

103 FERC ¶ 61,090  
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.  
GridAmerica Companies

Docket Nos. ER03-580-000 and  
EL03-119-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS,  
INITIATING INVESTIGATION, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES, AND REFUND EFFECTIVE DATE  
AND CONSOLIDATING DOCKET

(Issued April 30, 2003)

1. On February 28, 2003, in response to the Commission's December 19 Order,<sup>1</sup> Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and GridAmerica Companies<sup>2</sup> (together, Applicants) filed revisions to Midwest ISO's Open Access Transmission Tariff (OATT) to provide rates for service over the transmission facilities of GridAmerica LLC (GridAmerica). This filing is necessary for the startup of GridAmerica as an independent transmission company (ITC) within the Midwest ISO footprint and completes the rate filing obligations of GridAmerica Companies as ordered by the December 19 Order.

2. As discussed below, we will accept the proposed revisions to the Midwest ISO OATT, effective upon the commencement of service over the GridAmerica transmission facilities under the Midwest ISO OATT, suspend the proposed rates for a nominal

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<sup>1</sup>See Ameren Services Company, et al, 101 FERC ¶ 61,320 (2002) (December 19 Order); rehearing pending.

<sup>2</sup>The GridAmerica Companies are: Ameren Services Company as agent for its electric utility affiliates, Union Electric Company, d/b/a AmerenUE, and Central Illinois Public Services Company, d/b/a AmerenCIPS (collectively, Ameren); American Transmission Systems, Incorporated (ATSI), a subsidiary of FirstEnergy Corp. (FirstEnergy); and Northern Indiana Public Service Company (NIPSCO).

period, subject to refund, and establish hearing and settlement judge procedures. We also will initiate an investigation (in Docket No. EL03-119-000) under Section 206 of the Federal Power Act (FPA)<sup>3</sup> concerning the appropriateness of certain provisions in the Midwest ISO OATT applicable to customers on Michigan's lower peninsula. This order benefits customers as it furthers the Commission's goal of successful Regional Transmission Organization (RTO) development and operation and allows GridAmerica to become a viable ITC under the Midwest ISO umbrella.

### **Background**

3. In an April 25, 2002 order in Docket Nos. EL02-65-000, et al.,<sup>4</sup> the Commission directed the Alliance Companies,<sup>5</sup> among others things, to make compliance filings that detailed their plans to join an RTO. In the April 25 Order, the Commission, while stating that Midwest ISO's existing rate design and revenue distribution methodology had been accepted as reasonable, recognized that that rate design could impede additional participation in the RTO. Thus, the Commission stated that it would be open to revisiting Midwest ISO's rate design. The Commission also found reasonable the concept of using transitional surcharges to recover revenues lost due to the elimination of rate-pancaking as a result of RTO membership. However, the Commission cautioned that it would have to evaluate the resulting rates and any disparities among them to ensure that the transitional rates are just and reasonable.

4. In the July 31 Order, the Commission approved the compliance filing of GridAmerica Companies, in which they informed the Commission of their decision to join Midwest ISO.

5. In the December 19 Order, the Commission conditionally accepted GridAmerica Companies' proposal to form GridAmerica as an ITC within Midwest ISO and ordered

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<sup>3</sup>16 U.S.C. § 824e (2000).

<sup>4</sup>See Alliance Companies, et al., 99 FERC ¶ 61,105 (April 25 Order), order on compliance, 100 FERC ¶ 61,137 (July 31 Order) (2002), clarified, 102 FERC ¶ 61,214 (2003).

<sup>5</sup>The Alliance Companies include, but are not limited to, all of the GridAmerica Companies.

them to file proposed rates at least sixty days prior to GridAmerica's commencement of operations.<sup>6</sup>

### **Filing**

6. Applicants propose to revise Schedule 7 (Long-term Firm and Short-term Firm Point-To-Point Transmission Service), Schedule 8 (Non-Firm Point-To-Point Transmission Service), and Schedule 9 (Network Integration Transmission Service) of the Midwest ISO OATT to incorporate the zonal rates for each of three new pricing zones created by the incorporation of GridAmerica within Midwest ISO. According to Applicants, each of the GridAmerica Companies has elected to use stated rates based on the currently effective rates and revenue requirements under their individual-company OATTs.<sup>7</sup>

7. Applicants also propose two new schedules to the Midwest ISO OATT, Schedules 18 and 19, to recover lost revenues resulting from the elimination of pancaked rates as a result of GridAmerica Companies' participation in Midwest ISO.<sup>8</sup> Applicants contend that a lost revenue recovery mechanism is necessary to prevent cost shifting that can result from the elimination of pancaked rates and to protect transmission owners that do not have the flexibility to absorb such cost shifts by increasing rates to customers within their pricing zones.

