

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Docket No. ER05-560-001
Inc.

ORDER ACCEPTING AND SUSPENDING PROPOSED AGREEMENT AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 24, 2006)

1. In this order, the Commission accepts for filing a proposed Seams Operating Agreement (Seams Agreement) filed on September 27, 2006, by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act (FPA).¹ The proposed Seams Agreement is between the Midwest ISO and Manitoba Hydro² (the Parties). We will accept and suspend for a nominal period the proposed Seams Agreement, make it effective September 28, 2006, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. In 2001, the Midwest ISO and Manitoba Hydro submitted a Coordination Agreement to the Commission which provided a framework for the following: 1) coordinating transmission service pricing between the Manitoba Hydro Open Access Transmission Tariff (Manitoba Tariff) and the Midwest ISO Open Access Transmission Tariff to eliminate pricing seams; 2) retaining the Midwest ISO's services to administer the Manitoba Tariff and reliability procedures; 3) coordinating transmission line loading

¹ 16 U.S.C. § 824d (2000). The Midwest ISO submitted the proposed Seams Agreement in compliance with the Commission's directive in *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,374 (2005).

² Manitoba Hydro is a Canadian Crown Corporation incorporated pursuant to the provisions of the Manitoba Hydro Act (Revised Statutes of Manitoba 1987, chapter H190) that owns and operates transmission facilities in the province of Manitoba.

relief and other potential future congestion management procedures; and 4) coordinating transmission studies and transmission planning.³ This agreement treats Manitoba Hydro comparably to a transmission owner in the Midwest ISO for purposes of transmission service pricing and revenue distribution.

3. In 2005, the Parties revised the Coordination Agreement in anticipation of the opening of the Midwest ISO's energy markets⁴ and its use of a market-based congestion scheme. The revisions clarified that the Canadian province of Manitoba would not be part of the Midwest ISO's energy market region, and that Manitoba Hydro would retain transmission line loading relief procedures to manage congestion under the Manitoba Tariff. The Parties did not have time to negotiate detailed coordination procedures for congestion management prior to the opening of the Midwest ISO energy markets. As a result, the Parties added a provision (section 6.4) obligating themselves to enter into good faith negotiations to adopt a system for coordinating Manitoba Hydro and the Midwest ISO's disparate procedures for relieving transmission congestion.⁵

4. The Commission accepted the Parties' revised Coordination Agreement on March 28, 2005⁶ and advised the Parties that they should file the agreed-upon terms and conditions for coordinating their congestion management procedures within 30 days of concluding negotiations. On September 27, 2006 the Parties submitted the instant filing in response to the March 2005 Order.

³ The Coordination Agreement was accepted, pursuant to delegated authority, by unpublished letter orders dated December 19, 2001 and March 16, 2002.

⁴ In an order dated August 6, 2004, the Commission accepted the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT), which has allowed the Midwest ISO to initiate Day 2 operations in its 15-state region. The Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights market for transmission capacity. The energy markets opened on April 1, 2005. See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043 (2005).

⁵ Manitoba uses transmission line loading relief procedures and Midwest ISO relies on economic dispatch.

⁶ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,374 (2005) (March 2005 Order).

II. The Proposed Seams Operating Agreement

5. The Midwest ISO states that the proposed Seams Agreement between the Midwest ISO and Manitoba Hydro addresses:

- a) the designation of Coordinated Flowgates and Reciprocal Coordinated Flowgates;
- b) the method of flow calculations;
- c) the posting of firm market and non-firm economic market flows to the Interchange Distribution Calculator (IDC);
- d) provision of other data to the IDC for the computation of the effect of all tagged transactions and market flows;
- e) the circumstances under which and the extent to which each Party will reduce flows and/or dispatch generation;
- f) and compensation for the voluntary rescheduling of transmission and generation outages.

The Midwest ISO explains that the proposed Seams Agreement between the Midwest ISO and Manitoba Hydro is modeled on previous agreements⁷ executed by the Midwest ISO and PJM Interconnection, L.L.C. (PJM),⁸ and by the Midwest ISO and MAPPCOR.⁹

⁷ The Midwest ISO highlights the differences that exist between the proposed Seams Agreement and its precursor agreements. For example, the Parties propose certain revisions to clarify their respective obligations and to address the hydraulic nature of Manitoba Hydro's generation. Also, the Parties propose language different from the PJM and MAPPCOR agreements to conform some of the general contractual clauses to those in the Coordination Agreement and to Canadian law. The Midwest ISO has highlighted additional differences that are discussed herein.

⁸ The Commission approved the Midwest ISO-PJM joint operating agreement (PJM agreement) in *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,251 (2004), *order on reh'g*, 108 FERC ¶ 61,143 (2004). The Commission also "encourage[d] market participants to use the [PJM agreement] as a model or starting point for seams agreements, particularly with respect to the seams with

(continued...)

