

128 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Public Power Agency,
Michigan South Central Power Agency, and
Wolverine Power Supply Cooperative, Inc.

Docket No. EL09-58-000

v.

Midwest Independent Transmission System
Operator, Inc.

ORDER ON COMPLAINT

(Issued September 18, 2009)

1. On June 4, 2009, the Michigan Public Power Agency (MPPA), the Michigan South Central Power Agency (Michigan South Central), and Wolverine Power Supply Cooperative, Inc. (Wolverine) (collectively, Michigan Parties) filed a complaint against Midwest Independent Transmission System Operator, Inc. (Midwest ISO), regarding Midwest ISO's assessment of charges under Schedule 26 of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (ASM Tariff or Tariff) on load served under the Michigan Parties' respective Grandfathered Agreements (GFAs) carved-out of Midwest ISO's Energy and Operating Reserve Markets.¹ For the reasons discussed below, we deny the relief requested in the Michigan Parties' complaint.

¹ The phrase "carved-out" refers to a specific type of treatment of GFAs carved-out of Midwest ISO's energy markets under the Tariff. Carved-out GFAs are not subject to the Tariff scheduling and settlement requirements and are financially exempt from many energy market charges. The treatment of GFAs is outlined in section 38.8 of the Tariff (ASM Tariff Sheet Nos. 656-74).

I. Background

A. Michigan Parties' GFAs and Schedule 26

2. The Michigan Parties are transmission-owning members of Midwest ISO that serve a portion of their respective loads using GFAs. Each of these GFAs is associated with the Michigan Parties' joint ownership interests in transmission facilities that are part of the Michigan Electric Transmission Company's (METC) transmission system.² As part of these ownership interests, the Michigan Parties receive transmission service rights over the METC system, which are governed by ownership and operating agreements that predate the formation of Midwest ISO.

3. The Commission has, in the past, addressed the identification and categorization of transmission upgrades in Midwest ISO, and the allocation of costs for these projects on a regional and sub-regional basis, through the Regional Expansion Criteria and Benefits (RECB) provisions of Midwest ISO's Tariff.³ Schedule 26 of the Tariff provides for the assessment of network upgrade charges under the Midwest ISO Transmission Expansion Plan, as calculated using a formula rate included in Attachment GG to the Tariff.⁴ Attachment GG sets forth the formula for calculating charges associated with network upgrade projects whose costs are not already collected under Attachment N (Recovery of Costs Associated with New Facilities Resulting from Requests for Transmission Service) or Attachment X (Generator Interconnection Procedures). Schedule 26 provides that GFAs, "including the provision of transmission service, shall not be charged this Schedule 26."⁵

² Wolverine's ownership entitlements exist pursuant to GFA Nos. 254 and 255; MPPA's ownership entitlements exist pursuant to GFA Nos. 256 and 257; and Michigan South Central's ownership entitlements exist pursuant to GFA No. 266. *See* Attachment P (List of Grandfathered Agreements) of Midwest ISO's ASM Tariff.

³ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006), *order on technical conference, reh'g and compliance*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (2007), *order on reh'g and compliance*, 120 FERC ¶ 61,080 (2007), *order on reh'g and compliance*, 122 FERC ¶ 61,127 (2008).

⁴ *See* Michigan Parties, June 4, 2008 Complaint at 6 (Michigan Parties Complaint).

⁵ *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2194.

