101 FERC ¶ 61, 221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER02-2595-000

ORDER CONDITIONALLY ACCEPTING FOR FILING
AND SUSPENDING TARIFF REVISIONS,
AND ESTABLISHING
FURTHER PROCEDURES

(Issued November 22, 2002)

1. In this order we conditionally accept for filing Midwest Independent Transmission System Operator, Inc.'s, (Midwest ISO) proposed Schedules 16 and 17 to its Open Access Transmission Tariff (OATT), suspend them and make them effective November 25, 2002, subject to refund. We direct Midwest ISO to make periodic detailed reports consistent with the discussion below and to make a compliance filing. For the reasons stated below we will also order a "paper hearing" to determine the appropriate cost allocations (e.g., billing determinants) for these services and the appropriate exit fee for transmission owners that withdraw from Midwest ISO under certain circumstances. This order will enable Midwest ISO to recover the reasonable costs associated with the establishment of Financial Transmission Rights (FTRs) and the development of Energy Markets.

2. This order recognizes and supports Midwest ISO's continued efforts in furtherance of the Commission's goals to develop a standardized market and in working expeditiously to create a single market spanning a geographic area from New Jersey in the East to the Rocky Mountains in the West. Midwest ISO, through its exhaustive formation efforts and expansion, has demonstrated its leadership position in RTO development. The instant filing represents a significant and necessary step forward to

create a market in accord with the Commission's directives.[1] Through this order, we reaffirm our resolve to assist Midwest ISO in moving forward while remaining vigilant over the creation of the largest geographic electric market in the United States.

3. We do, however, recognize that RTO development costs must be carefully contained in order to maximize the net benefits of RTO formation and the creation of a common market to customers. Therefore, while we recognize the importance of RTOs recovering their costs associated with the services they provide, we also recognize the importance of cost control measures in system development. Consequently, we expect Midwest ISO's Board of Directors to be proactive in this area.[2] The Midwest ISO Agreement provides that the management of all property, business and affairs of Midwest ISO shall be vested in the Board of Directors. Thus, we expect the Board of Directors to guard against any unreasonable costs being incurred.

Background

4. By order dated, December 20, 2001, the Commission found that Midwest ISO's proposal to become a Regional Transmission Organization (RTO) satisfied the criteria required under Order No. 2000[3] for RTO status.[4] While finding that Midwest ISO's congestion management approach, as stated in Attachment K to its OATT, was a reasonable initial approach, the Commission nevertheless directed Midwest ISO to "coordinate its Day Two congestion management efforts with [the] recently announced Rulemaking on Standard Market Design."[5] In MISO, the Commission also approved Midwest ISO's request for a temporary suspension of Midwest ISO OATT Schedule 4,

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[1]See, Alliance Companies, et al, 100 FERC ¶ 61,137 (2002) (Alliance II).

[2]We similarly expect such action by the Boards of other ISOs.

[3]Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (February 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review dismissed, Public Utility District No. 1 of Sonomish County, Washington v. FERC, 272 F.3d 607 (D. C. Cir. 2001).

[4]See, Midwest Independent Transmission System Operator, Inc. 97 FERC ¶ 61,326 (2001) (MISO).

[5]Id. at 62,514, referencing Electric Market Design and Structure, 97 FERC ¶ 61,146 (2001).

Imbalance and Inadvertent Interchange, so that it could develop this service through the stakeholder process.[6]

5. While Midwest ISO was in the process of negotiating with PJM Interconnection, L.L.C., (PJM) to create a joint and common market based upon the PJM market structure, the Commission issued a declaratory order providing guidance to former Alliance companies as to the terms and conditions of their inclusion in Midwest ISO as an independent transmission company under Appendix I of the Midwest ISO Agreement and directing the former Alliance companies to make a compliance filing by May 28, 2002, advising the Commission which RTO each company would join.[7]

6. In an order issued July 31, 2002, the Commission held that a common market design between Midwest ISO and PJM would engender efficient operation notwithstanding the irregular configurations resulting from RTO participation decisions made by the former Alliance companies.[8] Accordingly, the Commission urged Midwest ISO and PJM to redouble their efforts to implement this joint and common market as soon as possible.

7. Also, on July 31, 2002, the Commission issued a Notice of Proposed Rulemaking in Docket No. RM01-12-000.[9] The SMD NOPR would require each public utility that owns, operates, or controls interstate transmission facilities to: 1) become an Independent Transmission Provider (ITP); 2) belong to a RTO that is an ITP; or 3) contract with an ITP for operation of its transmission assets.[10]

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[6] MISO, at 62,515.

[7] See, Alliance Companies, et al, 99 FERC ¶ 61,105 (2002) (Alliance I).

[8] See, Alliance II.

[9] See, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138 (2002) (SMD NOPR).

[10] An ITP is defined as any public utility that owns, controls or operates facilities used for the transmission of electric energy in interstate commerce, that administers the day-ahead and real-time energy and ancillary service markets in connection with its provision of transmission service pursuant to the SMD Tariff and that is independent (i.e., has no financial interest, either directly or through an affiliate, in any market

(continued...)

Proposed OATT Revisions

8. The proposed filing consists of Schedules 16 and 17 that contain mechanisms to recover the costs associated with implementing FTRs and Energy Markets, respectively. In its proposal, Midwest ISO includes estimates of the capital and operating costs that it expects to incur prior to the implementation of FTRs and its Energy Markets.[11] According to Midwest ISO, these costs could be recovered pursuant to Schedule 10 of its OATT,[12] given Schedule 10's omnibus nature however, Midwest ISO proposes to recover these costs separately under Schedules 16 and 17 once service commences, so that only customers taking the service will pay for that service.

9. Under the proposal, FTR costs and Energy Market costs are recovered through a formula rate that includes any difference between the actual monthly cost of providing the service in the prior month and the costs recovered in the previous month through its charges.

10. Midwest ISO asserts that each party to the original Midwest ISO Agreement committed to pay its proportionate share of the costs incurred to establish a compliant ISO in the event that it withdrew from Midwest ISO before all deferred and unrecovered implementation costs had been recovered.[13] Therefore, Midwest ISO proposes to collect from any withdrawing entity its proportionate share of all unpaid, undepreciated capital

[10](...continued)
participant in the region in which it provides transmission services or in neighboring regions). See, SMD NOPR at mimeo 10.

[11]Hardware and software acquisition and development costs are anticipated to be approximately $57 million in 2002 and 2003 and 85 new and 12 existing employees are expected to be assigned to positions directly related to services required to develop and administer FTRs and Energy Markets.

