

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER02-2458-004
ER02-2458-005
ER02-2458-006

ORDER CONDITIONALLY ACCEPTING FILINGS,
DIRECTING FURTHER COMPLIANCE FILINGS,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 20, 2006)

Introduction

1. In this order we conditionally accept and suspend, for a nominal period, filings implementing a new joint pricing zone, under Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission and energy markets tariff (TEMT) and establish hearing and settlement judge procedures.¹

Background

2. In the March 5 and September 30 Orders, the Commission, among other things, conditionally approved an offer of settlement (Settlement Agreement) between Midwest ISO, Wolverine Power Supply Cooperative, Inc. (Wolverine), Michigan Electric Transmission Company, LLC (Michigan Electric), and Michigan Public Power Agency (MPPA) (collectively, the Settlement Parties) that established a new joint pricing zone

¹ The joint pricing zone provisions are being proposed pursuant to a settlement agreement approved by the Commission. See, *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (March 5 Order), *order granting reh'g in part, Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,351 (2005) (September 30 Order).

under Midwest ISO's TEMT. The Settlement Agreement explains that the joint pricing zone will include Wolverine's, Michigan Electric's, and MPPA's facilities.² The Settlement Agreement utilizes the Michigan Public Service Commission's (Michigan Commission) seven-factor test analysis to support including Wolverine's facilities in the joint zone rate.³ The March 5 Order modified the Settlement Agreement to require that Midwest ISO perform a seven-factor test analysis on MPPA's facilities and the facilities of other entities not subject to Commission or state regulation, to determine which are eligible for inclusion in the joint zone. Midwest ISO was also directed to file the results of that analysis when it proposes to include those facilities in the joint zone rates.⁴

3. The September 30 Order set forth the following schedule for implementation of the Settlement Agreement: (1) Midwest ISO would file revised tariff sheets within 30 days of the September 30 Order; (2) Wolverine would file revised wholesale power rates reflecting revenue changes resulting from its participation in the joint zone,⁵ and (3) the Settlement

² The Settlement Agreement also sets out the criteria for others to join this joint pricing zone.

³ In Order No. 888 the Commission developed a seven factor test to distinguish the transmission facilities subject to federal jurisdiction from the local distribution facilities. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036, at pp. 31,783-84 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Statutes and Regulations ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ *See* March 5 Order at P 56.

⁵ The March 5 Order required Wolverine to file, within 30 days of the effective date of the Settlement Agreement, revisions to its existing wholesale rates to reflect any changes in its revenues resulting from its participation as a transmission owning member of Midwest ISO. *See* March 5 Order at P 21. The effective date of the Settlement Agreement is the date upon which the first joint zone transmission owner other than Michigan Electric transfers functional control of its transmission facilities to Midwest ISO.

Parties would file the methodology for the joint zone loss factor⁶ within 60 days of the September 30 Order, but no less than 60 days prior to the effective date for the joint zone settlement rates.

4. On October 31, 2005, the Settlement Parties filed a notice of status of their compliance filings and requested an extension of time, to July 1, 2006, to file the methodology for the joint zone loss factor. The request was made in order to allow sufficient time to update existing models to incorporate new facilities in the joint zone. They stated that Wolverine intends to transfer control of its facilities to Midwest ISO, effective January 1, 2006, which will become the effective date for the Settlement Agreement. The Settlement Parties state that they have agreed to adopt the current loss methodology for the Michigan Electric pricing zone for the interim period (before the updated joint zone loss factor becomes effective). On November 10, 2005, the Commission issued a notice granting an extension of time to file the joint zone loss factor by July 1, 2006.

