120 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos.	ER06-18-007
		ER06-18-008

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued July 23, 2007)

1. On March 15, 2007, the Commission conditionally accepted proposed revisions to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT)[1] to incorporate a proposed cost allocation methodology for Regionally Beneficial Projects that was established through the Midwest ISO's Regional Expansion Criteria and Benefits (RECB) Task Force.[2] As discussed below, the Commission denies requests for rehearing of the RECB II Order.

2. The RECB II Order directed the Midwest ISO to file, within 30 days, a compliance filing making certain changes to the language set forth in the cost allocation proposal. As discussed below, the Commission conditionally accepts the revised tariff sheets submitted in the Midwest ISO's April 16, 2007 compliance filing (April 16 Compliance Filing), effective April 1, 2007, as requested.[3]

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[1] Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Third Rev. Vol. No. 1.

[2] *Midwest Independent Transmission System Operator, Inc.*, 118 FERC ¶ 61,209 (2007) (RECB II Order). Regionally Beneficial Projects are economic upgrades that meet specific standards, as discussed herein.

[3] The April 1, 2007 effective date is consistent with the effective date requested in the Midwest ISO's original RECB II proposal and accepted in the RECB II Order.

I. **Background**[4]

A. **RECB II Filing**

3. On November 1, 2006 (as amended on November 8, 2006) the Midwest ISO filed its proposed cost allocation methodology for Regionally Beneficial Projects (RECB II Filing). Under its proposed "Weighted Gain-No Loss" approach, the Midwest ISO sought to ensure that proposed economic projects will have a regional benefit and that the cost of any such projects are borne only by those entities that benefit from them.

4. As set forth in the RECB II Filing, for a proposed project to qualify as a Regionally Beneficial Project in the Midwest ISO's Regional Transmission Expansion Plan (MTEP) process, it must satisfy two benefits tests. First, the present value of the Adjusted Production Cost benefit (production cost benefit)[5] and the Locational Marginal Pricing (LMP)-based energy cost benefit (LMP energy cost benefit),[6] determined in the aggregate for all generation and load nodes under the TEMT, must each be greater than zero. The total project benefit is a weighted value defined as the sum of 70 percent of the production cost benefit and 30 percent of the load's LMP energy cost benefit. Second, a proposed project must satisfy a variable project Benefits/Costs Ratio threshold. The

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[4] A broader history of cost allocation and pricing in the Midwest ISO region is summarized in the RECB II Order. *See* RECB II Order, 118 FERC ¶ 61,209 at P 16-23. The RECB II Order also provides a brief background regarding the Midwest ISO's "RECB I" proceeding, which addressed, among other things, the Midwest ISO's proposed cost allocation for network upgrades, including Baseline Reliability Projects. Baseline Reliability Projects are upgrades needed to maintain reliability while accommodating the ongoing needs of existing market participants and Transmission Customers' existing load requirements. *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on technical conference, reh'g and compliance*, 117 FERC ¶ 61,241 (2006) (RECB I Order on Rehearing), *order on reh'g*, 118 FERC ¶ 61,208 (2007) (RECB I Further Order on Rehearing).

[5] The production cost benefit is the calculation of production cost savings (benefits) due to the transmission expansion adjusted to reflect changes in sales and purchases that may occur as a result of the expansion.

[6] The LMP energy cost benefit is calculated by multiplying the LMP at each load bus within the sub-region for each period of the planning model simulation. The intent is to measure reductions in load energy payments resulting from LMP reductions associated with the expansion.

Benefits/Costs Ratio threshold varies linearly from 1.2 (for projects that have an in-service date within one year of the project's MTEP approval date) to 3.0 (for projects that have an in-service date ten or more years from the project's MTEP approval date).

5. The RECB II Filing also required that a proposed project must meet three qualifying tests to be designated a Regionally Beneficial Project and qualify for regional cost allocation. The project must: (1) cost more than $5 million, (2) involve facilities with voltages of 345 kV or more (high-voltage), and (3) not be a Baseline Reliability Project or New Transmission Access Project (as defined in the RECB I proceeding). If the project meets these three additional tests, then it is designated a Regionally Beneficial Project and, therefore, is eligible for cost allocation. These tests are intended either to be consistent with or to complement the qualifying tests the Commission accepted in the RECB I proceeding.

6. If a project: (1) meets the Benefits/Costs Ratio threshold; and (2) is designated a Regionally Beneficial Project eligible for regional cost allocation, then 20 percent of the costs of the project will be allocated on a load ratio share basis to all Midwest ISO customers (*i.e.*, a "postage-stamp" rate)[7] and 80 percent will be allocated among three geographic sub-regions (West, Central and East) based on a beneficiary analysis. Once each sub-region is assigned its portion of the project cost, the cost allocation to each individual entity within each geographic sub-region will be on a load ratio share basis to reflect the potential for shifting beneficiaries within the sub-region over time.

7. The proposed RECB II methodology provides for a deviation from the above cost allocation when either the production cost benefit or the LMP energy cost benefit to any one of the three sub-regions is negative. Under this circumstance, that sub-region would not be allocated a share of the 80 percent sub-regional component; the 80 percent of costs will be allocated only to benefiting sub-regions. According to the Midwest ISO, this "No Loss" piece of the Weighted Gain-No Loss analysis was intended to protect customers in a sub-region from being allocated costs when they may not benefit from the upgrade.

8. For cost allocation with transmission owners outside the Midwest ISO region, the Midwest ISO proposed that costs related to Baseline Reliability Projects (*i.e.*, reliability projects) located in neighboring regions be allocated among Midwest ISO customers in

[7] Under a postage-stamp rate design, all customers taking transmission service for delivery to load within a Regional Transmission Operator (RTO) pay the same rate, reflecting the average embedded costs of the transmission facilities throughout the RTO. *See Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168, at P 11, n.16, *order on clarification*, 109 FERC ¶ 61,243 (2004).

accordance with the same procedures for comparable projects located within the Midwest ISO region. For inter-regional Regionally Beneficial Projects (*i.e.*, economic projects), the Midwest ISO did not propose an allocation methodology, pending further discussions regarding cross-border allocation with its neighboring RTOs.

B. RECB II Order

9. In the RECB II Order, the Commission conditionally accepted the RECB II Filing. Relying, in part, on the principles articulated in Order No. 890,[8] the Commission found the principles expressed in, and the cost allocation methodology set forth in, the RECB II Filing (subject to certain conditions) to be just and reasonable.[9] The Commission also directed the Midwest ISO to file a series of annual updates to help the Commission, the Organization of MISO States (OMS), stakeholders and the Midwest ISO analyze the effectiveness of the proposed transmission expansion cost recovery plans. The RECB I Order on Rehearing had already directed the Midwest ISO to study, as part of its post-transition rate design filing to be made in August 2007, the effectiveness of the cost-sharing methodology accepted therein for new facilities.[10] In the RECB II Order, the Commission directed the Midwest ISO to include in that report a discussion of how the approved cost allocation methodologies for Baseline Reliability Projects and Regionally Beneficial Projects relate to the methodology that the Midwest ISO is planning to submit for allocating the costs of *existing* projects. The Commission further directed the Midwest ISO to make reports by August 2008 and August 2009 that analyze the effectiveness of all of the transmission expansion cost allocation

[8] These principles include, among other things: supporting regional flexibility; and consideration of whether a cost allocation proposal fairly assigns costs among participants, provides adequate incentives to construct new transmission, and is generally supported by state authorities and participants across the region. RECB II Order, 118 FERC ¶ 61,209 at P 24-26 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 559-61 (2007)).

[9] Each of these conditions, as well as the other modifications required by the RECB II Order, are discussed in greater detail in section III, below.

[10] RECB I Order on Rehearing, 117 FERC ¶ 61,241 at P 66; RECB I Further Order on Rehearing, 118 FERC ¶ 61,208 at P 28. The RECB I Order on Rehearing also directed the Midwest ISO to file a report specifically as to generator interconnection cost allocation by November 29, 2007. RECB I Order on Rehearing, 117 FERC ¶ 61,241 at P 83 and Ordering Paragraphs (C) and (D).

methodologies. The Commission stated that these reports will provide detail to enable review of, among other things: (1) the effectiveness of the postage-stamp rates for both Baseline Reliability Projects and Regionally Beneficial Projects, and (2) the discrete issues discussed in the RECB II Order.[11]

II. Notices and Responsive Filings

10. Timely requests for rehearing of the RECB II Order were filed by: Consumers Energy Company (Consumers); Indianapolis Power & Light Company (IPL); the Midwest ISO Transmission Owners (the Midwest ISO TOs);[12] and the Midwest TDUs.[13]

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[11] RECB II Order, 118 FERC ¶ 61,209 at P 35.

[12] For purposes of their filing, the Midwest ISO TOs include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, Missouri); City Water, Light & Power (Springfield, Illinois); Duke Energy Shared Services, Inc. f/k/a Cinergy Services, Inc. for The Cincinnati Gas & Electric Co. d/b/a Duke Energy Ohio, Inc., PSI Energy, Inc. d/b/a Duke Energy Indiana, Inc., and The Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; IPL; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

[13] For purposes of their filing, the Midwest TDUs include: Great Lakes Utilities; Lincoln Electric System; Madison Gas and Electric Company; Midwest Municipal Transmission Group; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; Southern Minnesota Municipal Power Agency; and Wisconsin Public Power Inc.

11. Notice of the April 16 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 23,812 (2007), with interventions and protests due on or before May 8, 2007. Comments and protests were filed by: American Transmission Company LLC (ATCLLC); the Integrys Energy Group and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc. (collectively, Integrys)[14]; International Transmission Company d/b/a ITC*Transmission* and Michigan Electric Transmission Company, LLC (ITC and METC); IPL; the Midwest ISO TOs; and the Midwest TDUs. The Midwest ISO filed an answer to the protests.

III. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Weighted Gain-No Loss Approach and The Calculation of Benefits, Costs and Benefits/Costs Ratio

1. RECB II Order

13. In the RECB II Order, the Commission found the Weighted Gain-No Loss approach proposed by the Midwest ISO, as conditioned, to be a reasonable approach to measuring benefits of a proposed economic project. The Commission also found the Midwest ISO's commitment to revisit the benefits analysis to be a practical way to deal with various parties' suggestions that the Midwest ISO methodology should consider benefits other than the production cost and LMP energy cost benefits. The Commission accepted the Midwest ISO's pledge that, as better metrics are developed to reliably evaluate benefits, it will make a Federal Power Act (FPA) section 205[15] filing to amend Attachment FF of the TEMT.