B. Michigan Joint Zone

4. The Michigan Joint Zone is a pricing zone established in the wake of Midwest ISO's proposed creation of a new pricing zone for Wolverine's transmission facilities, to take effect upon Wolverine becoming a member of Midwest ISO. The Commission rejected the Wolverine pricing zone, without prejudice to Midwest ISO filing to incorporate Wolverine into an existing pricing zone, and established settlement procedures to permit parties to develop a joint pricing zone that would include the transmission facilities of Wolverine and METC.⁶

5. In 2003, the parties to that proceeding filed a settlement agreement establishing the Michigan Joint Zone under the Tariff. The Commission conditionally approved the settlement.⁷ A Michigan Joint Zone Revenue Allocation Agreement, also established by the parties as part of the settlement process, was filed to govern the relationship between the parties with respect to allocation of revenues and charges that Midwest ISO allocates to the Michigan Joint Zone. In 2006, the parties filed a Second Amended and Restated Settlement Agreement (Settlement Agreement)⁸ and a Second Revised Michigan Joint Zone Revenue Allocation Agreement (Revenue Allocation Agreement),⁹ which

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004, at P 20-21 (2002). Wolverine's transmission system is connected with, and electrically surrounded by, METC's transmission system.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (March 2004 Order), *order on amended settlement agreement and requests for reh'g*, 112 FERC ¶ 61,351 (2005) (September 2005 Order).

⁸ *See* Michigan Parties Complaint at Exhibit B.

⁹ *See Id.* at Exhibit C.

established a Michigan Joint Zone rate applicable to only non-ownership entitlement load,¹⁰ and a Michigan Sub Zone rate applicable to all ownership entitlement load.¹¹

II. Complaint

6. On June 4, 2009, the Michigan Parties filed a complaint alleging that, based on their review of Schedule 26 invoice backup data, Midwest ISO has been assessing Schedule 26 charges to all coincident peak load on the Midwest ISO system, including all GFA load.¹² The Michigan Parties request that the Commission issue an order finding that Midwest ISO violated the terms of its Tariff by assessing Schedule 26 charges on the Michigan Parties' GFA load, directing Midwest ISO to refund, with interest, all improperly assessed Schedule 26 charges, and directing Midwest ISO to cease assessing such charges going forward.

7. The Michigan Parties argue that Schedule 26 provides that GFAs, including the provision of transmission service, shall not be assessed charges under Schedule 26. They contend that, in discussions prior to the filing of the Complaint, Midwest ISO recognized

¹⁰ Article II of the Settlement Agreement defines "ownership entitlement load" as load served using the ownership entitlements of any Michigan entity having an ownership entitlement in and related use rights to the METC transmission system pursuant to some or all of certain settlements and transmission ownership and operating agreements, as set forth in Article II of the Settlement Agreement. Article II of the Settlement Agreement defines "non-ownership entitlement load" as total load in the Joint Zone less ownership entitlement load. *See Michigan Parties Complaint at 11, n.13.*

¹¹ Section 5.2 of the Settlement Agreement provides that the Sub Zone rate is comprised of (a) a Wolverine rate component; (b) an MPPA rate component; and (c) the rate component of any other future Joint Zone transmission owners. *See Michigan Parties Complaint at 11, n.12.* The Commission conditionally approved the Settlement Agreement and the Revenue Allocation Agreement, and approved later amendments to the Settlement Agreement that permit the Michigan Joint Zone to remain in place beyond the initial termination date of January 31, 2008. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,148 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,067 (2008).

¹² Michigan Parties Complaint at 13.

that Schedule 26 charges do not apply to GFA load.¹³ Nonetheless, the Michigan Parties argue, Midwest ISO assessed such charges on GFA load, including the Michigan Parties' GFA load, without providing any basis for its actions. According to the Michigan Parties, Midwest ISO's disregard for the Schedule 26 exemption with respect to the Michigan Parties' GFAs is premised on a flawed reliance on the March 2004 Order, the September 2005 Order and related provisions in the Settlement Agreement,¹⁴ none of which, the Michigan Parties argue, are applicable to Schedule 26.