The Midwest ISO requests that the Commission accept the proposed Seams Agreement without modification or amendment.

6. Article IV provides for the Parties' exchange of real time operating data, information and projections.¹⁰ In addition to identifying the data and information to be exchanged, Article IV outlines the time frames, schedules and processes for transferring the data. The Midwest ISO states that these data exchange provisions essentially mirror the provisions in other joint operating agreements to which the Midwest ISO is a party (*e.g.*, the PJM and MAPP COR agreements). Most provisions are identical to the MAPP COR agreement, though a few variations exist. For example, the Parties' agreement refers to dispatching on "hourly generation schedules" rather than in "generation merit order," since Manitoba Hydro operates a predominantly hydroelectric system which is not dispatched in merit order. In addition, the proposed Seams Agreement removes overlapping data transfer obligations that are present in the MAPP COR agreement.¹¹ Article IV also provides that each Party shall bear its own costs of transferring information related to reliability coordination.

the various utilities in the MAPP [Mid-Continent Area Power Pool] region[.]" *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004), *order on reh'g*, 109 FERC ¶ 61,157 (2004).

⁹ MAPP COR is the contractor for members of MAPP. MAPP COR administers the MAPP Restated Agreement, a contract that governs the MAPP organization. The Midwest ISO and MAPP COR executed a seams operating agreement (MAPP COR agreement), abiding by the Commission's encouragement to use the PJM agreement as a model; the Commission accepted the MAPP COR agreement in *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169 (2005) (MAPP COR Order).

¹⁰ Data subject to exchange includes: real time and projected operating data, SCADA data, EMS models and operations planning data. This data gives the following information: *e.g.*, real-time information on generation status, transmission line status, loads, use of reservations, control area demands, hourly generation schedules, etc. See Seams Agreement section 4.1.

¹¹ For example, sections 4.1.4.2(iii) and 5.1.4 of the MAPP COR agreement cover the same data but prescribe different requirements for exchanging it. The Seams Agreement simply omits section 4.1.4.2(iii).

7. Article V addresses how the Parties will calculate total transfer capability (TTC), available transfer capability (ATC), available flowgate capacity (AFC), and related data.¹² These calculations pertain to forecasts of transmission capacity that may be available for transmission customers. Article V also designates how the Parties will coordinate and exchange the necessary data.

8. The provisions in proposed Seams Agreement Article V are similar to the MAPPCOR agreement Article V provisions in most respects, but there is one substantive difference; the proposed Seams Agreement omits section 5.1.10 of the MAPPCOR Agreement,¹³ which concerns how parties to the MAPPCOR agreement will calculate certain allocations of flowgate capacity on Reciprocal Coordinated Flowgates.¹⁴ The Midwest ISO explains that this omission is consistent with a protest filed with the

¹² The TTC/ATC/AFC Protocol in Attachment A of the proposed seams agreement specifies the criteria for satisfying the Article V requirements.

¹³ The omitted MAPPCOR agreement section 5.1.10 reads:

Each Party will identify and document rights to capacity of Flowgates comprised of multiple elements owned by multiple parties, such as but not limited to NDEX [North Dakota Export Interface]. These rights, other than transmission tariff service entitlements, have been established through existing contracts, operating agreements and operating guides. Each Party agrees to honor transmission service up to the rights of affected parties established for these Flowgates.

¹⁴ MAPPCOR agreement Attachment B section 6.1 provides the following definition for Reciprocal Coordinated Flowgates (and Reciprocal Entities):

In order to coordinate congestion management on a proactive basis, Operating Entities may agree to respect each other's Flowgate limitations during the determination of AFC/ATC and the calculation of firmness during real-time operations. Entities agreeing to coordinate this future-looking management of flowgate capacity are **Reciprocal Entities**. The Flowgates used in that process are **Reciprocal Coordinated Flowgates (RCFs)**.

Commission by Manitoba Hydro regarding the MAPPCOR agreement.¹⁵ By omitting MAPPCOR agreement section 5.1.10 from the Parties' proposed Seams Agreement, the Midwest ISO states that, in this respect, the proposed Seams Agreement is more comparable to the PJM agreement (which does not contain the MAPPCOR section 5.1.10 language).