14. The Commission required the Midwest ISO to revise its Weighted Gain-No Loss calculations in two major respects. First, the Commission directed the Midwest ISO to revise the Weighted Gain-No Loss metric so that only when the calculation results in a

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[14] Integrys Energy Group Inc. was granted party status in this proceeding under the name WPS Resources Corporation.

[15] 16 U.S.C. § 824d (2000).

net negative benefit would a proposed project be disqualified as a Regionally Beneficial Project. The Commission rejected the Midwest ISO's proposal that if a sub-region is shown to garner negative benefits under either the production cost benefit or LMP energy cost benefit metric, then that sub-region will not be given a sub-regional allocation of cost. The Commission found that the Midwest ISO failed to explain why a project that has net benefits will not qualify for regional cost allocation, stating:

> While we support a general No Loss provision, we find that provision should apply to the *overall* weighted sum of measured benefits. The metrics, as proposed, could violate the principle that proposed economic projects that have a regional benefit are borne by those regions that benefit from the proposed upgrade. Therefore, when the weighted present value sum of the production cost benefit and the LMP energy benefit is a net positive, that project would qualify for cost sharing, subject to the additional qualification criteria for Regionally Beneficial Projects. This revision adheres to the general "beneficiaries pay" approach because projects are required to demonstrate overall benefits to each sub-region in order to qualify as a Regionally Beneficial Project.[16]

15. Second, the Commission directed the Midwest ISO to revise the methodology for the weighting of production cost savings and LMP energy cost benefits to: (1) require that benefits be calculated on a net present value basis and (2) permit regional cost sharing for qualifying projects that produce benefits on a net present value basis, even if one of the two metrics is negative.[17]

16. In the RECB II Order, the Commission required the Midwest ISO to make several specific tariff revisions to implement these and related modifications. First, the Commission required the Midwest ISO to provide additional information regarding "the sensitivity analyses operations on the location and amount of transmission, non-transmission additions and retirements, as agreed to in the Midwest ISO's answer."[18] Second, the Commission required the Midwest ISO to revise the Weighted Gain-No Loss metric so that only when the calculation results in a net negative benefit would a proposed project be disqualified as a Regionally Beneficial Project.[19] Third, the

[16] RECB II Order, 118 FERC ¶ 61,209 at P 136 (emphasis in original).

[17] *Id.* P 30.

[18] *Id.* P 133.

[19] *Id.* P 136.

Commission required the Midwest ISO "to clarify its intent that the Weighted Gain-No Loss provisions should apply to the sum of present value of the benefits over the entire modeling period as agreed to in its answer."[20] Fourth, the Commission required the Midwest ISO "to revise certain ambiguities with regard to section II.B.1.b of Attachment FF." The Commission stated:

> We interpret section II.B.1.b to mean that the aggregate present value benefits of all generation and loads under the TEMT must be greater than zero to qualify for a regional cost allocation *within each sub-region*. Moreover, we find the phrase ". . . for a Regionally Beneficial Projects [sic] to qualify for regional cost allocation" in section II.B.1.b to be somewhat illogical; our understanding is that any designated Regionally Beneficial Project qualifies to allocate 20 percent of its costs to the entire Midwest ISO region. Further, the No Loss analysis determines to which of the three sub-regions the 80 percent cost allocation applies. Accordingly, we find section II.B.1.b's use of the term "each" in the description of how the Midwest ISO is proposing for the aggregate cost allocation to work in relation to the sub-regions, to be unclear. We direct the Midwest ISO to clarify the intent of section II.B.1.b for aggregate cost allocations to the region, while accounting for the other revisions required herein.[21]

Fifth, the Commission required the Midwest ISO to "clarify how its criteria coincide with (or do not hinder) state/local criteria for project planning."[22]

17. In addition, the Commission directed the Midwest ISO to make several clarifications regarding its calculations of benefits and costs and therefore, the Benefits/Costs Ratio, consistent with those required for Weighted Gain-No Loss calculations:

> First, as indicated above, it should clarify that the project costs used to calculate the Benefits/Costs Ratio are defined as the present value of revenue requirements for the project over the same period used to calculated benefits, as agreed to in its answer. Second, it should clarify the time period over which the present value of benefits will be calculated.

[20] *Id.* P 137.

[21] *Id.* P 138.

[22] *Id.* P 139.

> Finally, it should clarify how aggregate benefits will be calculated for each of the benefits tests. We note that under one benefits test, the proposed tariff language provides that "[t]he present value of the [production cost benefit] and of the [LMP energy cost benefit] determined in aggregate for all generation and loads under [the TEMT] must each be greater than zero" to qualify for cost sharing as a Regionally Beneficial Project. However, the tariff provisions for applying the Benefits/Costs Ratio thresholds are silent as to how aggregate benefits will be calculated, and the Midwest ISO's filing indicates elsewhere that total system benefits will be calculated as the sum of the blended Weighted Gain-No Loss metric, after the No Loss protection, as conditioned above, for sub-regions is applied.[23]

2. Requests for Rehearing

a. Requests for Rehearing

18. The Midwest ISO TOs argue that the Commission erred in requiring the Midwest ISO to revise the Weighted Gain-No Loss metric to provide that a proposed project will be disqualified as a Regionally Beneficial Project only when the Weighted Gain-No Loss calculation results in a net negative benefit. The Midwest ISO TOs argue that the Commission's modification is contrary to cost causation principles and the rationale articulated in the RECB II Order. The Midwest ISO TOs maintain that "the filed approach was included to better ensure that costs are allocated to those that benefit from the new projects. Reliance on positive results from only a single analysis increases the risk that costs will be allocated to entities that do not benefit, particularly given the fact that analyses such as these often will have results that vary depending upon the assumptions."[24] The Midwest ISO TOs argue that the original proposal provides "greater assurance that a region receives positive net benefits before it is allocated costs for a transmission project that is being constructed to provide an economic benefit."[25] The Midwest ISO TOs further maintain that "[w]hile this may appear to be a conservative approach . . . it is appropriate to ensure that a region receives a benefit for its customers before it is allocated a portion of the cost of an economic project."[26]

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[23] *Id.* P 158 (internal citations omitted).

[24] Midwest ISO TOs Request for Rehearing at 2-3.

[25] *Id.* at 13.

[26] *Id.* at 15.

19. The Midwest ISO TOs maintain that, "[b]ecause of the uncertainties related to modeling assumptions, the RECB Task Force decided to use multiple measures of benefits to get as clear a picture as possible of the benefits a party might receive."[27] The Midwest ISO TOs argue that the Weighted Gain-No Loss approach, as proposed, better protected customers within each planning region from being allocated costs where they may not benefit from a transmission upgrade. Using the example from the RECB II Order, the Midwest ISO TOs argue that if a region showed a $100 million production cost savings benefit but a $1 million net present value increase in LMP, then the customer in that region might not in fact receive any benefit, so it is appropriate to not allocate any cost to market participants in that region. The Midwest ISO TOs argue that the Commission's alternative "would not protect customers in the exporting region if the majority of the production cost of LMP savings from an economic project is exported, which is very possible for an economic project."[28]

20. Moreover, the Midwest ISO TOs argue that other examples show that the filed approach is reasonable. They note that if one study produces $51 million in positive benefits and the other study produces $49 million in negative benefits, then that should be a clear indication that the project may not be providing regional benefits. Under the filed approach, the project would not be considered a Regionally Beneficial Project but under the Commission's modification, it would.

21. The Midwest ISO TOs also note that the Weighted Gain-No Loss approach, as proposed in the RECB II Filing, was the product of the stakeholder process and, while not dispositive, that fact further supports is reasonableness. The Midwest ISO TOs argue that the Weighted Gain-No Loss provision "was a key component of the compromise that brought the various parties into basic agreement regarding the treatment of Regionally Beneficial Projects."[29]

22. The Midwest ISO TOs further note that the Midwest ISO will be analyzing the effectiveness of the Weighted Gain-No Loss metric, among other things, as part of its

[27] *Id.* at 13.

[28] *Id.* at 15.

[29] *Id.* at 5.

report to the Commission. They argue that, "[g]iven this opportunity to review the effectiveness of the [Weighted Gain-No Loss] methodology, it is appropriate to start with the more conservative approach proposed by the Midwest ISO."[30]

23. Finally, the Midwest ISO TOs argue that the Commission erred in finding that the Midwest ISO failed to justify its proposal. They state that "[t]he Commission was required to accept the filed proposal if it was reasonable; the Midwest ISO had no obligation to show that its proposal was better than all other proposals."[31]

24. The Midwest TDUs seek clarification that the substitution of a net Weighted Gain calculation for the sub-regional "either/or" test of the Midwest ISO's proposed "No Loss" provision (that is, that the requirement is triggered by either a negative production cost benefit or a negative LMP benefit) is limited only to the sub-regional Weighted Gain calculation and does not alter the Midwest ISO's proposed methodology for aggregating sub-regional benefits to calculate the Midwest ISO's region-wide Weighted Gain. The Midwest TDUs express concern that the Commission intended to apply a broader net benefits approach:

> . . . so that a sub-region with a net negative Weighted Gain is counted negatively against the positive Weighted Gains from the other sub-regions in calculating the region-wide Weighted Gain . . . or so that proposed upgrades are required to demonstrate net positive sub-regional benefits "to *each* sub-region in order to qualify as a Regionally Beneficial Project."[32]

The Midwest TDUs argue that such an approach would be inconsistent with the basic structure of the Midwest ISO's original RECB II Filing and that the modification would potentially decrease the number of transmission projects eligible for cost sharing.

b. <u>Commission Determination</u>

25. In the RECB II Order, the Commission found that the Midwest ISO did not adequately support its proposal that if a sub-region is shown to have negative benefits under either the production cost benefit or the LMP energy benefit, then that sub-region

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[30] *Id.* at 16.

[31] *Id.* at 4.

[32] Midwest TDUs Request for Rehearing at 4 (emphasis in original) (*quoting* RECB II Order, 118 FERC ¶ 61,209 at P 136).

will not be given a sub-regional allocation of costs.[33] The Commission agreed with the OMS and others that having positive values for both the production cost benefit and the LMP energy cost benefit appears to be an unrealistic requirement. As the Commission pointed out, the Midwest ISO's proposal could lead to distorted results where one metric showing a huge positive benefit could be negated by another metric showing minimal negative benefit.[34] Indeed, the Commission found that the metrics, as proposed, could violate the principle that proposed economic projects that have a regional benefit are borne by regions that benefit from the proposed upgrade.