Midwest ISO's October 31 Filing

5. On October 31, 2005, as amended on November 23, 2005, Midwest ISO filed revised tariff sheets implementing the joint pricing zone provisions of the Settlement Agreement. Midwest ISO proposes to change the name of the Michigan Electric pricing zone to the Michigan Joint Zone for its point-to-point and network integration transmission service schedules. Consistent with P 36 of the September 30 Order, Midwest ISO proposes to amend each schedule to adjust Wolverine's, MPPA's and any new joint zone transmission owner's revenue requirements to exclude a *pro rata* share of the total revenue requirements associated with load served by certain grandfathered agreements. Midwest ISO proposes to include the facilities of three of MPPA's members in the joint zone rates.⁷ Midwest ISO's proposal is based on the results of its seven-factor test analysis of the three members' facilities, as required by the Settlement Agreement, as modified by the March 5 Order. Midwest ISO states in its transmittal letter that it will

⁶ The joint zone loss factor will be used to gross up delivery point contract demand and metered network load for the purpose of billing the joint zone transmission rates. In addition, the Commission directed the Settlement Parties to develop the methodology for the joint zone loss factor through a participatory process among affected Midwest ISO participants.

⁷ The three member cities' systems addressed by Midwest ISO's seven-factor test analysis are Grand Haven Board of Light & Power (Grand Haven), Traverse City Light & Power (Traverse City), and the City of Zeeland, Michigan (City of Zeeland).

make additional revisions to the TEMT to incorporate grandfathered agreements of the appropriate parties into Attachment P (List of Grandfathered Agreements).⁸

Settlement Parties' December 1, 2005 Filing

6. On December 1, 2005, the Settlement Parties filed an Amended and Restated Settlement Agreement, including revisions to the related Michigan Joint Zone Revenue Allocation Agreement. The Settlement Parties state that the Amended and Restated Settlement Agreement incorporates: (1) the First and Second Amendments accepted in the September 30 Order; (2) other changes ordered by the September 30 Order; (3) updates to the Settlement Agreement which list the MPPA facilities to be included in the joint zone;⁹ and (4) formatting and other minor, non-substantive changes.

7. The First Amendment revised section 11.1 to postpone, until 30 days after the Commission issued a substantive decision on any rehearing requests of the March 5 Order, any decision of a Settlement Party to withdraw from the Settlement Agreement. The September 30 Order addressed the substantive issues raised by the rehearing requests, but no Settlement Party decided to withdraw from the Settlement Agreement. The Second Amendment to the Settlement Agreement modified section 4.2 and Appendix A to include the Michigan Public Service Commission's Revised Administrative Determination, that decided which Wolverine facilities would be reflected in the joint zone rates.

8. In addition, the Settlement Parties include provisions to adjust Wolverine's, MPPA's and any new joint zone transmission owner's revenue requirements to exclude a *pro rata* share of the total revenue requirements associated with load served by certain grandfathered agreements. They also revise the Settlement Agreement to reflect the extension of time to file an updated joint zone loss methodology by July 1, 2006, and the interim adoption of the current loss methodology for the Michigan Electric pricing zone until the updated joint zone loss factor becomes effective. Finally, they propose to revise the Settlement Agreement to adopt the regional postage stamp pricing methodology for Schedule 1 (Scheduling, System Control and Dispatch Service) of the Midwest ISO TEMT, in lieu of the license plate pricing methodology for such service currently provided in the Settlement Agreement.

⁸ In Docket No. ER06-350-000, Midwest ISO filed revisions to Attachment P which incorporate Wolverine's grandfathered agreements. In addition, Midwest ISO filed in Docket No. ER06-273-000, a notice of succession of certain transmission service agreements, under Wolverine's open access transmission tariff, that are being transferred to the Midwest ISO TEMT. These filings will be addressed by separate orders.

⁹ See Appendix B of the Amended and Restated Settlement Agreement.

9. The Settlement Parties also request a waiver of the Commission's 60-day prior notice requirement to allow an effective date of January 1, 2006, for the Amended and Restated Settlement Agreement.

Notice of Filing and Responsive Pleadings

10. Notice of Midwest ISO's October 31 filing was published in the *Federal Register*, 70 Fed. Reg. 69,328 (2005), with interventions and protests due on or before November 21, 2005. Notice of Midwest ISO's November 23 filing was published in the *Federal Register*, 70 Fed. Reg. 73,225 (2005), with interventions and protests due on or before December 14, 2005. On November 21, 2005, Consumers Energy Company (Consumers Energy) and International Transmission Company (International Transmission) filed protests to Midwest ISO's October 31 filing. On December 6, 2005, Consumers Energy filed a supplement to its protest of Midwest ISO's October 31, 2005 filing. On December 6, 2005, the Settlement Parties filed an answer to Consumers Energy's and International Transmission's protests. On December 7, 2005, International Transmission filed an answer to the Settlement Parties' answer. On December 8, 2005, Wolverine filed an answer to Consumer Energy's supplement to its protest.

