sink Control Area requirement for determining competing requests is inconsistent with its OATT. The January 30 Order cited *Mid-Continent Area Power Pool*,⁷ in which the Commission rejected a proposal to adopt a similar provision that would have permitted a longer-term service to bump a shorter-term service only when the competing requests used identical points of receipt and delivery. The Commission explained that “the pro forma tariff does not require the points be identical” and that “services can be competing services even though they do not have the same points of receipt and delivery.”⁸

9. According to Midwest ISO, evaluation of competing requests will no longer be limited to those requesting service involving the same source *and* sink Control Areas; rather, evaluation of competing requests will consider transactions involving the same source *or* sink Control Area, *or* controllable device/contract path interfaces.

10. Midwest ISO's revised practice suffers from the same flaw as its earlier practice. The *pro forma* tariff does not require that requests share a source or sink Control Area, or controllable device/contract path interface, in order to be considered competing. What matters in determining whether requests are competing is whether the requests can be simultaneously accommodated

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given available transmission capacity.⁹ Requests can be competing for the same available transmission capacity even when they do not share a source or sink Control Area, or controllable device/contract path interface.

11. Accordingly, we direct Midwest ISO, within 30 days of the date of this order, to revise further its procedures for evaluating transmission requests, pursuant to Section 13.2 of its OATT, to eliminate the condition that “competing requests” must share the same source or sink Control Area, or controllable device/contract path interfaces. We further direct Midwest ISO, at the time that it eliminates this condition, to reconsider any transmission requests that were rejected due to Midwest ISO's incorrect practice. If Midwest ISO cannot provide firm transmission service for the full amount of any transmission requests that were rejected due to Midwest ISO's incorrect practice, but can provide service for a lesser amount, we

direct Midwest ISO to offer the customer transmission service for the amount that it can provide. Additionally, we direct that any firm transmission service provided for the remaining term of long-term firm transmission requests that were rejected due to Midwest ISO's incorrect practice be treated as a long-term firm transmission service reservation with a right of first refusal pursuant to Section 2.2 of Midwest ISO's OATT. We also direct Midwest ISO, in determining the place in the queue for any transmission requests that were rejected due to Midwest ISO's incorrect practice, to take into account the date on which the customer first made its request for transmission service. Finally, we will direct Midwest ISO to file a report, within 45 days of the date of this order, detailing how it has complied with this order.

The Commission orders:

(A) Midwest ISO is hereby directed to revise its procedures, within 30 days of the date of this order, for evaluating transmission requests so as to eliminate the condition that "competing requests" must have the same source or sink Control Area, or controllable device/contract path interfaces, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to reconsider transmission service requests that were rejected due to Midwest ISO's incorrect procedures, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to make a compliance filing, within 45 days of the date of this order, as discussed in the body of this order.

¹ *Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc.*, [102 FERC ¶61,095 LK:NON: FERC-ALL 102FERCP61095](#) (2003).

² January 30 Order, [102 FERC ¶61,095 at PP 28-29 LK:NON: FERC-ALL 102FERCP61095.28](#) & n.11.

³ The relevant portions of Section 13.2 are the same as found in our *pro forma* tariff.

⁴ January 30 Order, [102 FERC ¶61,095 at P 31 LK:NON: FERC-ALL 102FERCP61095.31](#).

⁵ Midwest ISO's filing at 6.

⁶ *Id.* at 9.

⁷ *Mid-Continent Area Power Pool*, [91 FERC ¶61,065 LK:NON: FERC-ALL 91FERCP61065](#) (2000) (*Mid-Continent*).

⁸ *Id.* at p. 61,230.

⁹ See *Open-Access Same-time Information System and Standards of Conduct*, Order No. 638, *FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* [¶31,093, at p. 31,461 LK:NON: FERC-ALL P31093PAGE31461](#) (2000) (competing bids exist when multiple requests cannot be accommodated due to lack of available transmission capacity).

COMM-OPINION-ORDER, 106 FERC ¶61,230, **Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-43-000**, (March 8, 2004)
Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-43-000

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Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-43-000
Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-46-000 (Not Consolidated)

Order on Complaints

(Issued March 8, 2004)

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeem G. Kelly.

1. In this order, the Commission grants Tenaska's and Cargill's complaints concerning Midwest ISO's processing of rollover rights, as discussed below. This order benefits customers by providing certainty to Midwest ISO's customers concerning the processing of rollover requests and competing requests.

Background

2. On December 23, 2003, Tenaska Power Services Co. (Tenaska) filed a complaint against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in Docket No. EL04-43-000. Tenaska alleges that Midwest ISO is improperly processing its transmission queue by allowing later-queued new service requests to preempt earlier-queued requests to rollover existing long-term firm reservations and that Midwest ISO's scheduling procedures do not comport with [Order No. 638 LK:NON:FERC-ALL FERCOR638](#).¹ Tenaska requests that the Commission direct Midwest ISO to allocate capacity on a first-come, first-served basis (except for the right of later-queued rollover requests to preempt earlier- queued new service requests) and to provide customers that are asked to match a competing request with at least seventy-two hours in which to make such a decision.

3. On December 29, 2003, Cargill Power Markets, LLC (Cargill) filed a complaint against Midwest ISO in Docket No. EL04-46-000. Cargill alleges that Midwest ISO changed its treatment of rollover rights through a notice that was posted on Midwest ISO's OASIS and that this change was presented to its transmission customers with almost no notice and without a proper vetting through the stakeholder process. Cargill also alleges that Midwest ISO's change in its treatment of rollover rights is inconsistent with its open access transmission tariff (OATT) and Business Practices as well as Commission policy and precedent. Cargill requests that the Commission order Midwest ISO to modify its treatment of rollover rights to comply with Commission policy and reprocess its transmission queue.

4. The complainants state that Midwest ISO is currently providing long-term firm point-to-point transmission service to Tenaska, as well as Connectiv Energy Supply, Inc. (Connectiv), Detroit Edison Trading, Inc. (DTET), Public Service Enterprise Group (PSEG) and TransAlta Energy Marketing, Inc. (TransAlta), over the Michigan- Ontario (MI-IMO) interface which terminates at 24:00 on December 31, 2003. The complainants state that pursuant to Section 2.2 of Midwest ISO's OATT, all of these incumbent customers have rollover rights and rights of first refusal. They also state that, consistent with Commission policy these incumbents must exercise their Section 2.2 rights no later than sixty days prior to December 31, 2003 (*i.e.*, by November 1, 2003).

5. Section 9.3.1, Rollover Rights for Long-term Firm, of Midwest ISO's Business Practices states that:

AFCs posted will not reflect rollover rights (*i.e.* it is assumed in the AFC calculations that the rollover right will not be exercised). However, in its determination of whether a new request can be granted, the Midwest ISO will include the effect of any reservations that continue to have the right to rollover their request. This may cause some transactions to be denied even though it appears that AFC is available. If the new request cannot be accommodated, the new customer will have the option of proceeding with an impact study to determine any upgrades necessary to accommodate the request, or holding its request in Study mode until such time as other customers exercise their rollover rights.

6. On March 6, 2003, Tenaska submitted one- year rollover requests for four of its long-term firm contracts over the MI-IMO interface —two 51 MW blocks and two 1 MW blocks. At this time, there were no other requests in Midwest ISO's transmission queue for service to the MI-IMO interface. Midwest ISO did not accept the requests, but placed the requests in study mode.

7. On May 6, 2003, Cargill submitted a 52 MW seven-year long-term firm transmission service request for new transmission service to the MI-IMO

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interface.² On May 12, 2003, Cargill submitted additional requests for long-term firm transmission service. All of Cargill's requests were placed in study mode by Midwest ISO.

8. From August through October 2003, Tenaska, PSEG, Conectiv, TransAlta and DTET placed rollover requests for their long-term transmission service.

9. On October 31, 2003, Midwest ISO posted on its OASIS the following notice (October 31 Notice):

Important Notice on Rollover Rights

The last calendar day to exercise rollover rights for long-term firm point to point transmission service expiring 1/1/2004 00:00:00 EST is this Saturday, November 1, 2003. (The queue time of the renewal request must be earlier than 11/2/2003 00:00:00 EST.)

A renewal request is subject to pre-emption (with right of first refusal) by competing later- queued, longer duration requests, provided the later-queued, longer duration request is queued prior to 11/2/2003 00:00:00 EST. Existing customers exercising renewal rights by submitting a request for renewal will have the option to match competing requests of longer duration.