26. We disagree with the Midwest ISO TOs that the original "conservative" proposal provides "greater assurance that a region receives positive net benefits before it is allocated costs for a transmission project that is being constructed to provide an economic benefit."[35] The Midwest ISO TOs argue that if one study produces $51 million in positive benefits while the other study produces $49 million in negative benefits, that indicates that the project may not provide regional benefits and thus should not be considered a Regionally Beneficial Project. However, the Midwest ISO TOs' example illustrates the rationale behind using two studies and netting the outcome to properly evaluate potential benefit. In their example, there are still $2 million in net benefits provided to a sub-region. If that sub-region does not have to contribute towards the costs of that infrastructure, and those costs are indirectly foisted upon other parties, that would be an unreasonable result. Therefore, we affirm the earlier finding of the RECB II Order that the netting of results is just and reasonable.

27. The Midwest ISO TOs also claim that the Weighted Gain-No Loss provision filed by the Midwest ISO was the result of a stakeholder compromise and that should support its reasonableness. The Midwest ISO TOs also claim that the Midwest ISO's original proposal need only be found reasonable to be accepted and that it need not demonstrate that its proposal was superior to other options. While we listen very carefully to the results of the stakeholder process, we must consider the proposal before us on the merits. In the RECB II Order, the Commission recognized that the proposal was supported by stakeholders, but found that the particular proposal had not been adequately supported and that the outcome may lead to unjust and unreasonable results. Thus, the Commission modified the proposal in order to satisfy its statutory obligations.

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[33] RECB II Order, 118 FERC ¶ 61,209 at P 136.

[34] *Id.*

[35] Midwest ISO TOs Request for Rehearing at 13.

28. The Midwest TDUs seek clarification, or in the alternative, rehearing of the "No Loss" element of the Commission's RECB II Order. The Midwest TDUs suggest that the Commission's revisions were limited to the sub-regional Weighted Gain calculation and did not intend to alter the methodology for aggregating sub-regional benefits to calculate the Midwest ISO's region-wide Weighted Gain. The Midwest TDUs also claim, without support, that if the Commission intended the changes to apply to both the Weighted Gain and the No Loss provision, that calculation could potentially decrease the number of projects eligible for cost sharing.

29. In the RECB II Order, the Commission stated that "[w]hile we support a general No Loss provision, we find that provision should apply to the *overall* weighted sum of measured benefits."[36] Thus, the previous order clearly stated that the benefits, both positive and negative, should be netted to allow for a reasonable calculation. We disagree with the Midwest TDUs that the effect of our direction could give an individual sub-region veto rights over a project. The RECB II Order merely requires the weighing of the net benefit throughout the region of a proposed project. This approach more directly links the beneficiaries of a given project with the costs. We note that under the Midwest TDUs' interpretation, an individual sub-region that receives negative net benefits from a prospective project would be ignored in the determination of whether the region, as a whole, benefits from the project. Yet, after being excluded from that determination of whether the region as a whole benefits, that sub-region would nevertheless be assessed its load share of 20 percent of the project's costs. For all of these reasons, we deny the Midwest TDUs' rehearing request.

3. April 16 Compliance Filing

a. "No Loss" Aspect of the Weighted Gain-No Loss Calculation

i. April 16 Compliance Filing

30. The Midwest ISO proposes to modify section II.B.1.a of Attachment FF:

> [t]o clarify that: (1) the [Weighted Gain-No Loss] will be calculated for a sub-region in any year, regardless of whether the [production cost] benefit or the LMP benefit is negative for that year; and (2) the full project benefit is then calculated as the present value of the sum of the sub-regional annual [Weighted Gain-No Loss] metrics. Modifications to this Section also

[36] RECB II Order, 118 FERC ¶ 61,209 at P 136 (emphasis in original).

> clarify that the benefits evaluation will consider at a minimum the first ten years of life of the project. Section II.B.1.c . . . clarifies that the costs to be considered in the [Benefits/Costs Ratio] are the present value of the revenue requirements for the project, and describe how costs will be estimated and verified. Although the Midwest ISO will use estimated project costs to determine whether a proposed project qualifies as a [Regionally Beneficial Project], cost allocations will be based upon the actual, in-service costs of a project when it is completed, as documented by the constructing party. If FERC has approved the recovery of Construction Work in Progress ("CWIP") for a Transmission Owner, the Midwest ISO will honor such provisions. If a [Regionally Beneficial Project's] final, in-service costs are not sufficient to qualify a [Regionally Beneficial Project] for cost sharing, the Midwest ISO will reimburse parties for any CWIP charges previously collected . . .[37]

ii. Comments and Protests

31. As indicated above, the Midwest ISO TOs request rehearing of the findings in the RECB II Order regarding the Weighted Gain-No Loss approach and seek to reinstate the Midwest ISO's original proposal regarding the Weighted Gain-No Loss metrics. In their protest, the Midwest ISO TOs argue that because this issue is currently pending on rehearing, the Commission should not finally accept the revisions.

32. The Midwest TDUs argue that the Midwest ISO's proposed modification to the Weighted Gain-No Loss provision is not consistent with the RECB II Order because it "erroneously adopts a much broader change that completely eliminates the zeroing-out of negative sub-regional Weighted Gains values, and substitutes a simple net weighted benefits test at the region-wide level."[38] The Midwest TDUs argue that "[i]nstead of dropping net negative sub-regional Weighted Gain values from the region-wide Weighted-Gain calculation, [the Midwest ISO's] proposed modifications to Attachment FF, Section II.B.1.a, would include those negative values as an offset against the positive net benefits experienced by other sub-regions."[39]

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[37] April 16 Compliance Filing Transmittal Letter at 4-5 (internal citations omitted).

[38] Midwest TDUs Protest at 3.

[39] *Id.*

33. The Midwest TDUs also argue that this would "erroneously allow negative sub-regional Weighted Gain values to disqualify transmission facilities from treatment as [Regionally Beneficial Projects]—even though those sub-regions are exempt from paying the vast majority of the cost of the facilities, and the sub-regions that would bear those costs might realize significant positive benefits."[40] The Midwest TDUs argue that the modification "could allow one sub-region effective veto rights over projects that provide significant benefits to the other two regions, making it harder to get needed transmission built."[41]

34. Specifically, the Midwest TDUs ask the Commission to direct the Midwest ISO to "eliminate the originally proposed 'either/or' sub-regional test, while leaving intact RECB II's original methodology for aggregating sub-regional benefits to calculate the region-wide Weighted Gain."[42] The Midwest TDUs suggest the Midwest ISO revise section II.B.1.a to provide that the Weighted Gain-No Loss metric "shall be set to zero ~~calculated~~ for ~~each~~ any Planning Sub Region ~~for each year of evaluation~~ for which the [Weighted Gain-No Loss] calculation for the Planning Sub Region is less than zero. . . . The annual benefit for a Regionally Beneficial Project shall be determined as the sum of the [Weighted Gain-No Loss] metric values for each Planning Sub Region. . . ."[43]

iii. Midwest ISO Answer

35. In its answer to the Midwest TDUs, the Midwest ISO states that the RECB II Order required the Midwest ISO to make the proposed tariff revisions.

iv. Commission Determination

36. For the reasons discussed in greater detail, below, we will conditionally accept the revisions to the Weighted Gain-No Loss provisions filed by the Midwest ISO.

37. With regard to the Midwest ISO TOs' procedural concerns that the Commission should not act on the April 16 Compliance Filing while rehearing of the RECB II Order is pending, we find that, since we are acting on rehearing requests contemporaneously with the compliance filing, the Midwest ISO TOs' concerns are moot.

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[40] *Id.*

[41] *Id.* at 4.

[42] *Id.* at 5.

[43] *Id.* at App. A.

38. For the reasons discussed above, we disagree with the Midwest TDUs' proposed modifications of the Weighted Gain-No Loss provisions. The RECB II Order directed the Midwest ISO to modify its proposed Weighted Gain-No Loss approach so that only when the calculation yields a net negative benefit would a proposed project be disqualified as a Regionally Beneficial Project.[44] The Midwest TDUs' proposed revisions would not reach this result. The Commission also stated that it interprets section II.B.1.b of Attachment FF to mean the aggregate present value benefits of all generation and load under the TEMT must be greater than zero.[45] The Midwest ISO's proposed revisions meet this requirement.

b. Coordination with State/Local Criteria

i. April 16 Compliance Filing

39. Although the Midwest ISO does not propose any tariff revisions regarding how the cost allocation methodology will work with state/local criteria, the Midwest ISO provides certain clarifications regarding how its MTEP process will incorporate feedback from, among others, state and local regulatory personnel. The Midwest ISO states in the April 16 Compliance Filing:

> The MTEP Process adheres to the [TO Agreement], which provides that Transmission Owners may submit for inclusion in the regional plan any project required by state or local criteria. To the extent that such a project, after evaluation by the Transmission Provider, meets eligibility for cost sharing under Attachment FF it will be so designated and allocated. Otherwise the project may proceed as a part of the regional plan with local zone cost recovery subject to the provisions of the [TO Agreement]. The criteria and provisions of Attachment FF do not therefore hinder in any way the state or local criteria for project planning.[46]

ii. Comments and Protests

40. While ITC and METC agree with the Midwest ISO's statements regarding consideration of state and local planning criteria, they argue that the substance of the

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[44] RECB II Order, 118 FERC ¶ 61,209 at P 136.

[45] *Id.* P 138.

[46] April 16 Compliance Filing Transmittal Letter at 6.

clarification should be included in the TEMT itself, rather than in the transmittal letter. In the alternative, ITC and METC argue that the Midwest ISO should:

> consolidate all of the various transmission planning statements included in Attachment FF into a simple and straightforward tariff section stating that the applicability of Attachment FF is limited to determining eligibility for regional cost sharing, and that all transmission planning standards are set forth and governed by the [TO] Agreement, which permits consideration of state and local transmission planning criteria. . . . [and] that the costs of projects not eligible for regional cost sharing may continue to be recovered in local zonal rates as is the case today.[47]

iii. Commission Determination

41. We find that the Midwest ISO's proposal is consistent with our directives regarding clarification of how its criteria coincide with state/local criteria for project planning. The Commission did not direct the Midwest ISO to modify its TEMT to include such information in the TEMT, but rather, asked for clarification. The transmittal letter provided the support that was directed in the RECB II Order.

c. Determination of Costs

i. April 16 Compliance Filing

42. To address the Commission's concerns about the calculations of the Weighted Gain-No Loss metrics and calculations, the Midwest ISO proposes revisions to section II.B.1.b of Attachment FF to establish that:

> The present value of the annual benefits of the Regionally Beneficial Project (weighted present value sum of the [production cost] benefit and of the Load LMP benefit) ~~determined in aggregate for all generation and loads under this Tariff~~ must ~~each~~ be greater than zero for a project to qualify as a Regionally Beneficial Project ~~to qualify~~ and therefore [become] eligible for regional cost allocation, subject to the additional qualification requirements of this Section II.B.[48]

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[47] ITC and METC Protest at 8.