[12]The Schedule 10 cost adder is designed to recover all costs that are not recovered under Schedule 1, Scheduling, System Control and Dispatch Service. These costs include Midwest ISO's deferred pre-operating costs, the costs associated with building and operating the Security Center and costs associated with administering the OATT. The monthly rate is calculated based on budgeted costs and estimated MWhs of transmission service, trued-up the following month and capped at 15 cents/MWh.

[13]Midwest ISO relies on Midwest ISO Agreement, Article Five to support this assertion.

expenditures and unamortized deferred costs, attributtable to FTRs and/or the Energy Markets, over the remainder of the five-year transition period.[14]

11. Midwest ISO states that the costs incurred to establish FTRs and bid-based security constrained markets within its footprint do not create the joint and common market with PJM ordered by the Commission in Alliance II, but Midwest ISO maintains that implementation of these new schedules is a necessary first step towards creating a common portal that will integrate the two markets into a virtual single RTO with a single-unified OASIS.[15]

12. Midwest ISO expects service under Schedules 16 and 17 to begin in the fourth quarter of 2003.[16] Midwest ISO states that Commission approval of the cost recovery provided for in the proposed sections "is essential to securing the financing that will be necessary to go beyond Midwest ISO's current financing and spending capabilities to initiate full-time development and achieve expedited implementation."[17] Midwest ISO requests that the proposed schedules be made effective November 25, 2002.

Notice, Interventions, and Protests

13. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 21,654 (2002), with comments, protests, and motions to intervene due on or before October 15, 2002.

14. The Public Utilities Commission of Ohio filed a notice of intervention without substantive comment.

15. Timely motions to intervene, without substantive comment, were filed by: Tenaska Power Services Company, Wisconsin Public Power Inc., Wisconsin Public Service Corporation, Duke Energy North America, LLC, Reliant Resources, Inc., Michigan Public Power Agency and Michigan South Central Power Agency (jointly), and DTE Energy Company and Detroit Edison Company (jointly).

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[14] See, Transmittal Letter at 10.

[15] See, Transmittal Letter at 7.

[16] See, Transmittal Letter at 15.

[17] See, Transmittal Letter at 6.

16. Timely motions to intervene with protests were filed by: Otter Tail Power Company (Otter Tail), Midwest ISO Transmission Owners (Midwest ISO TOs),[18] Great River Energy (Great River), Wolverine Power Supply Cooperative, Inc. (Wolverine), Westar Energy, Inc. (Westar), Dairyland Power Cooperative (Dairyland), Wisconsin Electric Power Company (WEPCO), Industrial Energy Users-Ohio and the Coalition of Midwest Transmission Customers (collectively, Midwest Energy Consumers), Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, LG&E/KU), Minnesota Department of Commerce and Indiana Office of Utility Counselor (collectively, MDOC/IOUCC), East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives), and Consumers Energy Company and CMS Marketing, Services and Trading Company (collectively, Consumers).

17. A timely motion to intervene and request for clarification was filed by MidAmerican Energy Company (MidAmerican).

18. An untimely, joint motion to intervene, without substantive comment, was filed by Mirant Americas Energy Marketing, LP and Mirant Zeeland, LLC (collectively Mirant).

19. An untimely notice of intervention and protest was filed by the Public Service Commission of the Commonwealth of Kentucky (Kentucky Commission).

[18]The Midwest ISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company and Central Illinois Public Service Company; Alliant Energy Corporate Services, Inc. as agent for IES Utilities Inc. and Interstate Power Co.; American Transmission Company LLC; Aquila, Inc.; Central Illinois Light Co.; Cinergy Services, Inc. (for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co.); City Water, Light & Power (Springfield, IL); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; LG&E Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Lincoln Electric System; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc. and Xcel Energy Inc., (for Northern States Power Company and Northern States Power Company (Wisconsin)).

20. On October 15, 2002, Midwest ISO filed a motion for leave to answer and answer to the protests and comments.

21. We will discuss these filings in more detail below.

Discussion

Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), each timely, unopposed notice of intervention and motion to intervene serves to make the filing entity a party to this proceeding. In addition, pursuant to 18 C.F.R. §385.214(d) (2002), we will grant the Kentucky Commission's untimely notice to intervene and Mirant's untimely motion to intervene, since the motions express interests not adequately represented by another party, the proceeding will not be disrupted, nor will the late interventions place additional burdens on the parties. Additionally, while answers to protests generally are not permitted pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[19] we find good cause to accept the answer because it aids in our understanding and in resolution of issues.

Requests for hearing or settlement procedures

23. Many intervenors request that the Commission set the filing for hearing or establish settlement procedures in light of their objections that are discussed below.[20] In addition, MDOC/IOUCC request that the Commission consider alternative sites for settlement conferences (e.g., St. Paul, MN) or settlement through conference calls for states with very limited or no travel budgets. As more fully explained below, we will conditionally accept the proposed revisions, suspend them, subject to refund, and order a paper hearing on certain issues.

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[19] 18 C.F.R. § 385.213a(2) (2001).

[20] Midwest ISO TOs suggest that settlement judge procedures be employed since such procedures have resolved many issues in Midwest ISO filings including similar issues involving its Schedule 10, ISO Cost Recovery Adder.

Timing of Filing

24. Midwest ISO states that it is submitting these schedules at this time in order to facilitate the issuance of securities necessary to fund the development activity reflected in the section 204 filing submitted concurrently with this proposal.

Intervenor Objections

25. Several intervenors object to the filing because they assert that it is premature. They request that the Commission defer action on the proposed schedules until after the final SMD rule is issued.[21] They point out that the SMD NOPR is not a final rule and the proposed expenses that would ensure Midwest ISO's compliance with this NOPR are significant. Therefore, the intervenors argue against approval of the proposed cost recovery mechanisms because such approval would encourage Midwest ISO to make significant investments to comply with a proposed rule that could change considerably.

Commission Determination

26. Midwest ISO's filing is not premature. In its order granting Midwest ISO RTO status, the Commission recognized that Midwest ISO's proposed congestion management scheme and real-time balancing market were acceptable Day One approaches but were not sufficient as long term, or Day Two, solutions.[22]

27. The Commission directed Midwest ISO to coordinate its Day Two congestion management efforts with the SMD rulemaking stating:

> In this regard, we urge Midwest ISO to continue with development of its Day Two congestion management methodology in every aspect, including software, in a sufficiently flexible manner so that any products developed may be readily adapted to incorporate whatever standard market design elements are ultimately adopted in the Rulemaking on Standardized Market Design.[23]

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[21] See, East Texas Cooperatives Protest at 6; Great River Protest at 4; Consumers Protest at 3-5; and Wolverine Protest at 6.

