

124 FERC ¶ 61,309
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Missouri River Energy Services and Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER08-370-000 ER08-370-001 ER08-370-002 ER08-370-003
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Missouri River Energy Services and Western Minnesota Municipal Power Agency	Docket No. EL08-22-000
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ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF SHEETS,
GRANTING INTERIM DECLARATORY RELIEF,
CONSOLIDATING PROCEEDINGS, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2008)

1. In this order, we accept for filing Missouri River Energy Services' (MRES) proposed transmission formula rate template under Attachment O to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT) and suspend it for a nominal period, to become effective October 1, 2008, as requested, subject to refund. In addition, we grant, for an interim period, a related petition for a declaratory order to permit MRES and Western Minnesota Municipal Power Agency (Western Minnesota) to combine their financial data for the purpose of calculating MRES's rates pursuant to its formula rate template in Attachment O of the Midwest ISO TEMT. We also consolidate the proceedings and establish hearing and settlement judge procedures in order to explore disputed issues of material fact.

I. Background

2. MRES is a joint action agency made up of 60 municipal utility members. These members are located within and outside of the Midwest ISO footprint. MRES purchases energy from utilities and acts as a committee in making decisions regarding the acquisition and delivery of energy resources and related services. MRES has concluded that joining the Midwest ISO as a transmission-owning member would benefit MRES, its members, and their customers because the Midwest ISO has an established energy market, provides nondiscriminatory transmission service, and in the future will have an ancillary services market. These resources will allow MRES to supply its members' needs at competitive rates and with reliable service.

3. Western Minnesota is a joint action agency of 24 municipalities located in Minnesota, 23 of which are also members of MRES. Western Minnesota's principal activities are: (1) the acquisition and ownership of power supply and transmission projects; and (2) the sale of Western Minnesota's entitlement to the power, energy and transmission capability associated with these projects to MRES under separate power supply and transmission capacity agreements.¹ MRES's purchases of this power and transmission are used to supply power requirements of 57 of its members over and above the hydroelectric power allocated to them by Western Area Power Administration (WAPA). In addition, under an administrative services contract, MRES's staff performs administrative services for Western Minnesota.

II. The Filings

4. On December 20, 2007, in Docket No. ER08-370-000, MRES² proposed several revisions, pursuant to section 205 of the Federal Power Act (FPA),³ to the formula rate template specified in the *pro forma* Attachment O to the TEMT. The Attachment O

¹ Western Minnesota owns a 55 MW oil-fired peaking plant, a 16.47 percent entitlement in a 1,650 MW baseload plant, and several contracts for capacity and transmission with member utilities.

² Midwest ISO joined the filing for the sole purpose of fulfilling its role as administrator of the TEMT.

³ 16 U.S.C. § 824d (2006).

formula rate enables Midwest ISO transmission-owning members to calculate their annual transmission revenue requirement (ATRR).⁴

5. MRES is seeking Commission approval for certain variances to the generic Attachment O formula rate template to correct anticipated shortcomings in the generic formula as it would apply to MRES. MRES states that, when applied to its cost data, the revised formula it proposes reflects MRES's transmission cost of service more accurately than the generic formula.

6. The first proposed variance to the *pro forma* Attachment O formula template is the addition of a line item that directly assigns to the ATRR the debt service expenses related to individual transmission project bond resolutions, rather than allocating all debt service expenses using a gross plant allocator.

7. The second proposed variance is the addition of a separate gross plant allocator that excludes from the numerator plant financed under the individual transmission project bond resolutions. The adjusted gross plant allocator will be used to allocate annually the balance of debt service expenses not directly assigned to transmission. This variance relates directly to the first proposed variance in order to avoid overstating the debt service portion under MRES's ATRR.

8. Third, MRES proposes to directly assign property tax expenses to transmission instead of utilizing the gross plant allocator. MRES points out that the Attachment O template currently applies a gross plant allocator to the company's total property taxes to determine property taxes allocated to the ATRR.