10. On December 12, 2003, Midwest ISO required two of Tenaska's March rollover requests, totaling 52 MW, to match the seven-year term set forth in Cargill's May 6 request. Midwest ISO provided Tenaska with twenty-four hours in which to respond.³ Tenaska declined to match the seven- year term set forth in Cargill's May 6 request and on December 15, 2003, Midwest ISO awarded Cargill its seven-year request.

11. Subsequently, Midwest ISO accepted one- year rollover requests from PSEG, TransAlta, Tenaska, DTET and Conectiv without having them match any of Cargill's May requests. When Cargill contacted Midwest ISO to inquire specifically about the acceptance of PSEG's rollover requests, Midwest ISO asserted that its decision was consistent with Commission policy and referred Cargill to the October 31 Notice.

12. On December 19, 2003, Cargill contacted the Commission's Enforcement Hotline to inquire about the propriety of Midwest ISO's practice for processing transmission service requests and its failure to provide effective notice to the Midwest ISO's stakeholders. On December 23, 2003, the same day Tenaska filed its complaint, the Commission's Enforcement Staff notified Cargill that in light of Tenaska's complaint, the Commission's Enforcement Staff would not address Cargill's matter.

Tenaska's Complaint

13. Tenaska argues that Midwest ISO is processing its queue backwards. It states that its March rollover requests do not compete with the Cargill requests because they are ahead of the Cargill requests in the queue. Tenaska states that the fact that its March rollover requests are rollover requests, and not new service requests, does not negate that queue priority.

14. Tenaska asserts that a rollover request is similar to a new service request. It states that the most significant differences are that: (a) a rollover request does not need to be studied in the same manner as a new service request; and (b) the customer requesting to rollover existing service has a right of first refusal in the event of a competing request, while a customer requesting new service does not. Tenaska asserts that Midwest ISO should have treated its March requests as akin to a new service request, absent a competing request, without placing them in study mode.⁴ Tenaska states that Section 13.2 of Midwest ISO's OATT provides that long-term firm transmission service requests are processed on a first-come, first-served basis. Tenaska asserts that because its requests were first in the queue, they should have had first priority to transmission capacity and should have been accepted immediately.

15. Tenaska states that Section 13.2 permits Midwest ISO to bump a short-term service request (*i.e.*, for service less than one year in duration) with a longer-term request. It also states that Section 13.2 and [Order No. 638 LK:NON:FERC-ALL FERCOR638](#)⁵ do not allow a long-term request to be bumped by another later- queued, long-term request.

16. Further, Tenaska asserts that to deem Cargill's May requests as competing with its March requests under Section 2.2 of Midwest ISO's OATT would mean that a rollover request has less rights than a customer placing a request in the queue at the same time solely because they are a rollover request. Tenaska asserts that such a result is unduly discriminatory. Tenaska notes that as a result of Midwest ISO's queue processing, rollover requests received subsequent to Tenaska's requests have all been confirmed without the same requirement to match. Tenaska asserts that Midwest ISO should have started at the bottom of its queue of competing requests and worked its way up the queue. Tenaska states that, thus, the last entity to request rollover service should be the first to match the Cargill requests.

17. In addition, Tenaska argues that twenty- four hours is not sufficient time to evaluate whether to match Cargill's request. Tenaska states that extending a transmission service request

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from one year to seven years is a major change to the request for service, and the customer being asked to match the longer term request needs sufficient time to evaluate whether the extended term makes sense in light of projected market conditions. Moreover, Tenaska argues that the twenty-four hour period is especially unreasonable in light of the fact that a competing customer has fifteen days to decide whether or not to confirm its request. Tenaska requests that customers being asked to match a competing request be given at least seventy-two hours in which to make a decision.

Cargill's Complaint

18. Cargill argues that Midwest ISO's requirement in its October 31 Notice that a competing request be later-queued was an eleventh-hour, unilateral policy change that conflicts with both its OATT and Business Practices. Cargill states that under Section 2.2 of Midwest ISO's OATT, an incumbent customer "must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service," if there is insufficient ATC to accommodate other eligible customers' transmission service requests when an

incumbent customer's contract expires.

19. Cargill states that under Section 13.2 of Midwest ISO's OATT, long-term firm transmission service requests are processed on a first-come, first-served basis and that the incumbent customer has a right of first refusal to match a competing transmission service request, but if the incumbent customer does not exercise this right, then the new eligible customer, whose transmission service request was submitted first-in-time, is awarded the capacity.

20. Furthermore, Cargill states that Midwest ISO's Business Practices clearly contemplate competing requests being filed before an incumbent customer exercises its rollover rights. Cargill cites to Section 9.3 of the Business Practices which state: "in considering subsequent requests for long-term firm service, the [Midwest ISO] will not remove capacity associated with a potential rollover from its OASIS, but will instead post this capacity. When evaluating the subsequent request, MISO will assume that rollover rights will be exercised by all prior confirmed service with such rights." Cargill states that there would be no reason to assume under the logic of the October 31 Notice since subsequent requests would only be considered if queued after the rollover rights were exercised.

21. Cargill maintains that, taken to its extreme, Midwest ISO's October 31 Notice only encourages an incumbent customer with rollover rights for service ending December 31, 2003, to wait until the last second before midnight on November 1 to exercise its rollover rights, thereby thwarting any attempts to compete.

22. In addition, Cargill argues that Midwest ISO's October 31 Notice conflicts with Commission policy and precedent. Specifically, Cargill cites to *El Paso Electric Company*, [102 FERC ¶61,060 at PP 22-23 LK:NON: FERC-ALL 102FERCP61060.22](#), *reh'g denied in relevant part*, [103 FERC ¶61,289 LK:NON: FERC-ALL 103FERCP61289](#) (2003) (*El Paso*), where the Commission found that, by refusing to entertain competing requests until after the incumbent customer exercised its rollover rights, El Paso did not implement its OATT. Cargill cites to the Commission statement that "El Paso's OATT neither established a time frame for submitting a competing request nor limits the time period within which a competing request may be submitted."⁶ Cargill claims that the Commission explained in *El Paso* that the submission of an eligible customer's competing transmission service request before the day that the incumbent customer must exercise its right of first refusal is actually necessary because an incumbent transmission customer "must have notice of what competing offers are outstanding prior to the 60th day in order to make an economic decision on whether to roll-over the contract,"⁷ and that El Paso's process "makes it impossible to ever have a competing request."⁸

23. Cargill further argues that Midwest ISO's October 31 Notice was, in fact, a policy change that should be rejected because Midwest ISO failed to: (1) file the necessary revision to its OATT in order to demonstrate that the proposed change was either consistent with, or superior to, the Commission's *pro forma* OATT; and (2) to vet such changes through its stakeholder process. Cargill states that if Midwest ISO wishes to implement this change in its Business Practices, it should propose amendments to its OATT and Business Practices and seek stakeholder consensus on such changes before filing them with the Commission.

24. Cargill requests that the Commission order Midwest ISO to reprocess its queue and require those that submitted rollover requests after Cargill's May requests to either match Cargill's requests or surrender their rights to capacity over the MI-IMO interface, and to apply first-come, first-served principles as it determines which of those rollover requests will be required to match Cargill's May requests. In addition, it requests that the Commission find that Cargill's confirmation of the use of the seven-year Cargill May request is subject to termination if the Midwest ISO is required to reprocess the queue and/or a shorter-term reservation becomes available to Cargill as a result of this proceeding.

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Notice of Complaints, and Responsive Pleadings

25. Notice of Tenaska's complaint in Docket No. EL04-43-000 was published in the *Federal Register*, 69 *Fed. Reg.* 63 (2003), with the answer to the complaint and all comments, interventions or protests due on or before January 20, 2004.

26. Notice of Cargill's complaint in Docket No. EL04-46-000 was published in the *Federal Register*, 69 *Fed. Reg.* 1712 (2003) with the answer to the complaint and all comments, interventions or protests due on or before January 20, 2004.

