

101 FERC ¶ 61,317  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER03-86-000

ORDER ACCEPTING, AS MODIFIED, REVISIONS  
TO OPEN ACCESS TRANSMISSION TARIFF

(Issued December 19, 2002)

1. Today the Commission is acting on four interrelated orders which increase the size and scope of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and further the development of viable for-profit transmission companies that operate and perform certain functions under the Midwest ISO. Today's orders, when fully implemented, will increase the Midwest ISO's footprint and allow customers one-stop shopping for service under a single tariff covering the Midwest ISO, Southwest Power Pool, TRANSLink and the GridAmerica Participants.<sup>1</sup>
2. On October 24, 2002, in the docket at issue in this order, the Midwest ISO filed revisions to its Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1. In its filing, the Midwest ISO proposes to revise its OATT to specifically allow independent transmission companies (ITCs) to participate within its footprint. The Midwest ISO explains that the proposed modifications would allow ITCs to assume certain regional transmission organization (RTO) functions and activities under the direction and control of the Midwest ISO.
3. In this order, we accept, as modified, the Midwest ISO's proposed tariff revisions, finding that they conform with recent Commission policy and precedent. This order will benefit customers in the Midwest region by increasing the efficiency of the transmission grid.

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<sup>1</sup>See Appendix (map of the footprint of the Midwest ISO).

## **I. Background and Details of Filing**

4. The Midwest ISO explains that the language of its existing OATT does not explicitly refer to ITCs.<sup>2</sup> The Midwest ISO therefore finds it necessary to propose generic revisions to its OATT that would specifically allow ITCs to undertake additional responsibilities and to perform certain functions that would otherwise be performed by the RTO.

5. In a separate, concurrent filing, the Midwest ISO explains that TRANSLink Development Company, LLC (TRANSLink) proposes to incorporate rate schedules and attachments into the Midwest ISO's OATT for service on the TRANSLink transmission system.<sup>3</sup> The Midwest ISO states that it coordinated the preparation of the instant filing with TRANSLink and explains that the instant filing addresses generic changes to its OATT that can apply to all ITCs in its footprint, while the TRANSLink filing addresses only tariff revisions that specifically relate to TRANSLink. The Midwest ISO explains that the Commission's approval of this filing is necessary to accommodate developing ITCs, such as TRANSLink, and will result in the expansion of the geographic scope of its footprint.

6. Among the revisions that the Midwest ISO proposes to its OATT, under Sections 3 and 7, it seeks to allow an ITC to offer ancillary services (if the ITC maintains an ancillary services tariff) as well as billing services to its customers. Under its proposed changes to Sections 19 and 32 of the OATT, the Midwest ISO would permit ITCs to perform System Impact and Facilities Studies for transmission service requests in coordination with the Midwest ISO. The corresponding form agreements (in Attachment D) for these studies would also be revised to reflect that three parties may be signatories to such agreements.

7. The Midwest ISO also proposes to add a new Section 41 which would allow public power entities to participate in an ITC without being subjected to the jurisdiction of this Commission. The Midwest ISO explains that this provision was added at the request of public power entities that want to participate in an RTO through an ITC. Schedule 10 (the cost recovery adder) is also revised to clarify the delineation of functions between the ITC and the RTO. The proposed revisions would also allow the ITC to determine Total Transfer Capacity values of the ITC's transmission system, using

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<sup>2</sup>Rather, ITCs currently are referred to only in Appendix I to the Midwest ISO's Transmission Owner Agreements.

<sup>3</sup>See Docket No. ER03-83-000 (filed on October 24, 2002).

the methodology employed by the Midwest ISO. Finally, Attachment R to the OATT would be revised to provide for an ITC to take the place of its ITC participants as the transmission owner for generator interconnection and operating processes and procedures.<sup>4</sup>

8. The Midwest ISO states that the revisions to its OATT would become operational on the date when TRANSLink begins commercial operations, which is anticipated to occur during the third quarter of 2003. To this end, the Midwest ISO requests expedited consideration and requests an effective date of December 23, 2002.