⁴ The generic versions of Attachment O in the Midwest ISO TEMT may use one of three different data sources: (1) FERC Form No. 1; (2) Rural Utilities Service Form No. 12; or (3) United States Department of Energy, Energy Information Administration (EIA-DOE) Form No. 412. Attachment O allows for the development of transmission revenue requirements either on a traditional "return and depreciation" cost-of-service basis or a cash flow cost-of-service basis. Under the traditional method, investment in capitalized expenses is recovered through a combination of depreciation and amortization and a return on the undepreciated and unamortized costs based on a utility's weighted average cost of capital. However, under the cash flow basis used by most municipal and cooperative entities, recovery of capitalized costs is provided through inclusion of principal and interest expenses for debt plus a margin component to satisfy obligations under bond covenants or other financing requirements. As a joint action agency serving municipal member customers, MRES proposes to use the cash flow formula rate template with inputs sourced from the EIA-DOE Report No. 412.

9. Finally, the fourth proposed variance excludes amortization of debt discount and premium as an adjustment to ATRR separate from the debt service expenses in the Attachment O template. MRES proposes to exclude this line item since amortization is a non-cash item that does not affect debt service costs, and the principal and interest reflected in the debt service payments already include any discount or premium associated with the debt issuances.

10. MRES anticipates that it will transfer control of its transmission facilities to the Midwest ISO on October 1, 2008. Accordingly, it requests that the proposed rate formula be accepted to become effective on that date. MRES requests waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2008), to permit an effective date of more than 120 days after the filing. MRES asserts that such an advanced effective date is required to allow MRES to resolve any implementation details associated with becoming a transmission-owning member of the Midwest ISO.

11. In a related filing, under Docket No. EL08-22-000, MRES and Western Minnesota seek a declaratory order permitting them to combine their financial information for the purpose of calculating MRES's transmission rates under its proposed Attachment O transmission formula. MRES and Western Minnesota also request waiver of the filing fees associated with this petition.

III. Notices of Filings and Responsive Pleadings

12. Notice of MRES's proposal to revise Attachment O was published in the *Federal Register*, 73 Fed. Reg. 1219 (2008), with interventions and protests due on or before January 22, 2008. Notice of MRES and Western Minnesota's petition for declaratory order was published in the *Federal Register*, 73 Fed. Reg. 1876 (2008), with interventions and protests due on or before January 22, 2008. Midwest ISO Transmission Owners⁵ and Midwest Stand-Alone Transmission Companies (MSATs)⁶ filed timely

⁵ The Midwest ISO Transmission Owners 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 Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, Missouri); City Water, Light & Power (Springfield, Illinois); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a

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motions to intervene and protest in Docket No. ER08-370-000 only; Otter Tail Power Company (Otter Tail), a Midwest ISO Transmission Owner, filed a separate protest. WAPA filed a timely intervention and protest in both proceedings. Basin Electric filed a motion to intervene and protest in both proceedings, as well as a request for consolidation of the proceedings. The Organization of MISO States filed a notice of intervention in both proceedings.

13. On February 5, 2008, MRES filed a notice of partial withdrawal and motion for leave to answer and answer to the protests. In its withdrawal notice, MRES states that upon reviewing intervenors' comments, there remains significant confusion over the proper method for recovering costs of transmission over the WAPA Integrated Transmission System (WAPA IS) under Attachment O. Therefore, MRES proposes to withdraw the variances it had originally sought in its proposed Attachment O rate formula relating to transmission service over the WAPA IS. MRES also asks the Commission to deny or reject the protests of Otter Tail and Basin Electric, and submits substantive answers to their protests. Notice of MRES's notice of partial withdrawal was published in the *Federal Register*, 73 Fed. Reg. 9784 (2008), with interventions and protests due on or before February 26, 2008. No interventions or protests responsive to this filing were filed.

14. On March 14, 2008, the Director, Division of Tariffs and Market Development-Central, acting pursuant to delegated authority, issued a deficiency letter requesting additional information from MRES for the purpose of evaluating the remaining proposed variations from the *pro forma* Attachment O formula rate. On April 14, 2008, MRES filed an amendment to its application in response to the Commission's deficiency letter. Notice of MRES's response to the deficiency letter was published in the *Federal Register*, 73 Fed. Reg. 22,128 (2008), with interventions and protests due on or before May 5, 2008. Otter Tail filed a protest.

