

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-000

Public Utilities With Grandfathered
Agreements in the Midwest ISO Region

Docket No. EL04-104-000

ORDER DIRECTING INCOMPLETE JOINT FILINGS INVOLVING
GRANDFATHERED AGREEMENTS TO HEARING

(Issued July 2, 2004)

1. On May 26, 2004, the Commission issued an order on the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Open Access Transmission and Energy Markets Tariff (TEMT),¹ and initiated, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), a three-step process to address approximately 300 grandfathered agreements (GFAs) currently in force in the Midwest ISO region and offered an option for settling the GFAs.² In this order, the Commission directs that certain incomplete joint filings, ordered in Step 1 of that process, be included in the on-going hearing, established in Step 3 on the Procedural Order. Today's order benefits customers by taking measures necessary to ensure that the GFAs and other market participants are treated fairly and reasonably.

¹ The Midwest ISO's proposed TEMT contains the terms and conditions necessary to implement a market-based congestion management program, including a Day-Ahead Energy Market, Real-Time Energy Market and Financial Transmission Rights (FTR) Market, on December 1, 2004.

² Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,191 (2004) (Procedural Order).

Background

2. As pertinent here, in the Procedural Order, the Commission initiated, in Docket No. EL04-104-000, a narrowly-focused, three-step analysis “designed to provide the basis for us to decide whether GFA operations can be coordinated with energy market operations, whether and to what extent the TOs should bear the costs of taking service to fulfill the existing contracts and whether and to what extent the GFAs should be modified.”³

3. The first step of our analysis, the paper hearing, required jurisdictional public utilities providing or taking service under GFAs (and invited any non-jurisdictional parties on a voluntary basis), who provide or take service under GFAs, to submit, in Docket Nos. ER04-691-000 and EL04-104-000, on or before June 25, 2004, the following GFA information to the Commission: (1) the name of the GFA Responsible Entity, as defined in the proposed TEMT; (2) the name of the GFA Scheduling Entity, as defined in the proposed TEMT; (3) the source point(s) applicable to the GFA; (4) the sink point(s) applicable to the GFA; (5) the maximum number of megawatts transmitted pursuant to the GFA for each set of source and sink points; and (6) whether any modification to the GFA is subject to a “just and reasonable” standard of review or a *Mobile-Sierra*⁴ “public interest” standard of review.⁵

4. The Commission also stated that, if parties to each GFA were able to agree on the GFA information, they should file the GFA information jointly.⁶ The Commission clarified that the GFAs that were the subject of joint filings would not be included in the hearing described in Step 2 and that the Commission would evaluate these joint filings as a group to help determine the effects of the GFAs on the proposed energy markets. If parties to a particular GFA or GFAs were not able to agree on the GFA information, then

³ Procedural Order at P 67.

⁴ See *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Company*, 350 U.S. 348 (1956).

⁵ Procedural Order at P 74.

⁶ The parties were directed to make a simple statement in their joint filings to indicate whether or not they were willing to voluntarily convert their contract to TEMT service or settle their GFA by accepting one of the Midwest ISO’s three proposed scheduling and settlement options for treatment of GFA transactions. Procedural Order at P 20-22, 69.

the Commission required each party to file its own interpretation of the GFA and proceed to Step 2 of the Commission's analysis.

5. In Step 2 of the analysis, the trial-type hearing, the Commission would consider all GFA information on which parties could not agree to be disputed issues of material fact. The Commission set such GFAs for hearing before two administrative law judges under section 206 of the FPA, to identify GFA information for every GFA on which the parties did not agree by June 25, 2004.⁷

6. Finally, in Step 3 of the analysis, following the ALJ's oral presentation and written findings, the Commission stated that it would use the GFA information provided by the parties or the presiding judges, together with the parties' evidence and comments, and information on voluntary conversion of GFAs to transmission and energy market service or GFA service under the TEMT, to issue an order on the merits.⁸

7. On June 25, 2004, parties to the GFAs filed, among other things, joint filings agreeing to their GFA information, joint filings agreeing to their GFA information with a settlement, and independent filings on disputed GFA information.

8. On June 29, 2004, the presiding judges issued an order stating that, in accordance with the Procedural Order, those entities who submitted joint filings responding to the six categories of GFA information in this proceeding on or before June 25, 2004 would not be included in the hearing described in Step 2 of that order.⁹ However, they stated that those joint filings asserting that the contracts at issue do not belong in this proceeding shall remain subject to Step 2 of the proceeding. They also stated that "[t]hose parties whose joint filings contain incomplete GFA information shall contact the Secretary's Office to correct the deficiencies."¹⁰

⁷ Procedural Order at P 75. The Commission held that hearing proceedings would begin on June 28, 2004, and terminate on July 23, 2004.

⁸ *Id.* at P 78.

⁹ Midwest Independent Transmission System Operator, Inc., Docket Nos. ER04-691-000 and EL04-104-000, Order Addressing Joint Filings (June 29, 2004).

¹⁰ *Id.* at P 2.

