

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. ER06-360-001 ER06-360-002 ER06-361-001 ER06-361-002 ER06-362-001 ER06-362-002 ER06-363-001 ER06-363-002 ER06-372-001 ER06-372-002 ER06-373-001 ER06-373-002
Midwest Independent Transmission System Operator, Inc. and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc.	ER06-366-001 ER06-366-002

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued June 2, 2006)

1. On February 17, 2006, the Commission issued an order in these proceedings, conditionally accepting proposed revisions filed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Transmission Owners of the

Midwest Independent Transmission System Operator, Inc. (Midwest ISO TOs)¹ to schedule 23 (Recovery of Schedule 10 and Schedule 17 Costs from Certain Grandfathered Agreements (GFAs)) of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT), to become effective December 23, 2005, as requested, and conditionally accepting for filing six unexecuted schedule 23 service agreements filed by the Midwest ISO for service to Sioux Falls Municipal Light & Power Department (Sioux Falls), Truman Public Utilities (Truman), the University of North Dakota-Facilities (UND), East Grand Forks Water & Light Department (East Grand Forks), Granite Falls Municipal Utilities (Granite Falls), and East River Electric Power Cooperative, Inc. (East River), to become effective April 1, 2005, as requested.²

2. Basin Electric Power Cooperative and East River (collectively, the Basin Cooperatives) filed a timely request for rehearing of the February 17 Order. As discussed below, the Basin Cooperatives' request for rehearing is denied. In addition, on March 20, 2006, the Midwest ISO and Midwest ISO TOs filed tariff sheets revising the schedule 23 *pro forma* service agreement as well as updated versions of the six unexecuted service

¹ The Midwest ISO TOs, for purposes of this proceeding, consist of: 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 Company d/b/a AmerenCilco, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc., on behalf of Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); Cinergy Services, Inc. for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Company; City of Columbia Water and Light Department (Columbia, MO); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Minnesota Power, and its subsidiary Superior Water, Light & Power; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana; and Wabash Valley Power Association, Inc.

² *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,169 (2006) (February 17 Order).

agreements to comply with the February 17 Order. The Basin Cooperatives filed a timely protest of the March 20 compliance filing. As discussed below, the Commission accepts in part and rejects in part the revised tariff sheets effective December 23, 2005, and the revised unexecuted service agreements effective April 1, 2005.

Background

3. On January 13, 2005, the Midwest ISO TOs filed proposed schedule 23 of the TEMT, which provides for the Midwest ISO TOs' recovery of Midwest ISO schedule 10 (ISO Cost Recovery Adder) and schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) costs from customers under specified GFAs carved out of the Midwest ISO energy markets. Schedule 10 of the TEMT provides for recovery of the Midwest ISO's capital and ongoing operating costs associated with running the Midwest ISO; the ISO Cost Recovery Adder is based on the budgeted expenses to be recovered each month divided by the MWh of transmission service expected to be provided under the TEMT during the same period, subject to a true-up. Schedule 17 of the TEMT provides for a deferral of start-up costs related to the establishment of energy markets and for the recovery of such deferred costs as well as the ongoing costs of providing energy markets service once the markets are operational.

4. The Commission conditionally accepted schedule 23 on March 24, 2005.³ The Commission conditionally accepted the Midwest ISO TOs' subsequent compliance filing subject to minor revisions.

5. On December 22, 2005, in Docket No. ER06-366-000, the Midwest ISO and the Midwest ISO TOs filed with the Commission several proposed revisions to schedule 23. First, the Midwest ISO and Midwest ISO TOs proposed "minor revisions" to attachment 1 to schedule 23 "to spell out potentially confusing abbreviations, correct the names of GFA customers and contracts, and remove GFAs for which there have been settlements."⁴ Second, the Midwest ISO and Midwest ISO TOs proposed revisions to account for the Commission's decision⁵ to re-classify GFA Nos. 410 and 415 as carved-out GFAs, and the decision by the transmission owner for these GFAs, American

³ *Transmission Owners of the Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,339, *order on reh'g*, 113 FERC ¶ 61,122 (2005).

⁴ December 22, 2005 Filing, Docket No. ER06-366-000 at 3.

⁵ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,042 at P 279, *order on reh'g*, 112 FERC ¶ 61,311 (2005).