27. Midwest ISO filed an answer to both Tenaska's and Cargill's complaints and a separate motion to consolidate.⁹ A timely motion to intervene and comments in support of Midwest ISO's motion to consolidate was filed by Cargill in Docket No. EL04-43-000. A timely motion to intervene and comments was filed by Tenaska in Docket No. EL04-46-000. Timely motions to intervene in both Docket Nos. EL04-43-000 and EL04-46-000 were filed by Wisconsin Electric Power Company, Midwest ISO Transmission Owners, Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc., and Ontario Power Generation Inc. Timely motions to intervene and comments were filed in both dockets by TransAlta, DTET, Split Rock, Wisconsin Public Service Corporation (WPS) and Conectiv. PSEG Energy Resources & Trade LLC (PSEG ER&T) filed a timely motion to intervene, comments and a motion to consolidate in both dockets. Tenaska and Cargill each filed separate answers to Midwest ISO's answer to their complaints.

Midwest ISO's Answer

28. Midwest ISO states that in March 2003, when Tenaska submitted its rollover requests, Midwest ISO was engaged in a review of Commission orders, its OATT and Business Practices to determine how best to process the transmission queue. Midwest ISO states that by October 2003, it had concluded its review. According to Midwest ISO, it had determined that queue processing should be based upon the following principles: (1) an assumption that existing customers with rollover rights would exercise those rights, leaving zero Available Transmission Capacity (ATC) at the MI-IMO interface until November 1, 2003, which was the last day to exercise rollover rights; (2) any new request for transmission service submitted prior to an exercise of rollover rights would be rejected due to the absence of ATC; (3) only new transmission service requests for longer-term transmission service received after a rollover request was exercised would be allowed to compete with exercised rollover rights; (4) an existing customer with rollover rights would be allowed to match the durational term of new transmission service requests filed after its exercise of rollover rights; and (5) if an existing customer declined to exercise its right of first refusal, the capacity would be awarded to the customer who submitted the longer-term new transmission service request, and the existing customer would fall out of the queue upon confirmation of the request by the customer with the longer-term new transmission service request.

29. Midwest ISO explains that as a consequence of these principles, on October 31, 2003, it issued a notice "reminding" transmission customers of its policy that, in order to be considered a "competing request," a new longer-term transmission service request must be submitted after the relevant incumbent has submitted its rollover requests to Midwest ISO. Midwest ISO states that in December 2003, it began to process the queue for service to the MI-IMO interface as if it had been actively processing the queue in real-time since January 2003 according to these principles.

A. Response to Tenaska's Complaint

30. In response to Tenaska's complaint, Midwest ISO argues that it processed requests pursuant to Section 2.2 of its OATT. Midwest ISO alleges that it followed Commission policy that requires it to maintain ATC for existing long-term transmission customers with rollover rights until the time expires for those customers to exercise their rollover rights (*i.e.*, sixty days prior to the expiration of the existing contract)¹⁰ by setting

ATC at the MI-IMO interface at zero beginning on January 1, 2003, since all of that capacity was subject to existing transmission service agreements with rollover rights.¹¹ In addition, Midwest ISO states that it allowed new transmission service requests to compete with rollover requests. Midwest ISO asserts that the only novel feature of the instant case was that Midwest ISO was evaluating how to process a queue consisting of inchoate rollover rights and requests for new service until October 2003. It points out that in order to maintain the integrity of the queue during this evaluation process, it placed both rollover requests and requests for new service in a study status pending a final determination of queue procedures. Midwest ISO explains that once a final determination was reached, Midwest ISO processed the queue applying the policies that would have been in effect throughout the year had the final determination been in place when the first requests were filed. It asserts that it did not process the queue on a last-come, first-served basis, but rather, Tenaska's first requests for rollover

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competed with the first later-queued request for new service (i.e., Cargill's seven-year May request).

31. Midwest ISO continues that Tenaska wants the best of both worlds. It maintains that Tenaska wants: (1) Midwest ISO to maintain adequate capacity to accommodate its rollover rights; (2) a right of first refusal; and (3) to exercise first-come, first-served rights under Section 13.2, if those rights are more advantageous. Midwest ISO asserts that its OATT is not structured in that way and that existing customers have the rights provided under Section 2.2, and the priority of new transmission service requests are governed by Section 13.2.¹² With regard to Section 2.2, it asserts that queue position is a secondary consideration and that the first issue is whether the preexisting customer is willing to match competing offers to retain capacity rights. Moreover, Midwest ISO states that if an existing customer's rollover request must be granted immediately upon its tender under the provisions of Section 13.2, then that capacity would be committed and the rollover holder would not be required to match a subsequent longer term offer. It concludes that because such an outcome would be inconsistent with the competition provisions of Section 2.2 of its OATT, it does not treat rollover requests as akin to requests for new transmission service.

32. Midwest ISO further argues that it properly placed Tenaska's rollover requests in study mode. It states that the study status is not restricted only to those circumstances requiring a system impact study. Midwest ISO points out that Order No. 638 defines "study" as a value "assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate the service requested."¹³ It states that since under Section 2.2 a rollover customer cannot acquire unconditional acceptance without matching a later filed request for new service of longer term, the study designation was the proper treatment of such requests.

33. With regard to Tenaska's argument that it did not have sufficient time to evaluate whether to match Cargill's request, Midwest ISO states that this argument should be directed to the Commission. It states that Standard 4.20 of [Order No. 638 LK:NON:FERC-ALL FERCOR638](#) establishes twenty-four hours as the interval in which rights of first refusal must be exercised and that Section 6.9.1 of Midwest ISO's Business Practices provides that "the transmission customer with the right of first refusal will have up to 24 hours to agree to match the competing interests."

B. Response to Cargill's Complaint

34. Midwest ISO argues that Cargill's complaint should be dismissed for lack of aggrievement. It asserts that Cargill's only aggrievement is that Cargill confirmed its award of the capacity that it had requested through its seven-year request.

35. Midwest ISO further argues that while the methodology it employed had not been previously reduced to writing in a single document, its October 31 Notice did not represent a unilateral change in an existing tariff provision or a specific business practice. Midwest ISO states that there is not a methodology set forth in Section 2.2 on how to process the queue and that there were a number of competing interests that must be

balanced through *de novo* procedures.

36. Midwest ISO distinguishes *El Paso* stating that El Paso posted capacity associated with inchoate rollover rights, but rejected new service requests until rollover rights were exercised or expired. It states that it rejects new requests only when ATC is zero, and accepts new requests when ATC becomes positive through the exercise of rollover rights.

37. Midwest ISO also states that Cargill's assertion that having later-filed new service requests compete with rollover requests may defeat rights of competition if all existing holders wait until the last day permitted to exercise their rights is, to an extent, an accurate observation. However, it also states that this is a natural result of Commission policy, which is to allow existing holders to retain capacity, and the right to compete is the exception to the preference in favor of rollover rights.

Comments and Motions to Consolidate

38. Conectiv and WPS support the complainants' assertions that Midwest ISO has processed requests for rollover transmission service in a manner that is inconsistent with Midwest ISO's OATT and Commission precedent. Conectiv further states that: (1) the transmission queue should be reprocessed; (2) twenty-four hours is an unreasonable time to match competing requests; and (3) the Commission should set these complaints for hearing and refer them to a settlement judge. PSEG ER&T generally supports Tenaska's complaint.

39. In contrast, DTET argues that Midwest ISO properly processed the transmission queue for many of the reasons presented in Midwest ISO's answer.

40. DTET and Split Rock state that any remedial action granted by the Commission can only be prospective and should in no way retroactively affect transmission service requests granted by Midwest ISO from March 2003 through December 2003.

41. Split Rock further states that it cannot be determined from Section 2.2 of Midwest ISO's OATT whether the queue time of a competing

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request can be prior to a renewal request, subsequent to a renewal request, or both. It states that without additional detail added to Section 2.2, it may continue to be interpreted in different ways. Split Rock suggests that the current processing procedures should be considered either through a stakeholder process or through such other process as the Commission may specify. It also argues that customers should have at least seventy-two hours to evaluate whether to match a competing request.

42. TransAlta argues that Cargill's proposed transmission allocation methodology is no better, and may be worse than Midwest ISO's current methodology, because the existence of over-subscription cannot be known until the deadline for submitting service requests (including rollover requests) has passed. TransAlta states that rather than adopting Cargill's proposal, the Commission should direct Midwest ISO to consult with its stakeholders and develop procedures for the 2005 service year.

43. TransAlta, Cargill and Conectiv support Midwest ISO's motion to consolidate these proceedings, and PSEG ER&T filed a separate motion to consolidate.