8. Proposed Schedule 18, Sub-Regional Rate Adjustment (SRA), is designed to collect lost revenues for the current Midwest ISO transmission owners and GridAmerica Companies related to the historical point-to-point service between the existing Midwest

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<sup>6</sup>See, Ameren Services Co., et al, 101 FERC ¶ 61,320 (2002), reh'g pending (December 19 Order).

<sup>7</sup>See Transmittal Letter at 3. Applicants note that NIPSCO's transmission rates were litigated in Docket No. ER96-399-000 and that the Commission issued an opinion in that proceeding on December 30, 2002. See Northern Indiana Public Service Company, Opinion No. 462, 101 FERC ¶ 61,394 (2002). On April 10, 2003, NIPSCO completed its filing of revised tariff sheets in compliance with Opinion No. 462. The Commission has not acted on that filing.

<sup>8</sup>Midwest ISO states that, with respect to the proposal to recover lost revenues, it has elected to join in this filing and not oppose GridAmerica Companies' proposed method for such recovery, consistent with the Commission's guidance in the December 19 Order. See December 19 Order at P 160.

ISO transmission owners and GridAmerica Companies. Schedule 19, Zonal Transition Adjustment (ZTA), is designed to collect lost revenues for GridAmerica Companies related to the historical point-to-point service between GridAmerica Companies' systems under their individual-company OATTs.

9. Under proposed Schedules 18 and 19, revenues collected under each schedule would be distributed between the existing Midwest ISO transmission owners and GridAmerica Companies, and among GridAmerica Companies, in proportion to each group or company's lost revenues to be recovered under each schedule. The proposed rates in each rate schedule are designed so that GridAmerica Companies will remain revenue neutral for a transitional period of three years.

10. Applicants request an effective date of May 1, 2003; they explain that this is the date that they expect GridAmerica to begin operating as an ITC under Midwest ISO and Midwest ISO to begin providing transmission service over the GridAmerica transmission facilities under the Midwest ISO OATT.<sup>9</sup> Applicants request that, if the proposed tariff revisions are not accepted or approved without condition or further procedures, an Administrative Law Judge be appointed to preside over settlement proceedings which will enable parties to expeditiously resolve issues or disputes arising out of the instant filing. Applicants emphasize that they are eager to work constructively with other parties to resolve outstanding issues.

### **Notice of Filing and Responsive Pleading**

11. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 11829 (2003), with interventions, comments and protests due on or before March 21, 2003. Motions to intervene, notices of intervention, protests and comments were timely filed by parties listed in the Appendix to this order. The Public Utilities Commission of Ohio and the City of Hamilton, Ohio, each filed untimely interventions. The content of these pleadings is discussed below.

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<sup>9</sup>In their transmittal letter to their April 4, 2003 response to protests in Docket No. ER02-2233-003, et al., Midwest ISO and GridAmerica Companies have informed the Commission that they have revised their schedules and are now planning for GridAmerica to commence operations under Midwest ISO, and for Midwest ISO to begin providing transmission service over the GridAmerica transmission facilities, on October 1, 2003.

## **Discussion**

### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and the timely, unopposed motions to intervene filed by entities listed in the Appendix serve to make them parties to this proceeding. In addition, we will accept the untimely interventions filed by the Public Utilities Commission of Ohio and the City of Hamilton, Ohio, given their stated interests, the early stage of this proceeding, and the absence of any undue prejudice or delay.