11. Notice of the Settlement Parties' December 1 filing was published in the *Federal Register*, 70 Fed. Reg. 74,799 (2005), with interventions and protests due on or before December 19, 2005. On December 7, 2005, Consumers Energy filed preliminary initial comments on the Amended and Restated Settlement Agreement. On December 15, 2005, the Settlement Parties filed an answer to Consumers Energy's preliminary comments. On December 19, 2005, Consumers Energy filed a protest to the Amended and Restated Settlement Agreement. On December 22, 2005, Wolverine filed an answer to Consumers Energy's protest to the Amended and Restated Settlement Agreement.

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) (2005), prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Settlement Parties', International Transmission's, or Wolverine's answers.

B. Substantive Matters

1. Seven Factor Test Analysis of MPPA Facilities

13. When applying the seven-factor test to MPPA's facilities, Midwest ISO focuses on power flows in meeting factors three and four. Factor three provides that power flows into

local distribution systems, but rarely, if ever, flows out, and factor four provides that once power enters a local distribution system, it is not re-consigned or transported on to some other market. Midwest ISO states that it conducted a load flow analysis at six interfaces between MPPA and either Michigan Electric or Wolverine by examining flows over the 69 kV system of all three MPPA cities at the interface. If all of the power flows entered a sub-area, Midwest ISO determined that the facilities in the sub-area should be classified as distribution under factors three and four. In contrast, if power flows entered and exited a sub-area, Midwest ISO determined that the facilities in that sub-area should be classified as transmission. In addition, Midwest ISO performed a limited contingency analysis to test the response of particular facilities to changing network conditions. These studies led Midwest ISO to conclude that all non-radial 69 kV facilities of Grand Haven, Traverse City, and the City of Zeeland serve a transmission function and should be included in the joint zone rates.

14. In Consumers Energy's protest to the October 31 filing it argues that the MPPA facilities should not be included in the joint pricing zone because Midwest ISO's filing contains little more than an executive summary of its study. According to Consumers Energy, Midwest ISO has not supported the proposed inclusion of the MPPA facilities because it has not: (1) clearly delineated the specific MPPA facilities studied; (2) identified actual data and assumptions used in the underlying load flow studies; (3) analyzed the prior seven-factor test findings with respect to other facilities included in the joint pricing zone to ensure comparable treatment; and (4) addressed five of the seven test factors due to alleged lack of data. In its protest to the Amended and Restated Settlement Agreement, Consumers Energy asserts that the MPPA facilities that are included in the joint zone¹⁰ should be consistent with the outcome of Midwest ISO's seven-factor test analysis in its October 31 and November 23 filings.

Commission Determination

15. We find that Midwest ISO's proposal to include the three MPPA members' facilities in the joint zone rates presents issues of material fact that are best addressed in the hearing and settlement judge procedures ordered below. We note that the Settlement Agreement specifically provides that, when applying the seven-factor test analysis to a new transmission owner like MPPA, the analysis shall consider comparability of the candidate facilities to the transmission facilities of other joint zone transmission owners that have been included in the joint zone. Accordingly, in the hearing and settlement judge procedures ordered below, the parties should compare the three MPPA members' facilities

¹⁰ The MPPA facilities proposed to be included in the joint zone are listed in Appendix B of the Amended and Restated Settlement Agreement.

to the transmission facilities of other transmission owners that have been included in the joint zone.

2. Attachment O Adjustments

16. In order to comply with P 36 of the September 30 Order, Midwest ISO proposes to modify the schedules for point-to-point and network integration transmission service so that the joint zone rates calculated under the Attachment O rate formula will include adjustments to Wolverine and MPPA's revenue requirements that exclude "a *pro rata* share of the total revenue requirements associated with their jointly-owned facilities under Grandfathered Agreements included in the Michigan Joint Zone consistent with the Commission's directives in Docket No. ER02-2458-001." The Settlement Parties propose to reflect the Commission's directives set forth in the September 30 Order in the Settlement Agreement's provisions for calculating the joint zone revenue requirement and rates. There is also a sample calculation of the adjustment included in Appendix C of the Settlement Agreement.