Discussion

A. Procedural Matters

44. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.214 LK:NON: FERC-ALL 18CFR385.214](#) (2003), the timely unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

45. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.213\(a\)\(2\) LK:NON: FERC-ALL 18CFR385.213\(A\)\(2\)](#) (2003), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Tenaska's and Cargill's answers and will, therefore, reject them.

46. With regard to Midwest ISO's and PSEG ER&T's motions to consolidate, the Commission typically consolidates proceedings only for purposes of hearing and decision.¹⁴ As we are not setting either of these proceedings for hearing, there is no need to formally consolidate the dockets. Accordingly, we will deny the motions to consolidate.

B. Analysis

47. We will grant Tenaska's and Cargill's complaints, as discussed below.¹⁵

48. Section 2.2 of the *pro forma* OATT and Midwest ISO's OATT does not contain a process for handling rollover rights. In fact, the Commission has never found that there is only one way to process rollover requests. Rather, in [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#), the Commission explained that it would not specify the mechanics by which the right of first refusal mechanism would be exercised, but would address the issue on a case-by-case basis. However, the Commission did encourage utilities and their customers to include specific procedures for exercising the right of first refusal in future transmission service agreements executed under the *pro forma* tariff. And of course, utilities are free to make Section 205 filings to propose additions to the *pro forma* tariff to generically specify procedures for dealing with the issue.¹⁶ Thus, we agree with Split Rock that it cannot be determined from Section 2.2 whether a competing request can be prior to a renewal request, subsequent to a renewal request, or both, and it is in this context that we address the complaints.

49. Rather than include specific procedures for processing rollover requests in transmission service agreements or in its OATT, Midwest ISO chose to set forth its procedures in its Business Practices, which it posted on its OASIS. Under Section 9.3.1 of Midwest ISO's Business Practices, new transmission service requests that are filed before existing customers exercise their rollover rights are able to compete with later-submitted rollover requests. In particular, Section 9.3.1 states that: "If the new request cannot be accommodated, the new customer will have the option of proceeding with an impact study to determine any upgrades necessary to accommodate the request, or *holding its request in Study mode until such time as other customers exercise their rollover rights.*" (emphasis added).

50. Despite those Business Practices, on October 31, 2003, Midwest ISO posted a notice on its OASIS indicating that competing requests may be submitted only after a rollover request is submitted.¹⁷ We conclude that this October 31 Notice

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resulted in a new policy, and was not reasonably noticed to Midwest ISO's customers nor properly vetted through Midwest ISO's stakeholder process. Midwest ISO's October 31 Notice provided customers only one day to decide whether to file competing requests for transmission service. Under the circumstances, this was unreasonable. Indeed, Midwest ISO has a stakeholder process in place and using it could have avoided the complaints that are now before us.

51. In any event, even if the methodology expressed in the October 31 Notice were reasonably noticed and vetted through the stakeholder process, we conclude that the approach announced by Midwest ISO in its Notice is inconsistent with our policy and precedent. As Cargill explains in its complaint, Midwest ISO's October 31 Notice would allow a rollover customer to wait until the last moment before the deadline to exercise its rollover rights and thus eliminate any competing requests. Indeed, Midwest ISO argues that this is an "accurate observation," but claims that this is a "natural result of Commission policy."¹⁸ We disagree with Midwest ISO. Our right of first refusal is a tie-breaker that gives priority to existing firm transmission customers. As we explained in [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#) :

The objective of a right of first refusal is to allow an existing firm transmission customer to continue to receive transmission service under terms that are just, reasonable, not unduly discriminatory, or preferential. Absent the requirement that the customer match the contract term of a competing request, utilities could be forced to enter into short-term arrangements that could be detrimental from both an operational standpoint (system planning) and a financial standpoint.¹⁹

Thus, an approach that could result in the elimination of competing requests is contrary to our policy and we find it unacceptable. In an analogous circumstance, we found fault with a transmission provider's rollover mechanism because it "makes it impossible to ever have a competing request."²⁰ As Midwest ISO's methodology may lead to similar results, such a methodology would be inconsistent with Section 2.2 and our precedent.

52. We also agree with Tenaska's assertion that Midwest ISO's methodology is discriminatory because it allows rollover requests received subsequent to Tenaska's March rollover requests to be confirmed without requiring them to match any of Cargill's requests as Tenaska was required to do.²¹

53. Accordingly, we direct Midwest ISO to reprocess the transmission queue following the methodology in its Business Practices. Although certain parties argue that any remedial action should be prospective only, we conclude otherwise. Certain parties should not be allowed to retain transmission capacity that they should not have received in the first place. Further, if Midwest ISO were to find that its methodology set forth in its Business Practices is inadequate and needs to be changed, it should vet any changes through its stakeholder process and, if necessary, file proposed tariff language with the Commission.

54. Furthermore, we agree with the arguments that twenty-four hours is an unreasonable time for rollover requests to match competing requests. While Midwest ISO cites to Standard 4.20 of [Order No. 638 LK:NON: FERC-ALL FERCOR638](#)²² in support of its twenty-four hour requirement, this standard was not intended to apply to rollover requests under Section 2.2 of the pro forma tariff, but to initial transmission service requests.²³ Indeed, in Order No. 638, the Commission explicitly stated that "[t]he rights-of-first-refusal shown in Table 4-3 should not be confused with the right-of-first-refusal available to a customer with a pre-existing expiring contract under [Order No. 888 LK:NON: FERC-ALL FERCOR888](#)."²⁴ Moreover, we disagree with Midwest ISO's assertion that Section 6.9.1 of its Business Practices supports its twenty-four hour requirement. Section 6.9.1 is similar to Section 13.2 of the pro forma tariff and the relevant language in Section 13.2 concerns conditional short-term transmission service only. The referenced longer-term competing requests refer only to longer-term short-term requests.²⁵ Therefore, Midwest ISO should address through its stakeholder process, a reasonable time frame (or time frames) for customers with rollover rights to evaluate whether to match competing requests.

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The Commission orders:

(A) Tenaska's complaint is hereby granted, as discussed in the body of this order.

(B) Cargill's complaint is hereby granted, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to reconsider Tenaska's and Cargill's requests for transmission service, as well as other transmission service requests that were submitted from March 2003 through December 31, 2003, consistent with its Business Practices and OATT, as discussed in the body of this order.

(D) Midwest ISO is hereby directed to address, through its stakeholder process, a reasonable time frame (or time frames) for customers with rollover rights to evaluate whether to match competing requests.

¹ *Open-Access Same-time Information System and Standards of Conduct*, Order No. 638, *FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶31,093 LK:NON: FERC-ALL P31093 (2000).

² On May 6, 2003, Split Rock Energy (Split Rock) also submitted a two-year long-term firm transmission request for new transmission.

³ On December 14, 2003, Midwest ISO required Tenaska's other two March rollover requests, totaling 52 MW, to match Split Rock's May request within twenty-four hours.

⁴ *Citing Constellation Power Source, Inc. v. American Electric Power Service Corp.*, 102 FERC ¶61,142 at P 38 LK:NON: FERC-ALL 102FERCP61142.38 (2003).

⁵ *Citing Order No. 638 LK:NON: FERC-ALL FERCOR638* at p. 31,429.

⁶ *El Paso*, 102 FERC ¶61,060 at P 23 LK:NON: FERC-ALL 102FERCP61060.23.

⁷ *See id.* at P 22.

⁸ *Id.*

⁹ On December 31, 2003, Midwest ISO filed a request for extension of time to answer Tenaska's complaint. Tenaska filed a motion in opposition to the request. On January 9, 2004, the Commission's Secretary issued a notice granting Midwest ISO's extension from January 12 to January 20, 2004.

¹⁰ *Citing Tenaska Power Service Co. v. Southwest Power Pool, Inc.*, 102 FERC ¶61,140 LK:NON: FERC-ALL 102FERCP61140 (2003).

¹¹ Midwest ISO states that under Section 6.6 of its Business Practices, a request for transmission service submitted under Section 13.2 of the OATT is denied upon receipt if there is no ATC over the requested path and existing service is deemed unconditional.

¹² Midwest ISO states that Order No. 638 LK:NON: FERC-ALL FERCOR638 makes clear that those requesting new service and those seeking to extend existing service have fundamentally different rights.

¹³ Order No. 638 LK:NON: FERC-ALL FERCOR638 at 17,406.