Transmission Systems Incorporated, to add these GFAs to schedule 23. Third, the Midwest ISO and Midwest ISO TOs proposed a new attachment 2, “Form of Schedule 23 Service Agreement.” According to the Midwest ISO and Midwest ISO TOs, “[t]his service agreement will be used in accordance with section 2.3 of Schedule 23, which permits the Midwest ISO to ‘file a service agreement, either executed or unexecuted, with the Commission to allow charges to the Carved-Out GFA Customer under . . . Schedule 23.’”⁶ The Midwest ISO and the Midwest ISO TOs requested waiver of the 60-day prior notice requirement to allow the proposed revisions to schedule 23 to become effective December 23, 2005.

6. Also on December 22, 2005, the Midwest ISO filed unexecuted schedule 23 service agreements to allow recovery of schedule 23 charges from customers under six carved-out GFAs. The customers under these GFAs include: Sioux Falls (in Docket No. ER06-360-000); Truman (in Docket No. ER06-361-000); UND (in Docket No. ER06-362-000); East Grand Forks (in Docket No. ER06-363-000); Granite Falls (in Docket No. ER06-372-000); and East River (in Docket No. ER06-373-000). The Midwest ISO requested that the Commission grant an effective date of April 1, 2005 for each of these service agreements.

7. The February 17 Order conditionally accepted the proposed revisions to schedule 23, effective December 23, 2005, as requested. Similarly, the February 17 Order conditionally accepted the six unexecuted schedule 23 service agreements, effective April 1, 2005, as requested.

8. The February 17 Order agreed with certain protestors that the language in the *pro forma* service agreement, which provides that “the Tariff, in its entirety, is incorporated herein and made a part hereof,” is inconsistent with the TEMT, which requires “Carved-Out GFAs shall be subject only to section 38.8.4 of this Tariff.” The February 17 Order also agreed with certain protestors that a service agreement (and any associated obligations under schedule 23) should automatically terminate upon termination of the underlying carved-out agreement, and that the service agreement should specify payment procedures. In addition, the February 17 Order agreed with protestors that a service agreement should specify the information required of the customer. Based on these findings, the February 17 Order directed the Midwest ISO and Midwest ISO TOs to make a compliance filing with revisions to the *pro forma* service agreement, as well as the six schedule 23 unexecuted service agreements to: (1) incorporate only those provisions of the TEMT that are applicable to carved-out GFA customers under schedule 23; (2) provide for the service agreement to automatically terminate upon termination of the

⁶ December 22, 2005 Filing, Docket No. ER06-366-000 at 4.

underlying carved-out agreement; (3) specify payment procedures; and (4) specify the information required to be provided by the customer.⁷

9. On March 20, 2006, the Basin Cooperatives filed a request for rehearing of the February 17 Order, and the Midwest ISO and Midwest ISO TOs filed a compliance filing.

10. Notice of the Midwest ISO's and Midwest ISO TOs' March 20 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 16,300 (2006), with protests and interventions due on or before April 10, 2006. The Basin Cooperatives filed a timely protest.

Discussion

A. Rehearing Request

1. The February 17 Order

11. In the February 17 Order, the Commission found "good cause" to grant waiver of notice to permit a December 23, 2005 effective date for the *pro forma* service agreement filed in Docket No. ER06-366-000.⁸ The Commission also found "good cause" to grant the proposed April 1, 2005 effective date for the six unexecuted schedule 23 service agreements filed in Docket No. ER06-360-000, *et al.*⁹ The Commission agreed with the Midwest ISO that parties to carved-out GFAs were put on notice through the Commission's schedule 23 orders that they would be subject to the schedule 10 and schedule 17 charges pursuant to schedule 23. The Commission noted that the Midwest ISO TOs' original schedule 23 filing in Docket No. ER05-447-000, made on January 13, 2005, *i.e.*, made more than 60 days in advance of the requested effective date of April 1, 2005, included the carved-out GFAs and expressly named all six customers including East River. The Commission further noted, in this regard, that the Basin Cooperatives (which we note included, as relevant here, East River) were active parties in the schedule 23 proceeding. Accordingly, the Commission found that the customers to the

⁷ February 17 Order at P 19.

⁸ February 17 Order at P 26 (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 at 61,338-39 (*Central Hudson*), *order on reh'g*, 61 FERC ¶ 61,089 (1992) (*Central Hudson II*)).

