

135 FERC ¶ 61,205  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc.                      Docket No. ER11-3281-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS,  
SUBJECT TO COMPLIANCE

(Issued May 31, 2011)

1. On April 1, 2011, pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Part 35 of the Commission's Regulations, 18 C.F.R. Part 35, Midwest Independent Transmission System Operator, Inc. (MISO) submitted proposed revisions to certain provisions of its Reliability Coordination Service (Reliability Service) and Congestion Management Coordination Service (Seams Service), which are services provided under Part I and Part II, respectively, of Module F of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). In this order, we conditionally accept MISO's filing, to be effective June 1, 2011, as requested, subject to a compliance filing.

**I. Background**

2. MISO offers Reliability Service under Module F, Part I of its Tariff. Reliability Service extends the reliability coordination service that MISO provides to MISO Transmission Owners to all eligible customers. If an entity signs a Reliability Service Agreement, MISO acts as the North American Electric Reliability Corporation (NERC) Reliability Coordinator for the Reliability Service customer and performs specific tasks that include transmission system security and mitigation of potential problems on a Reliability Service customer's transmission systems.

3. MISO offers Seams Service under Module F, Part II of its Tariff. Generally, Seams Service provides a mechanism to manage market-to-non-market interfaces and specify an array of congestion management tools that are utilized for that purpose, including a standardized Congestion Management Process. The terms and conditions of Seams Service MISO provides under its Tariff are similar, but not identical, to the terms

and conditions in seams agreements MISO has or had with PJM Interconnection LLC (PJM), Southwest Power Pool, Inc. (SPP), and Tennessee Valley Authority (TVA).

## II. Filing

### A. Reliability Service

4. MISO proposes the following changes to the eligibility provision for Reliability Service at Module F, section 71 of its Tariff:

To be eligible for Reliability Coordination Service, a Reliability Coordination Customer must be an operating entity that is a NERC Registered Balancing Authority, ~~or a~~ NERC Registered Transmission Operator, or an owner of transmission facilities that are part of the Bulk Electric System, whose transmission facilities are contiguous to the Transmission System. ~~that~~ An entity is not eligible for Reliability Coordination Service if, during the time service is provided under this Part I, it is a signatory to the ISO Agreement. The Transmission Provider reserves the right to deny service under this Part I if, in its sole judgment, the transmission facilities of the applicant are more appropriately located in a different Reliability Coordinator Area.

5. MISO states that the proposed changes will allow certain entities that own Bulk Electric System<sup>1</sup> facilities, but who are not NERC Registered Transmission Operators, to be eligible for Reliability Service. Currently, an entity must be a NERC Registered Transmission Operator to be eligible for Reliability Service.

6. MISO explains that a smaller municipal or cooperative system that owns limited transmission facilities may not be a NERC Registered Transmission Operator. For example, a smaller municipal system may have a long-standing contract with a neighboring transmission owner to create an integrated transmission system, pursuant to which the neighboring transmission owner acts as the NERC Registered Transmission Operator for the municipal system. MISO states that a problem arises when the transmission owner, acting as the NERC Registered Transmission Operator, is a member of MISO but the smaller system is not. MISO states that the non-member assumes that

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<sup>1</sup> The Tariff defines Bulk Electric System as “[t]he electrical Generation Resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher as further defined by the applicable Regional Entity.”

its Bulk Electric System facilities are automatically part of the MISO Reliability Coordinator Area, and, as a practical matter, this is the case.<sup>2</sup> However, MISO states that what is lacking is the documentation required by NERC standards establishing MISO's authority to act as the Reliability Coordinator for the facilities owned by the non-member.

7. MISO states that, if a non-member that owns Bulk Electric System facilities signs up for Reliability Service under the Tariff, then MISO will have the authority required by NERC to act as the Reliability Coordinator for the non-member's system. Therefore, MISO is proposing the changes to its Tariff to allow an entity that is not a NERC Registered Transmission Operator to still be eligible for Reliability Service if the entity's facilities are contiguous to the MISO transmission system.

8. MISO is also proposing a second change to Reliability Service that limits it only to those parties with Bulk Electric System facilities that are physically interconnected to MISO Bulk Electric System facilities. MISO states that, while no transmission owner in a distant location has ever requested such service, the existing language raises that possibility, and it wishes to avoid "shopping" by Bulk Electric System owners who should more logically be part of a different Reliability Coordinator Area.