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 67,609 (2002), with interventions and protests due on or before November 14, 2002. The parties shown on the attachment to this order filed interventions, protests, and/or comments. On November 27, 2002, the Midwest ISO filed a response to the protests and comments.

## **III. Discussion**

### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>5</sup> the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. Given the early stage of the proceeding and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed motions to intervene of Xcel Energy Services Inc., PacifiCorp, and LG&E Energy Corp.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), generally prohibits answers to protests, unless otherwise ordered by the decisional authority. In this instance, we will accept the Midwest ISO's answer because it provides information that clarifies the issues and aids us in the decisional process.

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<sup>4</sup>Only some of the Midwest ISO's proposed OATT revisions are contested by the parties, and discussed below.

<sup>5</sup>18 C.F.R. § 385.214 (2002).

## **B. Substantive Issues, Comments, and Commission's Response**

12. Intervenors have raised a wide range of issues in response to the Midwest ISO's proposed revisions to its OATT. However, in this order, we will address only those issues that are both ripe and directly related to the proposed revisions in this docket. Any issues specifically relating to TRANSLink's separate, concurrent filing in Docket No. ER03-83-000 are addressed in a separate order in that docket being issued today. Finally, we remind the parties that future filings to amend the Midwest ISO's OATT will be forthcoming, and that interested parties will have an opportunity to comment on those filings at such time as they are made.

13. The Commission has previously recognized that the formation of ITCs can result in significant benefits to the energy industry, its markets, and the nation's transmission infrastructure.<sup>6</sup> To this end, we are encouraged by the Midwest ISO's proposal to revise its tariff to allow for ITCs that operate within its footprint and perform certain RTO functions. Recognizing, however, the importance associated with the proper delegation of responsibilities by an RTO to an ITC, several intervenors have raised issues and concerns in response to this filing.

### **1. Loss Methodology**

14. Attachment M to the Midwest ISO's OATT employs a zonal loss methodology where a separate, pancaked loss factor, is assessed for each control area through which a transaction flows. Midwest ISO now proposes to modify its loss methodology to provide that the facilities "operated by each ITC Participant that operates a zone immediately prior to its becoming an ITC Participant" shall be deemed a single control area.<sup>7</sup>

15. MEAN and Wisconsin TDUs object to the proposal to substitute imputed "zones" for factual "control areas" as the smallest modular unit used in Midwest ISO's loss methodology. They assume that under this new revision, each TRANSLink participant, rather than the entire TRANSLink control area, will count as a loss-assessment zone, thereby exacerbating the pancaking effect of the Midwest ISO's loss methodology. In addition, intervenors contend that while the Midwest ISO's loss methodology may have achieved a reasonable balance of conceptual accuracy and ease of administration under a

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<sup>6</sup>TRANSLink Transmission Company, L.L.C., *et al.*, 99 FERC ¶ 61,106 at 61,455 (2002) (April 25 Order).

<sup>7</sup>See First Revised Sheet No. 339.

smaller Midwest ISO footprint, the pancaked loss methodology produces less accurate results when extended over a larger area composed of more loss assessment zones.

16. The Midwest ISO does not explain the purpose of its proposed revisions to its loss methodology. Since TRANSLink has indicated its intention to consolidate the control areas currently operated by its participants, the purpose appears to be to establish loss assessment zones consistent with the control area boundaries of the TRANSLink participants prior to such consolidation.

17. The Commission will allow the establishment of loss assessment zones based on historical control area boundaries, since it results in the same loss compensation that the individual participants would have received if they had instead joined Midwest ISO as individual transmission owners. To do otherwise could create a disincentive to the TRANSLink participants to pursue their plan to consolidate control areas and may also disadvantage TRANSLink participants vis-a-vis other transmission owners in Midwest ISO that have not consolidated control areas.<sup>8</sup>

18. However, if the purpose of these revisions is not consistent with the Commission's understanding, we will direct the Midwest ISO to explain the purpose of its proposed revisions in its compliance filing and we will rule on its proposed revisions at that time.