15. On May 5, 2008, MRES made a supplemental filing on behalf of ITC Midwest correcting information from MRES's April 14 amendment. Notice of MRES's May 5,

Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁶ The MSATs include American Transmission Company, LLC, International Transmission Company, LLC d/b/a ITCTransmission, ITC Midwest, LLC, and Michigan Electric Transmission Company, LLC.

2008 supplemental filing was published in the *Federal Register*, 73 Fed. Reg. 28,447 (2008), with interventions and protests due on or before May 27, 2008. No interventions or protests responsive to this filing were filed.

16. On May 14, 2008, MRES filed a request for the Commission to defer action in these proceedings, stating that it had initiated discussions with Otter Tail to determine whether Otter Tail's concerns could be accommodated, and consenting to a thirty-day extension of time for the Commission to act on its Attachment O formula rate filing and petition for declaratory order. On July 16, 2008, MRES filed a request for the Commission to approve its proposed Attachment O rate formula and grant the petition for a declaratory order, detailing its discussions with Otter Tail and stating that it was in the process of developing guiding principles with Otter Tail related to procedures for advance review of MRES's arrangements for new leased facilities in the future. Notice of MRES's filing was published in the *Federal Register*, 73 Fed. Reg. 43,748 (2008), with interventions and protests due on or before August 6, 2008. Otter Tail filed a timely protest, indicating that it has not resolved its issues with MRES's proposed Attachment O revisions.

17. Great River filed comments on August 11, 2008 regarding the treatment of transmission facilities leased by MRES.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will accept Great River's late-filed comments given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept MRES's answer because it has provided information that assisted us in our decision-making process. We deny MRES's

request therein that we reject the initial protests of Basin Electric and Otter Tail, as these filings do not violate any applicable statute, rule, or order.⁷

B. Proposed Attachment O (Docket No. ER08-370-000, *et al.*)

1. MRES's Proposal

21. In its Attachment O filing, MRES initially proposed seven revisions to the formula rate methodology, three of which were related to Account No. 565 costs of transmission service over the WAPA IS. A number of parties, including WAPA, Otter Tail, Basin Electric, MSATs and Midwest ISO TOs, objected to the substance of the latter three variances, arguing that they are inconsistent with Commission precedent. Subsequently, MRES withdrew all three of these proposed Account No. 565 revisions from our consideration.⁸ MRES and the Midwest ISO are therefore directed to file revised tariff sheets reflecting the withdrawal of the Account No. 565-related variances within 30 days of the date of this order.

22. As described above, the four remaining proposed variances largely concern the direct assignment of debt service expenses, related to individual transmission project bond resolutions, and direct assignment of property taxes, rather than allocating all debt service expenses and property taxes using a gross plant allocator.

23. MRES states that it is proposing the variances because it is able to more accurately allocate to transmission that portion of Western Minnesota's debt service expense associated with issuances under individual transmission project bond resolutions, and because it is able to segregate property taxes between generation, transmission and general plant based on internal records. These internal accounting records detail property taxes paid by Western Minnesota and MRES to taxing districts in six states.⁹

⁷ 18 C.F.R. § 385.2001(b) (2008).

⁸ Notice of Partial Withdrawal of the Attachment O Variance Filing and Motion for Leave to Answer And Answer of Missouri River Energy Services, Docket No. ER08-370-001 (Feb. 5, 2008).

⁹ The six states are Montana, Wyoming, North Dakota, South Dakota, Nebraska, Minnesota and Iowa (*see* Exhibit RJW-102).

2. Protests

24. Otter Tail and Basin Electric request that the Commission deny the proposed direct assignment of debt service and property tax expenses because MRES has not supported the proposal and the filing raises questions as to whether the proposed direct assignments are legitimate and accurately computed. Otter Tail maintains that MRES has not shown that Western Minnesota's transmission project has been maintained as a separate operating subsidiary rather than merged into the broader corporate body or that these functions' respective financial affairs are not intermingled. Basin Electric points out that notes included in Attachment O refer to workpapers that have not been provided in the filing.

25. In addition, Otter Tail takes issue with MRES's claimed margin requirement in its Attachment O.¹⁰ Otter Tail contends that MRES's margin requirement is discriminatory because MRES has not shown that the amount is consistent with that assessed to its own customers. Otter Tail states that MRES does not provide sufficient detail to show how the proposed direct assignment of debt affects the claimed margin requirement now and in the future.