#### **B. Seams Service**

9. MISO proposes to add the following new section to Seams Service at Module F, section 82.5a of its Tariff:

If the Transmission Provider and the Congestion Management Customer have contract paths to the same entity, the combined contract path capacity will be made available for use by both parties. This will not create new contract paths for either Party that did not previously exist. The Congestion Management Customer will not be able to deal directly with companies with which it does not physically or contractually interconnect and the Transmission Provider will not be able to deal directly with companies with which it does not physically or contractually interconnect.

10. MISO states that the new provision requires MISO and a Seams Service customer to share, on a reciprocal basis, transmission capacity on a common path. MISO states that the new language is consistent with similar language in its existing seams agreements with PJM, SPP, and TVA.

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<sup>2</sup> MISO states that, for example, it cannot monitor only a portion of an integrated system, and those facilities are modeled and monitored automatically.

11. MISO states the capacity sharing concept it is proposing to add to Seams Service allows MISO and a Seams Service customer to backstop each other during outage situations but does not reduce the ownership rights of a party in its own capacity. The owner still retains the ability to sell transmission on its facilities as it always has. If shared capacity reaches its operating limit and requires congestion relief, the Congestion Management Process procedures provide that the entity using the other party's capacity will be curtailed to its historic parallel flow impacts using redispatch or curtailment to return the shared capacity to the other entity.

### **III. Notice of Filing and Responsive Pleadings**

12. Notice of MISO's filing was published in the *Federal Register*, 76 Fed. Reg. 19,988 (2011), with interventions and protests due on or before April 22, 2011. On April 13, 2011, a notice was issued extending the comment date to May 2, 2011. Timely motions to intervene were filed by Consumers Energy Company, Duke Energy Corporation, Minnkota Power Cooperative, and Wisconsin Electric Power Company.

13. Timely motions to intervene and comments were filed by Basin Electric Power Cooperative (Basin), Western Area Power Administration (WAPA), and Heartland Consumers Power District (Heartland) (collectively, IS Parties), Associated Electric Cooperative, Inc. (Associated Electric), SPP, Midwest TDUs,<sup>3</sup> TVA, and MISO Transmission Owners (MISO TOs).<sup>4</sup> On May 16, 2011, MISO filed a motion to answer and answer. On May 17, 2011, MISO TOs filed a motion to answer and answer. On

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<sup>3</sup> Midwest TDUs are Missouri Joint Municipal Electric Utility Commission and Missouri River Energy Services.

<sup>4</sup> For purposes of this filing, MISO TOs are: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; City Water, Light & Power; Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; 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 Wisconsin corporation; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

May 23, 2011, IS Parties filed a motion to answer and answer. On May 26, 2011, Midwest TDUs filed a motion to answer and answer.

#### **IV. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept MISO's, MISO TOs', IS Parties', and Midwest TDUs answers and will, therefore, reject them.

#### **V. Substantive Matters**

##### **A. Reliability Service**

##### **1. Comments and Protests**

16. In their comments, Midwest TDUs contend that MISO must clarify: 1) that Reliability Service will apply only to entities that NERC determines to be, and registers as, owners of Bulk Electric System transmission facilities; and 2) that Reliability Service customers who are also network integration transmission (network) service customers of MISO or of another transmission provider taking Reliability Service will not be subject to additional charges under Schedule 31 of the Tariff.<sup>5</sup> First, Midwest TDUs are concerned that MISO's proposed language adding, as eligible for Reliability Service, any "owner of transmission facilities that are part of the Bulk Electric System, whose facilities are contiguous to the Transmission System" gives MISO the ability to separately assess which transmission facilities are part of the Bulk Electric System.<sup>6</sup> Midwest TDUs comment that the MISO Tariff defines Bulk Electric System differently than NERC and, therefore, transmission facilities that are part of the Bulk Electric System under the Tariff

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<sup>5</sup> Midwest TDUs Comments at 2. MISO recovers its costs to provide Reliability Service pursuant to the terms of Schedule 31 (Reliability Coordination Service Cost Recovery Adder) to the Tariff. A Reliability Service customer is charged for Reliability Service under Schedule 31 based on the customer's non-coincident monthly peak load. The costs recovered pursuant to the terms of Schedule 31 are exclusive of those costs MISO recovers pursuant to Schedules 1, 10, 10-A, 10-B, 10-C, 16, 16-A, 17, or 17-A of the Tariff.