### **B. Analysis**

13. Applicants state that their proposed transitional surcharges to recover lost revenues associated with the elimination of rate pancaking are consistent with prior Commission orders in which the Commission has been supportive of transitional mechanisms to avoid abrupt cost shifts as a result the elimination of rate pancaking when RTOs are formed. Applicants state that they have not submitted updated cost-of-service studies to support the proposed base rates or transitional surcharges because the Commission does not require transmission owners to file updated cost-of-service studies in proceedings where transmission owners seek to adopt the existing rates and revenue requirements under their individual-company OATTs for use under an RTO OATT.

14. Protestors question the legitimacy of Applicants' proposed Schedules 18 and 19. Protestors argue that these proposed schedules represent a rate increase and do not provide revenue neutrality. Various protestors also assert that allowing the proposed SRA would constitute undue discrimination, given that no current transmission owners within Midwest ISO receive such preferential treatment. Protestors also raise numerous issues concerning the design of the proposed surcharges (e.g., billing determinants, applicability to grandfathered agreements, length of transition period, etc.) and the development of those surcharges (e.g., quantification of lost revenues and benefits from the elimination of rate pancaking, choice of test year, etc.).

15. We have previously found reasonable proposals by transmission owners to adopt rates for use under an RTO tariff that are based on the existing rates in their individual-company OATTs.<sup>10</sup> We have also previously found it reasonable to establish transitional

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<sup>10</sup>See Alliance Companies, et al., 94 FERC ¶ 61,070 at 61,311-312, order on reh'g,  
(continued...)

mechanisms such as surcharges that recover lost revenues resulting from the elimination of rate pancaking in proportion to the benefits that customers receive from the elimination of rate pancaking.<sup>11</sup> We continue to believe that such mechanisms can improve upon the license plate rate concept by better controlling cost-shifting.<sup>12</sup> We emphasize that such mechanisms are transitional and are meant to exist for only a defined period of time.

16. However, we share many of the concerns that parties have expressed regarding Applicants' proposal. Our preliminary analysis indicates that the proposed modifications to the Midwest ISO OATT may not be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed amendments, suspend them for a nominal period to become effective, subject to refund, on the date that Midwest ISO begins providing transmission service over the GridAmerica transmission facilities under the Midwest ISO OATT, and set the proposed amendments for hearing pursuant to Section 205 of the FPA.<sup>13</sup> However, as discussed below, we will hold the hearing in abeyance and direct settlement judge procedures, as Applicants request, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>14</sup>

17. Further, we will make specific findings as to the following issues:

### 1. Cost-of-Service Analysis

18. Midwest TDUs assert that the Commission should require GridAmerica Companies to use Midwest ISO's Attachment O rate formula, because that would ensure that the annual transmission revenue requirements underlying GridAmerica Companies' zonal rates will remain tied to current costs. They argue that GridAmerica Companies' use of existing revenue requirements and rates may result in rates that substantially

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<sup>10</sup>(...continued)

95 FERC ¶ 61,182; PJM Interconnection, LLC, *et al.*, 96 FERC ¶ 61,060 at 61,222-223 (PJM West) (2001), reh'g pending.

<sup>11</sup>Id.

<sup>12</sup>See April 25 Order at 61,444.

<sup>13</sup>16 U.S.C. § 824d (2000).

<sup>14</sup>18 C.F.R. § 385.603 (2002).

exceed costs. They argue that the fact that GridAmerica Companies chose not to use the Attachment O rate formula for the purpose of establishing their zonal rates indicates that their proposed rates exceed their cost-of-service.

19. Multiple protestors dispute the existence of lost revenues and, therefore, dispute the need for lost revenue recovery, asserting that Applicants' proposed surcharges are based on excessive and outdated rates. Detroit Edison argues that Applicants have failed to demonstrate that rate relief is required. Detroit Edison argues that Applicants have not provided, among other things, supporting data or cost-of-service analysis. Detroit Edison states that, during the past several years, load growth coupled with the lack of transmission infrastructure investment has created a very lucrative environment in which transmission owners have benefitted. Because of these circumstances, Detroit Edison argues, rate pancaking could be eliminated and transmission owners could still recover their authorized revenue requirements, or file to address any revenue deficiencies if they do not.

