125 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. and Transmission Owners of the Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER08-637-000 ER08-637-001 ER08-637-004 ER08-637-005

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS SUBJECT TO FURTHER ORDER

(Issued October 10, 2008)

1. In this order, we conditionally accept and suspend for five months, to become effective March 10, 2009, tariff sheets that effectuate the Market Service component of the Western Markets Proposal submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and certain Midwest ISO Transmission Owners[1] (collectively, Applicants), subject to further order after a technical conference. We find that the Market Service proposal, as supplemented by the responses submitted by Applicants and MidAmerican Energy Company (MidAmerican) to deficiencies identified by the Commission, is sufficiently complete to allow the Commission to proceed in evaluating whether the proposal is just and reasonable and not unduly discriminatory. However, we find that the policy and technical issues raised by the Market Service

[1] Midwest ISO Transmission Owners that joined in the filing with respect to Schedule 32 (Market Integration Transmission Service) include: American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., a Minnesota corporation, and Northern States Power Co., a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

proposal would benefit from further discussion before the Commission rules on the merits of the proposal, and we will employ a technical conference to allow the Commission an opportunity to discuss these issues with Applicants and interested parties.[2]

I. **Background**

2. On March 4, 2008, as amended on March 24, 2008, Applicants submitted a proposed new Module F to Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT or Tariff). Module F described three new services that the Midwest ISO intended to offer to Mid-Continent Area Power Pool (MAPP) members and other eligible entities: a Reliability Coordination Service (Reliability Service), an Interconnected Operations and Congestion Management Service (Seams Service), and a Market Coordination Service (Market Service). The third service, Market Service, would provide access to Midwest ISO's energy and operating reserve markets over the systems of eligible transmission owners and market participants located in MAPP and elsewhere without their transferring control of their transmission systems to Midwest ISO or providing transmission service over their systems under Module B of the TEMT.

3. In an order issued on June 13, 2008, the Commission conditionally accepted Midwest ISO's proposed Reliability and Seams Services, subject to compliance.[3] However, the Commission found that the Market Service proposal was incomplete and required Midwest ISO to address, in a compliance filing, deficiencies identified by the Commission.[4] The Commission also requested public comments on several broad policy issues.[5] The Commission noted that once Midwest ISO cured the deficiencies in the Market Service proposal, the Commission anticipated holding a technical conference to further consider the implications of the proposal.

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[2] The technical conference has been scheduled for November 12, 2008. Notice of Technical Conference, Docket No. ER08-637-000 (September 9, 2008).

[3] *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,265 (2008) (June 13 Order).

[4] The specific questions the Commission required Midwest ISO to address in its 60-day compliance filing (deficiency questions) can be found in Appendix B of the June 13 Order, 123 FERC ¶ 61,265.

[5] *Id*. P 155.

II. Compliance Filing, Notice of Filing and Responsive Pleadings

4. On August 12, 2008, Midwest ISO submitted a compliance filing that contained detailed answers (described in full below) to the Commission's deficiency questions. Notice of Midwest ISO's filing was published in the *Federal Register*, 73 Fed. Reg. 50,605 (2008), with interventions and protests due on or before September 5, 2008.[6] Comments were filed by MidAmerican, Western Area Power Administration (WAPA), Midwest Transmission Dependent Utilities (Midwest TDUs), Exelon Corporation (Exelon) and Ameren Services Company (Ameren).

5. On August 15, 2008, MidAmerican filed responses to the deficiency questions as well as draft Open Access Transmission Tariff (OATT) sheets illustrating how it plans to implement the Market Service proposal under its OATT. MidAmerican states that it is premature to make a section 205 filing to amend its OATT, but nevertheless seeks guidance from the Commission on its proposed tariff changes. Notice of MidAmerican's filing was published in the *Federal Register*, 73 Fed. Reg. 50,805 (2008), with interventions and protests due on or before September 5, 2008. Comments were filed by Midwest TDUs and Exelon.