[22] See, MISO, at 62,522.

[23] See, MISO, at 62,514.

The Commission further stated that it conditioned its acceptance of Midwest ISO's interim posting system proposal for a balancing market on Midwest ISO filing of a Day Two congestion management solution "that will improve the efficiency of the markets in the Midwest region, including the real-time imbalance energy market."[24]

28. Based on the Commission's findings in MISO, Midwest ISO now refines the interim proposals for congestion management and real-time balancing market. This filing is also intended to help facilitate establishing the funding mechanism that would permit Midwest ISO to further develop its congestion management and energy markets.[25] Even if there are changes in the SMD final rule, as the Commission noted in MISO, Midwest ISO must develop its system including software, in a sufficiently flexible manner so that any products developed may readily be adapted to incorporate whatever standard market design elements are ultimately adopted in the SMD final rule.[26]

29. In light of Midwest ISO's obligation to refine its proposals for congestion management and real-time balancing market and the relationship of these proposed schedules to that obligation, [27] we will deny intervenors' requests to defer action on this proposal.

Implementation Costs

30. The filing estimates that Midwest ISO will spend $57 million in 2002 and 2003 on hardware and software development. Additionally, the filing includes an estimate of the costs to be recovered by Schedules 16 and 17 for the first full year of operation.[28]

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[24]Id., at 62,522.

[25]See, e.g., ISO New England Inc., 97 FERC ¶ 61,304 (2001).

[26]Id.

[27]We also note that Midwest ISO's proposal is consistent with the SMD NOPR. The SMD NOPR proposes to require entities, such as Midwest ISO, to develop these services if they are to become independent transmission providers. Moreover, the Commission set an October 1, 2004 deadline for a common Midwest ISO and PJM market. See, Alliance II, at 61,527, P 40.

[28]Midwest ISO estimates that it will recover approximately $17 million in 2004 to pay for capital costs and operating costs for FTR Service under Schedule 16 and recover (continued...)

The estimates for full 2004 operation are based upon vendor quotes and material costs for a system that can be upgraded or modified to reflect refinements necessary to secure full compliance with SMD.[29]

Intervenor Objections

31. LG&E/KU assert that the Commission should regularly review Midwest ISO's expenditures and spending practices to ensure that the costs for these services are prudently incurred.[30]

32. Consumers assert that the charges under Schedules 16 and 17 should be capped at the cost levels included in the filing to provide cost certainty to customers and give Midwest ISO an incentive to prudently design its system so that it controls costs.[31]

33. Westar questions the justness and reasonableness of the level of expenditure required to implement FTRs and Energy Markets.[32]

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[28](...continued)
approximately $43 million for Energy Market Service under Schedule 17. See, C. Monroe Testimony, Exhibit No. __ MISO-3, at 12.

[29]See, C. Monroe Testimony, Exhibit __ No. (MISO-3), at 11.

[30]MDOC/IOUCC also request that annual audits of the actual costs incurred be made to ensure that costs are appropriately recovered under Schedules 16 and 17. See, MDOC/IOUCC Protest at 6.

[31]See, Consumers Protest at 8. Westar also asserts that the charges for Schedules 16 and 17 should be capped, as are Schedule 10 costs, in order to provide Midwest ISO with an incentive to control the costs. See, Westar Protest at 6.

[32] Westar questions whether Midwest ISO has issued an request for proposal to outsource the function of establishing and operating the FTR and Energy Markets. Westar states that SeTrans has recognized the possibility of achieving lower costs through outsourcing, and possibly PJM, New York Independent System Operator, Inc. or ISO- New England could perform this job cheaper, better and faster than the Midwest ISO. Westar notes that Section 5.5, Market Design and Congestion Management, of the SeTrans System Administrator Retention Agreement, allows the Independent System Administrator to contract out the congestion management and energy market functions.
(continued...)

34. Midwest ISO TOs state that Midwest ISO's not-for-profit status precludes the Commission from waiting to review the costs after Midwest ISO incurs them to determine if the costs were prudently incurred. Therefore, they argue that the Commission should investigate, prior to the incurrence of costs, whether Midwest ISO has adopted the most cost effective means of providing these services.[33]

Commission Determination

35. Midwest ISO TOs are correct that Midwest ISO's non-profit status complicates a prudence review after the costs are incurred. Further, Midwest ISO has not sufficiently explained how it intends to develop Day Two congestion management and energy markets. However, given our desire for a common Midwest ISO-PJM market by the deadline that has been set,[34] we will permit Midwest ISO to recover all of its prudently incurred costs[35] (as supported by the initial report ordered herein and subsequent informational filings) in order to develop these two services.

36. Intervenors raise valid concerns about the level of Midwest ISO's proposed expenditures; therefore, Midwest ISO must submit periodic informational filings until

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[32](...continued)
See, Westar Protest at 5-7. MDOC/IOUCC also question the justness and reasonableness of the costs included in the proposed adders. For example, MDOC/IOUCC question the estimated salaries for Midwest ISO employees who provide these services; they question the propriety of assigning the same level of costs to native load customers in non-open access states as to other holders of FTRs; and they object to the Schedule 16 cost adder not being applied to all users of the transmission system. See, MDOC/IOUCC Protest at 3-6.

[33]For example, the Midwest ISO TOs question whether Midwest ISO has adequately considered all alternative means of providing these services. See, Midwest ISO TOs Protest at 12.

[34]The Commission directed Midwest ISO and PJM to establish a common market by October 1, 2004. See, Alliance II, at 61,527, P 40.

[35]In order to avoid the possibility of double-recovery of costs, Midwest ISO is directed to make a compliance filing, within 45 days of the date of the issuance of this order, that revises Schedule 10 to provide that Schedule 10 includes all costs except those costs that are recoverable under Schedule 1, Schedule 16, or Schedule 17.

these services commence.[36] In the first informational filing[37] Midwest ISO should explain the: (1) alternative methods of developing these services considered; (2) progress made in developing these services; (3) actions that it will take to establish these services; and (4) detailed breakdown of the total start-up costs.[38] Additionally, the first informational filing and subsequent informational filings must include: detailed information on costs estimated to be incurred over the following 120 days for each service and detailed justifications for each of the costs; detailed information on the actual costs incurred over the previous 60 day period for each service; and detailed explanations for any cost differences between the budgeted amount for the past 60 day period (as shown in the previous two reports) and the actual amount incurred (as shown in the current report). Further, these informational filings must contain: an explanation of the progress that Midwest ISO expects to make in developing these services during the following 120 days; the actual progress accomplished during the prior 60 days; and the reasons for any difference between the progress that Midwest ISO has expected to make for the previous 60 days (as shown in the previous two reports) and the progress that Midwest ISO actually made (as shown in the current report). The Commission expects that these informational filings will give it sufficient opportunity to review and compare

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[36]Midwest ISO states that it provides status reports as part of the Midwest ISO-PJM joint implementation plan to the Commission every 60 days beginning on November 16, 2002. See, Midwest ISO Answer at 13. See, Alliance II, at 61,530, P 55. For administrative convenience, Midwest ISO is directed to submit the first informational filing, ordered herein, no later than 30 days from the date of issuance of this order. The subsequent periodic informational filings are to be submitted along with the periodic filings of the joint implementation plan status report ordered in Alliance II.