<sup>6</sup> *Id.* at 4.

may not be transmission facilities that are part of the Bulk Electric System as defined by NERC.<sup>7</sup> Consequently, Midwest TDUs argue that this difference allows MISO to inappropriately make its own determination as to which facilities are part of the Bulk Electric System and subject those facilities to taking Reliability Service, which undermines NERC's authority.<sup>8</sup> Midwest TDUs suggest that the Commission direct MISO to clarify that Reliability Service will only apply to those entities that NERC determines to be (and registers as) owners of Bulk Electric System transmission facilities.<sup>9</sup>

17. Midwest TDUs also argue that MISO should revise Schedule 31 (Reliability Coordination Service Cost Recovery Adder) of the Tariff to ensure no additional charges will be imposed on customers that take network service under the MISO Tariff. Midwest TDUs are concerned that certain small transmission owners that would now be eligible for Reliability Service would be subjected to additional charges under Schedule 31, even if the Reliability Service customer is already paying its full share of the costs of MISO's reliability coordinator functions by paying Schedule 10 charges.<sup>10</sup> Midwest TDUs note that Schedule 31 provides that the non-coincident monthly peak load that a Reliability Service customer will be assessed under Schedule 31 excludes the load "used to calculate the billing determinants of the Reliability Coordination Customer for the purpose of paying the [MISO's] full Schedule 10 under this Tariff." However, Midwest TDUs state that, while Reliability Service charges under Schedule 31 are based on the customer's non-coincident monthly peak load, the billing determinants for the Capacity Rate portion of Schedule 10 charges are based on a network service customer's network load, which is calculated on a coincident peak basis. Therefore, Midwest TDUs express concern that a Reliability Service customer that is also a MISO network service customer (or a network load of a network service customer) could be subject to paying Reliability Service charges on the difference between its non-coincident monthly peak load and its coincident monthly peak load.

18. Additionally, regarding Reliability Service customers who are outside MISO's footprint and are network service customers of a transmission provider who is also a Reliability Service customer, Midwest TDUs contend that the transmission provider Reliability Service customer is already compensating MISO for Reliability Service under

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 8.

Schedule 31.<sup>11</sup> Midwest TDUs therefore request clarification that small transmission owners that become Reliability Service customers who are network service customers of other Reliability Service customers would not be subject to Schedule 31 charges because of the exclusion from Schedule 31 billing determinants of load “included in the non-coincident monthly peak load of another Reliability Coordination Customer.”<sup>12</sup>

19. The IS Parties request that the Commission require MISO to file modifications to its proposed changes to Reliability Service because they are unjust and unreasonable. Initially, the IS Parties state that MISO has told them that it is willing to delete the portion of the proposed changes that reads “whose transmission facilities are contiguous to the Transmission System.”<sup>13</sup> However, IS Parties state that the deletion still does not adequately address all issues with the provision.<sup>14</sup> The IS Parties explain that MISO’s attempt to fix a gap in the registration process is a NERC issue and should not be addressed in Module F.<sup>15</sup>

20. The IS Parties also request that the Commission order MISO to modify the last sentence of Section 71 to eliminate the phrase “sole judgment” and to provide: “[t]he Transmission Provider may deny service under this Part I if the transmission facilities of the applicant are more appropriately located in a different Reliability Coordinator Area.” The IS Parties state that this revision will make MISO’s decisions as to whether an applicant’s transmission facilities should be located in a different Reliability Coordinator Area subject to the Commission’s evaluation under the just and reasonable standard.<sup>16</sup>

## **2. Commission Determination**

21. We will conditionally accept the proposed changes to the eligibility requirements for Reliability Service, to be effective June 1, 2011, as requested, subject to MISO making a compliance filing to make further revisions as described below.

22. We will accept MISO’s proposal to offer Reliability Service to certain entities that are not a NERC Registered Balancing Authority or a NERC Registered Transmission

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<sup>11</sup> *Id.* at 9-10.

<sup>12</sup> *Id.* at 10.

<sup>13</sup> IS Parties Protest at 35.

<sup>14</sup> *Id.* at 35-37.

<sup>15</sup> *Id.* at 36.