[48] April 16 Compliance Filing at Proposed Substitute Original Sheet No. 1839B.

43. The Midwest ISO also proposes additional language to section II.B.1.c of Attachment FF, regarding the calculation of a given project's benefits:

> The costs applied in the [Benefits/Costs Ratio] shall be the present value, over the same period for which the project benefits are determined, of the annualized revenue requirements for the project as determined from the actual installed cost of the project upon completion and the levelized fixed charge rate applicable to the constructing Transmission Owner(s). The Transmission Provider will, in its sole judgment, determine the installed cost to be applied in the [Benefits/Costs Ratio] based on the reasonableness of actual installed project costs reported by the constructing Transmission Owner taking into consideration comparative costs for similar facilities across the region, [and] reasonable variations for local circumstances, among other factors. The benefits of the project and the cost allocations as a percentage of project cost shall be determined one time at the time that the project is presented to the Transmission Provider Board for approval. Estimated project installed costs will be used to estimate the [Benefits/Costs Ratio] and the eligibility for cost sharing at the time of project approval. Final determination of the [Benefits/Costs Ratio] and therefore the eligibility for cost sharing will be based on the actual installed cost of the project when completed.[49]

ii. Comments and Protests

44. The Midwest ISO TOs argue that it is inappropriate for the Midwest ISO to determine "in its sole judgment" the installed cost to be applied to evaluate the relative benefits/costs for a potential Regionally Beneficial Project. They allege that "[t]he Midwest ISO's proposed language allows it too much discretion and suggests that customers will have no legal right to challenge Midwest ISO's determination."[50]

45. The Midwest ISO TOs also argue that the proposed language appears to be inconsistent with respect to the timing of cost allocation determination. That language, according to the Midwest ISO TOs, states that the Midwest ISO will calculate the benefits of the project and cost allocations as a percentage of project cost at "one time" but later language implies that the Midwest ISO will determine allocations more than once – once based on estimated costs and again based on actual costs.

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[49] *Id.* at Proposed Substitute Original Sheet No. 1839C-C.01.

[50] Midwest ISO TOs Protest at 4-5.

46. The Midwest ISO TOs state that the compliance filing must be limited to the specific directives of the RECB II Order, but the Midwest ISO proposes new tariff language regarding the allocation of CWIP that was not addressed in the RECB II Order. The Midwest ISO TOs state that they do not oppose the concept of CWIP for new facilities but have some reservations about its use, on the basis that "[e]quity issues arise if different rules apply to one pricing zone but not to others, given that costs associated with Regionally Beneficial Projects will ultimately be allocated, in part, by region."[51] The Midwest ISO TOs ask that the Commission order the Midwest ISO to meet with stakeholders "to address this issue more globally so that the rules are the same for all transmission owners now that new facility costs are being spread throughout the Midwest ISO."[52] The Midwest ISO TOs also state that even if it were considered procedurally proper, the Midwest ISO's new CWIP language is inadequate because "[i]t fails to set out sufficient details as to how CWIP will be reflected in the context of regional cost allocation. It is also unclear precisely what this one sentence seeks to achieve as it is included in the portion of the TEMT relating to a benefits test (not allocation) and it is not clear whether it is intended to apply to the allocation of costs associated with both reliability and economic projects."[53]

47. ATCLLC argues that the April 16 Compliance Filing goes beyond the RECB II Order, rather than "describ[ing] how [the Midwest ISO] will 'verify' a project's estimated cost . . . [and] 'clarify' what it will do in the event that its annual assessment reveals excessive funding requirements."[54] ATCLLC argues that the proposal "would allow the Midwest ISO, after the fact and 'in its sole judgment,' to perform what amounts to a prudence review of the actual costs of individual projects."[55] ATCLLC argues that the Midwest ISO's proposal establishes "broad, sweeping cost-evaluation procedures for which there has been no notice, no stakeholder process, and no evaluation of any kind" and will, therefore, create regulatory uncertainty.[56]

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[51] *Id.* at 9.

[52] *Id.* at 3.

[53] *Id.* at 4.

[54] ATCLLC Protest at 3.

[55] *Id.* at 4.

[56] *Id.* at 4-5.

48. Integrys states that it "does not agree or believe that the Midwest ISO can accurately separate reliability from economic projects nor accurately determine the beneficiaries of a project as approved by the Commission."[57] Further, Integrys argues that section II.B.1.c of Attachment FF allows the Midwest ISO to revoke a transmission project's status as a Regionally Beneficial Project and its cost sharing eligibility. Integrys argues that this after-the-fact revocation is contrary to one of the principal cost allocation factors the Commission emphasized in Order No. 890 – that is, revocation will not provide adequate incentives to construct new transmission projects and will discourage construction because of the uncertain cost allocation, and the potential to have to litigate the revocation determination. Integrys asks that the Commission direct the Midwest ISO "to establish an *ex ante* certainty regarding a transmission project's [Regionally Beneficial Project] status and cost sharing ability."[58]

49. ITC and METC state that the Midwest ISO's two-step approach for calculating project costs "raises more questions than answers and clearly demonstrates the inherently flawed and overly complex nature of Attachment FF."[59] ITC and METC raise several questions not addressed in the Midwest ISO's proposal, including:

> What is the purpose of the initial cost estimate if actual costs are to be controlling? What happens if a project qualifies for regional cost allocation based on estimated costs, but does not qualify once the project is completed and actual costs are known? Will actual costs be controlling with respect to (1) whether a project is eligible for regional cost sharing, (2) the amount of costs that are allocated on a regional and sub-regional basis, or (3) both? Whether and to what extent would the process be affected by a transmission owner's use of a forward-looking test period to calculate revenue requirements under Attachment O of the TEMT [(Rate Formulae)], as is the case for both [ITC] and METC?[60]

50. ITC and METC also argue that reliance on actual project costs would not provide assurances as to the methodology that will be used to recover the costs of new

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[57] Integrys Protest at 2.

[58] *Id.* at 5.

[59] ITC and METC Protest at 9.

[60] *Id.*

transmission investment. ITC and METC ask the Commission to direct the Midwest ISO to provide more details regarding its proposed cost calculation and verification process.

51. Further, ITC and METC argue that the Midwest ISO's proposal purports to rely on actual costs but "affords the Midwest ISO unfettered discretion to disregard such actual costs and substitutes its own subjective judgment for what a project should have cost."[61] ITC and METC also maintain that the TEMT does not provide sufficient procedural due process to allow the Midwest ISO this discretion. ITC and METC argue that if the Midwest ISO is permitted to make the final determinations based on actual project costs, then the Commission should reject the proposal.

52. ATCLLC also argues that the Midwest ISO's proposal creates regulatory uncertainty for transmission owners that have been authorized to use CWIP. ATCLLC asserts that the Midwest ISO's proposal could penalize those entities that have been authorized by the Commission to use CWIP, including ATCLLC, because they would have to reimburse any CWIP previously collected by the Midwest ISO for any subsequently disqualified projects. ATCLLC argues that the resulting forfeiture of regional cost contributions runs counter to the Commission's policy of encouraging needed investment in transmission.

53. ATCLLC further notes that the RECB II Order explicitly deals with the issue of cost overruns, "explicitly reject[ing] the need for any further relief regarding this issue at this time, pointing out that a Section 206 complaint is the statutory vehicle for transmission customers to complain that rates are not just and reasonable."[62]

54. As to the Benefits/Costs Ratio, ATCLLC argues that the Midwest ISO's proposal to use the present value of the annualized revenue requirements of the project as determined by "the levelized fixed charge rate applicable to the constructing Transmission Owner(s)" could be inconsistent with the directives of the RECB II Order. ATCLLC notes that "the Attachment GG [(Network Upgrade Charge)] fixed charge rate does not reflect the net incremental cost of a project to Midwest ISO customers. It does not measure the actual annual cost of service or revenue requirement for a project as that cost is calculated for ratemaking purposes in Attachment O of the TEMT."[63] ATCLLC

[61] *Id.* at 10 (citing April 16 Compliance Filing at Proposed Substitute Original Sheet No. 1839C).

[62] ATCLLC Protest at 7 (citing RECB II Order, 118 FERC ¶ 61,209 at P 213).

[63] *Id.* at 8.

argues that "the combined effect of high [Benefits/Costs Ratios] and a costing methodology that yields higher cost estimates will be that regional transmission customers that clearly benefit from projects that produce regional energy-cost savings greater than their incremental costs will not pay their fair share of the costs of such projects." Accordingly, the Commission should require the Midwest ISO "to use the Attachment O method of determining net incremental costs rather than the Attachment GG method in calculating the cost portion of the [Benefits/Costs Ratio] of Regionally Beneficial Projects."[64]

iii. Midwest ISO Answer

55. With respect to concerns about the Midwest ISO's discretion in determining installed costs, the Midwest ISO states that its intent "was to respond to the Commission's concern about the clarity of how costs would be calculated for Network Upgrades" and "not . . . to disqualify the entire project from regional cost sharing, but rather, only those costs determined to be unreasonably in excess of the cost estimates."[65] The Midwest ISO agrees to revise the proposed language of section II.B.1.c to properly reflect this intent. The Midwest ISO also states, as an alternative, that

> the Midwest ISO could simply accept the actual costs of the project without regard for how those final costs compare to the original estimates, with the understanding that there is always some uncertainty in cost estimating. In this alternative approach, if there was any disagreement among the parties as to the actual final costs for a Network Upgrade, it is likely that the decision would ultimately be left up to FERC's determination through [an FPA] Section 206 complaint proceeding. The Midwest ISO is willing to have such disputes resolved by the Commission or through Alternate Dispute Resolution ("ADR") proceedings if that is FERC's preference.[66]

56. With respect the Midwest ISO TOs' concerns about CWIP, the Midwest ISO states that it "did not intend to introduce any new treatment of CWIP into the Tariff." It argues that the "Attachment FF language only addressed CWIP to state that to the extent that the Commission approves the collection of costs in rates for CWIP for a constructing Transmission Owner, costs will be allocated and collected prior to completion of the

[64] *Id.* at 9.