[37]As stated previously, we directed Midwest ISO to undertake further development of its congestion management and real-time energy market in a flexible manner so that any products developed may be readily adapted to SMD. We expect Midwest ISO has complied with this directive thus far. However, the instant proposal does not sufficiently address how Midwest ISO intends to develop Day Two congestion management and energy markets. Such an explanation would provide information useful to the Commission as it monitors Midwest ISO’s development of these services as well as the projected costs of this development.

[38]For example, Midwest ISO's filing does not quantify how much, if any, of the proposed $57 million consists of salaries and wages, nor has it specified the FERC accounts (i.e., Uniform System of Accounts) to which these amounts will be booked. Midwest ISO's cost information should be comprehensive so that the Commission can effectively monitor the proposed cost recovery.

the proposed costs with the actual costs and allow the Commission to monitor Midwest ISO's cost containment efforts and the progress that Midwest ISO makes as it develops these services. We may supplement these requirements in subsequent orders, as necessary, to facilitate our monitoring function.

Billing Determinants

37. Midwest ISO proposes to recover the costs incurred to implement and administer FTRs.[39] The costs would be recovered pursuant to Schedule 16 and they include any deferred pre-operating costs, direct and indirect capital costs, direct and indirect operating expenses and all associated costs.[40] Schedule 16 contains a rate formula to determine the FTR Administrative Service Cost Recovery Adder for each month. The proposed billing determinants for the Schedule 16 cost adder are:

> [t]he total amount of FTR volume for all Primary FTR Holders, expressed in MW. The total FTR volume shall equal the MW of FTR capacity in effect in each hour for all FTRs held during the applicable month for which the FTR Administrative Cost Recovery Adder rate is effective, summed over all hours of that month.

Schedule 16 II, A, Billing Determinants[41]

38. Midwest ISO proposes to recover the costs of the administrative activities related to the development, implementation and operation of the Midwest ISO Energy Markets, including all costs directly incurred in providing the Energy Market Service and all other costs assigned or allocated to the Energy Market Service through the Schedule 17 cost adder. The billing determinants for that cost adder are contained in Schedule 17, II A.

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[39]The activities associated with FTR Service under Schedule 16 include: (1) coordinating FTR bilateral trading; (2) administering FTR allocation; (3) supporting Midwest ISO’s on-line, internet-based FTR tool; (4) conducting “simultaneous feasibility” analyses to determine the total combination of FTRs that can be outstanding and accommodated by the Transmission System at a given point in time; and (5) administering FTRs and facilitating FTR revenue distribution.

[40]See, Transmittal Letter at 7-8.

[41]See, Transmittal Letter at 8 citing C. Monroe Testimony, Exhibit No. __ (MISO-3) at 7.

Schedule 17, II A ("Billing Determinants") states in pertinent part:

> 1) all MWh injected into the Transmission System by all System Participants . . ., 2) all MWh extracted from the Transmission System by all System Participants under Point-to-Point or Network Integration Transmission Service . . ., and, 3) all physical and virtual bids or offers that settle in the day-ahead market, but do not actually inject MWh into or extract MWh from the Transmission System in the real-time market.

Intervenor Objections

39. Several intervenors object to the proposed allocation of costs in Schedules 16 and 17 to native load retail customers. The Kentucky Commission argues that the costs of FTRs and Energy Markets (Schedules 16 and 17, respectively) should not be fully allocated to bundled retail load because these customers will not benefit, to any measurable degree, from these services. According to the Kentucky Commission, "Midwest ISO's function is not to provide open access transmission service to bundled retail customers. . . . [M]ost of Kentucky's load will be served with generation and transmission within the Commonwealth."[42]

40. MDOC/IOUCC express similar concerns about assigning the same level of costs for FTR Service to native load retail customers in states that do not have retail open access.[43] They point out that retail customers in non-open access states will not use this service as much as retail customers in open-access states since open-access states will require a continuous reallocation of FTRs when a customer changes suppliers. In light of this alleged lower level of service usage, MDOC/IOUCC recommend that Midwest ISO unbundle the proposed rates for services to ensure that the costs are charged to those customers who actually cause the cost or, alternatively, that Midwest ISO be required to reduce the Schedule 16 charge for FTR Service to 40 or 50 percent of the proposed charge for native load retail customers or reduce the proposed charge to a level equal to the costs incurred for services provided to these customers. MDOC/IOUCC also argue

[42]Kentucky Commission Protest at 3-4.

[43]MDOC/IOUCC also argues that customers or marketers who do not hold FTRs will also likely benefit from the FTR auction, therefore the costs of FTR Service should be shared by all users of the transmission system. See, MDOC/IOUCC Protest at 3.

that native load customers in non-open access areas should not pay for all the services under Schedule 17 because they are not taking all of the services.[44]

41. LG&E/KU support the billing method of using transaction-based billing determinants. They argue that this billing method would properly allocate costs because vertically integrated utilities will not rely on real-time and/or next-day energy markets as much as more market dependent entities. LG&E/KU also argue that transaction-based billing determinants should be used to recover FTR costs because some entities hold FTRs but do not participate in the market.[45]

42. Great River objects to the proposal to fully allocate the cost of Schedule 17, Energy Market Service to bilateral contracts because the parties to these contracts make little use of the energy market.[46] Great River also raises the issue of whether power marketers would pay their fair share, under the proposal, because for the most part they will not inject energy into or extract energy from Midwest ISO's transmission system.[47]

43. WEPCO objects to Schedule 17 costs because the charges appear to be imposed on both the generator who injects power onto the Transmission System and the Transmission Customer who extracts that same power from the Midwest ISO Transmission System under a bilateral agreement. WEPCO argues that Schedule 17, as proposed, constitutes prohibited double billing. WEPCO further objects to the imposition of Schedule 17 charges for Midwest ISO development, operation and oversight of the market upon self-scheduling entities that do not transact in Midwest ISO

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[44]See, MDOC/IOUCC Protest at 3-5.