9. Even though Article V does not include the MAPPCOR section 5.1.10 language, the Parties' proposed Seams Agreement refers to the MAPPCOR agreement and the omitted language. Specifically section 6.6.3 of the Attachment B Congestion Management Process Protocol (Attachment B Protocol) contains this reference to MAPPCOR agreement section 5.1.10:

“For the purposes of this [s]ection 6.6.3, the [MAPPCOR agreement] shall not be considered a “Reciprocal Agreement” to the extent that MAPPCOR seeks to obtain additional capacity to provide transmission service over the facilities of MAPP members who, in reliance upon [MAPPCOR agreement section 5.1.10] do not recognize an obligation pursuant to this [s]ection 6.6.3 to share or transfer unused capacity with respect to their facilities.”

¹⁵ Paragraph 41 of the MAPPCOR Order summarizes Manitoba Hydro's concerns with MAPPCOR agreement section 5.1.10:

“Manitoba Hydro states that section 5.1.10 of the [MAPPCOR agreement] appears to operate as an exception, for multi-party flowgates, to the coordination procedures for coordinated flowgates. It states that this provision appears to base the allocation of flowgate capacity for specific flowgates on existing agreements and operating guides rather than historical use, which is the allocation methodology specified in Attachment B to the [MAPPCOR agreement]. Manitoba Hydro states that allocation of flowgate capacity based on operating guides is indefensible because operating guides were not intended to define rights to use of the system within flowgates, or to bind allocations of rights to simultaneously dependent operating points with other flowgates.

Based on these arguments, Manitoba Hydro argued that section 5.1.10 should be deleted in its entirety from the MAPPCOR agreement, or in the alternative, the reference to MHEX, the Manitoba Hydro flowgate that forms part of the Manitoba-United States interface, be deleted. Manitoba Hydro's alternative request was granted and reference to MHEX was deleted from the section 5.1.10 language.

10. Article VI deals with coordination. The Midwest ISO explains that coordinating transmission systems across regional lines can help avoid the creation of flow on another party's system where that flow could cause an overload condition. Flowgate coordination can be achieved through processes of congestion management. The proposed Attachment B Protocol is such a process.¹⁶ Article VI provides for implementation of the Attachment B Protocol. Article VI also creates certain exceptions¹⁷ in order to treat Manitoba Hydro more like a transmission owner than a separate party to the proposed Seams Agreement. The Midwest ISO explains that treating Manitoba Hydro more like a transmission owner accounts for the high degree of integration in administering the Parties' tariffs and to avoid placing an administrative burden on the Midwest ISO.

11. Article VII deals with, among other things, the coordination of voltage control and reactive power through the establishment of Business Practices, the coordination and compensation for rescheduling outages, transmission planning, emergency operations and reserve sharing. Regarding Article VII's reserve sharing provisions, each Party will make transmission capacity available for reserve sharing. The Midwest ISO states that these provisions ensure that each Party will continue to honor provisions of regional reserve sharing agreements, including system redispatch if required to meet the reserve sharing provisions.

12. Article VIII provides that the effective date of the agreement shall be the date specified by the Commission. Article IX addresses the Parties' rights to review data and to access dispute resolution procedures. The dispute resolution provisions are comparable to those in the Coordination Agreement. Article IX provides both formal and informal dispute resolution procedures.

13. Article XI confirms that the proposed Seams Agreement does not modify the respective agreements between the Midwest ISO and the owners of the transmission facilities over which the Midwest ISO provides service. Article XI also provides for routine issuance of invoices for amounts due between the Parties, payment procedures, and audit rights to ensure the accuracy of charges.

¹⁶ The Midwest ISO explains that the Attachment B Protocol establishes the procedures by which each Party will respect the other Party's flowgates. The Midwest ISO states that this Attachment B Protocol is also "functionally consistent" with the PJM agreement's Congestion Management Process.

¹⁷ See Midwest ISO transmittal letter at page 8 for a list of the exceptions.

14. Article XIII, among other things, contains the standard necessary for amending the agreement: “Except as may otherwise be provided herein, neither this Agreement nor any of the terms hereof, may be amended unless such amendment is made in writing, signed by the Parties, and filed and accepted by FERC.”

15. The Midwest ISO requests that the Commission waive its 60-day prior notice requirement and requests an effective date of September 28, 2006. The Midwest ISO states that this proposed agreement does not constitute a change or amendment to an existing rate schedule, and granting the requested effective date will ensure timely and efficient coordination of the Midwest ISO’s market-based congestion management procedures with Manitoba Hydro’s non-market-based congestion management procedures.