¹⁴ *See, e.g., Arizona Public Service Company*, 90 FERC ¶61,197 at P 14 LK:NON: FERC-ALL 90FERCP61197.14 (2000).

¹⁵ We disagree with Midwest ISO's argument that Cargill's complaint should be dismissed for lack of aggrievement. Cargill was aggrieved by Midwest ISO's October 31 Notice and improper processing of its queue and properly raised its concerns in a complaint with the Commission.

¹⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036 LK:NON:

FERC-ALL P31036 (1996), *order on reh'g*, Order No. 888-A, *FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* ¶31,048, at p. 30,198 LK:NON: FERC-ALL P31048PAGE30198 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶61,248 LK:NON: FERC-ALL 81FERCP61248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶61,046 LK:NON: FERC-ALL 82FERCP61046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York, et al. v. FERC*, 535 U.S. 1 (2002).

¹⁷ The October 31 Notice states that: “A renewal request is subject to pre-emption (with right of first refusal) by competing later-queued, longer duration requests, provided the later- queued, longer duration request is queued prior to 11/2/2003 00:00:00 EST. Existing customers exercising renewal rights by submitting a request for renewal will have the option to match competing requests of longer duration.”

¹⁸ Midwest ISO Answer at 22.

¹⁹ Order No. 888-A LK:NON: FERC-ALL FERCOR888-A at pp. 30,197-98.

²⁰ *El Paso*, 102 FERC ¶61,060 at P 22 LK:NON: FERC-ALL 102FERCP61060.22. We find that Midwest ISO's arguments distinguishing the circumstances in *El Paso* reflect a misreading of *El Paso*. In that case, El Paso posted the existing customer's capacity as available on OASIS prior to the customer exercising its rollover rights. The Commission cited the fact that the capacity was posted as available as reason that El Paso should have expected customers to submit competing requests. However, Midwest ISO turns the decision in *El Paso* on its head when it suggests that *El Paso* would allow it to prevent earlier queued requests for new service from competing with existing customers' rollover requests by simply not posting capacity subject to rollover rights on OASIS. Moreover, whether or not capacity over the MI-IMO interface that was subject to rollover rights beginning January 1, 2004 was posted as available on OASIS, as noted above, Section 9.3.1 of Midwest ISO's Business Practices provides customers whose requests cannot be accommodated the option to hold their request in study mode until such time as other customers exercise their rollover rights.

²¹ *See supra*, PP 10-11.

²² Standard 4.20 of Order No. 638 LK:NON: FERC-ALL FERCOR638 states that “A customer who has been extended a right-of-first-refusal should have a confirmation time equal to the lesser of a) the Customer Confirmation Time Limit in Table 4-2 or b) 24 hours.”

²³ *See* Order No. 638 LK:NON: FERC-ALL FERCOR638 at p. 31,429 (Table 4-3).

²⁴ *See* Order No. 638 LK:NON: FERC-ALL FERCOR638 at p. 31,428, n.114.

²⁵ *See Madison Gas & Electric Company v. Wisconsin Power & Light Company*, 80 FERC ¶61,331, at p. 62,103 LK:NON: FERC-ALL 80FERCPAGE62103 (1997), *reh'g denied*, 82 FERC ¶61,009 LK:NON: FERC-ALL 82FERCP61009 (1998).

COMM-OPINION-ORDER, 107 FERC ¶61,308, **Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-43-001**, (June 23, 2004)
Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., Docket No. EL04-43-001

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**Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc.,
Docket No. EL04-43-001**
**Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc., Docket
No. EL04-46-001**
(Not Consolidated)
Order Denying Rehearing

(Issued June 23, 2004)

**Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.**

1. In this order the Commission denies rehearing of the order issued on March 8, 2004, in these proceedings (March 8 Order).¹ This order benefits customers by providing certainty to Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) customers concerning the processing of rollover requests and competing requests.

Background

2. On December 23, 2003, Tenaska Power Services Co. (Tenaska) filed a complaint against Midwest ISO in [Docket No. EL04-43-000 LK:NON: FERC-ALL FERCDKTEL04-43-000](#). Tenaska alleged that Midwest ISO improperly processed its transmission queue by allowing later-queued new service requests to preempt earlier-queued requests to rollover existing long-term firm reservations and that Midwest ISO's scheduling procedures did not comport with [Order No. 638 LK:NON: FERC-ALL FERCOR638](#).²

3. On December 29, 2003, Cargill Power Markets, LLC (Cargill) filed a complaint against Midwest ISO in [Docket No. EL04-46-000 LK:NON: FERC-ALL FERCDKTEL04-46-000](#). Cargill alleged that Midwest ISO changed its treatment of rollover rights through a notice that was posted on Midwest ISO's OASIS on October 31, 2003 (October 31 Notice) and that this change was presented to its transmission customers with almost no notice and without a proper vetting through the stakeholder process. Cargill also alleged that Midwest ISO's change in its treatment of rollover rights was inconsistent with its open access transmission tariff (OATT) and Business Practices as well as Commission policy and precedent.

4. The March 8 Order granted the two complaints. The Commission found that Section 2.2 of the *pro forma* OATT does not define whether a "competing request" can be made prior to a renewal request, subsequent to a renewal request, or both. The Commission then found that: (1) Midwest ISO's Business Practices provided that a customer making a new request for service that could not be accommodated has the option of having an impact study done or having the request held in study mode until other customers exercised their rollover rights; and (2) on October 31, 2003, Midwest ISO changed this approach and posted a notice indicating that competing requests may be submitted only *after* a rollover request is submitted. The Commission found this approach unreasonable because the October 31 Notice resulted in a new policy which was neither reasonably noticed to Midwest ISO's customers nor properly vetted through Midwest ISO's stakeholder process. The Commission also found that the twenty-four hour period for rollover requests to decide whether to match competing requests was unreasonable. The Commission further explained that even if the methodology expressed in the October 31 Notice was reasonably noticed and

vetted through the stakeholder process, the approach was inconsistent with Commission policy and precedent because it allowed a rollover customer to wait until the last moment before the deadline to exercise its rollover rights and thus eliminate any competing requests. The Commission concluded that since Midwest ISO's methodology may make it impossible to ever have a competing request, such a methodology would be inconsistent with Section 2.2 and our precedent. Finally, the Commission found that Midwest ISO's methodology was discriminatory because it required rollover requests to match subsequent new service requests, but did not require rollover requests that were submitted after new service requests to match those new service requests (all of which service was to commence or rollover on the same date).

5. The Commission directed Midwest ISO to reprocess the transmission queue to reconsider Tenaska's and Cargill's requests, as well as other transmission service requests that were submitted from March 2003 through December 31, 2003, following the methodology in its Business Practices. The Commission also concluded that remedial action should not be prospective only, explaining that certain parties should not be allowed to retain transmission capacity that they should not have received in the first place. Further, the Commission emphasized, in the event that Midwest found that its methodology set forth

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in its Business Practices was inadequate and needed to be changed, the Commission directed Midwest ISO to vet any changes through its stakeholder process and, if necessary, file the proposed tariff language with the Commission.

Requests for Rehearing

6. Midwest ISO, DTE Energy Trading, Inc. (DTET), and PSEG Energy Resources & Trade LLC (PSEG ER&T) filed requests for rehearing of the March 8 Order. Midwest ISO requests that the Commission provide clarification and guidance with respect to certain overarching principles and methodologies for queuing and processing rollover requests, and requests that the Commission convene a technical conference. In the alternative, Midwest ISO seeks rehearing and argues that the Commission erred in the March 8 Order by: (1) finding that Midwest ISO's methodology set forth in the October 31 Notice is inconsistent with the Commission's policies and precedent and by requiring Midwest ISO to reprocess the 2004 queue; (2) directing Midwest ISO to establish a new methodology for processing rollover requests; and (3) failing to provide adequate guidance.

7. DTET requests that the Commission: (1) grant rehearing of the March 8 Order's rejection of DTET's request that any relief herein be granted on a prospective basis; (2) provide guidance in the form of certain objective core principles to be adopted by transmission providers as part of their respective methodologies for processing the transmission queue or direct the Midwest ISO to reprocess the queue pursuant to such principles; and/or (3) convene a technical conference for purposes of addressing the transmission queuing issues raised herein.