6. Comments on the Commission's broad policy questions were filed by Alliant Energy Corporate Services, Inc. (Alliant),[7] Ameren,[8] Midwest ISO, Midwest TDUs,[9] Indianapolis Power & Light Company (IPL), Great River Energy (Great River), Midwest

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[6] *See* Notice Extending Time for Comments, Docket No. ER08-637-004 (Aug. 26, 2008).

[7] Alliant is a service company affiliate of Interstate Power and Light Co. and Wisconsin Power and Light Co.

[8] Ameren filed its comments on behalf of its affiliated public utility operating companies, Union Electric Co., Central Illinois Public Service Co., and on behalf of its affiliated marketing company, Ameren Energy Marketing (collectively, Ameren).

[9] Midwest TDUs consist of Great Lakes Utilities, Madison Gas & Electric Co., Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Municipal Electric Agency of Nebraska, and Wisconsin Public Power Inc.

ISO Transmission Owners (Midwest ISO TOs),[10] Iberdrola Renewables, Inc. (Iberdrola), MidAmerican, and Exelon.

III. Responses to Deficiency Questions

A. MITS and MITS-Comparable Charges[11]

1. Background

7. Under the Market Service proposal, a Market Service customer pays Midwest ISO a Market Integration Transmission Service (MITS) charge for the unreserved transmission service on the Midwest ISO system needed for exports from Midwest ISO to the Market Service customer resulting from Midwest ISO's security constrained economic dispatch. A Market Service customer recovers these MITS charges from its own customers under the Market Service customer's OATT.[12]

8. In addition, each Market Service customer will: (1) determine its own charge for the unreserved transmission service over its facilities for exports from the Market Service customer's system to the Midwest ISO system or the system of another Market Service customer resulting from Midwest ISO's security-constrained economic dispatch (the

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[10] Midwest ISO TOs for this filing consist of: American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Co. (IPL); Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., a Minnesota corporation, and Northern States Power Co., a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[11] This section addresses the filings of Midwest ISO, Midwest ISO Transmission Owners and MidAmerican in response to questions 1-4 in Appendix B of the June 13 Order, 123 FERC ¶ 61,265.

[12] Attachment MM at section YYYYY states that a customer under the Market Service customer's tariff shall pay a portion of the MITS charges that the Market Service customer pays to Midwest ISO.

MITS-comparable charge); and (2) provide the mechanism to recover the MITS-comparable charge from its own customers under the Market Service customer's OATT.[13]

9. The Commission found that proposed Module F lacked information about MITS and MITS-comparable charges and directed Midwest ISO to answer questions regarding these charges and required additional information.

2. Midwest ISO's Filing and Responsive Comments

10. Midwest ISO responded to the Commission's deficiency questions by stating that the MITS charge is designed to compensate the Midwest ISO transmission owners for access, by Market Service customers, to the Midwest ISO transmission system. The charge is calculated annually based on historic demand for service and is charged on a monthly basis. Midwest ISO says that, as a result, this charge is non-transactional and will not cause the distorted market outcomes that may be associated with transactional charges. Midwest ISO states that a transactional rate could create incentives for Market Service customers to modify their offers or bids in order to offset any charges. Midwest ISO states that a transactional MITS or MITS-comparable charge would present challenges for market monitoring and mitigation such as in devising reference levels for resources with hard to forecast MITS-comparable charges.

11. Midwest ISO clarifies that during the transition period, which covers the first three years after a Market Service customer commences taking Market Service, Midwest ISO will calculate the MITS charge by including charges for *all* transmission service reserved under the TEMT for delivery to the interface with a Market Service customer during the calendar year prior to it commencing taking Market Service, regardless of which entity actually reserved and paid for the service. Midwest ISO will then reduce the monthly MITS charge by the amount Midwest ISO bills in that month for point-to-point (PTP) transmission service under the TEMT for delivery to the interface with a Market Service customer. Midwest ISO also provides examples to demonstrate how it will calculate the MITS charge during the transition period, including the application of credits for reserved service under the TEMT.