17. In its protest to Midwest ISO's October 31 filing, Consumers Energy objects that the proposed revisions do not specify load ratios or any changes to the Attachment O rate formula. According to Consumers Energy, the Settlement Parties must file the details of the joint zone rates and any necessary adjustments to the Midwest ISO Attachment O formula template before the rates take effect. In its protest to the Amended and Restated Settlement Agreement, Consumers Energy argues that while the Amended and Restated Settlement Agreement lists a total of 484 MW of ownership entitlements for Wolverine and MPPA alone, it only adjusts the revenue requirements for 120 MW of the ownership entitlements for Wolverine's portion of the joint zone rate and 52 MW for MPPA's portion of the joint zone rate. In addition, it argues that Wolverine and MPPA should adjust their revenue requirements for ownership entitlements of Michigan South Central Power Agency (MSCPA) and any other ownership entitlement holders there may be now or in the future on the Michigan Electric system. Consumers Energy estimates that there is a total of 608.5 MW of ownership entitlements authorized on the Michigan Electric transmission system.

Commission Determination

18. Under Section 18 C.F.R § 35.1(a), public utilities are required to file and post complete rate schedules that clearly set forth the rates, terms and conditions for any transmission or sale of electric energy subject to the jurisdiction of this Commission. Accordingly, the TEMT must clearly set forth the specific rates, terms and conditions of service to customers in the joint pricing zone, rather than incorporating rates, terms and conditions by reference to Commission orders or the Settlement Agreement. Midwest ISO

is directed to file, within 30 days of the date of this order, revised tariff sheets that specify the rates, terms and conditions of service to customers in the joint pricing zone.

19. Also, consistent with our prior orders addressing the joint zone rates, the revenue requirements for any joint zone transmission owners, other than Michigan Electric, must be reduced to remove a *pro rata* share associated with all of the ownership entitlements on the Michigan Electric system, except where the customer with the ownership entitlement already has an arrangement to use the transmission owners' joint zone facilities. The March 5 and September 30 Orders addressed adjustments for Wolverine and MPPA's ownership entitlements, without regard to whether the customer with such ownership entitlements is a joint zone transmission owner. While the Settlement Agreement only noted the ownership entitlements of MPPA and Wolverine, there is no reason to treat the ownership entitlements of MSCPA, or any other Michigan entity, differently. For this reason, in a separate proceeding, the Commission found that new ownership entitlements on the Michigan Electric transmission system, including entitlements owned by MSCPA, should be treated consistently with the ownership entitlements prescribed in the March 5 and September 30 Orders.¹¹ If the customer that owns the entitlement takes transmission service under the TEMT and receives a capacity offset to the billing determinant pursuant to the rate methodology specified in the Settlement Agreement, the revenue requirements of the joint zone transmission owners other than Michigan Electric must be reduced by the *pro rata* share associated with this ownership entitlement, even if this customer is not a joint zone transmission owner. Because there are disputed factual issues concerning the ownership entitlements for which these adjustments must be made, we will direct the parties to address the formula provisions necessary to implement these further adjustments to the transmission owners' revenue requirements in the hearing ordered below.

3. Requirements for Status as a Midwest ISO Transmission Owner

20. International Transmission states that Midwest ISO participants seeking status as transmission owners, as that term is defined in the TEMT and the Midwest ISO Transmission Owners Agreement,¹² must sign the Appendix I Supplemental Agreement. This Supplemental Agreement provides for International Transmission's participation in Midwest ISO as an independent transmission company. International Transmission states

¹¹ See, *Michigan Electric Transmission Company, LLC*, 113 FERC ¶ 61,117 at P 18 (2005).

¹² Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (Midwest ISO Transmission Owners Agreement).

that neither MPPA nor Wolverine had signed the Appendix I Supplemental Agreement. Accordingly, International Transmission asserts that both MPPA and Wolverine must sign the Appendix I Supplemental Agreement on or before the date that the proposed tariff sheets become effective.