⁹ *Id.*

six unexecuted schedule 23 service agreements including East River received adequate prior notice that the schedule 23 charges would be charged to them and found good cause to grant the proposed April 1, 2005 effective date.¹⁰

2. The Basin Cooperatives' Request for Rehearing

12. The Basin Cooperatives seek rehearing of the Commission's finding of good cause to grant an April 1, 2005 effective date for service to East River. The Basin Cooperatives argue that the Commission should have applied an "extraordinary circumstances" standard to the Midwest ISO's rationale for requesting an April 1, 2005 effective date. The Basin Cooperatives argue that the Commission acted arbitrarily and capriciously by not following its policy for waiver of notice for service agreements filed more than 30 days after commencement of service without explaining its departure from that policy.¹¹ The Basin Cooperatives cite to a recent decision in *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,278 at P 50 (*Midwest ISO*), order granting motion for clarification, 115 FERC ¶ 61,033 (2006), as indication of the Commission's standing policy that absent a showing of extraordinary circumstances, proposed tariff revisions will be effective 60 days after filing.

13. The Basin Cooperatives further assert that neither "extraordinary circumstances" nor "good cause" are present to justify the Midwest ISO's failure to file the service agreements within 30 days of the commencement of service. The Basin Cooperatives argue that, like the circumstances present in *Midwest ISO* and *Pacific Gas & Electric Company*, 109 FERC ¶ 61,093 at P 22-30 (2004) (*PG&E*), the Midwest ISO has failed to make a showing of extraordinary circumstances. The Basin Cooperatives argue that the Midwest ISO's reasons for filing the unexecuted service agreements nearly nine months late are insufficient to meet the "extraordinary circumstances" standard for granting such waiver, and therefore the agreement should be made effective 60 days from the date of the Midwest ISO's filing. The Basin Cooperatives assert that the Commission's prior orders involving schedule 23 provided inadequate notice to carved-out GFA customers as to the timing of charges. The Basin Cooperatives note that customers such as themselves

¹⁰ *Id.*

¹¹ As we discuss below, there are several circumstances in which the Commission has indicated that it will grant waiver. The fact that a service agreement was not filed within 30 days of the commencement of service (the circumstance addressed in *Prior Notice*, see *infra* note 15) does not mean that the filing of a service agreement could not qualify for waiver for other reasons as set forth in *Central Hudson*.

were “not on notice of the actual charges in April 2005, the charges were not established in an agreement as of April 2005, and the customers did not pay the charges without objection.”¹²

3. Commission Determination

14. The Commission denies the Basin Cooperatives’ rehearing request.

15. The Commission may, pursuant to section 205 of the Federal Power Act (FPA),¹³ exercise its discretion and allow proposed rates, terms and conditions to become effective upon less than 60 days’ prior notice upon a finding of “good cause.” The circumstances when the Commission will (or won’t) find such good cause are described in *Central Hudson*,¹⁴ with one additional circumstance where the Commission will find good cause that is described in *Prior Notice*.¹⁵ And recognizing that the jurisdictional guidance in *Central Hudson* was general, rather than case-specific, the Commission stated in *Central Hudson II* that “we will continue to consider requests for waiver of the [prior] notice requirement based on the specific factual circumstances of each filing.”¹⁶

¹² Basin Cooperatives Request for Rehearing at 7.

¹³ Section 205(d) of the FPA provides:

The Commission, for good cause shown, may allow changes to take effect without requiring the sixty days’ notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published.

16 U.S.C. § 824d(d) (2000); *see also* 18 C.F.R. §§ 35.3, 35.11 (2005). Indeed, as observed in *Gulf States Utilities Company v. FERC*, 1 F.3d 288, 293 (5th Cir. 1993), waiver necessarily presupposes a failure to timely file. *Accord infra* note 19.

¹⁴ *Central Hudson*, 60 FERC at 61,338-39; *accord El Paso Electric Co.*, 105 FERC ¶ 61,131 at P 15-16 (2003) (*El Paso Electric*).

¹⁵ *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984-85 (*Prior Notice*), *order on reh’g*, 65 FERC ¶ 61,081 (1993); *accord El Paso Electric*, 105 FERC ¶ 61,131 at P 18-20.

¹⁶ *Central Hudson II*, 61 FERC at 61,356.