<sup>16</sup> *Id.*

Operator. This will allow MISO to have the documentation required by NERC standards establishing the authority of MISO to act as the Reliability Coordinator for non-MISO transmission facilities. However, we agree with IS Parties that the requirement that a Reliability Service customer have transmission facilities that are “contiguous” to the MISO system could create unintended consequences. Therefore, we direct MISO, in the compliance filing required below, to delete the words “whose transmission facilities are contiguous to the Transmission System.”<sup>17</sup>

23. In addition, we agree with Midwest TDUs that the proposed language potentially could provide MISO the ability to determine on its own which transmission facilities are part of the Bulk Electric System and, accordingly, give MISO inappropriate discretion to decide which entities are eligible for Reliability Service. Therefore, we direct MISO, in its compliance filing, to clarify the Tariff language so that an entity that is considered an owner of Bulk Electric System transmission facilities under NERC procedures will be eligible for Reliability Service.

24. We also agree with IS Parties’ concern regarding MISO’s proposed language that would give MISO the right to deny Reliability Service if, in MISO’s sole judgment, the transmission facilities of the applicant are more appropriately located in a different Reliability Coordinator Area. The location of transmission facilities in the correct Reliability Coordinator Area should not be left to MISO’s sole judgment, even if only for purposes of Reliability Service. Therefore, we direct MISO, in its compliance filing, to delete the phrase “in its sole judgment” from its proposed Tariff language. If MISO believes the transmission facilities of an entity that requests Reliability Service should not be in the MISO Reliability Coordinator Area, MISO must work with that entity and NERC to determine the proper Reliability Coordinator Area for those facilities.

25. We disagree, however, with IS Parties’ assertion that MISO is attempting to fix a NERC registration issue and that the language expanding eligibility for Reliability Service should therefore be rejected. MISO’s change will allow certain entities that are not NERC Registered Transmission Operators to be eligible for Reliability Service, but this is not an attempt to fix a NERC registration issue and does change any existing NERC process. It simply expands the universe of entities that are eligible for Reliability Service. The fact that certain entities that are not NERC Registered Transmission Operators will now be able to take Reliability Service is not a basis to reject the proposed change.

26. We find that no changes are needed to address Midwest TDUs’ concern that a Reliability Service customer that is also a MISO network service customer may be subjected to additional Reliability Service charges under Schedule 31 of the MISO Tariff.

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<sup>17</sup> IS Parties state that MISO has already agreed to delete this language. *Id.* at 35.

27. We agree that, if a MISO network service customer becomes a Reliability Service customer, the non-coincident peak used to calculate the customer's Reliability Service charges under Schedule 31 should not include load that MISO already uses to calculate Schedule 10 charges on the same customer's network service. However, we find that Schedule 31 already prevents such double charging. Schedule 31 states:

The non-coincident monthly peak load of the Reliability Coordination Customer shall not include load within the Balancing Authority Area of the Reliability Coordination Customer, or load that is interconnected with and taking service over the transmission facilities of the Reliability Coordination Customer, to the extent that such load . . . is used to calculate the billing determinants of the Reliability Coordination Customer for the purpose of paying the Transmission Provider's full Schedule 10 under this Tariff.

28. Although Midwest TDUs express concern that a Reliability Service customer may face additional charges because Reliability Service charges are based on non-coincident monthly peak load and Schedule 10 charges are based on coincident monthly peak load, we find that Schedule 31 would not allow for such additional charges. Our understanding of this provision is that, if a MISO network service customer's load is used to calculate Schedule 10 charges related to its network service, then that same customer's network service load will not be included in a Reliability Service customer's non-coincident monthly peak load for purposes of Schedule 31 charges. The non-coincident monthly peak load used to calculate Schedule 31 charges for a Reliability Service customer who is also a MISO network service customer will not include any part of the Reliability Service customer's MISO network service load, even if the customer's non-coincident monthly MISO network service peak load is higher than its coincident monthly peak load. This is appropriate because a Reliability Service customer should not be assessed Reliability Service charges for load that is already assessed charges for reliability coordinating functions under Schedule 10 of the Tariff. However, because we find that the language of Schedule 31 already prevents this double charging, no changes are needed.

29. We agree with Midwest TDUs that Schedule 31 already provides that two Reliability Service customers will not both be assessed Schedule 31 charges for the same load. Schedule 31 states that a Reliability Service customer's non-coincident monthly peak load will not include load that "is included in the non-coincident monthly peak load of another Reliability Coordination Customer." Thus, the Schedule 31 non-coincident monthly peak load for a Reliability Service customer will not include its own load if the Reliability Service customer's load is already included in the Schedule 31 non-coincident monthly peak load for a different Reliability Service customer. We note that Midwest TDUs did not argue that MISO should change Schedule 31 on this point, and we find that no change is needed.