Commission Determination

21. Section 3.5 of International Transmission's Appendix I Supplemental Agreement states:

The parties agree that any person or entity seeking to join Midwest ISO as an Owner shall, as a condition to being granted such Owner status, be required to sign this Agreement and to be bound by all of its terms and conditions.

We note that International Transmission previously sought to require that each Midwest ISO transmission owner sign the Appendix I Supplemental Agreement. The Commission has stated that it is "reasonable [to] require potential Midwest ISO owners to sign the Supplemental Agreement committing the applicant to be bound by all terms of the agreement."¹³ We note that Midwest ISO recently filed, for informational purposes, the signature page by which Wolverine became a party to International Transmission's Appendix I Supplemental Agreement as of January 1, 2006.¹⁴ With respect to MPPA, we will require that it become a signatory to International Transmission's Appendix I Supplemental Agreement on or before including its facilities in the joint zone rates.

4. Joint Zone Loss Factor and Effective Date

22. The September 30 Order required the Settlement Parties to file the methodology for the joint zone loss factor within 60 days of that order, but no less than 60 days prior to the effective date for the joint zone settlement rates. As noted above, in their October 31 report on the status of filings, the Settlement Parties state that they have agreed to adopt the current loss methodology for the Michigan Electric pricing zone for the interim period beginning January 1, 2006 and lasting until the updated joint zone loss factor becomes effective by Commission order. Midwest ISO's October 31 filing proposes to continue Midwest ISO's existing loss methodology for the joint zone, and this has been codified in the Amended and Restated Settlement Agreement filed on December 1, 2005.

¹³ *International Transmission Company*, 97 FERC ¶ 61,328 at 62,542 (2001).

¹⁴ See Midwest ISO's filing on December 21, 2005, in Docket No. ER01-3-000.

23. The Settlement Parties contend that good cause exists to grant waiver of the Commission's 60-day prior notice requirement to allow the Amended and Restated Settlement Agreement to take effect January 1, 2006. They explain that the effective date of the Settlement Agreement is defined as the date upon which the first joint zone transmission owner, other than Michigan Electric, transfers functional control of its transmission facilities to Midwest ISO. They further explain that Wolverine intends to transfer functional control of its transmission facilities to Midwest ISO on January 1, 2006. The Settlement Parties state that they agreed to a January 1, 2006 effective date and that this date corresponds with the effective date specified in the Settlement Agreement. The Settlement Parties state that they are attempting to promptly comply with the Commission's September 30 Order and that all parties have been on notice of the proposed effective date since the Settlement Parties' October 31 report on the status of filings. Finally, they state that any delay in the effective date would delay the benefits of the joint pricing zone to all its participants.¹⁵

24. In its protest to Midwest ISO's October 31 filing, Consumers Energy argues that the proposed January 1, 2006 effective date is not consistent with the September 30 Order. According to Consumers Energy, the September 30 Order directs the Settlement Parties to file the loss methodology for the joint zone no less than 60 days prior to the effective date for the joint pricing zone. Nor, Consumers Energy argues, can the Settlement Parties argue that the Commission's November 10, 2005, notice granting an extension of time to file the joint zone loss factor approved their proposed January 1, 2006 effective date. Consumers Energy notes that the Settlement Parties previously committed in April 2004 to file the joint zone loss factor prior to the effective date of the joint zone. Consumers Energy argues that the Commission accepted this commitment in the September 30 Order. Consumers Energy contends that had the Settlement Parties wanted to expedite the establishment of the joint zone they should have commenced working on updating the joint zone loss rate prior to the issuance of the September 30 Order. Finally, Consumers Energy argues that carrying over the current loss methodology for the Michigan Electric pricing zone for an interim period after the joint zone operations begin would result in a loss methodology that is designed on a basis inconsistent with the design of the rest of the joint zone rates being charged.

¹⁵ According to the Settlement Parties, the effective date of the Settlement Agreement is defined as the date upon which the first joint zone transmission owner, other than Michigan Electric, transfers functional control of its' transmission facilities to Midwest ISO.