8. PSEG ER&T argues that the Commission erroneously determined that the Midwest ISO should reprocess its transmission queue beginning January 1, 2004. Second, PSEG ER&T argues that if the Commission determines that it did not erroneously require Midwest ISO to reprocess its transmission queue beginning January 1, 2004, the Commission erred: (i) by failing to specify a date certain by which Midwest ISO must file a compliance filing setting forth its methodology for reprocessing the transmission queue for service to the Michigan-Ontario (MI-IMO) interface beginning January 1, 2004; (ii) by failing to specify another date certain by which Midwest ISO must reprocess its transmission queue under the proposed new methodology; (iii) by failing to specify another date certain by which Midwest ISO must institute a process for resolving its methodology for processing its transmission queue for service beginning January 1, 2005 and afterward; and (iv) by requiring any remedial action by MISO to become effective as of January 1, 2004.

9. Tenaska, Cargill and TransAlta Energy Marketing (U.S.) Inc. (TransAlta) filed answers to Midwest

ISO's request for rehearing.

Discussion

Procedural Matters

10. Rule 713(d) of the Commission's Rules of Practice and Procedure, [18 C.F.R. §385.713\(d\) LK:NON:FERC-ALL 18CFR385.713\(D\)](#) (2003), provides that the Commission will not permit answers to a request for rehearing. We will accordingly reject Tenaska's, Cargill's and TransAlta's answers.

Analysis

11. As discussed further below, we will deny the rehearing requests filed in this proceeding. We will also deny Midwest ISO's request that the Commission provide it clarification and guidance with respect to certain principles and strawman proposals. These matters are more appropriately addressed in a petition for declaratory order. However, in the context of Midwest ISO's rehearing requests, we will clarify for Midwest ISO and the parties to this proceeding what Midwest ISO's OATT and Commission precedent require. Thus, in this regard, we will explain for Midwest ISO what its OATT and Commission precedent require it to do. Finally, we will deny Midwest ISO's and DTET's requests for a technical conference and DTET's request that the Commission commence a rulemaking proceeding.

Requests for Rehearing

12. Midwest ISO argues that the March 8 Order strikes down Midwest ISO's existing methodology for processing rollover requests and requires the Midwest ISO to both reprocess the 2004 queue and adopt a new mechanism for handling rollover requests on a prospective basis. Midwest ISO asserts that the March 8 Order provides little guidance on how this can be achieved.

13. Midwest ISO argues that the March 8 Order admits that Section 2.2 of the Midwest ISO's OATT does not contain a process for handling rollover rights and directs Midwest ISO to reprocess the queue following the methodology in its Business Practices. Midwest ISO asserts that, while instructive, the Business Practices (specifically, Section 9.3.1) language is inadequate in the absence of further guidance to serve as a basis for developing both a retroactive correction mechanism and prospective methodology. Midwest ISO argues that given the fact that Midwest ISO's rollover request processing has already been the subject of multiple complaints, the Commission's failure to provide further detailed guidance in its March 8 Order demonstrates a lack of reasoned decision making.

14. DTET argues that the March 8 Order failed to take remedial action addressing Midwest ISO's processing of the transmission queue on a prospective basis. DTET argues that in addition to violating Section 206 of the FPA, the March 8 Order opens the flood gates for disaffected customers to continually challenge the processing of the transmission queue for the sole purpose of advancing their respective queue position.

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15. PSEG ER&T requests that the Commission reverse its conclusion that Midwest ISO should reprocess

its transmission queue beginning January 1, 2004. It argues that given the lack of detail in Midwest ISO's OATT and Business Practices regarding procedures to analyze competing requests, Midwest ISO reasonably exercised its discretion and did not unduly discriminate against any transmission customer. In addition, PSEG ER&T argues that the Commission incorrectly concluded that Midwest ISO's approach would preclude new requests from ever competing with rollover requests and that Midwest ISO's actions contravened Commission policy. In support of this argument, PSEG ER&T states that Midwest ISO allowed new requests for transmission service to compete with rollover requests that were already submitted.

16. If the Commission continues to find that Midwest ISO should reprocess the queue, PSEG ER&T contends that the March 8 Order provides insufficient guidance as to how Midwest ISO should reprocess its queue. PSEG ER&T argues that Midwest ISO's Business Practices provide insufficient detail to resolve Midwest ISO's transmission queue and that the March 8 Order is not clear as to whether, if the Midwest ISO were to file a proposed methodology, such methodology would apply to Midwest ISO's queue for service beginning January 1, 2004 or whether it would apply only to the queue for service beginning January 1, 2005. Additionally, PSEG ER&T argues that the March 8 Order is unclear as to the consequences (*e.g.*, financial) if Midwest ISO determines that different parties should have received service beginning January 1, 2004, and thus should take service under the queue as reprocessed. Finally, it argues that the March 8 Order sets forth no deadline by which Midwest ISO should reprocess its queue or file such proposed tariff language and requests that the Commission establish such deadlines.

Commission Determination

17. In denying the rehearing requests, we disagree with the primary assertion that the Commission did not provide adequate guidance on how Midwest ISO should reprocess its transmission queue and that the Commission somehow was directing Midwest ISO to establish a new methodology for processing rollover requests. In the March 8 Order, the Commission directed Midwest ISO to reconsider requests for transmission service that were submitted from March 2003 through December 31, 2003, consistent with its Business Practices. The Commission concluded that on October 31, 2003, Midwest ISO posted on its OASIS a new approach to processing rollover requests that was contrary to the approach set forth in its Business Practices. In particular, Midwest ISO's Business Practices provided that if a new request could not be accommodated, the new customer could proceed with an impact study to determine if any upgrades were necessary to accommodate the request, or it could have its request held in Study mode until such time as other customers exercise their rollover rights.³ Midwest ISO's October 31, 2003, posting, however, directly contravened that approach. Rather than provide that new requests could be held in Study mode until rollover rights were subsequently exercised, Midwest ISO's new approach specifically limited competing requests to those submitted after a rollover request is submitted.⁴ Accordingly, the Commission rejected this unsupported change and required Midwest ISO to reprocess the transmission queue following the methodology set forth in its Business Practices. In other words, the Commission told Midwest ISO to go back and reprocess the queue following the approach it used prior to its October 31 Notice.⁵ Contrary to Midwest ISO's assertions, this did not strike down Midwest ISO's existing methodology nor did it require Midwest ISO to adopt a new mechanism for handling rollover requests on a prospective basis. The order simply told Midwest ISO to use the methodology that it was previously using.⁶

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18. Cargill's complaint supports the Commission's view point, in that Cargill explicitly complained that Midwest ISO's October 31 Notice was an eleventh-hour, unilateral change that conflicted with both its OATT and Business Practices and should be rejected. In response, Midwest ISO never argued that it did not have an existing approach to processing transmission requests, but rather focused on arguing in support of its new approach announced in its October 31 Notice. If, as it now appears Midwest ISO is intimating, it never had a specific documented approach to processing its queue prior to its October 31 Notice to which it

could return, Midwest ISO was still obligated to process its transmission queue in a manner consistent with its OATT, its Business Practices, and Commission precedent. With respect to those Business Practices, the Commission specifically recognized in the March 8 Order that Midwest ISO's existing Business Practices (prior to the October 31 Notice) allowed new requests to compete with later filed rollover requests and found this to be an appropriate practice. There is nothing more the Commission needed to or could have done.

19. DTET's argument that the Commission violated Section 206 of the FPA by failing to take remedial action addressing Midwest ISO's processing of the transmission queue on a prospective basis is unavailing. DTET appears to misunderstand the Commission's directive in the March 8 Order. The March 8 Order found the October 31 Notice to be unreasonable and contrary to Commission precedent and policy, as described above. In light of this finding, the Commission directed Midwest ISO to reprocess the transmission queue following the methodology in its Business Practices, *i.e.*, the methodology it was previously using. In other words, Midwest ISO was directed to process the transmission queue as if the October 31 Notice had not been posted on its OASIS. Thus, the methodology in place prior to the October 31 Notice is the methodology that would continue to be used prospectively because, of course, that is the only methodology that Midwest ISO had in place.