**B. Seams Service****1. Comments and Protests**

30. In their protests, both the IS Parties and Associated Electric argue that the Commission should reject MISO's proposed modifications to Part II of Module F because they would force customers taking Seams Service to either give MISO the right to use their transmission facilities on a contract path basis without compensation to serve loads on MISO's transmission system or to cancel their Seams Service Agreement with MISO.<sup>18</sup> The IS Parties first note that proposed section 82.5a provides that if MISO and a Seams Service customer have contract paths to the same entity, both parties may use the combined contract path capacity. The IS Parties argue that this constitutes an attack on the long-standing principle that a transmission provider may only sell transmission service for which it has contract path transfer capability, and it eliminates the distinction between contract path service and parallel flows.<sup>19</sup> The IS Parties and Associated Electric also contend that, even though the provision seems equitable because it allows Seams Service customers to use MISO's transmission capacity, MISO actually receives an advantage because it would use the IS Parties' system while the IS Parties will not use MISO's facilities.<sup>20</sup> The IS Parties and Associated Electric claim that this would result in MISO expropriating the IS Parties' transmission system without compensation, or would force the IS Parties to terminate their Seams Service with MISO to avoid expropriation of their system.

31. The IS Parties reject MISO's claims that its proposal will reduce transmission costs and address situations in which one party experiences an outage on its system and has to make use of another system. The IS Parties respond that the IS Parties' customers will simply be subsidizing MISO's use of their system and, instead of eliminating transmission costs, the proposal shifts those costs from MISO's loads and resources to the IS Parties' loads and resources.<sup>21</sup> The IS Parties state that it is also unjust and unreasonable for MISO to require a neighbor to unwillingly give up its capacity rights in order to retain Seams Service with MISO.<sup>22</sup>

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<sup>18</sup> IS Parties' Protest at 1; Associated Electric Protest at 1.

<sup>19</sup> IS Parties' Protest at 2.

<sup>20</sup> IS Parties' Protest at 2; Associated Electric Protest at 2.

<sup>21</sup> IS Parties' Protest at 3, 19-20.

<sup>22</sup> *Id.* at 4.

32. The IS Parties further contend that, although MISO states that the proposed provision is meant to address outage situations, the new provision is not limited and would also allow MISO to expropriate the IS Parties' facilities under normal operating conditions without compensation.<sup>23</sup> The IS Parties further state that they are willing to bilaterally negotiate with MISO to address the situation in which one party loses its contract path capability and must use the other party's system to serve its loads or maintain generation deliveries to the market.<sup>24</sup>

33. The IS Parties disagree with MISO's assertion that the right to share capacity is reciprocal.<sup>25</sup> The IS Parties point out that MISO has more than 140,000 MW of load, while the IS Parties have only about 4,600 MW of load and therefore, MISO's potential use of the IS Parties' facilities is much greater than the IS Parties' potential use of MISO's system.<sup>26</sup> The IS Parties note that MISO's connections to its load serving entities (LSE) and generators at key seams with the IS Parties are less robust than the IS Parties' connections with those LSEs and generators and consequently, there are certain regions, namely in North and South Dakota, where MISO needs the IS Parties' facilities more than the IS Parties need MISO's facilities.<sup>27</sup> The IS Parties contend that MISO will not have any incentive to build its own facilities at its seams with the IS Parties if it is allowed to use the IS Parties' facilities to serve its load.<sup>28</sup>

34. The IS Parties comment that MISO's stated purpose for adding the capacity sharing provision conflicts with the plain language of the proposed provision. The IS Parties explain that MISO stated that one purpose of a similar provision in the MISO-PJM seams agreement was "to insure that the continuity requirement is maintained in the event of a transmission outage," and that "the capacity 'sharing' concept [in the MISO-PJM seams agreement] allows each [Regional Transmission Organization (RTO)] to backstop the other during outage situations."<sup>29</sup> The IS Parties contend that the Tariff revision goes beyond this stated purpose and instead allows MISO to use its Seams Service customers' transmission facilities on a contract path basis under normal operating

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<sup>23</sup> *Id.* at 18.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 15.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 15-16.

<sup>28</sup> *Id.* at 16-17, 21-22.