Commission Determination

25. We find that the Settlement Parties' proposal to adopt, on an interim basis, the current loss methodology used in the Michigan Electric pricing zone may be unjust and unreasonable based on the record before us. Accordingly, we find that the justness and reasonableness of the proposal is more appropriately addressed in the evidentiary hearing ordered below. The Settlement Agreement contemplated filing an updated loss factor applicable to the joint zone, but did not specify the loss factor or a methodology for determining the loss factor.¹⁶ Accordingly, that loss factor must be filed pursuant to section 205 of the Federal Power Act.¹⁷ Furthermore, in the September 30 Order the Commission directed the Settlement Parties to file this loss factor at least 60 days prior to the effective date of the joint zone rates, which is consistent with the Commission's 60-day prior notice requirement for section 205 filings. In this case, we find waiver of the prior notice requirement unnecessary because parties have had notice of the proposed loss factor since the Settlement Parties' and Midwest ISO's October 31 filings. Thus, we will grant the requested effective date for the joint zone rates (*i.e.*, the earlier of January 1, 2006, or the date that a new transmission-owning member of the joint zone transfers control of its facilities to Midwest ISO).¹⁸

¹⁶ See September 30 Order at P 37.

¹⁷ 16 U.S.C. § 824d (2000).

¹⁸ While we are setting for hearing the proposal to adopt the current loss methodology for the Michigan Electric pricing zone until the updated joint zone loss factor is accepted to take effect, we disagree with Consumers Energy's suggestion that the current loss methodology for the Michigan Electric pricing zone is *per se* unreasonable when applied to the joint pricing zone or that the effective date for the joint zone should be delayed until the updated joint zone loss factor is accepted to take effect. While Consumers Energy is correct that the current loss methodology for the Michigan Electric zone is inconsistent with the joint zone rate methodology, it is reasonable to expect that a loss factor for the Michigan Electric pricing zone will be less than a loss factor based on all joint zone facilities. This is because Michigan Electric's facilities generally operate at higher voltages (138 kV and above) than Wolverine and MPPA's facilities that are being added to the joint zone (which are primarily 69 kV facilities), and losses are generally lower at higher voltages.

4. Acceptance, Suspension, and Hearing

26. Our preliminary analysis of Midwest ISO's seven-factor test analysis and proposal to incorporate facilities of MPPA's members into the joint zone, and the Settlement Parties' proposed loss factor, indicates that the proposals have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept those aspects of Midwest ISO's and the Settlement Parties' filings, suspend them for a nominal period and make them effective January 1, 2006, subject to refund, and set them for hearing and settlement judge procedures as ordered below.¹⁹ The other aspects of the filings are accepted for filing, effective January 1, 2006, subject to the conditions and compliance filings ordered above. As discussed above, we will set for hearing the aspects of Midwest ISO's and the Settlement Parties compliance filings that address P 36 of the September 30 Order, in order to determine what further adjustments to MPPA and Wolverine's revenue requirements are necessary to exclude the *pro rata* share associated with ownership entitlements to the Michigan Electric transmission system.

27. While we are setting the matters noted above for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁰ If the parties desire they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²¹ The settlement judge

¹⁹ Because neither the loss factor, nor the facilities of MPPA's members that are eligible for inclusion in the joint zone rates, were prescribed in the Settlement Agreement or prior Commission Orders in this proceeding, we treat these aspects of Midwest ISO's and the Settlement Parties' filings as section 205 filings. While we prefer that compliance filings not include proposals that are in reality new section 205 applications, we acknowledge that the September 30 Order discussed all of these filings necessary to implement the Settlement Agreement, under the heading of "Compliance Filings" without distinguishing which filings constitute compliance filings and which would constitute new section 205 filings.

²⁰ 18 C.F.R. § 385.603 (2005).

²¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their

(continued...)

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

The Commission orders:

(A) Midwest ISO's and the Settlement Parties' October 31 and December 1 filings are hereby conditionally accepted for filing and suspended for a nominal period, and made effective on January 1, 2006, subject to refund, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed joint pricing zone rates as well as all other issues discussed in the body of this order. As discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to conduct settlement judge procedures.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within 15 days of the date of this order. The designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable.

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

background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.