[65] Midwest ISO Answer at 6.

[66] *Id.* at 6-7.

project."[67] The Midwest ISO states that it will remove "the language regarding reimbursement of CWIP charges collected for a project for which actual costs are higher than estimated, to be consistent with the intent to not disqualify an entire project based on this difference in costs."[68]

57. With respect to ITC and METC's concerns about the "overly complex" nature of the Midwest ISO's cost allocation methodology, the Midwest ISO argues that their protest is an impermissible collateral attack on the RECB II Order and that the April 16 Compliance Filing is more consistent with the views of the Midwest ISO stakeholders than any alternative methodology (including that set forth for PJM).

iv. Commission Determination

58. Several protesters raised concerns with the discretion the Midwest ISO proposes to allow itself regarding the determination of installed costs, particularly the provision that allows the Midwest ISO to determine the reasonableness of actual installed costs. Specifically, Integrys states that this *ex post* cost analysis may discourage investment and fail to provide adequate incentive to build. Furthermore, Integrys states that the Midwest ISO should provide more certainty regarding a project's Regionally Beneficial status. In its answer, the Midwest ISO agrees to revise the language in section II.B.1.c to reflect the fact that it is not the Midwest ISO's intent to disqualify entire projects from cost sharing, but rather only those costs determined to be unreasonably in excess of the cost estimates. The Midwest ISO provides an alternative approach in its answer (*i.e.*, to accept the actual costs of the project without regard for how those final costs compare to the original estimates). We accept the Midwest ISO's alternative and direct the Midwest ISO to provide revised tariff sheets consistent with the alternative set forth in its answer.[69] In addition to addressing the concerns raised above,[70] this should alleviate concerns raised regarding uncertainty in the two-step process. As a result of the Midwest ISO's answer, we understand that the project's status as a Regionally Beneficial Project is not in

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[67] *Id.* at 7-8.

[68] *Id.* at 8.

[69] *See supra* P 55 (citing Midwest ISO Answer at 6-7). As the Midwest ISO states in its answer, disagreements among the parties as to actual final costs for a Network Upgrade could be brought to the Commission through a section 206 complaint proceeding.

[70] *See, e.g.*, Midwest ISO TOs Protest at 4-5, ITC and METC Protest at 9-10.

question, but rather this issue is of the actual costs. We also interpret the Midwest ISO's answer that it will not disqualify entire projects to mean that entities such as ATCLLC do not run the risk of having to forfeit CWIP funds in the event that actual costs deviate from estimated costs.

59. In the RECB II Order, the Commission directed the Midwest ISO to submit detailed language regarding how it will calculate a Regionally Beneficial Project's cost.[71] In its compliance filing, the Midwest ISO has, among other things, included a direct reference to the inclusion of CWIP for Regionally Beneficial Projects, as stated above. We find the inclusion of this language is reasonable and appropriate, and that its inclusion satisfies the directives of the RECB II Order. In addition, the language, which states "that to the extent that the Commission approves the collection of costs in rates for CWIP for a constructing Transmission Owner, costs will be allocated and collected prior to completion of the project,"[72] does not change any existing rate treatment. We decline to order the Midwest ISO to work with stakeholders to determine if a regional umbrella approach to CWIP may be appropriate, but note that the parties are free to do that. Finally, we will accept the Midwest ISO's commitment to remove the language regarding the reimbursement of CWIP charges collected for a project for which actual costs are higher than estimated. We find this consistent with the Midwest ISO's commitment to not disqualify entire projects based on a difference in costs between the estimates and actual costs.

60. We disagree with ATCLLC that the Attachment O revenue requirement is the appropriate device for measuring costs. We have previously approved the development of costs for network upgrades in Attachment GG and will allow the Midwest ISO to apply the resulting information to the denominator of the Benefits/Costs Ratio. However, we direct the Midwest ISO to explicitly list the fixed charge rate as the rate found in Attachment GG or, in the alternative, repeat those rates set forth in Attachment FF.

61. Finally, we note that the Midwest ISO's proposed revisions to sections II.B.1.b and II.B.1.c of Attachment FF contain grammatical errors. We direct the Midwest ISO to insert the word "become" between "therefore" and "eligible for cost allocation" in the language quoted *supra*, paragraph 42. We also direct the Midwest ISO to add the word "and" between "across the region," and "reasonable variations" in the language of section II.B.1.c quoted *supra*, paragraph 43.

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[71] RECB II Order, 118 FERC ¶ 61,209 at P 100.

[72] Midwest ISO Answer at 7-8.

d. Sensitivity Analyses

i. April 16 Compliance Filing

62. In the April 16 Compliance Filing, the Midwest ISO proposes to modify section II.B.1 of Attachment FF to provide, among other things, that: "Sensitivity analyses shall include, among other factors, consideration of: (i) variations in amount, type, and location of future generation supplies as dictated by future scenarios developed with stakeholder input and guidance; (ii) alternative transmission proposals; (iii) impacts of variations in load growth; and (iv) effects of demand response resources on transmission benefits."[73]

ii. Commission Determination

63. We find that the Midwest ISO's modifications are consistent with the Commission's directives in the RECB II Order.

C. Treatment of "Other Projects"

1. RECB II Order

64. In the RECB II Filing, the Midwest ISO proposed the creation of a new category for transmission expansions – network upgrades that do not qualify as Baseline Reliability Projects, Regionally Beneficial Projects, or New Transmission Access Projects but deserve to be included in the MTEP when they are justified under the criteria of Appendix B of the Midwest ISO Transmission Owners Agreement (TO Agreement) and section I.A of Attachment FF, and do not violate any reliability criteria. Under the Midwest ISO's proposal, such "Other Projects" (originally proposed as section II.B of Attachment FF) would have been able to be proposed by the Midwest ISO, Transmission Owners, independent transmission companies, market participants, or regulatory authorities.

65. In the RECB II Order, the Commission found that the Midwest ISO had not adequately explained its proposal regarding Other Projects. The Commission agreed with certain protestors that the Midwest ISO was proposing to expand its authority beyond what is provided in the TO Agreement to prevent transmission projects from being included in the MTEP, given the lack of discussion of this provision in the RECB II Filing Transmittal Letter and in its answer. The Commission found that "nothing in the

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[73] April 16 Compliance Filing at Proposed Original Sheet No. 1839.01.

RECB II proposal should preclude parties from supporting the construction of projects that, although failing to satisfy the benefits tests set forth in the RECB II proposal, provide benefits that are sufficient to allow them to support the projects financially."[74]

2. Request for Rehearing

66. In its request for rehearing, Consumers argues that the Commission erred in rejecting the Midwest ISO's proposal to allow parties (including the Midwest ISO, transmission owners, or other parties) to propose a network upgrade for inclusion in the MTEP as part of its "Other Projects" section. Consumers argues that the Commission was mistaken that the Midwest ISO's proposal would be a "new" category for transmission expansions.[75] Consumers notes that, as part of the RECB I Order, the Commission accepted virtually identical language under which the Midwest ISO, as Transmission Provider, can determine that a project "provide[s] sufficient benefits . . . to justify inclusion in the MTEP."[76] Consumers argues that, although the approved language was stated as a negative statement and the proposed language was stated as a positive statement, "the concepts are the same."[77] Consumers also argues that the Commission erred in finding that the Midwest ISO had not provided sufficient explanation in support of the Other Projects provisions. It argues that the Midwest ISO did not need to explain the Other Projects provision since it had already been approved by the Commission in the RECB I Order and the relocation of the language was purely ministerial.

67. Further, Consumers notes that, to the extent the Commission's decision to reject the Other Projects provision was in response to comments and answers filed in the original RECB II proceeding, ITC and METC's comments reflected an overreaction to Consumers' original arguments. Consumers argues that its original comments did not intend "to imply that ITC [and] METC would or should be barred from including any projects in the Attachment O formula" but rather intended "to state that projects that are

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[74] RECB II Order, 118 FERC ¶ 61,209 at P 169.

[75] Consumers Request for Rehearing at 4 (citing RECB II Order, 118 FERC ¶ 61,209 at P 159).

[76] *Id.* at 1-2 (citing TEMT, Third Rev. Vol. No. 1, Substitute Original Sheet No. 1839 at Section II.B.).

[77] *Id.* at 5.

included in MTEP are less likely to be challenged in a Section 206 complaint case, than those projects that a Transmission Owner includes in the Attachment O formula that are not included in MTEP."[78]

3. April 16 Compliance Filing

68. In the April 16 Compliance Filing, the Midwest ISO proposes removal of the provision regarding Other Projects, section II.C of Attachment FF.

4. Commission Determination

a. Requests for Rehearing

69. We deny Consumers' request for rehearing. While we agree with Consumers that the Commission accepted a provision that includes "Other Projects" in the RECB I Order, as clearly stated in the beginning of that provision, that section was to be applicable "until such time as alternative provisions are filed addressing Regionally Beneficial Projects . . ."[79] Accordingly, contrary to Consumers' characterization, the language adopted as part of the "Other Projects" section of the RECB II Filing was not merely a relocation of existing language that was "ministerial" in nature, but rather, a newly-proposed provision that required full section 205 review by this Commission.

70. Further, in the RECB II Order, the Commission found that the Midwest ISO failed to demonstrate that its Other Projects provision is just and reasonable. Consumers has not raised any additional arguments that would refute this finding.[80] Accordingly, we are not persuaded that we erred.

71. In response to Consumers' concern about ITC and METC's broad interpretation of its original comments to the RECB II Filing, we do not disagree that "projects that are included in MTEP are less likely to be challenged in a Section 206 complaint case, than those projects that a Transmission Owner includes in the Attachment O formula that are not included in MTEP."[81] However, that alone is not a sufficient rationale to demonstrate

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[78] *Id.* at 6.

[79] Midwest ISO October 7, 2005 Filing, Docket No. ER06-18-000, at Original Sheet No. 1839 (as approved in the RECB I Order, 114 FERC ¶ 61,106 (2006)).

[80] In fact, Consumers notes that it "cannot explain why the Midwest ISO chose not to provide an explanation in its answer . . ." Consumers Request for Rehearing at 5.