[45]See, LG&E/KU Protest at 3-4. Midwest ISO TOs and Otter Tail also support transaction-based charges for Energy Markets Service and FTR Service. See, Midwest ISO TOs Protest at 4-6 and Otter Tail Protest at 4. Otter Tail alternatively supports the use of a transaction-based fee as well as an availability fee that socializes a portion of the cost.

[46]See, Great River Protest at 4, quoting SMD NOPR ¶ 228 "Standard Market Design is premised on the use of bilateral contracts. While [Load Serving Entities] may purchase energy in the spot markets, these purchases should constitute a small percentage of their actual purchases."

[47]Id.

markets. Finally, WEPCO questions whether some of the costs to be collected pursuant to Schedule 17 are not already eligible for recovery under Schedule 10.[48]

Commission Determination

44. We find that the proposed billing determinants raise important issues that cannot be resolved based on the information presented. However, we do not believe that a trial-type evidentiary hearing is necessary to allow us to determine the appropriate cost allocations or billing determinants in these circumstances. Rather, we believe, a "paper" hearing will allow us to make such determinations[49] and we will order such a hearing below. While the parties may address any issue that they believe would assist the Commission in making the policy decision concerning the appropriate billing determinants, we direct the parties to address, for each customer class, the benefits received and the degree of cost causation generated by each class for these services.

Withdrawal/Exit Fees

45. The proposed Schedules 16 and 17 include exit fees imposed on any transmission owner that withdraws its facilities from Midwest ISO's control before recovery of all deferred costs under those schedules. Midwest ISO justifies these exit fees as being analogous to the fees imposed on withdrawing transmission owners requiring them to pay their proportionate share of costs to establish a compliant ISO.[50]

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[48] See, WEPCO Protest at 3-4.

[49] The use of a "paper" hearing rather than a trial-type evidentiary hearing has been addressed in several cases. See, e.g., Public Service Company of Indiana, 49 FERC ¶ 61,346 (1989), order on reh'g, 50 FERC ¶ 61,186, opinion issued, Opinion 349, 51 FERC ¶ 61,367, order on reh'g, Opinion 349-A, 52 FERC ¶ 61,260 , clarified, 53 FERC ¶ 61,131 (1990), dismissed, Northern Indiana Public Service Company v. FERC, 954 F.2d 736 (D.C. Cir. 1992). As the Commission noted in Opinion No. 349, 51 FERC at pp. 62,218 -19 & n.67, while the Federal Power Act and case law require that the Commission provide the parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, i.e., where the written submissions do not provide an adequate basis for resolving disputes about material facts.

[50] See, Transmittal Letter at 5.

Intervenor Objections

46. LG&E/KU object to the proposed exit fees imposed on utilities that depart from Midwest ISO prior to the full amortization of the Schedules 16 and 17 start-up costs. LG&E/KU point out that these exit fees, which are based upon load share, bear no relationship to any cost caused by the departing utility and that the fees are in reality penalties that may prevent achievement of the desired seamless regional market.[51]

47. Westar objects to the proposed exit fees because they are: (1) inconsistent with Midwest ISO Agreement;[52] (2) inconsistent with Order No. 888;[53] (3) unduly

[51]LG&E/KU Protest at 4-5.

[52] Westar claims that the transmission owners agreed voluntarily to an exit fee, under Midwest ISO Agreement, that was limited to the ISO start-up costs in the event of a withdrawal. Westar further asserts that these withdrawal provisions require unanimous consent of the transmission owners for any revisions and that Midwest ISO has not yet obtained this consent for the proposed exit fees. Thus, Westar requests that the proposed exit fees be rejected. See, Westar Protest at 3-4.

[53]Westar cites Order No. 888, Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at ¶ 31,812 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in part and remanded in part sub nom., Transmission Access Policy Study Group, et al., v. FERC, 122 S.Ct. 1012 (2002), where the Commission refused to permit unilateral filings to recover additional exit fees to recover stranded costs when the contract already addressed the exit issue explicitly. See, Westar Protest at 4.

discriminatory;[54] (4) anti-competitive;[55] and (5) not shown to be necessary for Midwest ISO to obtain financing.[56]

48. Midwest ISO TOs object to the proposed exit fees because they assert that transmission owners would be assessed withdrawal fees that exceed the costs incurred to provide services to those transmission owners.[57] Midwest ISO TOs also refer to the Commission's stranded cost policy enunciated in Order No. 888 as a useful analogy. Midwest ISO TOs argue that Midwest ISO would be required under the Order No. 888 stranded cost policy to mitigate all stranded costs and show that it had a reasonable expectation of continuing to serve the customer. Midwest ISO TOs assert that Midwest

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[54]Westar points out that Midwest ISO has exempted American Electric Power Corporation's (AEP) subsidiaries in the Southwest Power Pool (SPP) from the exit fee, if AEP's subsidiaries withdraw from Midwest ISO prior to January 1, 2006 in the Memorandum of Understanding between Midwest ISO and AEP. Westar argues that limiting the exemption from the responsibility to pay exit fees to AEP's subsidiaries discriminates against Transmission Owners, including Transmission Owners that were in SPP, and who must pay those exit fees. See, Westar Protest at 4.

[55]Westar argues that the exit fees are anti-competitive because they insulate Midwest ISO from competition from other RTOs. See, Westar Protest at 5.

[56]See, Westar Protest at 5. Midwest ISO TOs also question Midwest ISO's assertion that the withdrawal fee is required to finance the system. They point out that Midwest ISO has not demonstrated that an alternate means of securing payment that spreads costs among all customers and members would not achieve the same goal. See, Midwest ISO TOs Protest at 10.

[57]Midwest ISO TOs compare Midwest ISO’s proposed allocation of costs to customers under Schedules 16 and 17 to the proposed allocation of costs to withdrawing transmission owners, and they argue that there is a mismatch because the withdrawing transmission owner is assessed more costs than if the transmission owner remained in Midwest ISO. Midwest ISO TOs state that Midwest ISO has not demonstrated that withdrawing Transmission Owners cause Midwest ISO to incur costs since the systems used to perform these services, presumably could be used for other customers. See, Midwest ISO TOs Protest at 8.