12. After the transition period, a Market Service customer will receive a credit, in megawatts (MWs), against its MITS demand for *all* transmission service reserved under the TEMT for delivery to the interface with a Market Service customer, regardless of

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[13] Midwest ISO Proposal at 19. In addition, Attachment MM at section Y.4 states that customers under the Market Service customer's tariff shall pay for use of the Market Service customer's transmission system in connection with transactions in the Midwest ISO energy and operating reserve markets.

which entity reserved and paid for the service. Midwest ISO also provides examples to demonstrate how it will calculate the MITS charge after the transition period and how it will calculate and apply the credit mechanism.

13. The Midwest ISO Transmission Owners that joined Midwest ISO's response in part state that MITS charges should not be discounted. They say that the purpose of such discounting is to increase throughput, so a discount should influence an entity's behavior in deciding whether to take service. Here, they say, a discount cannot influence behavior because MITS charges are based on an entity's past behavior.

14. Ameren states that Midwest ISO has not addressed how the MITS charge would be calculated during the transition period for a Market Service customer that has no historic exports on which to base the charge (e.g., an existing transmission-owning member of Midwest ISO that converts to taking Market Service).

3. MidAmerican's Filing and Responsive Comments

15. In its response to the deficiency questions regarding recovery of MITS charges and MITS-comparable service, MidAmerican states that during the transition period, it will recover MITS charges that Midwest ISO assesses MidAmerican by allocating those MITS charges to loads within the MidAmerican Local Balancing Authority Area based on historic load ratio shares.[14] MidAmerican will provide a credit to customers that are assessed MITS charges based on the revenues MidAmerican earns from MITS-comparable charges.

16. Unlike its proposed recovery of Midwest ISO's MITS charge, MidAmerican's proposed MITS-comparable rate would be a transactional charge based on a customer's hourly integrated metered injections and withdrawals. However, MidAmerican is proposing several measures that it argues would avoid the potential adverse market impacts associated with such transactional charges. Specifically, the total MITS-comparable charges that MidAmerican assesses its customers will not exceed the total monthly MITS charge that Midwest ISO assesses to MidAmerican. MidAmerican will also credit revenues it receives from its own MITS-comparable charges back to loads that pay the MITS charges that Midwest ISO charges to MidAmerican; thus, argues MidAmerican, the combined net revenues of the two charges will merely equal the new MITS-related expenses imposed by Midwest ISO on MidAmerican as a Market Service customer. In addition, MidAmerican will not assess a MITS-comparable charge to *any* customer in any hour in which there are no net deliveries to the Midwest ISO energy markets.

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[14] MidAmerican states that it is not sure how it will recover MITS charges from its customers after the transition period.

17. MidAmerican states that its MITS-comparable charge avoids circumstances where customers pay twice for the same service. MidAmerican will not assess a MITS-comparable charge to network customers in hours where the customer's network load exceeds the generation from the customer's designated and non-designated resources. In these situations, such customers already compensate MidAmerican for use of its system via their monthly charges for network integration transmission service. Similarly, MidAmerican will not assess MITS-comparable charges to a PTP customer in hours where the customer's unused PTP reservation (i.e., their total PTP reservations less their PTP tagged schedules on those reservations) exceeds the customer's deliveries to the Midwest ISO market. Such customers are already compensating MidAmerican through charges for PTP service. Finally, MidAmerican states that it has limited its MITS-comparable rate to no more than $1.583/MWh.

18. MidAmerican asks for guidance on an alternative rate design should the Commission direct MidAmerican to abandon its proposed MITS and MITS-comparable rate structure. Under the alternative proposal, MidAmerican's MITS and MITS-comparable charges are based entirely on the MITS charge assessed to it by Midwest ISO. MidAmerican would divide Midwest ISO's total annual MITS charge by the number of MW of participating load and resources on MidAmerican's system and create a $/MW-month rate. It would assess that monthly rate on the present month's registered MW for generation and the rolling twelve-month average coincident peak for loads. MidAmerican would cap the MITS-comparable charges so they did not exceed the revenues it needed to cover the Midwest ISO MITS charges.

19. With respect to Market Service customers' access to sufficient information to permit the recovery of MITS and MITS-comparable costs consistent with cost causation principles, MidAmerican explains that it will have access to sufficient load data to allow it to allocate the costs of MITS charges on a load ratio share basis to participating load in the Local Balancing Authority Area. It adds that it has received assurances from Midwest ISO that Midwest ISO will provide any necessary data for determining MITS-comparable charges. MidAmerican adds that its customers will receive itemized bills that should allow them to understand their charges.