## **2. Public Power Participation**

19. The Midwest ISO proposes to add a new Section 41 to its OATT. This section states that "[t]he participation in this Tariff by an ITC Participant that is not a public utility under the Federal Power Act is subject in all respects to the laws and regulations of the state of its creation and to rate schedules adopted by its governing board under state law. In the event of a conflict between such state law, regulations or rate schedules with any provisions in this Tariff, such state law, regulations or rate schedules shall govern with respect to the application of this Tariff to said ITC Participant." The Midwest ISO states that this provision was included at the request of public power entities that want to participant in an RTO through an ITC.

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<sup>8</sup>However, we do note that Midwest ISO plans to implement an energy market, including locational pricing to facilitate congestion management, at the end of next year and the Midwest ISO will need to reevaluate its loss methodology at that time in order to ensure that it does not impair the operation or efficiency of those markets or create seams with neighboring RTOs.

20. Numerous intervenors request that the Commission reject the addition of Section 41 to the Midwest ISO's OATT. Intervenors contend that the new provision is unjustified, and not necessary due to the "easy withdrawal rights available to TRANSLink's NJ sponsors".<sup>9</sup> Intervenors also assert that a reasonable interpretation of this section could imply that a non-jurisdictional entity's board could pass a resolution stating that notwithstanding any provisions in the Midwest ISO OATT, that entity will collect an additional fee for service over its facilities, and deny service to any customer that competes for its wholesale or retail load. At a minimum, the intervenors request that TRANSLink or the Midwest ISO be required to make Section 205 filings disclosing the terms that affect the Midwest ISO's jurisdictional service, including all of the matters that could be subject to Section 41, so that the Commission may determine if the OATT remains just and reasonable when thus subordinated.

21. We are hesitant to accept the proposed Section 41 without additional clarification. While we welcome the participation of public power entities and understand their desire to avoid unexpected adverse outcomes in those limited instances where state law or regulation could potentially conflict with the terms of the Midwest ISO's OATT, we remain concerned that the language in Section 41, as written, is overly broad. We must balance the interests of public power entities that desire to participate in an ITC with the need for an efficient non-discriminatory transmission grid. We therefore we will require the Midwest ISO to revise Section 41 and provide more specific information relating to public power's obligations and to the limited instances when a conflict with the OATT could adversely affect a public power entity's ability to participate in an ITC and the RTO. We will allow all interested parties an opportunity to comment on the revisions (following the Midwest ISO's submission of its compliance filing) and we will address this matter further at that time.

### **3. Grandfathered Agreements**

22. The Midwest ISO proposes to add a new Section 1.22b to its OATT that defines "ITC Grandfathered Agreement(s)." However, the Midwest ISO does not propose revisions to Attachment P (its list of grandfathered contracts) at this time. The Midwest ISO states that when the operational date of TRANSLink approaches, the Midwest ISO will submit a revised Attachment P with an updated list of grandfathered agreements.

23. Lincoln argues that the definition of Grandfathered Agreements is unclear, since it does not specify a date after which contracts would not be considered to be

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<sup>9</sup>Passage quoted by Lincoln at 4, MEAN at 46, and Wisconsin TDU's at 14.

grandfathered. Lincoln further argues that it is not clear whether the intention is to consider contracts entered into later than September 16, 1998 to be grandfathered agreements.

24. As ITCs begin to join the Midwest ISO, we remind the Midwest ISO that it is required to file revised Attachment P's with the Commission. Further, with its Attachment P's, the Midwest ISO should also specify the date that the Midwest ISO used to determine whether particular agreements were considered grandfathered.

#### **4. Control Area Services and Operations Tariff**

25. The Midwest ISO has proposed modifications throughout its OATT to include references to the "ITC Control Area Services and Operations Tariff."

26. Intervenors argue that the Midwest ISO continues to make references to a mandatory Control Area Services and Operations Tariff in the proposed revisions to its OATT but no such document has yet been filed for Commission review. Wisconsin TDU's contend that the Commission should clarify that the ITC Control Area Services and Operations Agreement that network customers will have with TRANSLink and the Network Operating Agreement that customers will have with the Midwest ISO must not impose inconsistent requirements, and that, in the case of conflict, the latter will control. MEAN requests that the Commission withhold approval until the Midwest ISO files the ITC Control Area Services and Operations Tariff.