### **Commission Determination**

20. Consistent with our prior orders on proposals by transmission owners to utilize existing individual-company OATT rates to establish initial rates, including transitional surcharges, under an RTO OATT, we will accept Applicants' proposal to use the revenue requirement and rates in GridAmerica Companies' individual-company OATTs to establish rates under the Midwest ISO OATT and will not require updated cost-of-service analysis to be filed.<sup>15</sup> If a customer believes that a transmission owners' existing rates are no longer just and reasonable, it can file a complaint under Section 206 of the FPA.<sup>16</sup> However, protestors have not provided evidence that persuades us to invoke Section 206 of the FPA to institute an investigation of GridAmerica Companies' rates on our own motion, at this time.

21. The proposed rates for the NIPSCO pricing zone are the rates that were accepted subject to refund and set for hearing in Docket No. ER96-399-000. As indicated above, the Commission issued an opinion (Opinion No. 462) in that proceeding on December 30, 2002 and NIPSCO completed its filing of revised tariff sheets in compliance with Opinion No. 462 on April 10, 2003. We will require GridAmerica Companies to use the rates resulting from the outcome of Docket No. ER96-399-000 to establish the rates for

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<sup>15</sup>See PJM West, 96 FERC ¶ 61,060 at 61,220; Alliance Companies, et al., 95 FERC ¶ 61,182 at 61,632 (2001).

<sup>16</sup>16 U.S.C. § 824e (2000).

the NIPSCO pricing zone under the Midwest ISO OATT. In addition, to the extent that the proposed ZTA and/or SRA surcharges reflect revenues based on NIPSCO's current rates, such surcharges should be adjusted to reflect the rates that result from the outcome of Docket No. ER96-399-000. Similar adjustments should be made to the extent that the proposed ZTA and/or SRA surcharges reflect revenues associated with rates of other transmission owners that were in effect subject to refund. We will direct Applicants to revise their proposed rates accordingly and refile them within 30 days of the date of this order.

## 2. Stated Rates for Network Service

22. Various parties object to the proposed conversion of rates for network service from the 12-month rolling average load-ratio share allocation currently used in GridAmerica Companies' individual-company OATTs to a stated rate based on a historic test-period divisor. They assert that, even if the existing revenue requirements can be found to be just and reasonable, conversion to stated rates for network service increases the rates for that service and inflates revenues due to (a) the substantial difference between a test-year divisor and the 12-month rolling average load divisor currently used for network service billing and (b) further load growth during future years.

### Commission Determination

23. Consistent with PJM West, we will allow the use of historical data (i.e., consistent with the test-period used to establish other components of the rates and revenue requirements) to develop stated rates for network service.<sup>17</sup> However, we recognize that, to the extent that GridAmerica Companies have experienced an increase in network load and firm point-to-point reservations since the test year, the use of test year demand data would increase the per-unit network service charges and revenues above those levels achieved with the 12-month rolling load-ratio share allocation currently in use. As GridAmerica Companies request to be held harmless from lost revenues associated with the elimination of rate pancaking, so should all existing network customers be held harmless from any increase in charges due to the switch from the 12-month rolling load-ratio share allocation methodology to the use of a stated rate for network service.<sup>18</sup> We will direct the participants, in the hearing and settlement procedures established below, to address what an appropriate mechanism would be to effectuate this hold harmless condition.

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<sup>17</sup>See 96 FERC at 61,221.

<sup>18</sup>Id.

### 3. Applicability of Transitional Surcharges to Michigan Parties

24. In addition to making general objections to the proposed lost revenue surcharges similar to those made by other protestors, Detroit Edison objects to these surcharges based upon the unique relationship between it, and other customers on Michigan's lower peninsula, and Midwest ISO. Detroit Edison points out that Midwest ISO OATT Schedules 7-Michigan, 8-Michigan, and 9-Michigan each contain language that specifically protects these customers against the proposed SRA charges at issue here.<sup>19</sup> Detroit Edison asserts that the proposed lost revenue surcharge can only be applied to customers on Michigan's lower peninsula if Applicants show that the "public interest" requires the imposition of this surcharge. Detroit Edison argues that Applicants have not made the required showing and, therefore, the SRA charges at issue here do not apply to these customers.