16. Waiver of the 60-day prior notice requirement was justified in this instance; good cause was present. We deny rehearing, therefore, as to the Basin Cooperatives' claim that good cause sufficient to warrant an effective date of April 1, 2005 for the six unexecuted schedule 23 service agreements did not exist. An effective date for service to East River was already prescribed in the so-called schedule 23 proceeding, Docket No. ER05-447-000. There the Commission addressed the original filing of schedule 23 (made, we note, more than 60 days in advance of April 1, 2005) and allowed an April 1, 2005 effective date for schedule 23. Schedule 23, as originally proposed and conditionally accepted by the Commission, specifically identified East River as a carved-out GFA customer receiving service under schedule 23 beginning April 1, 2005 and specified the charges for that service. (And East River was an active participant in that proceeding.) Accordingly, it was appropriate to allow an April 1, 2005 effective date in this proceeding applying schedule 23 service to East River.¹⁷

17. The Basin Cooperatives nevertheless argue that the February 17 Order errs in its failure to demonstrate either good cause or extraordinary circumstances that would support granting waiver of the 60-day prior notice requirement. We disagree. As noted above, good cause existed and the Commission was within its rights to exercise its discretion and allow an effective date upon less than 60 days' prior notice, *i.e.*, allow an April 1, 2005 effective date.

18. Even if the Commission were required to show extraordinary circumstances, they are present here; the Commission has indicated that even if the other circumstances warranting a grant of waiver of the 60 day prior notice requirement are not present, it will still grant waiver when agreements for service are filed after service has commenced (as these service agreements were) if extraordinary circumstances are present.¹⁸ As we found in February 17 Order, and note above, the customers to the six unexecuted schedule 23 service agreements received adequate prior notice that the schedule 23 charges would be charged to them. The parties to carved-out GFAs were put on notice through the

¹⁷ February 17 Order at P 26.

¹⁸ *Central Hudson*, 60 FERC at 61,339. In *Central Hudson II*, the Commission addressed the contention that it had replaced the good cause standard with the extraordinary circumstance standard. The Commission explained that the statutory standard is good cause, and that *Central Hudson* simply elaborated that, when a filing is made after the commencement of service (and thus the Commission typically would have no prior notice), the filing utility must make a stronger showing of good cause for waiver than if the filing had been made prior to the commencement of service. *Central Hudson II*, 61 FERC at 61,355.

Commission's schedule 23 orders in Docket No. ER05-447-000 that they would be subject to the schedule 10 and 17 charges pursuant to schedule 23 which had been made effective April 1, 2005. Moreover, the Midwest ISO TOs' original filing in Docket No. ER05-447-000, which included the carved-out GFAs and expressly named all of these customers, was made more than 60 days in advance of the requested effective date of April 1, 2005. Further, as noted in the February 17 Order, the Basin Cooperatives were active parties in those schedule 23 proceedings.¹⁹

19. We find the Basin Cooperatives' citation to *PG&E* to be unpersuasive. In *PG&E*, the proposal to charge the affected customers was first filed with the Commission on November 12, 1999, more than 18 months after the proposed effective date of March 31, 1998,²⁰ and the Commission ultimately denied waiver and made the effective date following 60 days from the date of filing.²¹ As indicated above, in the present case, East River received timely notice of the actual charges and the April 1, 2005 effective date through the Midwest ISO and the Midwest ISO TOs' proposal and the Commission's determinations in Docket No. ER05-447-000. The Basin Cooperatives also note that, in *PG&E*, the Commission found that the fact that customers temporarily received "free benefits" did not absolve the utility of the obligation to make a timely filing;²² however, that finding is not relevant here because we did not resolve this issue on the basis of "free benefits" and, in any event, as noted above, East River received timely notice.

¹⁹ February 17 Order at P 26. Courts have expressly affirmed the Commission's authority to deem rates effective even though the rates are not filed until months or years later. *See, e.g., City of Holyoke Gas & Electric Department v. FERC*, 954 F.2d 740, 744 (D.C. Cir. 1992) (affirming in pertinent part Commission orders waiving 60-day prior notice requirement and allowing rate to become effective in 1988, even though contract was not filed until 18 months later); *accord Barton Village, Inc. v. Citizens Utilities Co.*, 99 FERC ¶ 61,111 (2002) (granting waiver of prior notice requirement and not ordering refunds for previously-unfiled, pre-1983 agreements), *reh'g denied*, 100 FERC ¶ 61,244 (2002) (same), *aff'd in relevant part sub nom., Barton Village, Inc. v. FERC*, No. 02-4693 (2d Cir. June 17, 2004) (unpublished) (stating "we do not find that FERC's refusal to grant refunds is an abuse of discretion that we can rectify while granting proper deference to FERC").