8. In their Complaint, the Michigan Parties contend that Midwest ISO's assessment of Schedule 26 charges to GFA load violates the terms of its own Tariff and, therefore, the filed rate doctrine.¹⁵ According to the Michigan Parties, Commission policy requires that a regional transmission organization must operate in conformance with its approved tariff,¹⁶ and that, pursuant to the filed rate doctrine,¹⁷ a utility may not charge any rate except one that is on file with the Commission.¹⁸ The Michigan Parties add that the considerations underlying the filed rate doctrine are "preservation of the agency's primary jurisdiction over reasonableness of rates and the need to insure that regulated companies charge only those rates of which the agency has been made cognizant."¹⁹ According to the Michigan Parties, the plain language of Schedule 26 exempts GFA load from Schedule 26 charges without any qualification, and section 38.8.4.6 of the Tariff provides

¹³ The Michigan Parties refer to a March 3, 2009 letter from the Midwest ISO which denied billing dispute requests submitted by Wolverine on March 6, 2009 and March 23, 2009. *See* Michigan Parties Complaint at 13-14; *see also* Michigan Parties Complaint at Exhibit H (March 31 Letter).

¹⁴ *See* Michigan Parties Complaint at 10-11, Exhibits B, C.

¹⁵ *Id.* at 15.

¹⁶ *Id.* (citing *Williams Power Co., Inc. v. California Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,231, at P 18 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 27 (2006); *New York Power Authority v. Consolidated Edison Co. of New York*, 115 FERC ¶ 61,088, at P 15 (2006)).

¹⁷ 16 U.S.C. 824d(d) (2006).

¹⁸ Michigan Parties Complaint at 15, n.26.

¹⁹ *Id.* at 16 (quoting *Arkansas Louisiana Gas Co. v. Hall*, 435 U.S. 571, 577 (1981)).

that GFAs will not be subject to any charges under the Tariff except Schedules 10, 17 and 18.²⁰ As such, the Michigan Parties argue, Midwest ISO's assessment of Schedule 26 charges on GFA load is a violation of the filed rate which, according to the Michigan Parties, expressly exempts GFA load from these charges.

9. The Michigan Parties further contend that Midwest ISO has not provided an adequate explanation for allocating Schedule 26 charges to all GFA load, including non-Michigan Parties' GFA load. Rather, the Michigan Parties assert, Midwest ISO has overlooked the allocation of Schedule 26 charges to non-Michigan Parties, while arguing that the Michigan Joint Zone and Michigan Sub Zone present a unique situation within the Midwest ISO footprint.²¹ According to the Michigan Parties, while Midwest ISO claimed that the Michigan Parties' GFA load should be exempt from Schedule 26 charges related to METC projects, it maintained that the Michigan Parties' GFA load should nonetheless be allocated, and pay for, costs associated with RECB-eligible projects in other Midwest ISO pricing zones. The Michigan Parties contend that, according to Midwest ISO, the GFAs addressed in the March 2004 Order and the September 2005 Order regarding the Michigan Joint Zone only cover use of METC's transmission system, and do not extend to the use of the Wolverine or MPPA transmission systems to serve their load.²² The Michigan Parties argue, however, that their GFAs are no different than any other GFAs currently receiving the Schedule 26 exemption.

10. According to the Michigan Parties, GFAs predate the existence of Midwest ISO and, therefore, do not provide for transmission service over multiple transmission systems. The Michigan Parties argue that this was the rationale underlying the exclusion of loads served under GFAs from Schedule 26 charges. According to the Michigan Parties, the March 2004 Order and the September 2005 Order, along with the Settlement Agreement, only address charges under Schedules 1, 7, 8 and 9 of the Tariff and make no mention of Schedule 26. The Michigan Parties argue that, had the Commission intended to subject the Michigan Parties' GFA load to Schedule 26 charges in either the March 2004 Order or the September 2005 Order, the Commission would have so done by directing that Schedule 26 be included in Section 3.3 (Joint Zone and Sub Zone Rates) of the Settlement Agreement.²³

²⁰ *Id.* at 16.

²¹ *Id.* (quoting March 31 Letter at 1).

²² *Id.* at 16 (quoting March 31 Letter at 1).

²³ *Id.* at 17-18.