20. PSEG ER&T's argument that Midwest ISO reasonably exercised its discretion and did not unduly discriminate against any transmission customer given the lack of detail in Midwest ISO's OATT and Business Practices is similarly unavailing. As explained above, PSEG ER&T misses the point of the order. The Commission was not reviewing Midwest ISO's methodology announced in its October 31 Notice under Section 205 of the FPA to determine whether it was just and reasonable. Rather, the Commission was responding to two complaints that the Midwest ISO had improperly imposed a new policy through its October 31 Notice. The Commission agreed with the complaints and directed Midwest ISO to reprocess the transmission queue following the methodology in its Business Practices that existed prior to the October 31 Notice.

21. Further, we find PSEG ER&T's argument that the March 8 Order is unclear as to the financial consequences of Midwest ISO's reprocessing of the transmission queue to be irrelevant. As we stated in the March 8 Order, “[c]ertain parties should not be allowed to retain transmission capacity that they should not have received in the first place.”⁷ We expect Midwest ISO to reprocess its queue and to deal with any financial consequences that may arise.

22. Finally, we agree with PSEG ER&T that a deadline for Midwest ISO to reprocess its queue is necessary. While we initially expected that the Midwest ISO would timely reprocess its queue, that has not happened. Accordingly, we will require Midwest ISO to submit a compliance filing within forty-five days of the date of this order reflecting that it reprocessed its transmission queue. We disagree with PSEG ER&T, however, that a deadline should be set for Midwest ISO to file proposed tariff language. In the March 8 Order, the Commission stated that if Midwest ISO were to find that its methodology set forth in its Business Practices is inadequate and needs to be changed, it could file proposed tariff language with the Commission. Such a filing would be pursuant to Section 205 of the FPA and would be for prospective application only. Moreover, any such Section 205 filing would be at the discretion of Midwest ISO as the Commission has no authority to order that a Section 205 filing be made.⁸ Nevertheless, given the controversy Midwest ISO's current tariff and Business Practices have engendered, it may be advisable for Midwest ISO to make such a tariff filing.

Request for Guidance on Proposed Principles & Models for Queuing and Processing Rollover Requests

23. Midwest ISO requests the Commission's clarification and guidance with respect to certain “overarching” principles and methodologies for queuing and processing rollover requests for the purpose of reprocessing its transmission queue for service beginning January 1, 2004, as well as for processing its transmission queue on a prospective basis. Midwest ISO states that it presented these principles and methodologies to its Business Practices Working Group (BPWG) on March 22 and April 2, 2004. In

particular, Midwest ISO requests Commission guidance on twelve articulated principles. Midwest ISO states that these

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principles have been broadly endorsed by Midwest ISO's stakeholders except for two.⁹ These two principles state that: (1) Priority amongst competing originals is based first on the duration of the requested service, and second on queue time; and (2) During competition based on duration, queue-time is not relevant between the competing original and the renewal. Only duration matters in the competition. Midwest ISO explains that the majority of the stakeholders participating in the BPWG believe that the original queue priority should be determined based solely on queue time, and prefer that only earlier-queued originals compete with later-queued renewals. In contrast, Midwest ISO states that priority among competing originals should be based first on the duration of the requested service, and second on queue time.

24. Midwest ISO then asks for guidance with respect to two basic models that it could use for processing the queue and allocating capacity among new requests for service and rollover requests.¹⁰ The first model is titled "One-On-One." Essentially, under this model the last queued renewal must match against the longest term original. Also, the next to last rollover is matched against the second queued original and this process is repeated until each renewal is paired with an original. A rollover customer has three business days to agree to match the duration of the competing original request, and the transmission request queue would be processed in a single round.

25. The second model is titled "Hybrid." This model contemplates one-on-one competition with multiple rounds. A matched original requestor is not out of the queue, but goes up against the next entity in the rollover queue renewal. The longest original requestor competes against the last queued rollover. If the rollover customer matches, it gets reservation at the matched MWs and duration. The original requestor then competes against the next queued rollover. If a rollover matches a given original request, the original requestor at the bottom of the original request queue is eliminated. If the rollover requestor does not match, it is eliminated from the queue.

26. Midwest ISO states that a third model was also presented before the BPWG, but because it received no support from the stakeholders, it has been eliminated. Midwest ISO explains that this model was based on the principle that all rollover customers must match the longest original request. If a rollover customer matches, it gets a reservation at matched MW and duration. Under this option, the last queued un-matching rollover customer[s] loses capacity sufficient to accommodate the winning competitor and is eliminated from the queue and the remaining un-matching rollovers compete against next longest original request.

Commission Determination

27. Initially, we will deny Midwest ISO's request that the Commission provide it clarification and guidance with respect to twelve "overarching" principles and three strawman proposals that it indicates were presented at a BPWG meeting on March 22, 2004. These matters are more appropriately addressed in a petition for declaratory order,¹¹ which Midwest ISO is free to file at any time, where the issues raised can be explored on a more substantial record and with the input of all interested parties. However, in order to facilitate Midwest ISO's compliance with the March 8 Order, we will clarify for Midwest ISO and the parties to this proceeding what Midwest ISO's OATT and Commission precedent require Midwest ISO to do.

28. Midwest ISO's most significant confusion appears to be with its attempt to impose a "duration" requirement on its processing of long-term firm transmission service requests. This attempt is simply contrary to Midwest ISO's OATT and [Order No. 888 LK:NON: FERC-ALL FERCOR888](#). Section 13.2 of Midwest ISO's OATT, consistent with Section 13.2 of the *pro forma* tariff, states that "Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, *i.e.*, in the

chronological sequence in which each Transmission Customer has reserved service.”¹² Therefore, as Midwest ISO processes new requests for service, priority must

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be based solely on queue time.¹³ In other words, a later-submitted new request cannot bump an earlier submitted new request for a shorter duration.

29. Next, Midwest ISO attempts to allow only later-submitted new service requests to compete with earlier-submitted requests to roll over existing service. This is directly contrary to Midwest ISO's Business Practices that provide for competing requests to be made prior to rollover requests.

30. Midwest ISO's attempt to allow only later- submitted new requests to be competing requests would unreasonably disrupt the expectations of customers under Midwest ISO's OATT and Business Practices who have already submitted their rollover requests. This is demonstrated by the situation in which Tenaska found itself with respect to its March 6, 2002 request to roll over its existing reservation for 102 MW of service with delivery at the MI-IMO interface beginning January 1, 2004. At the time Tenaska submitted its rollover request, there were no outstanding new requests for such service. By exercising its rollover rights, under Midwest ISO's proposal, Tenaska would be required to match competing new service requests submitted after it exercised its rollover right. However, if instead of submitting the rollover request, Tenaska had simultaneously submitted a new request for the same 102 MW of service and a notice that it would not exercise the rollover rights associated with its existing reservation, it would have secured the desired reservation without being required to match any competing requests. Without adequate notice that its rollover request would be subject to competition from later-queued new service requests, Tenaska had no reason to expect that it would be disadvantaged by exercising its rollover request instead of seeking the desired transmission capacity in the form of a request for new service. Therefore, for the purpose of processing the transmission service queue for 2004, based on its existing OATT and Business Practices, Midwest ISO may only allow earlier-queued new service requests to compete with rollover requests.¹⁴

31. Finally, neither Midwest ISO's OATT nor its Business Practices establish a time period during which existing customers must agree to match the term of competing requests. While, in the March 8 Order, the Commission found the twenty- four hour period allowed by Midwest ISO to be unreasonable, we clarify that the period allowed for matching should be practicable given the sixty- day window between the close of the period during which rollover requests and new service requests must be submitted and the date that service commences. Because existing customers are on notice that they may be required to match the terms of longer-term competing requests, they should be aware of competing requests in the transmission queue and should have performed the necessary analysis to decide the longest term that they are willing to accept prior to being asked to match longer-term competing requests.

Rulemaking

32. DTET states that due to significant changes in, and the continuing evolution of, the electric industry, the Commission must now take a more proactive approach and address transmission queuing issues in a prospective manner.¹⁵ DTET notes that the Commission could take the following courses of action for implementing such an approach. First, it could institute a generic rulemaking proceeding focused on developing standardized rules for processing the transmission queue, with a particular focus on the treatment of “competing” requests for long-term, firm service. Once final, these rules would be incorporated as part of the terms and conditions of transmission providers' respective OATTs. Alternatively, it asserts, the Commission could keep the development of specific transmission queuing methodologies at the transmission provider level, consistent with current Commission policy. If the Commission chooses the latter option, DTET requests that the Commission establish certain “bedrock,” or “core,” principles that transmission providers must incorporate into their respective methodologies for processing the transmission queue.