20. Midwest TDUs fault MidAmerican's MITS-comparable charge as being convoluted and state that numerical examples are needed. Midwest TDUs take issue with both MidAmerican's primary and alternative proposals for MITS-comparable service. They state that the transactional nature of MidAmerican's primary MITS-comparable charge proposal would penalize market participants who offered resources into the Midwest ISO market from within the MidAmerican transmission system rather than from within the Midwest ISO transmission System, necessitating an increase in the offering price of generation resources located within the MidAmerican system. The fact that the charge will be assessed on an after-the-fact "as used" basis, according to Midwest TDUs, will slightly delay this price signal, but it will not prevent the signal from being sent and

received. To the contrary, they assert, the timing may both amplify and distort the signal. Midwest TDUs argue that the alternative rate structure that MidAmerican proposes would also have market-distorting effects, although they would principally operate on a longer time scale.

B. Transmission Planning and Coordination[15]

1. Determining ATC, AFC, TTC and Coordinating Planning

21. Under the Market Service proposal, Midwest ISO and the Market Service customer develop a mutually agreed-upon methodology for determining Available Transfer Capability (ATC) and also coordinate the calculation of ATC, Available Flowgate Capability (AFC), and Total Transfer Capability (TTC)[16] as indicated in the executed Service Agreement.

22. The Commission found that Midwest ISO's proposal lacked specificity and required additional information in the coordination of the transmission planning by Midwest ISO and the transmission planning by the Market Service customer.

23. Midwest ISO states that it will use the flow-based approach in Attachment C to examine the acceptability of the Market Service customer's ATC. Where the Market Service customer's methodology differs from Midwest ISO's approach to ATC, Midwest ISO will work with the customer to resolve issues. Finally, Midwest ISO will encourage the Market Service customer to use the Network AFC method identified in Order No. 890 for ATC and AFC calculations. MidAmerican proposes to have Midwest ISO perform ATC, AFC, TTC, and Total Flowgate Capability (TFC) calculations for MidAmerican's facilities. MidAmerican will provide facility ratings to Midwest ISO for use in Midwest ISO's determination of the TFC for MidAmerican Energy's flowgates, with such facility ratings being subject to North American Electric Reliability Corporation Reliability Standards.

24. With respect to the concern that planning requirements for Market Service customers be transparent and coordinated with the Midwest ISO planning and

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[15] This section addresses the responses by Midwest ISO and MidAmerican to the Commission's deficiency question numbers 5 through 9 found in Appendix B of the June 13 Order, 123 FERC ¶ 61,265.

[16] Available Transfer Capability and Total Transfer Capability are defined in sections 1.16 and 1.313a of Midwest ISO's tariff, respectively. Available Flowgate Capability is described in Attachment C to the Tariff, "Methodology to Assess Available Transfer Capability."

interconnection processes, Midwest ISO refers to Attachment FF of the Tariff, Transmission Expansion Planning Protocol, which describes the coordinated planning process in accordance with the transparency requirement of Order No. 890.[17] This coordinated planning process, says Midwest ISO, mirrors Commission-approved language on coordinated planning in joint operation agreements (such as those with Southwest Power Pool, Inc., PJM Interconnection, LLC and Tennessee Valley Authority) and includes the coordination of generator interconnections. Midwest ISO points to its further compliance filing in Docket No. OA08-53, and asserts that some transparency and coordination concerns will be resolved through that compliance filing. Midwest ISO states that it coordinated the proposed changes in that compliance filing with MAPP and others and that only minor changes will be required to further adapt the tariff language to include Market Service customers. Midwest ISO also submits, for illustrative purposes, a draft of proposed future tariff changes to clarify the applicability of Attachment FF to Market Service, which Midwest ISO intends to file after the Commission accepts the other Attachment FF revisions in Docket No. OA08-53.