11. The Michigan Parties go on to argue that Article V (Pricing) of the Settlement Agreement, which establishes the Michigan Sub Zone rate pricing, deals exclusively with revenues collected under Schedules 7, 8 and 9 of the Tariff and does not address charges recovered under Schedule 26. Instead, the Michigan Parties state that Schedule 26 charges are dealt with in Section 10.8 (Charges, Assessments or Fees) of the Settlement Agreement, which, they argue, does not distinguish between charges assessed to the Michigan Joint Zone and the Michigan Sub Zone. According to the Michigan Parties, parties are liable for Schedule 26 charges to the extent provided for in the Tariff and Schedule 26. The Michigan Parties add that the Revenue Allocation Agreement also reflects this by providing that revenues from Schedule 26 will be distributed in accordance with the provisions of Schedule 26, and not in the same manner as revenues related to Schedules 7, 8 and 9 of the Tariff.²⁴ As such, the Michigan Parties argue, Midwest ISO has provided no basis to support the allocation of Schedule 26 charges to GFA load, including the Michigan Parties' GFA load.

12. Finally, the Michigan Parties contend that, to the extent Midwest ISO demonstrates that only the Michigan Parties' GFA load is being assessed Schedule 26 charges, this assessment still violates the filed rate doctrine in that it ignores the language contained in Schedule 26 and section 38.8.4.6 of the Tariff. The Michigan Parties add that their GFAs are not different from any other GFAs in that all involve, by definition, transmission service over only one system. As such, the Michigan Parties contend that Midwest ISO's actions here would also constitute a discriminatory rate practice, in violation of section 205 of the Federal Power Act (FPA).²⁵

III. Notice of Filing, Answer and Pleadings

13. Notice of the Complaint was published in the *Federal Register*, 74 Fed. Reg. 28,043 (2009), with interventions and protests due no later than June 24, 2009. Midwest ISO filed an answer to the Michigan Parties' complaint.

14. The following parties filed timely motions to intervene: American Municipal Power-Ohio, Inc.; Duke Energy Corporation, on behalf of its affiliates, Duke Energy Indiana, Inc., Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc. and Duke Energy Business Services, LLC; Detroit Edison Company; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; and Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative. Motions to intervene and

²⁴ *Id.* at 18, Exhibit C.

²⁵ 16 U.S.C. § 824d(b) (2006).

comments were filed by Consumers Energy Company (Consumers) and Great River Energy (Great River Energy). International Transmission Company (ITC) filed a motion to intervene out-of-time. The Michigan Parties filed a reply to Midwest ISO's answer.

IV. Midwest ISO Answer

15. In its answer, Midwest ISO argues that, while the Michigan Parties are transmission customers of METC for purposes of implementing their GFAs, the Michigan Parties sought to become revenue-earning transmission owners. According to Midwest ISO, this was accomplished by the creation of two separate pricing zones (the Michigan Joint Zone and the Michigan Sub Zone) through the Settlement Agreement and Revenue Allocation Agreement, which describe as "Ownership Entitlement Load" the Michigan Parties' load covered by their respective rights to use METC's transmission system pursuant to their GFAs.²⁶ Midwest ISO contends that, in conditionally approving the initial versions of the settlement agreement and revenue allocation agreement, the Commission clarified that "[t]he [GFAs] provide for transmission service over the METC transmission system, not for transmission service over the Wolverine and MPPA facilities used to transfer power to Wolverine's and MPPA's members."²⁷ As such, Midwest ISO argues, the Commission required the Michigan Parties to exclude from their transmission revenue requirements recovered through the joint zone rate, a pro rata share of the total revenue requirements associated with their facilities included in the joint zone.²⁸

16. Midwest ISO contends that, in response to the Commission's directives in the March 2004 Order and the September 2005 Order, the Michigan Parties submitted revised versions of the settlement agreement and revenue allocation agreement, distinguishing a Joint Zone rate and a Sub Zone rate. According to Midwest ISO, the Michigan Parties did this in such a way as to ensure that they would be responsible for their share of the cost of their facilities used to deliver power wheeled under the GFAs.²⁹ In forming a separate pricing zone, Midwest ISO argues, the Michigan Parties agreed to charges under Schedules 7, 8 and 9 of the Tariff (for firm and non-firm Point-to-Point Transmission Service, and Network Integration Transmission Service) being imposed

²⁶ Midwest ISO, June 24, 2008 Answer at 2 (Midwest ISO Answer).