#### Commission Determination

25. We agree with Detroit Edison's interpretation of the language in the Michigan rate schedules. However, we find that the ever evolving nature of Midwest ISO's development requires that this restrictive language be revisited. We will therefore institute a Section 206 proceeding<sup>20</sup> to determine whether it is appropriate to permit the "public interest" standard to be used to determine whether "zonal rates for service under th[e] Tariff shall . . . include the costs of, or foregone revenues associated with, any facilities outside of the Transmission System (Michigan) . . ."

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<sup>19</sup>The language states:

However, in consideration of the historic non-pancaked usage of the Transmission System (Michigan), zonal rates for service under this Tariff shall not include the cost of, or foregone revenues associated with, any facilities outside of the Transmission System (Michigan) absent a showing by an applicant or the Commission that such costs or forgone revenues should be borne by Transmission Customers of the Transmission System (Michigan) and are "in the public interest" as applied to such customers (as the term "in the public interest" has been interpreted by the Commission and the courts).

<sup>20</sup>Section 206 of the FPA, 16 U.S.C. § 824e (2000).

26. In cases where, as here, the Commission institutes a Section 206 investigation on its own motion, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's intent to institute a Section 206 proceeding in the Federal Register, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent, we will establish a refund effective date at the earliest date allowed.<sup>21</sup> This date will be 60 days from the date on which notice of our initiation of the investigation in Docket No. EL03-119-000 is published in the Federal Register.

#### 4. Issues in Other Proceedings

27. Detroit Edison contends that the proposed filing should be linked to the ongoing proceedings in Docket No. EL02-111-000<sup>22</sup> and Docket No. EL02-65, et. al.<sup>23</sup>

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<sup>21</sup>See, e.g., Canal Electric Co., 46 FERC ¶ 61,153 (1989).

<sup>22</sup>In the July 31 Order accepting the decisions of Illinois Power Company (Illinois Power), Commonwealth Edison Company (ComEd), and American Electric Power Service Corporation (AEP) to join PJM Interconnection LLC (PJM), the Commission stated that resolution of the issue of inter-RTO rate pancaking between PJM and Midwest ISO is fundamental to its decision to accept the choices of Illinois Power, ComEd, and AEP to join PJM." (See July 31 Order at P 49.) The Commission therefore initiated an investigation under Section 206 of the FPA as to the rates for through and out service between PJM and Midwest ISO in Docket No. EL02-111-000 (the Inter-RTO Rates Proceeding). In this proceeding, still pending before the Commission, GridAmerica Companies have proposed a transitional rate mechanism to facilitate the elimination of inter-RTO rate pancaking involving transactions that cross the Midwest ISO/PJM seam that is very similar to the SRA proposed here for intra-RTO transactions.

<sup>23</sup>In the July 31 Order, the Commission also found that some parties were concerned that the decisions by AEP, ComEd and Illinois Power to join PJM "will isolate Michigan and Wisconsin from the rest of Midwest ISO and . . . that ComEd's participation in PJM creates: (1) a void at the center of Midwest ISO and (2) a seam at the southern interface of the already constrained Wisconsin Upper Michigan System (WUMS) [which] presents significant obstacles to the effective planning and construction needed to widen this bottleneck and impedes management of loop flows and congestion." The Commission therefore directed AEP, ComEd, Illinois Power, Midwest ISO and PJM to "propose a solution which will effectively hold harmless utilities in

(continued...)

### **Commission Determination**

28. Given the advanced stages of the proceedings referenced by Detroit Edison, we believe that it is wiser to reject Detroit Edison's request and direct the parties to litigate the relevant issues in this proceeding. However, when the Inter-RTO Rates and/or Wisconsin-Michigan Hold Harmless Proceedings are completed,<sup>24</sup> if this proceeding is still ongoing, the decision in those proceedings will inform the proceeding here.

### **5. Consolidation and Settlement Procedures**

29. Because Docket Nos. EL03-119-000 and ER03-580-000 raise common issues of law and fact, we will consolidate them for purposes of hearing and decision. Accordingly, any party who has moved to intervene in Docket No. ER03-580-000 will be considered to be a party to the consolidated proceeding.

30. In addition, in order to allow the parties an opportunity to resolve this matter amicably without an evidentiary hearing, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>25</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law

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<sup>23</sup>(...continued)

Wisconsin and Michigan from any loop flows or congestion that results from the proposed configuration[.]" (See July 31 Order at P 53.) The parties have been pursuing a solution to this problem in Docket No. EL02-65, *et al.* (the Wisconsin-Michigan Hold Harmless Proceeding).