25. MidAmerican notes that on August 12, 2008, it submitted a compliance filing in Docket No. OA08-41-001 modifying its tariff to provide coordinated transmission planning with Midwest ISO, and that such coordination will be transparent with respect to MidAmerican. MidAmerican states that MAPP, on behalf of its members (including MidAmerican), and Midwest ISO will be members of a joint planning committee that will coordinate the development of common power system analysis models, regularly conduct a Coordinated Regional Transmission Planning study, communicate coordinated planning information, and meet at least semi-annually. MidAmerican further notes that this compliance filing provides that MAPP will coordinate with Midwest ISO on studies to determine the impact of a proposed generator or merchant transmission interconnection.

26. Exelon states that coordination among Midwest ISO, PJM, and MidAmerican must be completed prior to MidAmerican becoming a Market Service customer. Exelon

[17] Midwest ISO August 12, 2008 Filing at 14 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 8, 2008), 123 FERC ¶ 61,299 (2008). On December 7, 2007, in Docket No. OA08-53-000, Midwest ISO submitted revisions to its existing Attachment FF in order to comply with the transmission planning principles outlined by the Commission in Order No. 890. On May 15, 2008, the Commission accepted Midwest ISO's filing, as modified, subject to a further compliance filing. *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,164 (2008).

asserts that it is unclear whether the Joint Operating Agreement between Midwest ISO and PJM will apply once Market Service is in effect, since the companies that become Market Service customers will not be full members of Midwest ISO. Exelon states that if the Joint Operating Agreement does not apply, then other rules and procedures will need to be established to assure such coordination.

2. Obligation to Maintain Simultaneous Feasibility of ARRs

27. In order for market participants under a Market Service customer's tariff to receive Auction Revenue Rights (ARR),[18] the Market Service customer must provide in its tariff for a mutual obligation by the Market Service customer and Midwest ISO to maintain simultaneous feasibility across the combined systems[19] by expanding their respective transmission systems to serve network load.

28. The Commission generally found that Midwest ISO's proposal lacked specificity and required additional information on the expansion obligation to maintain the simultaneous feasibility across the combined systems.

29. With respect to ARR entitlements, Midwest ISO states that it will use the coordinated planning section of Attachment FF to identify upgrades needed on a Market Service customer's system. Midwest ISO says it will use a mutually agreed-upon common model and dispatch for such coordinated planning. Under this model, each party is obligated to construct the upgrades shown by the planning analysis to be required under its respective reliability or economic planning criteria. To the extent that such upgrades are developed in accordance with the dates required in the planning analysis, and updated on an annual basis, long-term ARR entitlements will be available for any year for which the appropriate upgrades are placed into service. Pursuant to existing section II of Attachment FF, infeasible ARRs are not to be granted if the Market Service customer fails to make required upgrades by the time that they are needed.

30. Midwest ISO points to a five- to ten-year planning horizon and states that the coordinated planning process and dispute resolution would have ample time to be completed before the annual performance of simultaneous feasibility tests for ARRs. Midwest ISO says it is currently engaged in stakeholder discussions to define the

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[18] Section 1.141 of the TEMT defines Auction Revenue Rights to be a market participant's entitlement to revenue generated in the annual Financial Transmission Rights auction.

[19] Proposed section 1.31c of the TEMT defines the combined system to be the Midwest ISO transmission system and the Market Service customer transmission facilities under Part III of Module F of the TEMT.

planning process around ARRs and long term transmission rights (LTTRs). The resulting ARR/LTTR-oriented refinements to the planning process will also be applicable to upgrades by Market Service customers pursuant to the coordination provisions of Attachment FF. Midwest ISO provides illustrative draft tariff language in Tab C of its filing.[20]

31. MidAmerican acknowledges that its planning criteria do not obligate it to build projects for economic reasons. MidAmerican states that if it becomes a Market Service customer, its obligations under Part III of Module F would consist of the obligation to build projects on its transmission system which meet MidAmerican's reliability criteria and which are identified through the inter-regional coordination process.[21]