²⁷ *Id.* at 3 (citing March 2004 Order, 106 FERC ¶ 61,219 at P 19, *order on reh'g and compliance*, September 2005 Order, 112 FERC ¶ 61,351 at P 36).

²⁸ *Id.* at 3 (citing March 2004 Order, 106 FERC ¶ 61,219 at P 19).

²⁹ *Id.* at 3.

upon their load, including their GFA loads.³⁰ Midwest ISO adds that the Michigan Parties further agreed that all parties to the Settlement Agreement would pay all applicable Tariff charges, including those under Schedules 10, 16, 17, 19, 22, 23, 24, 25 or 26.³¹

17. Midwest ISO argues that the Michigan Parties have constituted their transmission facilities (non-METC facilities which are not covered by the Michigan Parties' GFAs) into a separate pricing zone through which they earn transmission revenues as transmission owners. Midwest ISO further contends that, in light of the Settlement Agreement and Commission orders, the Michigan Parties are subject to Schedule 26 charges on the same basis that they pay for service under Schedules 7, 8 or 9 of the Tariff. Midwest ISO adds that the Michigan Parties' GFAs are respected by the exclusion of network upgrade costs for the METC facilities (which are covered by their GFAs) from their Schedule 26 charges.

18. According to Midwest ISO, the Michigan Parties' interpretation of the Tariff would allow some transmission-owning Midwest ISO members who participate in the benefits of regional transmission service and regional planning to exclude their entire load from shouldering the costs of those benefits on the same basis as other transmission owners' load served under the Tariff. Midwest ISO argues that it has applied a reasonable interpretation of its Tariff, the Settlement Agreement and the Commission's orders in such a way as to enable the Michigan Parties to avoid Schedule 26 costs attributable to the METC transmission facilities covered by their existing GFAs, while allocating Schedule 26 charges relating to the non-METC transmission facilities. Midwest ISO states that this is consistent with the approach required by the Commission to calculate the appropriate revenue requirement.

19. Midwest ISO argues that, while Schedule 26 states that GFAs shall not be charged under Schedule 26, this statement does not apply to non-grandfathered transmission facilities of GFA customers, such as the Michigan Parties, who become transmission owners and who form a separate pricing zone enabling them to obtain transmission revenues from such facilities. According to Midwest ISO, under such circumstances the separate pricing zone is subject to the provision of Schedule 26 which provides that all pricing zones will include a system-wide rate component of the network upgrade charge, as provided under section 2 of Attachment GG, and that designated pricing zones will

³⁰ *Id.*

³¹ *Id.* at 3-4.

include an additional network upgrade charge rate component.³² Moreover, Midwest ISO argues, it is reasonable for the Michigan Parties to bear their share of the cost of network upgrades, as the Michigan Parties benefit from the reliability and other system improvements resulting from such upgrades.

20. In response to the Michigan Parties' contention that Midwest ISO has imposed Schedule 26 charges on all other GFA loads, Midwest ISO states that it lacks sufficient knowledge or information to admit or deny the truth of this claim. Midwest ISO maintains that, while it is not its policy to assess Schedule 26 charges on GFA load, it is in the process of determining whether any GFA loads of parties other than the Michigan Parties have been inadvertently assessed Schedule 26 charges as a result of the way in which loads are reported by certain local balancing authorities.³³ Midwest ISO argues, however, that allegations that it may have also assessed Schedule 26 charges on other GFA loads are beyond the scope of this proceeding.