ISO cannot expect to serve them beyond the five-year notice period for withdrawal contained in the Midwest ISO Agreement.[58]

Midwest ISO Answer to Protests

49. Midwest ISO reiterates the cost causation of the withdrawal fee in that the sunk costs incurred to provide services under Schedule 16 and 17 are directly related to the transmission facilities located in its service territory. Midwest ISO argues that Transmission Owners will benefit from a more robust energy market and if the Transmission Owner removes its transmission facilities from Midwest ISO's operational control, without a withdrawal fee, the costs to develop these services for the benefit of the withdrawing Transmission Owner will be shifted to other parties. Midwest ISO notes that the Midwest TOs concede that if Midwest ISO incurred costs because of the withdrawing Transmission Owner, then it might be appropriate to recover those costs.

50. Without conceding that Order No. 888's stranded cost policy applies here, Midwest ISO points out that in Order No. 888 the Commission encouraged parties to address stranded cost obligations in contracts, rejected the argument that recovery of stranded costs caused by market reforms is anti-competitive and emphasized that stranded costs should be directly assigned to the departing customer that causes those stranded costs. Midwest ISO asserts that its proposal addresses the stranded costs obligations in Article Five of the Midwest ISO Agreement; facilitates further transitions to competitive wholesale power markets; and directly assigns the stranded cost to the departing transmission owner consistent with the Commission's stranded cost policy. As a result, Midwest ISO argues that Westar's request that the exit fee be rejected should be denied.[59]

51. Midwest ISO challenges Westar's assertion that the exit fee is unduly discriminatory. Midwest ISO points out that the exit fees in Schedules 16 and 17 do not exempt AEP, furthermore, the MOU between AEP and Midwest ISO addresses specific

[58]Midwest ISO TOs also argue that the withdrawal fees violate the open architecture requirement of Order No. 2000, because the fees make them captive to Midwest ISO. See, Midwest ISO TOs Protest at 8.

[59]See, Midwest ISO Answer at 10-11.

state law requirements applicable to AEP's participation in a RTO and is just an interim agreement between the parties.[60]

Commission Determination

52. The Midwest ISO Agreement permits transmission owners to withdraw from Midwest ISO after providing proper notice and obtaining the necessary regulatory approvals. The instant proposal adds payment of the proposed exit fee as a condition to withdrawal from Midwest ISO. This additional condition precedent has the effect of modifying the Midwest ISO Agreement because it adds a condition that must be met prior to withdrawal from Midwest ISO.[61] Westar is correct that the Midwest ISO Agreement requires unanimous consent of the transmission owners to change the withdrawal provisions. Midwest ISO has not obtained that consent, therefore we direct Midwest ISO to delete the language that makes payment of the exit fee a condition precedent to withdrawal from Midwest ISO.

53. We agree with Midwest ISO's interpretation of the withdrawal provisions in Midwest ISO Agreement, Article Five. Article Five requires withdrawing Transmission Owners to settle their obligations and we interpret this obligation to include obligations created under Schedules 16 and 17, as discussed below. In light of this interpretation, we find that the Transmission Owners' rights are unchanged with this modified filing.[62] The Midwest ISO TOs can still withdraw from Midwest ISO as before and are only obligated to pay their share of unrecovered costs that were incurred to make Midwest ISO compliant with the decision in MISO.

54. We find that Midwest ISO's proposal to assess an exit fee on Transmission Owners that withdraw from Midwest ISO is reasonable. Transmission Owners form RTOs by transferring operational control of their facilities to the RTO and the RTO is

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[60]See, Midwest ISO Answer at 12.

[61]The Midwest ISO Agreement provides that the withdrawing transmission owner and Midwest ISO would settle outstanding obligations (and renegotiate as necessary); however, the Midwest ISO Agreement does not state that this settlement of obligations is a condition precedent to withdrawal. See, Midwest ISO Agreement at Article Five, Section II.

[62]We find that under the proposal, Midwest ISO and its members retain the flexibility to improve the organization's structure, geographic scope, market support and operations in order to meet market needs.

dependant upon the ability to operate those transferred facilities for its existence. In other words, Midwest ISO depends on its Transmission Owners to ensure that the debt it incurs is paid. Each decrease in the potential use of these services caused by the withdrawal of a transmission owner diminishes Midwest ISO's ability to recover its costs and to service its debt.[63]

55. Westar's assertion that this withdrawal fee is unduly discriminatory is premature. We have not acted upon a request to exempt AEP's subsidiaries from the withdrawal fee and the instant proposal does not include such an exemption. This issue is more appropriately addressed when it is raised in that context.

56. We disagree that the exit fee is anti-competitive. Exit fees have not deterred some Transmission Owners from leaving Midwest ISO to join another proposed RTO.[64] We find that Westar's bald assertion to the contrary is not sufficient to warrant an investigation into the issue.

57. We believe that the intervenors' reliance on the Commission's stranded cost policy for generation facilities is misplaced. Order No. 888's stranded cost policy applies to stranded generation assets,[65] not stranded investments for start-up of RTOs, the subject of this proceeding.

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[63]Without a withdrawal fee, the unrecovered costs of these services shifts to the other parties when a Transmission Owner withdraws from Midwest ISO even though Midwest ISO's services were created, in part, to benefit that departing Transmission Owner and comply with the Commission's directive in MISO to establish services that are consistent with the Commission's efforts to develop a standardized market.

[64]See, e.g., Illinois Power Company et al., 95 FERC ¶ 61,183, reh'g. denied, 96 FERC ¶ 61,026 (2001).

[65]In Order No. 888, we said:

> [I]f customers leave their utilities' generation systems without paying a share of these costs, the costs will become stranded unless they can be recovered from other customers. (Emphasis added). Order No. 888 at 31,785.

58. Midwest ISO TOs' assertion that the proposed withdrawal fee violates our "open architecture" policy[66] is incorrect. We note that the proposed exit fee permits Midwest ISO to accommodate a Transmission Owner's desire to withdraw from its system without jeopardizing the RTO's financial structure and thereby its continued operation. Additionally, as Midwest ISO states, the withdrawal fee facilitates the acquisition of debt to fund the FTR Service and Energy Market Service to improve its operations.

59. Notwithstanding our determination that as a matter of policy that Midwest ISO can impose exit fees to recover certain deferred costs from withdrawing Transmission Owners, we find that Midwest ISO has not adequately justified the proposed allocation of these exit fees. We also find that the outcome of the billing determinant dispute could affect the resolution of the exit fee allocation. Consequently, we will address those issues, and other issues outlined herein, in the "paper" hearing ordered below.

Formula Rate

60. The formulae in Schedules 16 and 17 determine the total costs by adding the estimated budget for the month and the true-up for the prior month. The schedules define the true-up amount as the difference between actual total monthly costs of the transmission provider for the prior month and the costs recovered in that month through the charges.[67] The total costs for service are divided by the billing determinants.