<sup>24</sup>As to the Inter-RTO Proceeding, the presiding judge issued his initial decision on March 31, 2003. In the Wisconsin-Michigan Hold Harmless Proceeding, on February 26, 2003, the Commission issued an order responding to questions seeking clarification from the Commission regarding the language in the July 31 Order so as to enable the parties to move toward a settlement. See *Alliance Companies*, 103 FERC ¶ 61, 214 (2003). On March 28, 2003, the settlement judge issued a status report indicating that the parties to the Wisconsin-Michigan Hold Harmless Proceeding have resumed negotiations with the benefit of the Commission's clarification order.

<sup>25</sup>18 C.F.R § 385.603 (2002).

Judge will select a judge for this purpose.<sup>26</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of the evidentiary hearing by assigning the case to a presiding judge.

**The Commission orders:**

(A) The proposed amendments to the Midwest ISO OATT are hereby accepted for filing and suspended for a nominal period to become effective, subject to refund, on the date that Midwest ISO begins providing transmission service over the GridAmerica transmission facilities under the Midwest ISO OATT, as discussed in the body of this order.

(B) 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 by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket Nos. EL03-119-000 and ER03-580-000 concerning the justness and reasonableness of the proposed amendments, and whether it is appropriate to permit the "public interest" standard to be used to determine whether "zonal rates for service under the Tariff shall . . . include the costs of, or foregone revenues associated with, any facilities outside of the Transmission System (Michigan) . . ." under Midwest ISO OATT Schedules 7-Michigan, 8-Michigan, and 9-Michigan, as discussed in the body of this order.

(C) The hearing ordered in Ordering Paragraph (B) above shall be held in abeyance pending settlement judge proceedings, as discussed in the body of this order.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

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<sup>26</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

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(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(G) Docket Nos. EL03-119-000 and ER03-580-000 are hereby consolidated for the purposes of hearing and decision.

(H) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of Section 206 proceedings in Docket No. EL03-119-000.

(I) The refund effective date in Docket No. EL03-119-000, established pursuant to Section 206(b) of the Federal Power Act, will be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (H) above.

By the Commission.

(S E A L)

Magalie R. Salas,  
Secretary.

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**APPENDIX**

American Municipal Power-Ohio, Inc (AMP-Ohio) \*

City of Cleveland, Ohio (Cleveland) \*

City of Hamilton, Ohio (Hamilton) \*\*\*

Commonwealth Edison Company and Exelon Generation Corporation (Exelon) \*\*

Consumers Energy Company (Consumers) \*

Dairyland Power Cooperative (Dairyland) \*

Detroit Edison Company (Detroit Edison) \*

Great River Energy (Great River) \*\*

GridAmerica LLC (GridAmerica) \*\*

Illinois Municipal Electric Agency (IMEA) \*

Indiana Municipal Power Agency, Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, and Wisconsin Public Power Inc. (Midwest TDU) \*

Industrial Energy Users-Ohio and Coalition of Midwest Transmission Customers (Midwest TDUs) \*

Michigan Electric Transmission Company., LLC (METC) \*\*

State of Michigan and Michigan Public Service Commission (Michigan) \*

MidAmerican Energy Company (MidAmerican) \*

Midwest ISO Transmission Owners (Owners) \*

[The Midwest ISO Transmission owners consist of: Alliant Energy Corporate Services, Inc.; American Transmission Company LLC; Aquila, Inc.; Cinergy

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Services, Inc.; 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; Lincoln Electric System; Minnesota Power, Inc.; Northwestern Wisconsin Electric Company; Otter Trail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Wabash Valley Power Association, Inc.]

Public Utilities Commission of Ohio (PUCO) \*\*\*

Wabash Valley Power Association, Inc. (Wabash) \*

Wisconsin Electric Power Company (WEPC) \*

Wisconsin Public Service Corporation and Upper Peninsula Power Company (WPSR Operating Companies) \*

Wolverine Power Supply Cooperation, Inc. (Wolverine) \*

\*Motion to intervene and protest

\*\*Motion to intervene

\*\*\*Motion to intervene out-of-time