V. Comments

A. Great River Energy

21. Great River Energy argues that parties, in addition to the Michigan Parties, are being assessed Schedule 26 charges to GFA load. According to Great River Energy, this is not permissible under the language of the Tariff and Schedule 26.³⁴ Specifically, Great River Energy states that Section 38.8.4.6 of the [Tariff] provides:

Except as otherwise set forth in this Section 38.8, Carved-Out GFAs shall not be subject to any charges under this Tariff except Schedules 3, 5, 6, 10, 17 and 18 charges.³⁵

³² *Id.* at 5.

³³ According to Midwest ISO, the timetable of such fact-finding is contingent upon the response times of load-reporting entities from which the Midwest ISO has requested relevant information. Midwest ISO Answer at 8.

³⁴ Great River Energy, June 24, 2009 Comments at 3 (Great River Energy Comments).

³⁵ *Id.* at 6 (quoting Midwest ISO Tariff at section 38.8.4.6).

Great River Energy further contends that Schedule 26 provides that “[GFAs], including the provision of Transmission Service, shall not be charged Schedule 26.”³⁶

22. Great River Energy argues that, between March 2007 and May 2009, it paid in excess of \$219,000 in Schedule 26 charges for its own load, as well as for municipal load, served using GFA transmission service.³⁷ Great River Energy states that establishing a methodology to allocate Schedule 26 charges solely to the portion of load not served by GFA transmission service should be straightforward. According to Great River Energy, Midwest ISO has hourly GFA scheduling information, as well as information on coincident load for the Great River Energy pricing zone and hour of coincident peak load necessary to ensure an accurate assessment of Schedule 26 charges for its network load.³⁸ Great River Energy states that Midwest ISO could subtract from the reported network load in the Great River Energy pricing zone the megawatts associated with the corresponding GFAs that were scheduled over the Great River Energy pricing zone’s peak hour, as reported by Great River Energy.³⁹

23. Nonetheless, Great River Energy states, the assessment of Schedule 26 charges by Midwest ISO may have been inadvertent.⁴⁰ Great River Energy adds that it is willing to work with Midwest ISO and other stakeholders to achieve a resolution and to ensure that Schedule 26 charges are not assessed to GFA load in the future.⁴¹

B. Consumers Energy Company

24. Consumers states that it supports Midwest ISO’s finding that the Michigan Parties are responsible for Schedule 26 charges related to the Michigan Parties’ use of their own

³⁶ *Id.* at 7.

³⁷ *Id.* at 4; *See also* Great River Energy Comments, Butkowski Aff. ¶ 6. Great River Energy states that Midwest ISO assessed Schedule 26 charges for load covered under GFA Nos. 367, 370, 390, 451, 460 and 461. Great River Energy Comments at 5-6.

³⁸ *Id.* at 4, 7.

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 3-4, n. 2.

⁴¹ *Id.* at 4, 7.

transmission facilities in the Michigan Joint Zone.⁴² Consumers argues that the Michigan Parties' complaint ignores the fact that the GFAs related to their ownership entitlement load only covers use of the METC facilities in the Michigan Joint Zone. Consumers adds that such ownership entitlement load's use of non-METC facilities in the Michigan Joint Zone is not grandfathered and, therefore, is not exempt from charges under Schedules 7, 8 and 9 or Schedule 26 of the Tariff.⁴³ Consumers argues that, rather than load paying for the use of non-METC facilities under a rate or financial arrangement set forth in a GFA, the Michigan Parties are responsible for a *pro rata* share of Schedule 7, 8 and 9 costs for its use of non-METC facilities in the Michigan Joint Zone.⁴⁴ According to Consumers, responsibility for such costs under Schedules 7, 8 and 9 of the Tariff is not consistent with an exemption from charges under Schedule 26.

VI. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant ITC's late-filed motion to intervene, given its interests in this proceeding, the early stage of this proceeding, and the lack of any prejudice or delay.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the Michigan Parties' answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

27. The Commission denies the relief requested in the Michigan Parties' complaint, and finds that the Michigan Parties are appropriately assessed Schedule 26 charges for the non-grandfathered transmission service that they must use to serve their load. As Midwest ISO points out, the Michigan Parties' GFAs only apply to Wolverine's and MPPA's use of the METC transmission system within the Michigan Joint Zone. The

⁴² Consumers Energy Company, June 24, 2009 Comments at 3-4.