Intervenor Objections

61. Consumers object to the proposed true-up component because it asserts that a mismatch is created between the payment of charges in one month and the true-up amount in the following month. For example, if Midwest ISO over recovers from a customer in one month, but that customer does not take service the following month (or takes less service), then the customer will not receive the refund. Consumers requests that the Commission direct Midwest ISO to separate the calculation of the true-up for the

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[66] In Order No. 2000, we said:

> we adopt the principle of open architecture in order that the RTO and its members have the flexibility to improve their organizations in the future in terms of structure, geographic scope, market support and operations to meet market needs. Order No. 2000, at 31,168.

[67] See, Schedule 16, III. Rate Formula, Original Sheet No. 283f; Schedule 17, III. Rate Formula, Original Sheet No. 283l.

prior month and the calculation of the charge in the following month in order to eliminate the mismatch. Consumers' request would cause Midwest ISO to reflect only current month projected expenditures and respective FTR and MWh volumes.[68]

62. Consumers also asserts that Midwest ISO's rationale for this proposal (i.e., that it is consistent with Midwest ISO's practice regarding the Schedule 10 true-up calculation) does not support this proposal because Midwest ISO's practice with regard to Schedule 10 is inconsistent with the provisions of the tariff accepted by the Commission.[69]

Commission Determination

63. We will deny Consumers' request to separate the true-up mechanism from the following month's charge. It is important for Midwest ISO customers to have price certainty before entering into transactions. Consumers' request could make transactions appear economical before they are undertaken, but in reality they would be found to be uneconomical after the transaction is completed. We acknowledge that there may be a mismatch due to the true-up; however, we believe the benefits of price certainty outweigh any de minimus mismatches that can be mitigated over time.[70]

64. We have concerns regarding the specificity of Midwest ISO's formula rate. In Section II.B, Determination of Costs to Be Recovered, of Schedules 16 and 17, Midwest ISO states the types of costs that will be recovered. These include indirect capital costs and indirect operating expenses which are an allocable portion of infrastructure, resources, personnel and overheads. The proposed rate sheets do not specify the actual calculations of the costs of these services.[71] This lack of specificity in cost allocation

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[68]See, Consumers Protest at 6-7.

[69]According to Consumers, Midwest ISO's OATT requires the following months actual costs and actual MWhs of Transmission Service but its invoices from the Midwest ISO use the MWh usage in the month following the true-up month and not the MWh usage in the true-up month. See, Consumers Protest at fn8.

[70]In some months a customer may be overcharged due to the mismatch, but in other months the same customer could be undercharged.

[71]Midwest ISO witness, Mr. Meyer, generally describes the types of allocations that will be used. For example, Mr. Meyer states that allocations can be used based on NARUC Electric Utility Cost Allocation Manual and that salary costs for those shared

(continued...)

among the schedules is contrary to Commission policy.[72] We will therefore direct Midwest ISO to make a compliance filing, within 45 days of the date of the issuance of this order, that specifies in the rate sheets the formula calculations.[73] We caution Midwest ISO that: (1) all allocations must be consistent with Commission requirements, instead of NARUC manuals, (2) all labor related expenses (e.g., general plant and Administrative & General expenses) must be allocated according to labor wages and salaries instead of the number of employees,[74] and (3) the allocations must be specific and incorporated into the filed rate schedule so that Midwest ISO cannot revise the allocations at its discretion.

Pass Through of Costs to Retail Customers

65. Midwest ISO proposes to impose charges under both Schedules 16 and 17 on FTR volumes that may be to serve retail load and extractions from the transmission system that may be to serve retail load, respectively.

Intervenor Objections

66. Consumers requests that Midwest ISO be directed to revise Schedules 16 and 17 to permit customers, subject to retail rate freezes, to defer payment of the charges for FTR Service and Energy Market Service until the retail rate freeze expires.[75] Instead these customers would pay Midwest ISO monthly interest payments on the same

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[71](...continued)
services employees will be allocated to each schedule (including Schedule 10) based on the ratio of employees.

[72]See, Maine Yankee Atomic Power Company, 42 FERC ¶ 61,307, reh'g. denied, 43 FERC ¶ 61,453 (1988), (Formula calculations must be incorporated into rate schedules so that utilities cannot unilaterally revise them).

[73]The calculation of the "F" term of the Schedule 16 formula and the "E" term of the Schedule 17 formula require further specificity in the rate sheets.

[74]See, e.g., Minnesota Power & Light Company, 5 FERC ¶ 61,091 at 61,150-51 (1978).

[75]Consumers states that it is subject to a retail rate freeze and will be unable to pass through charges for FTR Service and Energy Market Service to retail rate payers until the retail rate moratorium is over. See, Consumers Protest at 8-9.

schedule as regular Schedule 16 and 17 charges are due.[76] Consumers argues that this accommodation would allow these costs to be paid by the end use customers who are the intended beneficiaries of these RTO requirements.[77]

67. Midwest ISO TOs suggest if the Commission investigates the costs of these services prior to their incurrence that the costs might be more easily recovered from retail ratepayers.[78]

Commission Determination

68. We will deny Consumers' request to direct Midwest ISO to defer billing entities under retail rate freezes, to incur debt due to these deferrals, and to charge those entities interest on the debt until the retail rate freeze is lifted. Requiring Midwest ISO to incur debt due to these deferrals would not give affected Transmission Owners incentive to seek recovery or the respective state commissions sufficient incentive to allow recovery of these costs from the relevant customers receiving benefits from these investments and services.

Technical Feasibility

69. Midwest ISO's proposal is designed to provide for the collection of costs incurred by Midwest ISO to provide FTRs, establish and implement within its footprint day-ahead and real-time energy markets and to facilitate the eventual creation of a joint and common market by and between it and PJM.

Intervenor Objections

70. Dairyland objects to the proposed filing, in part, because it asserts that Midwest ISO has not shown that such an endeavor is technically feasible over such a large area.

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[76]Consumers states that treating trapped FTR Service and Energy Market Service costs as a regulatory asset is inadequate. Formerly vertically integrated utilities, such as Consumers Energy Company, that have transferred ownership of their transmission systems to Independent Transmission Providers, cannot avail themselves of regulatory asset treatment of trapped costs as they no longer own any Commission jurisdictional transmission facilities. See, Consumers Protest at fn10.

[77]See, Consumers Protest at 9.

[78]See, Midwest TOs Protest at 13.