27. At this time, the Commission finds that it is premature to discuss the ITC Control Area Services and Operations Tariff or any associated agreements since they have not yet been filed with the Commission. However, the Commission will direct the Midwest ISO to file the ITC Control Area Services and Operations Tariff in sufficient time to allow for the required sixty-days' notice, prior to the operational date of TRANSLink in order to allow for comment by interested parties and Commission action.

#### **5. Schedule 10**

28. Section III of Schedule 10 provides that the Midwest ISO will offer an ITC the option of contracting with the Midwest ISO for services, including: (1) Tariff Administrative Services (including Ancillary Services); (2) Business Services (including Billing and Settlements and Dispute Resolution); (3) Reliability Services (including Security Coordination, Long-Term Planning and Congestion Management); and (4) Market Monitoring.

29. WEPCO contends that the Commission has already stated that the Midwest ISO, rather than the ITC, must provide several of these services (*i.e.*, business services). WEPCO also contends that the Midwest ISO should include market monitoring as one of the mandatory functions that an RTO must perform, rather than an ITC.

30. In its response, the Midwest ISO clarifies that the services provided under sections III.A.1 through III.A.3, in fact, are mandatory services; that is, they must be taken from the Midwest ISO.<sup>10</sup> Further, the Midwest ISO agrees that the market monitoring function should also be among the mandatory services and states that it is not opposed to revising Section III.A to clarify the mandatory nature of this section.

31. The Commission finds that the Midwest ISO's clarification and offer to revise Section III.A satisfies WEPCO's concerns. The Midwest ISO is therefore directed to revise this section accordingly.

## 6. Congestion Management

32. WEPCO states that, for Sections 22.2, 30.5, 33.2, and 33.3, the Midwest ISO proposes language that suggests that an ITC could continue to use its own congestion management and redispatch procedures even after the Midwest ISO had its own similar procedures in place. WEPCO therefore states that such language should be revised to clearly explain that an ITC's recovery of congestion costs and its authority to order redispatch will terminate once the Midwest ISO has an approved Attachment K in place.

33. In its answer, the Midwest ISO clarifies that an ITC will be subject to Attachment K, or other appropriate congestion management procedures, once the Midwest ISO congestion management plan is in place.

34. The Commission finds this clarification to be reasonable and in accord with our decision to prohibit ITCs from operating separate congestion management systems within an RTO.<sup>11</sup> As noted in the TRANSLink order issued concurrently, we clarify that in certain limited emergency situations, the ITC (or the transmission owner, depending on the circumstances) may redispatch as the first line of defense in the absence of

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<sup>10</sup>Sections III.A.1 through III.A.3 provides for the Midwest ISO to provide Tariff Administrative Services; Business Services; and Reliability Services.

<sup>11</sup>April 25 Order, 99 FERC at 61,468-69.

immediate RTO action. Such redispatch must only be until such time as the RTO can take corrective action and closely coordinated with the RTO as soon as possible because redispatch can impact the larger region. We further believe that such redispatch is appropriate for reliability reasons especially until the Midwest ISO operates an energy market at which time we expect the Midwest ISO to be the primary line of defense. We believe that this is also consistent with our acknowledgment that ITCs may need to be delegated limited responsibility in certain emergency conditions.<sup>12</sup>

## 7. Miscellaneous

35. The Midwest ISO OATT provides that the Midwest ISO is required to offer to provide, among other things, Energy Imbalance Service. However, WEPCO seeks clarification as Midwest ISO's Energy Imbalance Service is currently suspended. The Commission and the Midwest ISO both clarify that this service has been suspended until the details of energy imbalance and inadvertent interchange and the posting system have been resolved through an open and inclusive stakeholder process.<sup>13</sup>

36. Wisconsin TDU's argue that tariff references to ITCs as the provider of service should be clarified to reflect that the Midwest ISO is the provider of service under the OATT. However, we find that no additional clarification is necessary since Section 1.59 of the OATT clearly defines the "transmission provider" as being the Midwest ISO.