32. Midwest TDUs fault Midwest ISO's response – that Market Service customers are obligated to construct upgrades shown by the planning analysis to be required under their respective reliability or economic planning criteria – as being severely limited.[22] They say that this response is limited to the individual entity's own criteria and how that entity interprets its own transmission expansion criteria. Further, Midwest TDUs fault illustrative tariff language included in Midwest ISO's response as conflicting with existing language in Attachment FF. Finally, Midwest TDUs find that the absence of any obligation for Market Service transmission owners to build for Midwest ISO market flows is compounded by the omission of any right for others to build if the initially-identified builder fails to follow through.[23]

33. WAPA raises an issue on the nomination of ARRs that it raised in its initial comments and that it says Midwest ISO has not addressed. Pursuant to the existing Tariff, market participants with ARRs are entitled to a share of the revenues generated in the annual FTR auction.[24] ARRs are defined by, among other things, Reserved Source

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[20] Midwest ISO states that it will seek these changes after the Commission accepts other Attachment FF revisions to be submitted as part of a compliance filing in Docket No. OA08-53.

[21] MidAmerican Transmittal Letter at 15 (Aug. 15, 2008).

[22] Midwest TDUs Comments at 15.

[23] *Id*. at 14-17.

[24] Section 1.141 of the Midwest ISO Tariff.

Points.[25] To qualify as a Reserved Source Point, a Resource must first qualify as a baseload supply resource by having an average capacity factor of 50 percent over the reference year and the two years previous to the reference year or the life of the unit, to the extent the unit had not been in operation for three years up to and including the reference year.[26] WAPA believes that the description of Baseload Supply Resource must be modified to reflect what WAPA characterizes to be the unique nature of large hydroelectric plants. Instead of a three-year period for the calculation of the average, WAPA believes that for large hydroelectric plants a longer period should be used because the intent of the section is to establish an average capacity factor for the specific type of generation unit. WAPA proposes language to clarify that hydroelectric resources may use an exception to determine the capacity factor under certain conditions, so as to take into account *force majeure* conditions such as the current drought in the upper Midwest.

C. Governance[27]

1. Background

34. Midwest ISO initially proposed that Market Service customers be eligible to participate in the Midwest ISO's existing stakeholder process under the current "[c]oordination [c]ustomer" segment. In the June 13 Order, the Commission noted that Midwest ISO's proposal did not address whether Market Service customers meet the Midwest ISO TO Agreement's definition of coordinating members,[28] and asked Midwest ISO to clarify whether it intends to revise the Midwest ISO TO Agreement.[29]

35. Midwest ISO also proposed a Joint Coordinating Committee, composed of Midwest ISO and Market Service customers, to perform several duties necessary for the

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[25] Section 43 of the Midwest ISO Tariff. Reserved Source Points are defined in section 1.270a as Resources historically used by a Market Participant to serve Load in an ARR Zone.

[26] Section 43.2.4.a.i.(b) of the Midwest ISO Tariff.

[27] This section addresses the responses to questions 10 and 11 of Appendix B from the June 13 Order, 123 FERC ¶ 61,265.

[28] June 13 Order, 123 FERC ¶ 61,265 at App. B, 11.

[29] Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO at Article Two, section VI.A.1, FERC Electric Tariff, First Revised Rate Schedule No. 1, Second Revised Sheet No. 44.

implementation, administration, and/or operation of Market Service.[30] In the June 13 Order, the Commission requested clarification of the relationship between the Joint Coordinating Committee and Midwest ISO's existing stakeholder committees and processes.[31]

2. Midwest ISO's Filing

36. In its compliance filing, Midwest ISO states that the Midwest ISO TO Agreement does not need to be amended because it defines "[c]oordinating [o]wner" as Manitoba Hydro,[32] and Manitoba Hydro has agreed to include Market Service customers in the coordinating owners segment of the stakeholder process. With regard to the Joint Coordinating Committee, Midwest ISO clarifies that it intends the Joint Coordinating Committee to serve in only an advisory capacity on technical issues and that any proposed tariff revisions will be reviewed by the appropriate stakeholder committee.[33]

D. Exit Fee[34]

1. Background

37. Midwest ISO stated in its initial filing that the exit fee that will apply to a Midwest ISO Transmission Owner withdrawing from the Midwest ISO TO Agreement will operate to discourage casual withdrawals that might otherwise occur from the introduction of Market Service. To provide the Commission with a basis to evaluate the financial impact of the exit fee as it pertains to the existing membership in Midwest ISO, the Commission required Midwest ISO to quantify that impact using the example of Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), and the exit fee negotiated upon their withdrawal from Midwest ISO. Midwest ISO was instructed to factor in the credits that would be due to LG&E and KU after withdrawal for any charges they would incur under Schedules 10, 16, 17 and 31 of the TEMT using the

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[30] Midwest ISO Filing at 20 (Mar. 4, 2008).