26. Otter Tail states that during discussions with MRES, it became apparent that MRES does not assess the same margin requirement to its members as it would assess under its proposed Attachment O. Specifically, MRES's proposed Attachment O uses a gross margin of \$5.9 million on a total company basis, whereas MRES is charging its own customers a net margin of less than \$1 million. The disparity, according to Otter Tail, arises from MRES's improper treatment of interest earned on bond proceeds. Otter Tail notes that MRES's Annual Report indicates that MRES invested a portion of its

¹⁰ The *pro forma* Attachment O cash flow formula template includes a line item allowing for the recovery of margin requirements. As stated in Note H of the template, the margin requirement represents a return component for utilities utilizing the cash flow methodology. Since entities such as MRES do not sell stock to investors to raise equity capital, the margin requirement allows the utility to ensure its ATRR is sufficient to satisfy the requirements of debt service covenants or other financial requirements. A margin requirement expressed as a percentage of interest expenses is commonly referred to as the "times interest earned ratio," or TIER, and a margin requirement expressed as a percentage of debt service expenses is commonly referred to as a "debt service ratio" or DR. Further, Note H states that transmission owners must provide work papers showing derivation of claimed margin requirements, and the Midwest ISO will review such filings to assure that the margin requirements are consistent with those applicable to native load or required by bond covenants. MRES's Attachment O includes in its formula rate an input for margin requirement of \$5.9 million on a total company basis.

bond proceeds, yielding about \$5 million of interest revenue. It argues that the Commission should require MRES to include, as a reduction to the ATRR, the amount of interest it is receiving on the invested bond proceeds, so that the ATRR reflects a net margin requirement comparable to that MRES assesses to its members.

27. Further, Otter Tail and Basin Electric protest MRES's proposed future inclusion of lease payments associated with transmission facilities it may lease from its members in the future. Otter Tail argues that the filing fails to specify which transmission facilities MRES may lease from its customers and whether the member cities' facilities qualify as transmission facilities under the Commission's seven-factor test. In addition, since the leases are not public documents like rate schedules, Otter Tail asks the Commission to require MRES to provide parties the opportunity to review the information as a requirement for inclusion in Attachment O.

28. Otter Tail further argues that since MRES wants to combine its books with Western Minnesota, the allocation of costs is an important issue. Specifically, Otter Tail states that it has concerns with the lack of detail related to Western Minnesota's employees, and MRES's wages and salaries, payroll taxes, and operation and maintenance and administrative and general expenses. Otter Tail states that it appears that MRES's proposal to mix direct assignment and general allocation will result in massive over collections if Western Minnesota's \$26 million special transmission project is added to the Otter Tail pricing zone. Otter Tail states that the MRES/Western Minnesota 2006 Annual Report shows the annual cost of the \$26 million special transmission project as \$2.7 million, but if MRES allocates the ATRR to the special transmission project based on a gross plant ratio, customers in the Otter Tail pricing zone would be charged a revenue requirement of \$7.2 million for the facilities.

3. MRES's Answer

29. In response to Otter Tail's arguments concerning MRES's claimed margin requirement, MRES states that it is proposing to abide by the generic Attachment O formula on this issue and does not seek a variance relating to the margin requirement. It states that Attachment O does not provide for crediting interest earned on invested bond proceeds and that the Midwest ISO reviewed MRES's margin requirement and did not object to it.

30. In response to Otter Tail's claim that the proposal will result in massive overcollection of costs associated with Western Minnesota's special transmission project, MRES clarifies that its proposal is to assign directly only those costs that can be directly assigned while allocating the remainder according to conventional criteria. MRES also states that it is not requesting a variance from the Midwest ISO's standard method of allocating ATRR among pricing zones on a gross plant basis. MRES adds that Otter Tail's reference to costs of Western Minnesota's special transmission project in the annual report refers only to the financial statements of Western Minnesota, which do not

include MRES's operation and maintenance and administrative and general costs associated with payments to Otter Tail on an annual basis.