37. The Midwest ISO proposes to revise Section 14.7 to state that "[a]ny revenues in excess of actual costs shall be used to reduce the ISO costs in Schedule 10 or, in the case of ITC Service, any revenues in excess of actual costs should be applied as specified in an ITC Rate Schedule." Under this language, WEPCO seeks clarification that an ITC would not receive a "double benefit" in situations where (1) penalty revenues exceeded actual costs and (2) the ITC received such penalty revenue from a transaction that did not use the ITC's transmission system.

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<sup>12</sup>Id. See also Alliance Companies et al., 99 FERC ¶ 61,105 at 61,437 (2002). We also believe that this is consistent with what is currently taking place in the Midwest ISO, as redispatch is now accomplished pursuant to provisions already in place in transmission owner's individual OATTs and other existing arrangements. See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,075 at 61,219, order denying reh'g, 99 FERC ¶ 61,198 (2002).

<sup>13</sup>See Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,075 (2002).

38. In its response, the Midwest ISO clarifies that "an ITC will pay full Schedule 10 charges prior to any reduction resulting from excess revenues. An ITC will be treated in a comparable manner with all other entities paying Schedule 10 charges and will not be afforded any special rate reduction resulting from excess revenues collected." We find that this response will satisfy WEPCO's concern on this issue.

39. Finally, WEPCO cites to specific areas in the Midwest ISO OATT where minor changes or clarification may be necessary. In its answer, the Midwest ISO either provides an explanation or responds to the issues raised by WEPCO. Upon review of the answer, we find that the Midwest ISO adequately addresses any remaining concerns of WEPCO.

#### **IV. Conclusion**

40. Accordingly, we will accept the Midwest ISO's revisions to its OATT, as modified as discussed above, to be effective December 23, 2002.

#### **The Commission orders:**

(A) Midwest ISO's proposed tariff revisions, as modified pursuant to Ordering Paragraph (B) below, are hereby accepted, subject to modification, as discussed in the body of this order, effective December 23, 2002.

(B) Midwest ISO is hereby directed, within 30 days of the date of issuance of this order, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Deputy Secretary.

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ATTACHMENT

Midwest Independent Transmission System Operator, Inc.  
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**Motions to Intervene**

American Transmission Company, LLC  
Central Iowa Power Cooperative  
Dairyland Power Cooperative  
Duke Energy North America, LLC  
Great River Energy  
Kansas Gas & Electric Company  
MidAmerica Energy Company  
Mirant Americas Energy Marketing, LP and Mirant Zeeland, LLC (jointly)  
Missouri River Energy Services  
Municipal Energy of Nebraska  
Nebraska Public Power District  
PacifiCorp\*  
Reliant Resources, Inc.  
Rochester Public Utilities  
Southern Minnesota Municipal Power Agency  
Upper Peninsula Power Company  
Westar Energy, Inc.  
Wisconsin Public Service Corporation  
Xcel Energy Services Inc.\*

**Motions to Intervene, Protests, and/or Comments**

Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio  
(jointly)  
Consumers Energy Company  
Detroit Edison Company  
Golden Spread Electric Cooperative, Holy Cross Energy, Inc., and Yampa Valley  
Electric  
Association, Inc. (collectively, Xcel Customers)  
Illinois Industrial Energy Consumers  
International Transmission Company

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Lincoln Electric System (Lincoln)  
LG&E Energy Corp.\*  
Midwest Municipal Transmission Group  
Municipal Energy Agency of Nebraska (MEAN)  
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Public Service Electric and Gas Company and PSEG Energy Resources & Trade, LLC  
(collectively, PSEG Companies)  
TRANSLink Development Company, LLC  
Wisconsin Electric Power Company (WEPCO)  
Wisconsin Public Power Inc., and Madison Gas & Electric Company (collectively,  
Wisconsin TDUs)

\*out of time

APPENDIX