[31] June 13 Order, 123 FERC ¶ 61,265 at App. B, 10.

[32] Midwest ISO TO Agreement at Appendix C-4, section I.C, FERC Electric Tariff, First Revised Rate Schedule No. 1, First Revised Sheet No. 130g-2.

[33] Midwest ISO August 12, 2008 Filing at 17-18.

[34] This section addresses responses to question 12 of Appendix B of the June 13 Order, 123 FERC ¶ 61,265.

methodology for such credits as reflected in Schedules 10-C, 16-A, and 17-A of the TEMT. Further, Midwest ISO was to assume that LG&E and KU commenced taking Reliability Service and Market Service upon their withdrawal.[35]

2. Midwest ISO's Filing

38. Midwest ISO's witness Mr. Holstein estimates that, for the period September 1, 2006 through August 31, 2014, if LG&E and KU withdrew from Midwest ISO and became a Market Service customer, LG&E and KU's combined exit fee and charges for service under the TEMT after withdrawing would total $100,388,265 in undiscounted dollars. Mr. Holstein estimates that as a member of Midwest ISO, LG&E/KU's charges under the TEMT over the same period would total $98,707,632. Thus, Mr. Holstein estimates that LG&E and KU would save a total of $1,680,633 in undiscounted dollars (or $210,079 per year) over that period by staying in Midwest ISO instead of withdrawing and becoming a Market Service customer.

IV. Responses to Broad Policy Questions

39. In the June 13 Order, the Commission identified several broad policy issues regarding the Market Service proposal that needed to be explored further.[36] These issues included the effects on membership under the Midwest ISO TO agreement (both immediately and after Market Service customers have gained experience with the market), the overall benefits of the proposal to existing customers and potential market service customers, and the advantages and disadvantages of offering Market Service as a generic agreement.

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[35] The Commission told Midwest ISO to assume that LG&E and KU would continue taking Reliability Service and Market Service during the entire period for which they are eligible to receive credits against charges incurred under Schedules 10, 16, and 17, or their equivalents, such as Schedule 31, using the methodology reflected in Schedules 10-C, 16-A, and 17-A of the TEMT. The Commission instructed Midwest ISO to factor in the credits that would be due to LG&E and KU for any charges they would incur under Schedules 10, 16, 17 and 31 after withdrawal using the methodology for such credits as reflected in Schedules 10-C, 16-A, and 17-A of the TEMT. It also told Midwest ISO to assume that LG&E and KU commenced taking Reliability Service and Market Service upon their withdrawal, and continued taking such services during the entire period for which they are eligible to receive credits against charges incurred under Schedules 10, 16, and 17, or their equivalents, such as Schedule 31, using the methodology reflected in Schedules 10-C, 16-A, and 17-A of the TEMT.

[36] *See* June 13 Order, 123 FERC ¶ 61,265 at P 155.

40. Almost all of the commenters contend that the Market Service proposal will encourage entities that do not currently participate in Midwest ISO energy markets to do so as Market Service customers. Midwest ISO believes that Market Service will give these entities experience with the market and ultimately encourage some of them to join the Midwest ISO as Midwest ISO transmission owners. Regarding the possibility of existing transmission-owning members of Midwest ISO leaving Midwest ISO to take Market Service, Midwest ISO notes that transmission-owning members may leave Midwest ISO and that the Market Service proposal makes no change to the rules governing such withdrawals. In contrast, Midwest TDUs, Midwest ISO TOs, IPL, and Great River argue that Market Service customers will not migrate to full Midwest ISO membership under the Midwest ISO TO Agreement because they will prefer to avoid regional transmission expansion cost allocations. Midwest TDUs are concerned that entities may time their participation as transmission-owning members of Midwest ISO versus as Market Service customers depending on the status of their transmission needs. Parties also raise issues associated with the appropriate exit fee. For example, IPL argues that those moving from participation as a transmission-owning member of Midwest ISO to participation as a Market Service customer should not be allocated regional cost allocations in their exit fees.