⁴³ *Id.* at 4.

⁴⁴ *Id.*

service covered under Michigan Parties' GFAs is associated with their joint ownership interest in METC's transmission facilities. The GFAs do not extend to the service Wolverine and MPPA use on their respective transmission systems to serve their load. Although there is a single Joint Michigan Zone, the Michigan Parties' own transmission facilities (i.e., non-METC facilities in the Joint Michigan Zone) are constituted into the separate Michigan Sub Zone over which they take non-grandfathered transmission service to serve their load. The Michigan Parties' use of the transmission facilities in the Michigan Sub Zone is not covered by their GFAs.

28. In approving the Settlement Agreement, the Commission stated that "[t]he [GFAs] provide for transmission service over the METC transmission system, not for transmission service over the Wolverine and MPPA facilities used to transfer power to Wolverine's and MPPA's members."⁴⁵ Michigan Parties do not dispute that they use transmission service over the Wolverine and MPPA facilities to serve their load, including load served, in part, under the GFAs. Therefore, we find that, based on the Settlement Agreement as well as both the March 2004 Order and the September 2005 Order establishing the Michigan Joint Zone, the Michigan Parties are subject to Schedule 26 charges for Wolverine's and MPPA's use of their respective transmission systems to serve their load not covered under any GFA, on the same basis that they pay for transmission service under Schedules 7, 8, or 9 of the Tariff for transmission service taken over their respective systems. Accordingly, we deny the relief requested in the Michigan Parties' complaint with regard to Schedule 26 charges on the Michigan Parties' own GFA loads.

29. We deny Great River Energy's request that the Commission direct Midwest ISO to develop and implement a method to prevent the assessment of Schedule 26 charges on GFA load. Midwest ISO's Answer provides that it is not Midwest ISO's policy to assess Schedule 26 charges on GFA load and adds that Midwest ISO is ascertaining whether any GFA loads may have been inadvertently assessed Schedule 26 charges. We agree that Schedule 26 prohibits GFAs from being assessed Schedule 26 charges and expect that Midwest ISO will continue to work with its members to determine if Schedule 26 charges were inappropriately assessed to any GFA loads.⁴⁶ We find that the potential inadvertent

⁴⁵ March 2004 Order, 106 FERC ¶ 61,219 at P 19, *order on reh'g*, September 2005 Order, 112 FERC ¶ 61,351 at P 36.

⁴⁶ We note, for example, that Great River Energy states that it is willing to work with Midwest ISO and other stakeholders to achieve a resolution and ensure that Schedule 26 charges are not assessed to loads in the future. Great River Comments at 4.

Schedule 26 charges for GFAs is being appropriately addressed through Midwest ISO's own internal investigation.⁴⁷ Moreover, the Midwest ISO is already obligated to follow its filed rate, and therefore to avoid assessing Schedule 26 charges to GFAs. We do not find it necessary to affirmatively order the relief Great River Energy seeks.

The Commission orders:

(A) The relief requested in the Michigan Parties' complaint is hereby denied, as discussed in the body of this order.

(B) Great River Energy's request that the Commission direct Midwest ISO to develop and implement a method to prevent the assessment of Schedule 26 charges on GFA load and grant such other relief as may be appropriate is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁷ The Commission has discretion to decide when and where it will resolve an issue. *See, e.g., Mobil Oil Exploration v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) ("An agency enjoys broad discretion in determining how to handle related, yet discrete, issues in terms of procedures . . . [such as] where a different proceeding would generate more appropriate information and where the agency was addressing the question.") (citations omitted). *See also, e.g., Tennessee Gas Pipeline Co v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) ("The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem"); *Nadar v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) ("[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload.").