4. Discussion

31. Upon review, we find that the issues raised by Otter Tail and Basin Electric regarding MRES's proposed Attachment O involve issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in hearing and settlement judge procedures. Therefore, we accept MRES's proposed Attachment O for filing, suspend it for a nominal period, grant waiver of the 120-day maximum notice requirement to make it effective October 1, 2008, subject to refund, and set it for hearing and settlement judge procedures.

32. 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, 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.¹¹ 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.¹² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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. If settlement discussions continue, the settlement judge shall file a report at least every sixty days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

C. Combined Financial Information (Docket No. EL08-22-000)

1. MRES and Western Minnesota's Proposal

33. In their request for declaratory order, MRES and Western Minnesota seek to combine their financial statements as necessary to reflect the contractual and economic

¹¹ 18 C.F.R. § 385.603 (2008).

¹² 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 background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

relationships between the two organizations. For over 20 years, MRES and Western Minnesota have issued combined audited financial statements to reflect their relationship. They argue that since MRES is seeking to become a transmission-owning member of the Midwest ISO and Western Minnesota is not, the cost data used to calculate MRES's ATRR must include both MRES and Western Minnesota financial data.

34. In support of their petition, MRES and Western Minnesota state that MRES is Western Minnesota's only customer and that Western Minnesota owns the majority of generating and transmission facilities that MRES uses to serve its members. In addition, Western Minnesota facilitates MRES's generation and transmission construction and acquisition efforts by issuing tax-exempt debt, and revenue that MRES collects is pledged as security for repayment of Western Minnesota's debt. According to MRES, Western Minnesota has no employees, and MRES's staff provides administrative services to Western Minnesota through an administrative services contract. MRES states that five of MRES's current board members are also members of the board of directors of Western Minnesota. MRES and Western Minnesota also point out that they are tied together by power supply and transmission capacity agreements as well as several projects that Western Minnesota uses to supply power to MRES. Given their interdependence, MRES maintains that a combined financial statement is the only way to accurately represent the costs and the financial strength of the two organizations.

2. Protests

35. Otter Tail believes that the petition for declaratory order lacks sufficient detail concerning the relationship of MRES and Western Minnesota and the precise information intended to be included in Attachment O. Otter Tail observes that the Commission requires specificity for formula rates, and argues that neither the petition nor the proposed Attachment O filing provides such detail. Otter Tail argues that MRES should explain why Western Minnesota or MRES's members owning transmission facilities are not joining the Midwest ISO and specify its intentions with respect to Western Minnesota's one member who is not a member of MRES. Otter Tail also raises questions about apparent discrepancies as to the exact number of Western Minnesota employees.

36. Basin Electric contends that it is unclear from the two proposals exactly how MRES has combined its own financial information with that of Western Minnesota for purposes of implementing the requested variances to Attachment O. Basin Electric also argues that nowhere in either filing is it shown what portions of the Attachment O amounts relate to MRES and what portions relate to Western Minnesota.

37. In its answer, MRES explains that MRES and Western Minnesota have joint contractual histories with Basin Electric and Otter Tail, which undercuts the protesters' purported concerns about ambiguities and alleged need for more information. MRES states that the concerns related to transmission facilities, load locations and pricing zones are beyond the scope of the petition for declaratory order. However, MRES argues that

it would not have received an unqualified audit opinion from external auditors if the combination of MRES's and Western Minnesota's financial statements did not exclude inter-company transactions or duplicate charges. MRES also explains that Western Minnesota financed the acquisition of certain transmission facilities under a separate bond resolution from its power supply resources and sells to MRES rights to only those resources under a separate contract. This arrangement between Western Minnesota and MRES, it argues, ensures that both MRES and Western Minnesota segregate assets, liabilities, costs and revenues related to those particular transmission facilities from other assets, liabilities, costs and revenues relating to Western Minnesota's other financed assets.

3. Discussion

38. The issues that Otter Tail and Basin Electric raise concern allocation and assignment of MRES's and Western Minnesota's costs to MRES's revenue requirement for transmission service provided under the Midwest ISO TEMT. Otter Tail and Basin Electric have also raised these issues in protest to MRES's Attachment O formula rate filing, and we have set that filing for hearing as discussed above.