[81] *Id.* at 6.

the justness and reasonableness of the provision. As stated in the RECB II Order, the cost allocation methodology set forth in the RECB II Filing will not "preclude parties from supporting the construction of projects that, although failing to satisfy the benefits tests set forth in the RECB II proposal, provide benefits that are sufficient to allow them to support the projects financially."[82] Accordingly, it remains unclear to the Commission why the "Other Projects" provision is necessary.

b. April 16 Compliance Filing

72. The Midwest ISO's proposed tariff deletion is consistent with the Commission's directives in the RECB II Order and, accordingly, we will accept the revised tariff sheets.

D. Transmission Owner Cost Obligations in the Event of Withdrawal from the Midwest ISO

1. RECB II Order

73. In the RECB II Filing, the Midwest ISO did not specify a transmission owner's responsibility for transmission costs allocated prior to that transmission owner's withdrawal from the Midwest ISO. However, in response to comments, the Midwest ISO stated that it believes that stakeholders intended that a withdrawing party would not be able to escape its Attachment FF cost responsibilities, consistent with the withdrawal provisions found in the TO Agreement.

74. In the RECB II Order, the Commission agreed that the cost allocations for withdrawing transmission owners should be clarified in the TEMT. The Commission found that "[i]n principle, a transmission owner should not be able to avoid previously allocated costs by withdrawing from the Midwest ISO. Article V of the TO Agreement states that a withdrawing transmission owner shall honor its existing obligations."[83] The Commission directed the Midwest ISO to revise Attachment FF to clarify that withdrawal does not absolve a transmission owner of its responsibility for the costs of upgrades previously allocated to it.

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[82] RECB II Order, 118 FERC ¶ 61,209 at P 169.

[83] *Id.* P 193 (citing TO Agreement at Art. Five, § II.B ("All financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner.") and Art. Two, § IX.C.8 (stating that Article V cannot be changed without a unanimous vote by the transmission owners).

2. **Request for Rehearing**

75. IPL argues that the Commission erred in finding that the TEMT must provide that a departing transmission owner must continue to pay transmission upgrade allocations after exit from the Midwest ISO. IPL states that Article Five, section II.B of the TO Agreement should not be interpreted to include transmission cost allocation under the TEMT. First, IPL argues that "the rationale for assigning costs to load is a benefits rationale – in theory, the load receives a benefit associated with the construction of the new transmission facility."[84] IPL maintains that in the event a transmission owner withdraws from the Midwest ISO, it would no longer receive market benefits and accordingly, it would be unjust and unreasonable to continue to allocate these costs to the departed load.

76. Second, IPL argues that upon withdrawal from the Midwest ISO, a transmission owner would no longer take network service from the Midwest ISO and therefore, there would be no tariff under which to assess the costs. IPL also argues that it is unclear how the mechanics of collection would work in that circumstance, noting that "the Commission does not have jurisdiction to authorize charges to non-customers simply because the Midwest ISO places such a charge in its tariff."[85]

77. Third, IPL argues that it would be improper to include transmission cost allocations as part of the exit fee calculation under the TEMT and TO Agreement. IPL argues that the history of the exit fee provisions show that "it is logical that the exit fee calculation centers around repayment of Schedules 10, 16, and 17 obligations . . . costs that are essentially administrative in nature, and are spread on a basis that does not involve a benefits test."[86] IPL argues that the nature of the costs in this proceeding is "fundamentally different than imposing the duty to pay for administrative costs," noting that while the imposition of exit fee charges to cover Schedules 10, 16 and 17 may be needed to cover costs incurred by the Midwest ISO, a not-for-profit entity, the cost allocations with transmission upgrades will flow to developers of new transmission facilities and not the Midwest ISO itself. IPL argues that "[s]ound policy undoubtedly

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[84] IPL Request for Rehearing at 5 (citing RECB II Order, 118 FERC ¶ 61,209 at P 27).

[85] *Id.* at 7 (citing *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,191 at P 17 (2006); *Florida Municipal Power Agency v. FERC*, 411 F.3d 287 (D.C. Cir. 2005), *order on remand*, 113 FERC ¶ 61,290, *reh'g denied*, 116 FERC ¶ 61,012 (2006)).

[86] *Id.*

involves certainty in the funding of transmission upgrades" and, therefore, "the portion of the costs allocated to the departing load should properly be reassigned to those continuing to receive the benefits of the upgrades, namely the remaining applicable load within the Midwest ISO."[87]

3. April 16 Compliance Filing

78. In the April 16 Compliance Filing, the Midwest ISO states that it agrees with the Commission's interpretation of Article 5, section II.A. of the Midwest ISO Agreement regarding withdrawal, and proposes a clarification in new section III.A.2.i of Attachment FF that provides that:

> A Party that withdraws from the Midwest ISO shall remain responsible for all financial obligations incurred while a Member of the Midwest ISO and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Member, including, but not limited to, all obligations incurred by the Member pursuant to Attachment FF.[88]

4. Comments and Protests

79. Consistent with the arguments raised in its request for rehearing, IPL argues that transmission owners that are withdrawing from the Midwest ISO should not be made to pay for the transmission upgrade cost allocations after their withdrawal. IPL argues that "the TO Agreement cannot be interpreted to include transmission cost allocations under the TEMT, when read in the proper context."[89] IPL argues that regional market benefits associated with transmission upgrades are not applicable to departed load and therefore, it is unjust, unreasonable and disadvantageous to enforce an allocation of costs on load that no longer receives the benefit of the economic upgrade. IPL also argues that there would be no tariff under which to assess the costs to a withdrawn transmission owner. IPL further argues that the Commission does not have justification to authorize charges to non-customers simply because the Midwest ISO places such a charge in the TEMT. IPL also argues that including allocated transmission costs within the exit fee calculation is improper because the exit fee calculation is focused on repayment of obligations under

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[87] *Id.* at 8.

[88] April 16 Compliance Filing at Proposed Original Sheet No. 1849D.

[89] IPL Protest at 4.

Schedules 10, 16, and 17, "obligations to repay costs that are essentially administrative in nature and support the capital costs associated with the Midwest ISO . . ., and are spread on a basis that does not involve a benefits test."[90]

80. ITC and METC argue that the Midwest ISO's proposed language is over-broad and introduces issues that are beyond the scope of this proceeding. Specifically, they argue that the scope of this proceeding is limited to financial obligations incurred under Attachment FF and, therefore recommend the following modification:

> A Party that withdraws from the Midwest ISO shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a Member of the Midwest ISO and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Member~~, including, but not limited to, all obligations incurred by the Member pursuant to Attachment FF~~.

81. ITC and METC argue that absent such a modification, entities would remain responsible for obligations incurred under any section of the TEMT that was incurred while a withdrawing entity was a member of the Midwest ISO.

5. Midwest ISO Answer

82. In its answer, the Midwest ISO maintains that "[t]he April 16 [Compliance] Filing reflected the intent of the majority of the RECB II stakeholders: a party that incurred financial obligations under Attachment FF should not be able to selectively avoid such obligations by withdrawing from the Midwest ISO."[91] The Midwest ISO states that it did not intend to expand or modify the existing rights and obligations of parties that may withdraw from the Midwest ISO, but to clarify that other obligations may exist in other agreements. The Midwest ISO states that it will narrow the provision to only refer to Attachment FF obligations if the Commission believes the language is overbroad.

[90] *Id.* at 6 (citing *Louisville Gas and Electric Co.*, 116 FERC ¶ 61,282, at P 53-54, 58 (2006)).

[91] Midwest ISO Answer at 3.

6. **Commission Determination**

a. **Request for Rehearing**

83. The Commission disagrees with IPL's contention that the context of the TO Agreement precludes the inclusion of any cost allocation other than administrative costs (Schedules 10, 16, and 17) for a withdrawing owner. The TO Agreement states that "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Owner."[92] The Commission has determined that the cost allocations made under Attachment FF are rightfully included in the "all financial obligations" contemplated by the TO Agreement. This treatment is consistent with the Commission's previous actions regarding the creation and inclusion of Schedules 16 and 17 cost allocations into the Midwest ISO's TEMT.[93] Furthermore, the Commission finds that failing to include the costs allocated to a member under Attachment FF would create volatility and uncertainty in the ratemaking process by transferring costs assigned to a withdrawing member of the Midwest ISO to the remaining members.

84. The Commission finds without merit IPL's assertion that the Commission lacks jurisdiction to allow transmission costs to be allocated to departing load. In this matter, the Commission is not authorizing charges to non-owners. Rather, it is authorizing qualifying charges to existing transmission-owning members of the Midwest ISO that subsequently decide to withdraw from the Midwest ISO. That is, the transmission cost allocation is made under Attachment FF prior to the date the departing owner's withdrawal becomes effective. The mechanism for finalizing and paying all cost allocations would have to be negotiated by the Midwest ISO and the departing owner

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[92] TO Agreement at Art. Five, § II.B.

[93] *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002), *reh'g denied*, 103 FERC ¶ 61,035 (2003). Schedules 16 and 17 did not exist at the time the TO Agreement became effective. The Commission later took action to include the cost allocations created by Schedules 16 and 17 into the calculation of the exit fee. *See also Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192 (2003), *order on reh'g*, 104 FERC 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004) (finding, among other things, that the Midwest ISO's Schedule 10 Cost Adder should include in its calculation all loads using the regional grid that the Midwest ISO operates).

during the calculation of the exit fee and then approved by the Commission under the terms of Article Seven, section D of the TO Agreement. These negotiations would have to include a truing-up mechanism to allow for a reconciliation between planned and actual project costs, and the resulting cost allocations.

85. With respect to market benefits being applicable to departed load, the Commission disagrees with IPL's claims that once it withdraws from the Midwest ISO, it will no longer receive benefits from the transmission upgrades for which it was assigned a cost allocation. IPL will continue to reap the benefits from expanded transmission capacity in the form of improved reliability and reduced congestion charges.

b. April 16 Compliance Filing

86. For the reasons stated above, the Commission denies IPL's request for rehearing and, therefore, rejects its protest. Additionally, the Commission will conditionally accept the Midwest ISO's proposed language pending the revisions proposed by ITC and METC. The Commission finds that the modified language is superior to that submitted by the Midwest ISO. It is more precise because it addresses only those financial obligations that arise under Attachment FF. This proceeding pertains to costs and cost responsibility arising under Attachment FF and the Midwest ISO's proposed language is overly broad because it references costs and cost responsibility other than those arising under Attachment FF.