Dairyland suggests that Midwest ISO be required to show that it can run a State Estimator (SE) for the entire market footprint. According to Dairyland, SE has been used primarily as a tool to assess the security of the network and does not require the level of reliability that would be required to support the Locational Marginal Pricing (LMP) function over such a broad market with numerous control areas and data links. Thus, Midwest ISO must improve upon the SE of its member systems.[79]

71. Dairyland argues that performance criteria of the SE should be established which would address accuracy of the SE solution, adequacy of measurement redundancy, and stability of the solution over a long period of time. According to Dairyland, without an accurate, reliable SE, Day 2 Congestion Management will fail. Dairyland stresses that the huge cost of implementing the systems proposed by Midwest ISO necessitates that the underlying foundation be in place before commitments to incur these charges are made.[80]

Commission Determination

72. Midwest ISO states that it has concluded that PJM operated a successful energy market and substantial efficiencies could be created and significant cost savings could be realized with a common market based upon adoption of the PJM market structure.[81] We note that PJM uses a SE in its LMP Model.[82] Therefore, to form a common market, we believe that Midwest ISO should incorporate a SE in its LMP model and gain experience

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[79]See, Dairyland Protest at 4.

[80]Dairyland recommends that Midwest ISO be required to demonstrate that SE is operable for at least one year and that an appropriate model maintenance program is in place to ensure that the continued reliability and accuracy of SE. See, Dairyland Protest at 4. We also note that Dairyland's request for a year delay in Midwest ISO's incorporation of the SE into its LMP model is an impermissible collateral attack on our directive to Midwest ISO and PJM to have the common market in place by October 2004.

[81]See, Transmittal Letter at 4.

[82]In a training manual submitted to the Commission on July 30, 1998, the term "PJM State Estimator" is defined as “a standard power system operations tool that is designed to provide a complete and consistent model of the conditions that currently exist on the PJM power system based upon metered input and an underlying mathematical model.” See, PJM Manual at 9.

with SE.[83] However, we will not mandate how much experience Midwest ISO must have before Midwest ISO's congestion management system is implemented; therefore, we deny Dairyland's request to require one year of operational experience with SEs.

Application of Charges during Phase-in

Clarification Request

73. MidAmerican requests clarification as to how the proposed charges will apply in the event that Midwest ISO phases in the development of these services. MidAmerican concedes that a phase-in may not be contemplated at this point; and that Midwest ISO participants have not discussed the option of a phase-in of services. MidAmerican argues that the charges in Schedules 16 and 17 should not be assessed until FTR Service and Energy Market Service are implemented throughout Midwest ISO's footprint.[84]

Commission Determination

74. We will deny MidAmerican's request for clarification, since MidAmerican concedes, a phase-in is not contemplated at this time. Further, Midwest ISO is not proposing to assess the charges for FTR Service and Energy Market Service until the services commence. Prior to the commencement of these services, if Midwest ISO decides to phase-in these services, we expect Midwest ISO make the appropriate filing and to support any proposed phase-in of charges for FTR Service and Energy Market Service at that time.

[83]At a "Midwest ISO, Midwest Market Initiative, Policy Subcommitee Meeting" held on July 17, 2002, Midwest ISO circulated a project implementation plan designed to provide monthly updates on the progress of Midwest ISO and PJM's progress in developing a single common market. In that circulated plan (included as an attachment to Midwest ISO/PJM/SPP's July 25, 2002 letter to the Commission) Midwest ISO indicates on page 9 that for the Real-Time Energy Market, it will use LMP calculation using real-time SE values. However, the proposal to use LMP calculation using real-time SE values is not addressed in this filing. Therefore we direct Midwest ISO to address the merits of Dairyland's concerns by explaining, in depth, its plans for SE when it makes the compliance filing ordered below.

[84]See, MidAmerican Protest at 3-4.

Waiver of Prior Notice

75. Midwest ISO states that it will not begin cost recovery under the proposed Schedules until each respective service is provided under the OATT. Midwest ISO requests waiver of the Commission's prior notice requirement for an effective date of November 25, 2002 even though it does not expect its Energy Markets to become operation or FTRs to be offered before the fourth Quarter of 2003, assuming timely regulatory approvals.[85]

76. Midwest ISO justifies its request for waiver on its need to obtain financing to fund and defer the estimated cost of service development. Midwest ISO analogizes this waiver request to the one granted by the Commission when it accepted Midwest ISO's OATT in September 1998 for services that were not offered until February 2002.[86]

Commission Determination

77. We will grant Midwest ISO's request for waiver of our prior notice requirements. We agree that the request is analogous to the one granted in Midwest Independent Transmission System, Inc., 84 FERC ¶ 61,231 at 62,181-2, Ordering Paragraph C, clarified, 85 FERC ¶ 61,250, reh'g. order, 85 FERC ¶ 61,372 (1998).

Hearing Procedures

78. Our preliminary analysis indicates that the proposed revisions to Midwest ISO's OATT have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed tariff revisions, as modified herein, for filing, suspend them for a nominal period, effective, subject to refund, on November 25, 2002, and set the issues of cost allocation and the appropriate exit fee as outlined herein, for a "paper" hearing.

79. Accordingly, we will provide the parties an opportunity to file initial and reply comments, containing all arguments and supporting evidence that they wish to present on the billing determinants and exit fee disputes in addition to responding to our request for comments specified herein. Initial comments will be due 60 days from the date that this order is published, and reply comments will be due 15 days from the date of the filing of the initial comments.

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[85]See, Transmittal Letter at 15.

[86]Id.

The Commission orders:

(A) The proposed tariff revisions are hereby conditionally accepted for filing and suspended for a nominal period, to be become effective November 25, 2002, subject to refund.

(B) Midwest ISO is hereby directed to submit an initial report, consistent with the discussion herein, no later than 30 days from the date of issuance of this order. Midwest ISO is hereby directed to submit periodic reports, consistent with the discussion herein.

(C) Midwest ISO is directed to submit a compliance filing, consistent with the discussion herein, within 45 days of the date of issuance of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter 1), the further proceedings directed in Ordering Paragraph (E) below shall be conducted concerning the appropriate cost allocations and exit fees, as discussed in the body of this order.

(E) The parties may submit to the Commission additional arguments and evidence as outlined in the body of this order, 60 days from the date of issuance of this order. Replies may be made 15 days thereafter. A party's presentation should separately state the facts and arguments advanced by the party and include any and all exhibits, affidavits, and/or prepared testimony upon which the party relies. The statement of facts must include citations to the supporting exhibits, affidavits and/or prepared testimony. All materials must be verified and subscribed as set forth in 18 C.F.R. § 385.2005 (2002).

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.