39. We find that the issues raised in response to MRES and Western Minnesota's petition for declaratory order are so closely intertwined with those raised in response to MRES's Attachment O formula rate filing that they should also be explored in the hearing. In that setting, parties will be able to address what, if any, revisions to MRES's Attachment O formula are necessary to reflect the specific relationship between MRES and Western Minnesota, and how these entities can use their consolidated financial reporting practice to ensure that the formula results in a just and reasonable ATRR. We will therefore grant Basin Electric's request to consolidate the proceedings, and set the petition for declaratory order for hearing along with MRES's Attachment O proposal.

40. For an interim period, subject to further order, we will grant MRES and Western Minnesota's petition to allow MRES and Western Minnesota to combine their financial information for the purposes of MRES's Attachment O transmission rate formula. This interim relief will permit MRES to implement its transmission formula rate proposal, and to transfer control over its transmission assets to the Midwest ISO, while the hearing is ongoing. As noted above, MRES's proposed transmission formula rate has been accepted subject to refund. At the conclusion of the hearing, when the record has been fully developed, the Commission will again evaluate MRES and Western Minnesota's request for declaratory relief.

D. Waivers

41. Regarding their request for filing fee exemption, MRES and Western Minnesota argue that section 381.108 of the Commission's Rules and Regulations, 18 C.F.R. § 381.108, exempts municipalities from the fee otherwise required under

Rule 207(c) for a petition for the issuance of a declaratory order.¹³ They note that it has been the Commission's established practice to exempt municipalities from paying the filing fee.¹⁴ In addition, they note that the Commission has specifically waived such fees for municipalities seeking to join Commission-approved RTOs.¹⁵ Accordingly, MRES and Western Minnesota request exemption from the declaratory order filing fee.

42. We will grant MRES and Western Minnesota's petition for waiver of the filing fees. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required in Part 381.¹⁶

43. MRES also requests waiver of the provisions of Section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2008), to permit an effective date more than 120 days after its filing. In order to facilitate MRES's transfer of control over its transmission facilities, which is necessary to become a member of the Midwest ISO, we find good cause to grant waiver of the 120-day maximum prior notice requirement to permit an effective date of October 1, 2008, as requested. Alternatively, if MRES joins the Midwest ISO later than October 1, 2008, the revised tariff sheets shall be effective on the date it becomes a member. MRES and the Midwest ISO are directed to submit a compliance filing with revised tariff sheets reflecting the correct effective date if MRES joins the Midwest ISO later than the anticipated October 1, 2008 effective date. Any such filing is due within 30 days of the actual effective date.

The Commission orders:

(A) MRES's proposed revised Attachment O formula rate is hereby accepted for filing and suspended for a nominal period, to become effective October 1, 2008, or upon such later date as it actually joins the Midwest ISO, subject to refund, as discussed in the body of this order.

(B) MRES and the Midwest ISO are hereby directed to submit a compliance filing reflecting the withdrawal of three of MRES's initially proposed variances to

¹³ 18 C.F.R. § 381.108 (a) ("States, municipalities and anyone who is engaged in the official business of the Federal Government are exempt from the fees required by this part and may file a petition for exemption in lieu of the applicable fee").

¹⁴ See *City of Anaheim*, 112 FERC ¶ 61,208 (2005).

¹⁵ See *City of Pasadena*, 109 FERC ¶ 61,386 (2004).

¹⁶ 18 C.F.R. § 381.108 (2008).

Attachment O, within 30 days of the date of this order, as discussed in the body of this order. MRES and the Midwest ISO are hereby directed to submit a compliance filing, if necessary, within 30 days of the date that MRES joins the Midwest ISO, as discussed in the body of this order.

(C) MRES and Western Minnesota's petition for declaratory order is hereby granted for an interim period, subject to further order, as discussed in the body of this order.

(D) 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 public hearing shall be held concerning MRES's proposed transmission formula rate template under Attachment O to the Midwest ISO TEMT and MRES and Western Minnesota's petition to combine their financial reporting for purposes of Attachment O. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), 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 within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, 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.

(G) 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 prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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.

(H) MRES and Western Minnesota's request for waiver of the filing fee for its petition for declaratory order is hereby granted, as discussed in the body of this order.

(I) Basin Electric's request to consolidate these dockets is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.