E. Cost Allocation for Regionally Beneficial Projects

1. RECB II Order

87. In the RECB II Order, the Commission required the Midwest ISO to provide an annual report to the Planning Advisory Committee and the OMS that details the steps taken in the MTEP to develop a portfolio of projects that spread benefits through each sub-region. The Commission noted that, "[t]o the extent a report that details the development of project portfolios will be unduly burdensome, the Midwest ISO should explain . . . how, absent the additional annual report, the information requested by the OMS will be provided in a timely way to stakeholders."[94]

[94] RECB II Order, 118 FERC ¶ 61,209 at P 76, n.66.

2. April 16 Compliance Filing

88. The Midwest ISO states that it "will prepare an annual report to the Planning Advisory Committee and the OMS that details the steps taken in the MTEP to develop a portfolio of projects that spread benefits throughout each sub-region."[95]

3. Commission Determination

89. As the Midwest ISO's response indicates that it will provide annual reports as required, we accept the Midwest ISO's statement as compliant with the RECB II Order.

F. Threshold Criteria of 345 kV

1. RECB II Order

90. In the RECB II Order, the Commission directed that the Midwest ISO clarify the criterion that Regionally Beneficial Projects "involve facilities of 345 kV or higher." The Commission required the Midwest ISO to provide in its compliance filing an explanation of certain clarifications set forth in its answer to comments and protests on the RECB II Filing, including specification of what it means for facilities to be an "integral" or "necessary" part of a high-voltage project, and propose appropriate tariff language to implement these clarifications.[96]

2. April 16 Compliance Filing

91. The Midwest ISO proposes to modify section II.B.iv of Attachment FF to allow Regionally Beneficial Projects to:

> . . . include any lower voltage facilities of 100 kV or above that collectively constitute less than fifty percent (50%) of the combined project cost, and without which the 345 kV or higher facilities could not deliver sufficient benefit to meet the required [Benefits/Costs Ratio] threshold for the project as established in Section II.B.1.c, or that otherwise are needed to relieve

[95] April 16 Compliance Filing Transmittal Letter at 10.

[96] RECB II Order, 118 FERC ¶ 61,209 at P 93.

> applicable reliability criteria violations that are projected to occur as a direct result of the development of the 345 kV or higher facilities of the project; . . .[97]

3. Comments and Protests

92. The Midwest ISO TOs argue that the Midwest ISO has not justified its proposal to allow the costs of lower-voltage facilities to be spread regionally if those costs constitute less than 50 percent of the combined project cost. The Midwest ISO TOs ask that the Commission direct the Midwest ISO to include an analysis, to be completed in consultation with its stakeholders, of the effectiveness of the 50 percent threshold in its annual reports to the Commission.

4. Answer

93. In its answer, the Midwest ISO maintains that "[d]etermination of whether specific facilities are sufficiently 'related' to a high voltage project, to be subject to regional cost sharing, can only be assessed on a case-by-case basis."[98] The Midwest ISO states that the "50 [percent] test" is "a practical way of determining whether lower voltage facilities should be considered part of a higher voltage project that qualifies for regional cost sharing" but that if the Commission requires more detailed procedures, it "will prepare such procedures, recognizing that any such procedures, of necessity, will have to provide a reasonable degree of discretion to the Midwest ISO to make such determination."[99]

5. Commission Determination

94. We agree with the Midwest ISO that determination of whether a particular project is related to a high-voltage project requires a certain degree of subjectivity. Accordingly, we find the "50 percent test," in conjunction with the Midwest ISO's review procedures (as discussed above), is a reasonable starting point for establishing which lower-voltage facilities should be considered part of a higher-voltage project such that the lower-voltage facilities should also qualify for regional cost sharing. We will not require more detailed procedures at this time, but we agree with the Midwest ISO TOs that the Midwest ISO

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[97] April 16 Compliance Filing at Proposed Substitute First Revised Sheet No. 1839.

[98] Midwest ISO Answer at 8.

[99] *Id.* at 8-9.

should revisit this threshold as it gains further experience in implementing the cost allocation methodology for Regionally Beneficial Projects. Accordingly, we direct the Midwest ISO to include in its annual reports to the Commission an analysis, to be completed in consultation with its stakeholders, of the reasonableness of the 50 percent threshold.

G. Threshold Criteria of $5 Million

1. RECB II Order

95. In the RECB II Order, the Commission accepted the Midwest ISO's proposal of a $5 million minimum project cost to establish eligibility for cost sharing of Regionally Beneficial Projects. However, the Commission directed the Midwest ISO to provide "detailed information regarding how it will calculate a project's cost" and "an explanation of how project costs will be verified."[100]

2. April 16 Compliance Filing

96. On compliance, the Midwest ISO states that it will work with stakeholders and regulatory authorities "to obtain information about the projected installed costs and revenue requirements of a [Regionally Beneficial Project] at the time that the [Regionally Beneficial Project] is expected to commence operations. After the [Regionally Beneficial Project] is placed in service, the Midwest ISO will use its best engineering judgment to verify actual project costs, including, without limitation, comparing final project costs to comparable facilities constructed in the Midwest ISO Region."[101] The Midwest ISO also notes that its proposes to clarify Attachment FF by describing how project costs will be calculated and verified (as described in section III.B, *supra*).

3. Commission Determination

97. We accept the Midwest ISO's statement as compliant with the RECB II Order, consistent with the modifications to the proposed tariff revisions regarding the calculation of project costs, as discussed above.

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[100] RECB II Order, 118 FERC ¶ 61,209 at P 100.

[101] April 16 Compliance Filing Transmittal Letter at 3.

H. Treatment of "Grandfathered Projects"

1. RECB II Order

98. In the RECB II Order, the Commission required modifications to the Midwest ISO's proposal regarding grandfathered projects, finding the Midwest ISO's proposed language to be unclear and requiring that the Midwest ISO clarify its intent regarding the scope of grandfathered projects. Specifically, the Commission directed the Midwest ISO to clarify the statement: "No transmission project that is a Regionally Beneficial Project and that is not identified in Attachment FF-1 shall be excluded from consideration for cost allocation under this Attachment FF."[102]

2. April 16 Compliance Filing

99. In the April 16 Compliance Filing, the Midwest ISO proposes deletion the final sentence in section III.A.2.b of Attachment FF regarding grandfathered projects as unnecessary.

3. Commission Determination

100. The Midwest ISO's proposed tariff deletions are consistent with the Commission's directives in the RECB II Order and, accordingly, we will accept the revised tariff sheets.

I. Separate Treatment of Economic and Reliability Projects

1. RECB II Order

101. While the Commission approved the Midwest ISO's proposal to treat economic and reliability projects under separate cost allocation methodologies, it noted that:

> there appears to be a conflict between proposed sections II.B.v and III.A.2.g of Attachment FF. Section II.B.v defines a Regionally Beneficial Project, in part, as a project that is not a Baseline Reliability Project, but section III.A.2.g discusses projects that meet both criteria. We believe that clarifying language in section II.B.v stating that a Regionally Beneficial Project is a project that is not determined to be a Baseline Reliability

[102] RECB II Order, 118 FERC ¶ 61,209 at P 171.

> Project or New Transmission Access Project *or a project determined to be a Regionally Beneficial Project under section III.A.2.g*, will resolve this ambiguity.[103]

2. April 16 Compliance Filing

102. The Midwest ISO proposes to revise section II.B.iv consistent with the Commission's recommendation.[104]

3. Commission Determination

103. The Midwest ISO's proposed tariff modification is consistent with the Commission directives in the RECB II Order and, accordingly, we accept the revised tariff sheet.

J. Treatment of Cross-Border Projects

1. RECB II Order

104. In the RECB II Order, the Commission found the proposal to address cross-border allocation of reliability upgrade costs to be outside the scope of RECB II Filing (as articulated in the RECB I Order) and directed the Midwest ISO to delete this provision.[105]

2. April 16 Compliance Filing

105. In the April 16 Compliance Filing, the Midwest ISO removed the provision regarding cross-border allocation found at section III.B.1.a of Attachment FF.[106]

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[103] *Id.* P 183 (internal citations omitted, emphasis in original).

[104] April 16 Compliance Filing at Proposed Substitute First Revised Sheet No. 1839.

[105] RECB II Order, 118 FERC ¶ 61,209 at P 170, 188-89.

[106] April 16 Compliance Filing at Proposed Substitute First Revised Sheet No. 1850.

3. Commission Determination

106. The Midwest ISO's proposed tariff deletions are consistent with the Commission's directives in the RECB II Order and, accordingly, we will accept the revised tariff sheets.

K. Mechanics of Collecting Costs

1. RECB II Order

107. In the RECB II Order, the Commission found that the Midwest ISO had not provided sufficient detail regarding "the methodology by which it will apportion such costs to each pricing zone," finding that "[t]he rates calculated pursuant to Attachment GG for each pricing zone must appropriately reflect the partial postage-stamp allocation, reliability and economic upgrades and the partial sub-regional license-plate allocation . . . of the cost of economic upgrades approved in the RECB I proceeding and in the instant proceeding."[107] The Commission also directed the Midwest ISO "to specify the formula for calculating the per-unit charge for network upgrades, rather than simply referencing the methodology in Attachment O. In such revised Attachment GG, the Midwest ISO may reference specific values defined in Attachment O, but must otherwise specify all adjustments to such values and all other calculations required to derive the per-unit charge for network upgrades."[108]

2. April 16 Compliance Filing

108. In the April 16 Compliance Filing, the Midwest ISO proposes to add new section 2.b to Attachment GG describing the method for apportioning costs to each pricing zone for both Baseline Reliability Projects and Regionally Beneficial Projects. The Midwest ISO also proposes new language in section 2.d explaining how the Network Upgrade Annual Revenue Requirement apportioned to a pricing zone is calculated. Finally, new section 2.e clarifies how charges for through-and-out transmission service are calculated.

3. Comments and Protests

109. The Midwest ISO TOs argue that the Midwest ISO's proposed revisions to Attachment GG regarding the allocation of revenue requirements for Regionally Beneficial Projects and Baseline Reliability Projects are improper to the extent they

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[107] RECB II Order, 118 FERC ¶ 61,209 at P 208.

[108] *Id.* P 209.

involve reliability upgrades that are not at issue in this proceeding and, therefore, beyond the scope of the compliance filing. The Midwest ISO TOs also argue that proposal is legally insufficient in that it relies on an appendix to an outside document, the Midwest ISO Transmission Expansion Plan, which is not part of the TEMT. The Midwest ISO TOs argue that the Commission should direct the Midwest ISO to submit additional revisions to the TEMT detailing the allocation of revenue requirements or commit to make filings, without reliance on a document not filed with the Commission.