²⁰ *PG&E*, 109 FERC ¶ 61,093 at P 15.

²¹ *Id.* at P 30; *see generally id.* at P 22-29.

²² *Id.* at P 29.

20. The Basin Cooperatives note that the Commission, in *PG&E*, distinguished *Gulf States Utilities Co. v. FERC*, 1 F.3d 288, 292-93 (5th Cir. 1993) (*Gulf States*), in which the Court of Appeals reversed the Commission's denial of waiver given that the parties were on notice of the actual charges and the charges were set out in an agreement between the parties.²³ Here, as in *Gulf States*, the customer East River received notice of the applicability of schedule 23 and schedule 23's rates for service to it. Thus, as discussed above, we find the original schedule 23 filing in Docket No. ER05-447-000 and Commission's determinations in that proceeding provided notice to East River that the schedule 23 charges would be applicable to it effective April 1, 2005.²⁴

21. Finally, *Central Hudson* instructs that, in deciding waiver cases, the Commission should balance the need to deter violations of the FPA filing requirements with the requirement that rates not be confiscatory.²⁵ Here, given the notice that was provided and that is discussed above, not granting waiver would inequitably penalize the utilities who have been paying these charges rather than the carved-out GFA customers who have been taking service.²⁶

²³ *Id.* at P 28.

²⁴ We note further that the Basin Cooperatives' reliance on *Midwest ISO*, 114 FERC ¶ 61,278 at P 50 is misplaced. In that case, the Midwest ISO provided less than 60 days' notice for its proposed effective date for authority to suspend service without prior Commission approval where customers are in violation of Midwest ISO's credit policy, and the Commission found that the Midwest ISO had not demonstrated good cause. The Commission stated that it was unconvinced that the Midwest ISO could implement the provision for service provided prior to the Commission's order granting such authority. Here, the customer received at least 60 days' notice of the charges applicable to it under schedule 23, and thus there is no question that application of schedule 23 to East River can be implemented effective April 1, 2005.

²⁵ *Central Hudson II*, 61 FERC at 61,357.

²⁶ See Motion to Intervene of Xcel Energy Services Inc. on Behalf of Northern States Power Company, Docket No. ER06-360-000, *et al.*, at 6-7. We note that, even if we denied waiver of notice, our policy is to direct a refund equal to the time value of revenues collected prior to the authorized effective date, not a refund of all revenues collected prior to the effective date. See *Prior Notice*, 64 FERC at 61,979-80.

B. Compliance Filing

1. The February 17 Order and March 20 Compliance Filing

22. In their March 20 compliance filing, the Midwest ISO and Midwest ISO TOs filed a revised schedule 23 *pro forma* service agreement and conforming changes to the six unexecuted service agreements to comply with the February 17 Order. As noted above, the February 17 Order required revisions to:

- (1) incorporate only those provisions of the TEMT that are applicable to carved-out GFA customers under schedule 23;
- (2) provide for the service agreement to automatically terminate upon termination of the underlying carved-out agreement; (3) specify payment procedures; and (4) specify the information required to be provided by the customer.²⁷

2. The Basin Cooperatives' Protest

23. In their protest, the Basin Cooperatives argue that the Midwest ISO and Midwest ISO TOs' March 20 compliance filing does not comply with or directly contravenes the Commission's findings in the February 17 Order in several ways, and therefore, the Commission should summarily reject the compliance filing.

24. First, the Basin Cooperatives argue that the March 20 compliance filing unnecessarily incorporates a portion of the Market Participant agreement in section 3.0 of service agreement – "Section II, pages 1 and 2, to the Market Participant registration packet." The Basin Cooperatives assert that the requirement "raises concerns that [the Midwest ISO] could treat a carved-out GFA customer as a Market Participant."²⁸

25. The Basin Cooperatives also argue that the changes to sections 4.0 and 9.0 proposed in the March 20 compliance filing overreach the mandate set forth in the February 17 Order. The Basin Cooperatives note that the February 17 Order directed the Midwest ISO to acknowledge that only section 38.8.4 of the TEMT applies to carved-out GFAs, and therefore that the March 20 compliance filing's more general references to section 38.8 of the TEMT in sections 4.0 and 9.0 are overbroad.