III. Notice and Responsive Pleadings

16. Notice of the Midwest ISO’s filing was published in the *Federal Register*, 71 Fed. Reg. 59,110 (2006), with interventions and protests due on or before October 18, 2006. Motions to intervene were timely filed by Manitoba Hydro, MAPPCOR, Minnkota Power Cooperative, Inc. (Minnkota)¹⁸ and Otter Tail Power Company (Otter Tail). In addition to their motions to intervene, MAPPCOR submitted comments, Minnkota submitted a protest, and Otter Tail submitted comments in support of the proposed Seams Agreement. The Midwest ISO and Manitoba Hydro both filed answers in response to MAPPCOR’s and Minnkota’s comments. Minnkota filed a reply comment to the Midwest ISO’s answer.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁸ Minnkota is a generation and transmission cooperative incorporated in Minnesota and a member of MAPP but Minnkota is not a member of the Midwest ISO. Minnkota is party to two interconnection agreements with Manitoba Hydro. Minnkota is a party to several integrated transmission agreements with Otter Tail and also a party to settlement agreements (GFA Settlement Agreements) with the Midwest ISO that address the treatment of Minnkota’s ITAs under the TEMT. See *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,491. (2005).

18. 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 to an answer unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's, Manitoba Hydro's, and Minnkota's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Authority under the Proposed Seams Agreement

19. In its protest, Minnkota argues that provisions of the proposed Seams Agreement purport to give authority to the Midwest ISO and Manitoba Hydro to make decisions on behalf of other entities (including Minnkota).¹⁹ Minnkota states that there are provisions that appear to authorize the Parties to establish or modify the methodologies and calculations that determine flowgate allocations, TTC, ATC, and AFC.²⁰

20. We disagree with Minnkota's arguments. Much of the information to be shared between the Midwest ISO and Manitoba Hydro is merely information posted on OASIS nodes and would already be known to transmission owners in the region. Moreover, any changes to alteration of netting and counterflow practices for firm and non-firm AFC postings "shall be made with mutual agreement of Manitoba Hydro and [the Midwest ISO], considering stakeholder review and input."²¹ Finally, we will not adopt Minnkota's requested changes to language in this Seams Agreement, particularly without any indication of the degree of support for such changes by all interested parties. Instead, we would anticipate that depending on the ultimate outcome in this proceeding, the parties would determine if further review by stakeholders is required.

¹⁹ See Protest at 24 through 26.

²⁰ See Reply Comments at 13.

²¹ See Original Sheet No. 40.

2. Hearing and Settlement Judge Procedures

21. Minnkota is concerned that allocation sharing provisions of the proposed Seams Agreement could subject Minnkota's Manitoba Hydro Interface (MHEX)²² transmission rights to third-party use without compensation. Minnkota seeks confirmation that the Midwest ISO will respect Minnkota's transmission rights.

22. Minnkota also asserts that the Midwest ISO TEMT does not provide a basis for including Minnkota's facilities in the allocation sharing provisions of the proposed Seams Agreement. Minnkota points out that it has not given the Midwest ISO control or use of its facilities and capacity rights.

23. The Midwest ISO responds that Minnkota's arguments that it would be deprived of transmission rights are misplaced and that Minnkota confuses loop flows with contractual and ownership rights. According to the Midwest ISO, the proposed Seams Agreement does not grant Manitoba Hydro any rights to schedule transactions on MHEX or on any other flowgates in excess of its own contractual or ownership rights. Rather, the congestion management process provides a method for dealing with loop flows.

24. The Midwest ISO further states that, since Minnkota is a member of MAPP, any allocation sharing that occurs would actually have Minnkota's tacit consent. The Midwest ISO asserts that MAPPCOR entered into the MAPP agreement as agent on behalf of all of the MAPP members (including Minnkota).

25. Manitoba Hydro addresses Minnkota's argument that it has contractually defined rights to capacity on MHEX that must be respected. Manitoba Hydro argues, among other things, that certain attachments to Minnkota's protest do not, as Minnkota argues, reflect contractual "allocation[s] of transfer capability rights" among various owners of MHEX.

26. Our preliminary analysis indicates that Minnkota's arguments regarding whether the allocation sharing provisions of the proposed Seams Agreement could subject Minnkota's MHEX transmission rights to third-party use without compensation raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately resolved in the hearing and settlement judge procedures ordered below.

²² MHEX is defined by Minnkota as the flowgate that forms part of the Manitoba-U.S. Interface and comprises facilities owned by Manitoba Hydro, Minnkota and other MAPP and Midwest ISO members. Minnkota states that its ownership share of the MHEX consists of portions of two of the four high-voltage transmission lines that make up MHEX.

27. Our preliminary analysis indicates that the proposed Seams Agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed Seams Agreement for filing, suspend it for a nominal period, to become effective September 28, 2006, as requested, subject to refund and set it for hearing and settlement judge procedures.

28. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²³ 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.²⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning 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 or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Seams Agreement is hereby accepted for filing and suspended for a nominal period, to become effective September 28, 2006, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a

²³ 18 C.F.R. § 385.603 (2006).

²⁴ 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. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

public hearing shall be held concerning the justness and reasonableness of the Seams Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

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

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.