9. Also on June 29, 2004, the Commission issued an order stating that it intended to “issue an order, in the near future, identifying which joint filings have been found to be deficient and, at that time, will instruct the parties on how they should proceed.”¹¹

Discussion

10. The Commission finds that certain joint filings did not contain the information that we sought in P 68 of the Procedural Order and are thus incomplete. Attachment A to this order contains a list of GFAs for which joint filings have been found to contain one or more of the deficiencies outlined below. The Commission considers the incomplete joint filings to be disputed issues of material fact and we will include such GFAs in the on-going hearing in Step 2 of our analysis. There are other joint filings that have yet to be reviewed; our review of these filings is ongoing and, to the extent that any additional joint filings are found to be deficient, they will be addressed by separate order in the near future.

11. For certain GFAs, the parties do not supply the requested data, indicating that they intend to terminate the contract before the commencement of operation of the Midwest ISO’s market or convert to Midwest ISO tariff service before that time (*e.g.*, GFAs 12, 375, and 376) or that transmission provisions of the contract are currently not in use. For such GFAs, the parties must establish the six data elements for use by the Commission in the event that the parties do not terminate the contracts or the transmission service provisions of the contracts are utilized in the future. In the alternative, parties may file a settlement definitively committing to terminate the transmission service provisions in the contract prior to the commencement of operation of the Midwest ISO’s market.

12. Some joint filings specify a Responsible Entity, but indicate that this entity is not responsible for certain financial obligations of Responsible Entities under the proposed TEMT. In such instances, the parties must indicate an entity that is liable for each financial responsibility of Responsible Entities.

13. A number of the contracts either (1) provide for services that are interrelated (*e.g.*, GFAs 16, 28, 29, 30, 31, 32, 33, 35 and 36, and GFAs 20 and 41) or (2) are listed more than once for the various transmission-providing parties to the contracts, but the joint responses for certain of these contracts do not explain the relationship between the services reported for each GFA so as to avoid double counting of services. In order to

¹¹ Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,328 (2004).

accurately establish the data elements for these contracts, parties to such contracts need to clearly specify the relationship between the services reported for each GFA so as to avoid double counting of services.

14. For a number of contracts, joint filings: (1) fail to specify source or sink points (*e.g.*, GFAs 317, 318 and 324) or list sinks with no sources (*e.g.*, GFA 34); (2) fail to pair sinks and sources for the purpose of reporting MW values; or (3) provide aggregate MW values for the contract, but fail to report MWs for each source/sink pair (*e.g.*, GFAs 101-104).¹² Some joint filings state that MWs are not limited under the contract (*e.g.*, GFAs 211, 317, 318) or report total transfer capability of transmission or distribution interfaces (*e.g.*, GFA 212), without providing the three years of historical data requested for such situations. In addition, a number of joint filings list MWs for individual source/sink pairs that total in excess of stated cumulative maximum MWs of capacity provided under the contract (GFAs 205-207 and 267-269). In this case, parties should provide three years of historical MW data by source/sink pair at the system peak.

15. A number of joint filings left undetermined whether any modification to the GFA is subject to a “just and reasonable” standard of review or a *Mobile-Sierra* “public interest” standard of review. Parties that explain that a specific part of the GFA is subject to the “just and reasonable” standard of review and part is subject to the *Mobile-Sierra* “public interest” standard of review provided complete information. Those that agree to take no position on the applicable standard of review are incomplete.

16. Finally, a number of joint filings, including some of those listed on Attachment A, fail to provide the requested information, or provide the requested information but state that the contract should not be subject to this proceeding, arguing that the contract does not provide transmission service or that it provides transmission service that is not within the Midwest ISO’s market. For example, certain joint filings report that the GFAs are interconnection agreements that provide for use of each party’s system by the other (*e.g.*, GFAs 17 and 18, 356), but that no transmission service is provided. Other joint filings indicate that the GFA provides only for service over dedicated generator outlet facilities that are not used by any other generators and do not raise reliability issues and that, therefore, the GFA should not be subject to this proceeding (*e.g.*, GFAs 32 and 33). As noted above, these joint filings are currently subject to the hearing under the presiding judges June 29, 2004 order. We direct that these joint filings requesting that the

¹² For certain of these joint filings, it is not clear if the individual sources and sinks listed were intended to be paired with each other, or if some other relationship was intended to be reflected. Parties should explain the relationship between the sources and sinks listed.

associated GFAs be excluded from the proceeding remain in the hearing in order to:
(1) establish the data required by the May 26 order, to the extent that they are deficient;
or (2) give the parties an opportunity to establish that the service provided under the GFA
is such that it will not impact operation of Midwest ISO's energy markets.

The Commission orders:

The incomplete joint filings discussed above are hereby directed to be included in
the on-going hearing in this proceeding.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Attachment A

Midwest Independent Transmission System Operator, Inc.
 Docket Nos. ER04-691-000 and EL04-104-000

Grandfathered Agreements Jointly Filed Requiring Additional Information

GFAs – Requests To Be Excluded From
 Hearing

17	65
18	66
21	67
22	68
23	69
24	70
25	71
27	72
32	73
33	75
42	76
43	77
44	78
45	79
46	80
47	81
48	82
49	83
50	84
51	85
52	86
53	87
54	88
55	89
56	90
57	91
58	92
59	93
60	339
61	356
62	393
63	395
64	396
	397

GFAs – Further Information Required

12	213
16	219
20	223
28	267
29	268
30	269
31	317
34	318
35	324
36	343
41	362
101	369
102	375
103	376
104	401
106	403
107	405
108	407
109	409
110	418
112	419
205	420
206	425
207	428
211	441
212	442
	443