²⁷ February 17 Order at P 19.

²⁸ Basin Cooperatives Protest at 3.

26. The Basin Cooperatives further argue that the March 20 compliance filing's changes to section 5.0 are superfluous. The Basin Cooperatives note that the February 17 Order directed the Midwest ISO to provide that the agreement terminates automatically when the underlying GFA terminates, and not that the agreement terminates upon "notification received by the Transmission Provider from the Transmission Owner."

27. Finally, the Basin Cooperatives argue that the March 20 compliance filing's incorporation of section 7 (Billing and Payment) of the TEMT in section 7.0 of the service agreement is beyond the scope of the Commission's directives in the February 17 Order. The Basin Cooperatives assert that not all of TEMT section 7 is applicable to the service agreement and nothing in the February 17 order authorizes the "entire, considerable financial and administrative burden of compliance with TEMT section 7 and related business practices" to be shifted to carved-out GFA customers.²⁹

3. Commission Determination

28. We will accept in part and reject in part the Midwest ISO's proposed revisions. We disagree with the Basin Cooperatives that requiring carved-out GFA customers to complete section II, pages 1 and 2, to the Market Participant registration packet could provide the Midwest ISO an opportunity to treat carved-out GFA customers as Market Participants. These pages contain: (1) a form asking for billing contact information (*i.e.*, names, addresses and phone numbers), and (2) an authorization form for automatic debits and/or credits (*i.e.*, contact information and financial institution information). We find that this information, along with providing other information as required under section 3.0, is consistent with our directive in the February 17 Order³⁰ and provides the Midwest ISO with the information needed to properly invoice schedule 23 charges. Providing such information will not allow the Midwest ISO to impose additional requirements applicable to Market Participants. Notably, the schedule 23 *pro forma* service agreement does not require carved out GFA customers to execute the Market Participant Agreement, a predicate to Market Participant status under the TEMT.

29. However, we agree with the Basin Cooperatives that the more general references to section 38.8 of the TEMT in sections 4.0 and 9.0 could be too broadly interpreted. We also find that these references are contradictory to the Commission's directive to only incorporate provisions of the TEMT attributable to carved-out GFA customers under

²⁹ *Id.* at 5.

³⁰ February 17 Order at P 19.

schedule 23, specifically section 38.8.4.³¹ Therefore, we direct the Midwest ISO and the Midwest ISO TOs to make a compliance filing within 30 days of the date of this order to revise sections 4.0 and 9.0 of the *pro forma* schedule 23 service agreement, as well as the six unexecuted schedule 23 service agreements, to incorporate only section 38.8.4 and the other TEMT provisions specifically referenced therein.

30. Furthermore, we agree with the Basin Cooperatives that the proposed revisions to section 5.0, specifically that the agreement would terminate upon “notification received by the Transmission Provider,” are not what the Commission directed.³² Therefore, we require the Midwest ISO and the Midwest ISO TOs to revise section 5.0 as follows:

This Service Agreement shall terminate upon termination of the Carved-Out GFA for which these Schedule 23 Charges are being assessed in accordance with any applicable Commission rules. Such termination of this Service Agreement does not absolve the Carved-Out GFA customer from payment of outstanding obligations under this Service Agreement.

31. In addition, we agree with the Basin Cooperatives that the reference to the general procedures applicable to Billing and Payment under section 7 of the TEMT in section 7.0 of the schedule 23 service agreement is overbroad because not all of TEMT section 7 is applicable to carved-out GFA customers. We therefore direct the Midwest ISO and Midwest ISO TOs to revise section 7.0 of the *pro forma* schedule 23 service agreement, as well as the six unexecuted schedule 23 service agreements, to reflect the specific provisions of TEMT section 7 that apply to carved-out GFA customers.

32. Accordingly, we accept in part and reject in part the revised tariff sheets. We direct Midwest ISO and the Midwest ISO TOs to file further revised tariff sheets consistent with this order within 30 days of the date of this order.

The Commission orders:

(A) The Basin Cooperatives’ request for rehearing is hereby denied, as discussed in the body of this order.

³¹ *Id.*

³² *See id.*

(B) The Midwest ISO's and Midwest ISO TOs' March 20 compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

(C) The Midwest ISO and the Midwest ISO TOs are hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.