110. ITC and METC take no position with respect to the Midwest ISO's tariff revisions regarding rate mechanics. They note, however, that the Midwest ISO's proposed tariff revision may create some uncertainty as to how the Midwest ISO intends to administer Schedule 26 and treat revenue collected under Schedule 26. ITC and METC state that "[u]nlike most other Transmission Owners, [ITC] and METC calculate their annual revenue requirements on a forward-looking basis, with a true-up mechanism used to prevent any over or under recovery. [ITC] and METC trust this existing process will not be adversely affected by the Midwest ISO's implementation of regional cost sharing, and they are committed to working with the Midwest ISO to ensure this is the case."[109]

4. Commission Determination

111. The Commission accepts the Midwest ISO's proposed language for new section 2.b to Attachment GG as well as the new language developed for sections 2.d and 2.e (previously sections 2.c and 2.d) to include a specific formula for calculating charges for Network Upgrades as discussed below and subject to further compliance filing.[110]

112. The Commission disagrees that the Midwest ISO's proposed language is beyond the scope of the proceeding and the methodology is legally insufficient. In the RECB II Order, the Commission directed the Midwest ISO to revise Attachment GG to clarify the methodology by which it will apportion such costs to each pricing zone. The

[109] ITC and METC Protest at 13-14.

[110] *See* RECB II Order, 118 FERC ¶ 61,209 at P 209. We specifically note that the Midwest ISO failed in its compliance filing to include any revenue credit for transactions not included in the divisor and that, without such an adjustment, Schedule 26 will over-collect the cost of network upgrades. This revenue credit should be made to both the revenue requirements used to adjust the Schedule 7, 8, and 9 rates and to the revenue requirements used to calculate the Schedule 26 zonal and drive-through/out charges. Accordingly, we direct the Midwest ISO to make a further compliance filing.

Commission also stated that "The rates calculated pursuant to Attachment GG for each pricing zone must appropriately reflect the partial postage-stamp allocation, reliability and economic upgrades and the partial sub-regional license-plate allocation . . . of the cost of economic upgrades approved in the RECB I proceeding and in the instant proceeding."[111] The Commission finds that the Midwest ISO's inclusion of language regarding apportioning for Baseline Reliability Projects is consistent with the Commission's requirement to clarify the methodology by which cost allocations will be made as stated in the RECB II Order.

113. The Commission also disagrees with the Midwest ISO TOs' argument that the proposed methodology is legally insufficient because it relies on documents that are not included in the Midwest ISO's TEMT. In its proposed tariff language the Midwest ISO references the "total" found in Appendix A of the MTEP Report. The methodology by which that total is calculated was filed with the Commission and has been approved as part of Attachment FF.[112]

114. Moreover, this approach is not inconsistent with the precedent cited by the Midwest ISO TOs in their protest. In the recent decision on cost allocation for PJM Interconnection, L.L.C. (PJM), the Commission "set for hearing the *methodology* for economic projects to ensure that the *methodology* is likewise set forth in the Tariff and not subject to relitigation each time a new project is approved by PJM."[113] The Commission stated that "[p]lacing the full *methodology, criteria and assumptions* in the Tariff will eliminate protracted future proceedings and expedite the construction of new or expanded transmission facilities."[114] However, the Midwest ISO's "full methodology, criteria and assumptions" are already in the tariff as part of Attachment FF. It is just the calculated total that is in Appendix A of the MTEP Report; the methodology by which that number is calculated is on file as part of Attachment FF.

[111] RECB II Order, 118 FERC ¶ 61,209 at P 208.

[112] In fact, Appendix A to the Midwest ISO Transmission Expansion Plan for 2006 Report specifically states: "Cost allocations determined in accordance with Attachment FF to TEMT." *See* Midwest ISO Transmission Expansion Plan 2006, App. A-1.

[113] *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,063, at P 45 (2007) (emphasis added).

[114] *Id.* P 72 (emphasis added).

115. With regard to ITC and METC's concerns regarding Schedule 26, the Commission appreciates that ITC and METC calculate their annual revenue requirements on a forward-looking basis with a true-up mechanism. We will note their concern and intent to work with the Midwest ISO to ensure that their existing process remains undisturbed by regional cost sharing. Accordingly, the Commission accepts the Midwest ISO's proposed language.

L. Excessive Funding or Requirements

1. RECB II Order

116. In the RECB II Order, the Commission directed the Midwest ISO to clarify the procedures regarding the identification of any unintended consequences by the Midwest ISO as set forth in section III.A.2.f.iii of Attachment FF.[115]

2. April 16 Compliance Filing

117. The Midwest ISO proposes revisions to section II.A.2.f.iii of Attachment FF to provide that: "After discussing such assessments with [the Planning Advisory Committee and the OMS], and taking into consideration the cumulative experience in applying this Attachment FF, the Transmission Provider will make a determination as to whether Tariff modifications are required, and if so, file such modifications."[116]

3. Commission Determination

118. The Commission is satisfied that the Midwest ISO's proposed language in section II.A.2.f.iii of Attachment FF is sufficient in addressing what will happen upon the identification of unintended consequences. Therefore, the Commission accepts the revised language of section II.A.2.f.iii of Attachment FF as compliant with the RECB II Order.

M. Clarification of "Potential" Regionally Beneficial Projects

1. RECB II Order

119. In the RECB II Order, the Commission agreed with the OMS that the Midwest ISO has not sufficiently defined the concept of "potential Regionally Beneficial

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[115] RECB II Order, 118 FERC ¶ 61,209 at P 214.

[116] April 16 Compliance Filing at Proposed Substitute Original Sheet No. 1849C.

Projects," and directed the Midwest ISO to "clarify the process for identifying potential Regionally Beneficial projects and how such potential Regionally Beneficial Projects relate to project coordination obligations or project portfolio development obligations . . ."[117]

2. April 16 Compliance Filing

120. The Midwest ISO states that its modifications to section II.B.1 of Attachment FF (Proposed Original Sheet No. 1839C.01) satisfy this compliance requirement.

3. Commission Determination

121. We find that the Midwest ISO's modifications to section II.B.1, read in combination with the Midwest ISO's clarification in its prior answer,[118] are consistent with the Commission's directives in the RECB II Order.

The Commission orders:

(A) The requests for rehearing are hereby denied, as discussed in the body of this order.

(B) The Midwest ISO's April 16 Compliance Filing is conditionally accepted, as discussed in the body of this order.

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[117] RECB II Order, 118 FERC ¶ 61,209 at P 220.

[118] Midwest ISO January 5, 2007 Answer, Docket No. ER06-18-005, at 12-13 ("The concept of 'potential Regionally Beneficial Projects' is any Network Upgrade that might qualify as [a Regionally Beneficial Project] under the criteria in Attachment FF. It is not a new category of projects, but is a "short hand" expression for projects that have the potential for meeting the criteria found in Attachment FF to qualify as a [Regionally Beneficial Project].").

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

By the Commission. Commissioner Kelly concurring with a separate statement attached.
Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. — Docket Nos. ER06-18-007, ER06-18-008

(Issued July 23, 2007)

KELLY, Commissioner, *concurring*:

Last year we received Midwest ISO's filing of the 80-20 proposal for cost allocation of transmission reliability projects. We set it for a technical conference to explore issues associated with the proposal to only socialize 20 percent of the cost of new transmission facilities across the entire Midwest ISO footprint. Later we received Midwest ISO’s proposal for economic, or Regionally Beneficial, projects. This proposal also included an 80-20 split allocation but added a weighted gain/no loss beneficiaries analysis.

As I have mentioned before, I believe that adequate transmission facilities are not only key to reliability but they are also the essential medium that permits adequate competition in generation. Accordingly, as we proceeded with the technical conference and all of the other deliberations on these matters, my feeling has been that a higher level of socialization was probably desirable, primarily because of the public interest in healthy competition in generation. In other words, it is better to spend a little more on transmission if it will spawn even larger savings in generation.

However, the technical conference and filed comments made clear that there is not adequate record support for a higher regional allocation. Further, considering that the goal is to get sufficient transmission built, there is little point in attempting to press for a cost allocation scheme unsupported by regional parties. In particular, given their pivotal role in siting transmission facilities, we must give due consideration to the cost allocation views of affected state authorities, so long as those views are just and reasonable.

Accordingly, we ultimately accepted Midwest ISO’s proposal for reliability projects and later conditionally approved its proposal for Regionally Beneficial projects, but we have required Midwest ISO to monitor the effects of these proposals and report back to us over time. I continue to support these actions but a new concern has arisen for me of late.

It is well understood that the nation’s transmission grid was developed piecemeal by individual utilities with each utility building essentially only enough transmission infrastructure to move its generation to its load. If that service model still prevailed, then the current grid and the current piecemeal way of upgrading it might remain adequate. However, we have for years now been moving beyond that model in order to capture the consumer benefits of more regional competitive generation. In the not-too-distant future, we will need to move even farther away from the old transmission upgrade model in order to capture the many benefits of remotely-located and intermittent renewable generation.

In order to truly capture not only the benefits of competition in generation but also to facilitate increased use of renewable resources, I am convinced that we will need not just to upgrade our electric grid but also to reconfigure it. We need a true nationwide transmission version of our interstate highway system; a grid of extra-high voltage backbone transmission lines reaching out to remote resources and overlaying, reinforcing, and tying together the existing grid in each interconnection to an extent never before seen.

To get to that end state, we must have cost allocation provisions in place that can accommodate such wide ranging benefits. The cost allocation provisions that we uphold here today may well be able to accommodate such projects. Indeed I would tend to assume that a large multi-state 500 or 765 kV transmission line would not have much difficulty showing net benefits over a very broad region such that even under the 20-80 allocation its costs would be spread quite broadly. However, I can not be certain of that at this stage. Nor I think, can anyone else.

Accordingly, I would first urge all interested parties to consider the vision of a transmission interstate highway system. As I discussed above, I think the benefits of such a system would be tremendous for both reliability and for various issues that are invested with great public interest like the increased use of renewable resources. I would also urge the stakeholders to remain vigilant in assessing on an ongoing basis how well their current allocation proposal performs in support of the public interest and also to keep an eye on how their neighbors are doing with other cost allocation systems. We recently approved a version of a highway/byway proposal in PJM that will hopefully be another good option to consider.

In any event, I support this order and concur only for the purpose of emphasizing my belief that these matters are of the gravest importance to our nation's ongoing health and economic prosperity and if it becomes apparent in the future that further changes are necessary for the public good, then I believe that all stakeholders must stand ready to propose those changes.

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Suedeen G. Kelly