41. Most parties agree that all Midwest ISO customers will see benefits from the integration of Market Service customers in the form of enhanced reliability, decreased administrative costs, and lower energy costs. However Midwest TDUs and Midwest ISO TOs allege that the level of benefits claimed by Midwest ISO is speculative and inflated. This is especially because the administrative cost estimates assume that MAPP members are going to take service with Midwest ISO, when several have instead decided to join Southwest Power Pool, Inc. In contrast, numerous parties agree that a single agreement available to any entity would be preferable to individually-negotiated agreements because a single agreement would ensure uniform, transparent, and non-discriminatory implementation.

42. The Commission's questions also explored the effects of the proposal on: (1) Midwest ISO's ability to perform its RTO functions and meet the required RTO characteristics of Order No. 2000; (2) transmission infrastructure; and (3) the operation and efficiency of the regional energy market with respect to the proposal's allowance of rate pancaking for Market Service customers. Parties disagree on these issues.

43. With respect to RTO functions and characteristics, opinions vary from Midwest ISO – which argues that the proposal does not adversely impact its RTO responsibilities or threaten the required RTO characteristics – to Alliant and Midwest TDUs, who argue that the Market Service proposal's pancaked transmission rates, transmission service provision under multiple tariffs, multiple OASIS sites, and coordination of transmission planning undermine the role and characteristics of an RTO, as well as the Independent Market Monitor's ability to perform its surveillance. Similarly, with respect to

transmission infrastructure, Midwest ISO claims that, under the Market Service proposal, Market Service customers will build new transmission facilities; Midwest ISO TOs argue that Market Service customers will be able to free-ride on the new facilities paid for by Midwest ISO Transmission Owners. Parties vary on rate pancaking, as some compare the degree of pancaking that would exist under the proposal to the existing level, while others compare it to the level that would exist if Market Service customers instead joined Midwest ISO under the Midwest ISO TO Agreement.

V. Discussion

44. We find that the answers provided by the Applicants and MidAmerican[37] result in an application that is sufficiently complete for the Commission to proceed in evaluating Applicants' Market Service proposal. However, we find that the proposal has not been shown to be just and reasonable, and not unduly discriminatory, and that it raises significant policy and technical issues that remain to be resolved.

45. As reflected in the comments on the proposal, there is substantial disagreement on a number of topics important to the future of Midwest ISO and perhaps other RTOs. In particular, opinions vary as to the impacts of the proposed transmission rate design and transmission planning provisions on the Midwest ISO's markets and whether the proposal will result in just and reasonable rates for energy and operating reserves in Midwest ISO's markets and for transmission service under Midwest ISO's TEMT and the individual tariffs of Market Service customers.

46. These issues require further discussion before the Commission can make a final decision on the merits of the proposal. We find that the best forum for that discussion is a technical conference in which the Commission and its staff can discuss the issues with Applicants and other interested parties. Accordingly, these and other issues will be the subject of discussion at the November 12, 2008 technical conference on the Market Service proposal.

47. Accordingly, we will conditionally accept and suspend for five months the effectiveness of the Applicant's joint proposal to become effective March 10, 2009, subject to further order after the technical conference.

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[37] We note that it is premature for the Commission to give guidance to MidAmerican on its MITS-comparable proposal, given that we have not yet ruled on Market Service at this time.

<u>The Commission orders</u>:

The Midwest ISO's Market Service proposal in Part III of Module F of the TEMT, the Market Service *pro forma* agreement in Attachment KK (Attachment KK-3), Attachment MM, the proposed modifications to Attachment L, Schedule 32 and revisions in Module A and C that relate solely to Market Service are conditionally accepted and suspended for five months, subject to the outcome of a further order after the technical conference.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.