33. DTET's request that the Commission commence a rulemaking proceeding to provide standardized practices for transmission queuing is beyond the scope of this proceeding and is rejected.¹⁶ Moreover, in [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#) the Commission specifically chose not to impose an industry-wide methodology for processing rollover requests, but instead indicated that it would address such issues on a case-by-case basis if and

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when a dispute arises.¹⁷ While DTET suggests that circumstances warrant the Commission, on a generic basis, to re-examine these matters, we are not persuaded that circumstances are so different now as to warrant such a generic re-examination of these matters. In any event, in [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#), the Commission did encourage utilities and their customers to include specific procedures for exercising the right of first refusal in further transmission service agreements and further emphasized that utilities are free to make Section 205 filings proposing additions to the pro forma tariff to specify generic procedures for dealing with these issues.¹⁸

Technical Conference

34. Midwest ISO and DTET request that the Commission convene a technical conference to discuss the issues related to processing the transmission queue. PSEG ER&T, however, opposes the convening of a technical conference. It asserts that given Midwest ISO's BPWG meetings to discuss how Midwest ISO should reprocess its queue or file proposed tariff language, a technical conference could only delay the resolution of these issues, instead of capitalizing on the momentum that Midwest ISO built in its stakeholder process.

35. We concur with PSEG ER&T and will not convene a technical conference. Given that Midwest ISO's stakeholder process has already made significant progress in resolving the issues concerning how Midwest ISO should process its transmission queue, and given the further guidance provided in this order, the commencement of an additional forum would only be redundant and unnecessary. Accordingly, Midwest ISO should continue with its stakeholder process, to the extent necessary, to achieve resolution of these issues.

The Commission orders:

(A) The requests for rehearing are hereby denied.

(B) Midwest ISO is hereby directed to submit a compliance filing, within forty-five days of the date of this order, reflecting that it reprocessed its transmission queue, as discussed in the body of this order.

¹ *Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., et al.*, [106 FERC ¶61,230 LK:NON: FERC-ALL 106FERCP61230](#) (2004).

² *Open-Access Same-time Information System and Standards of Conduct*, [Order No. 638 LK:NON: FERC-ALL FERCOR638](#), *FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000* [¶31,093 LK:NON: FERC-ALL P31093](#) (2000).

³ In significant part, the Business Practices provided, as previously noted in the March 8 Order, that: "If the new request cannot be accommodated, the new customer will have the option of proceeding with an impact study to determine any upgrades necessary to accommodate the request, or *holding its request in Study mode until such time as other customers exercise their rollover rights.*" [106 FERC ¶61,230 at P 49 LK:NON: FERC-ALL 106FERCP61230.49](#) (emphasis added in March 8 Order).

⁴ [106 FERC ¶61,230 at P 50 LK:NON: FERC-ALL 106FERCP61230.50](#).

⁵ This approach would then be used to reconsider Tenaska's and Cargill's requests for transmission service, as well as other transmission service requests that were submitted from March 2003 through December 31, 2003. In addition, this approach would continue to be used prospectively from December 31, 2003, because that would be the only methodology that Midwest ISO had in place.

⁶ Contrary to Midwest ISO's argument, it is irrelevant that Section 2.2 of the OATT "does not contain a process for handling rollover requests." Midwest ISO Rehearing Request at 39 (quoting March 8 Order). Pursuant to [Order No. 888 LK:NON: FERC-ALL FERCOR888](#) and the *pro forma* tariff, Midwest ISO was required to process transmission requests consistent with [Order No. 888 LK:NON: FERC-ALL FERCOR888](#) and the *pro forma* tariff. In [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#), the Commission explained that it did not specify the mechanics by which the right of first refusal mechanism would be exercised, but encouraged utilities and their customers to include specific procedures for exercising the right of first refusal in future transmission service agreements executed under the *pro forma* tariff. In addition, utilities were free to make Section 205 filings proposing additions to their OATTs to specify generic procedures for dealing with the issue. Midwest ISO chose not to take either approach. Instead, Midwest ISO chose to process transmission requests as it interpreted [Order No. 888 LK:NON: FERC-ALL FERCOR888](#), its own OATT and Business Practices and Commission precedent and to leave any controversy to resolution on a case-by- case basis. Midwest ISO cannot now be heard to argue that because it chose not to file specific procedures with the Commission that this left it devoid of any methodology to follow and that the only way it can now process transmission requests submitted prior to the Commission's order is if the Commission, after the fact, tells it how to do so. This would mean that Midwest ISO is now arguing that it had no method for processing transmission requests and was processing such requests on an ad hoc basis, a clear violation of its OATT and [Order No. 888 LK:NON: FERC-ALL FERCOR888](#). It is Midwest ISO's responsibility, pursuant to [Order No. 888 LK:NON: FERC-ALL FERCOR888](#) and its OATT, to process transmission requests in a just and reasonable manner and there is sufficient guidance in [Order No. 888 LK:NON: FERC-ALL FERCOR888](#), the *pro forma* tariff and Commission precedent to permit it to do so.

⁷ [106 FERC ¶61,230 at P 53 LK:NON: FERC-ALL 106FERCP61230.53](#).

⁸ [16 U.S.C. §824d LK:NON: FERC-ALL 16USC824D](#) (2000).

⁹ The principles endorsed by Midwest ISO's stakeholders include: (1) Renewal requests ("renewals") are subject to competition from longer-term new requests ("originals"); (2) Priority amongst renewals is based on queue time; (3) A given transmission customer's original request can compete with that same customer's renewal request; (4) Renewals (with unlimited rollover rights) may be conditionally accepted upon receipt. The condition of acceptance is that in order to retain capacity, the renewal customer must match longer duration competing original(s) during competition on duration; (5) The renewal queue for a specific date is comprised of conditionally confirmed renewal requests; (6) An original service request is eligible to be placed in the original request queue, if and only if: (a) Its start date and time coincides with an expiring long- term request that is eligible for renewal; (b) It is at least one year in duration; (c) It is queued before the close of the minimum 60-day window for exercising renewal rights; (7) The original request queue will be comprised of conditionally accepted and confirmed competing original requests. (The condition of acceptance is that sufficient capacity remains to accommodate the request after competition on duration is complete.); (8) The size of the original competing request queue will be limited to the capacity held by renewal rights holders; (9) A later-queued original request can bump an earlier-queued original request if it is of longer duration; (10) During competition based on duration, renewal customers have three business days to confirm for longer-term service.

¹⁰ Midwest ISO states that these options were presented to a Midwest ISO Business Practices Working Group on March 22 and April 2, 2004, and that the parties were unable to reach a resolution. Midwest ISO also states that a third option was also proposed, but because it did not receive stakeholder support, it has been eliminated.

¹¹ See [18 C.F.R. §385.207\(a\)\(2\) LK:NON: FERC-ALL 18CFR385.207\(A\)\(2\)](#) (2003); see also [18 C.F.R. §381.302\(a\) LK:NON: FERC-ALL 18CFR381.302\(A\)](#) (2003).

¹² See also Standard 4.15 in [Order No. 638 LK:NON: FERC-ALL FERCOR638](#), which states that “[c]onsistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE_TIME.”

¹³ We note that all three of Midwest ISO's methods fail to follow this approach.

¹⁴ We also note that Midwest ISO's Business Practices do not provide any indication that requests to rollover existing long-term reservations will be treated differently from new service requests in the processing of transmission service requests.

¹⁵ Specifically, DTET states that the Commission must ensure that the processing of the transmission queue is undertaken pursuant to a fair and objective set of criteria that reflects the competing value of transmission capacity to different classes of customers, *i.e.*, entities with long-term load-serving obligations and entities that participate in physical wholesale power markets on a purely competitive basis. It states that such an approach is critical to avoiding unnecessary and new seams issues that could impede the successful implementation of competitive wholesale power markets-especially in the Midwest.

¹⁶ See, *e.g.*, [PJM Interconnection, L.L.C., et al. , 107 FERC ¶61,087 at P 71 LK:NON: FERC-ALL 107FERCP61087.71](#) (2004) (finding that DTE Energy's request that the Commission promulgate principles to be followed by interconnected transmission providers to be beyond the scope of the proceeding).

¹⁷ See [Order No. 888-A LK:NON: FERC-ALL FERCOR888-A](#) at p. 30,198.

¹⁸ *Id.*