<sup>29</sup> *Id.* at 22 (citing MISO Transmittal Letter at 6).

conditions, regardless of whether a transmission outage occurs on its system.<sup>30</sup> The IS Parties also assert that the proposed provision has a fundamental effect on Seams Service customers' ownership rights in their transmission facilities, since MISO can use them on a contract basis without their consent and without compensating them.<sup>31</sup>

35. The IS Parties argue that MISO has failed to demonstrate how its proposal to "share" the IS Parties' transmission capacity will result in more efficient transmission.<sup>32</sup> The IS Parties state that MISO failed to describe either the inefficiencies in the IS Parties' system or how the IS Parties' system could be improved.<sup>33</sup> The IS Parties further state that their system meets the efficiency standards of the Commission's open access policies.

36. The IS Parties argue that the Commission does not have jurisdiction to approve a provision that requires non-jurisdictional entities, such as the IS Parties, to give up their rights or ability to provide transmission service over their facilities.<sup>34</sup> The IS Parties request that the Commission direct MISO to enter into negotiations with the IS Parties concerning Seams Service.<sup>35</sup>

37. The IS Parties also contend that MISO's assertion that its proposal will make Seams Service consistent with similar language in its other bilateral seams agreements is inaccurate and misleading because the other seams agreements referenced by MISO are either currently being disputed (between MISO and SPP), have been cancelled (between MISO and TVA) or involve different circumstances (between MISO and PJM).<sup>36</sup>

38. SPP notes that, while the proposed capacity sharing provision in MISO's Tariff does not apply to SPP, section 5.2 of the seams agreement between SPP and MISO, which MISO discusses in its transmittal letter, contains language similar to proposed section 82.5a. SPP states that it is involved in a dispute with MISO regarding the application and interpretation of this similar language, and the dispute is currently

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<sup>30</sup> IS Parties' Protest at 23.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 26.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 32.

<sup>35</sup> *Id.* at 34-35.

<sup>36</sup> IS Parties' Protest at 27-30.

pending before the Commission in Docket No. EL11-34-000. Accordingly, SPP requests that the Commission clearly state that any determination in this proceeding will not affect the issues pending before the Commission in Docket No. EL11-34-000.

39. TVA comments that MISO incorrectly implies that the proposed change reflects standard language found in MISO's seams agreement with TVA and that TVA found that provision acceptable. TVA states that it did enter into a seams agreement with MISO and PJM, called the Joint Reliability Coordination Agreement, that contained a capacity sharing provision similar to that proposed in the instant filing. TVA states, however, that MISO terminated its participation in the Joint Reliability Coordination Agreement because a dispute arose between TVA and MISO as to the correct interpretation of the capacity sharing provision. Consequently, TVA and MISO negotiated a new agreement, the Adjacent Reliability Coordination Agreement, that does not contain the disputed provision. TVA also states that, unlike the Joint Reliability Coordination Agreement in which MISO no longer participates, the new Adjacent Reliability Coordination Agreement does not address the management of the market-to-non-market interface between MISO and TVA, leaving the management of that interface uncertain.

40. The MISO TOs filed comments in support of the proposed revision to Part II of Module F on the basis that this capacity sharing provision: (i) supports the Commission's policy that RTO membership is voluntary; (ii) complements the Commission's policy to drive down barriers to trade across RTO seams by providing more efficient use of transmission at a lower cost, reducing ultimate energy costs to consumers; (iii) encourages closer regional planning between interconnected transmission owners; and (iv) provides a reciprocal solution that allows for maximizing transmission system utilization, facilitating the participation of renewable projects located in MISO's western footprint in the energy markets.

## **2. Commission Determination**

41. We will accept MISO's proposal to add the capacity sharing provision as a new section 82.5a of Part II of its Tariff. The provision creates a reciprocal obligation for MISO and a Seams Service customer to share unused contract path capacity on each other's system under certain conditions. This is consistent with other aspects of Seams Service, under which MISO and a Seams Service customer have mutual rights and responsibilities. For instance, MISO and a Seams Service customer exchange real-time data and projected information, coordinate and exchange the calculations of transfer capability, coordinate flowgates through the binding Congestion Management Process, and provide opportunities for generation redispatch to relieve congestion. The capacity sharing provision adds another aspect of reciprocal coordination and cooperation to what

already occurs between MISO and a Seams Service customer. The Commission has also accepted similar provisions as part of other MISO seams agreements.<sup>37</sup>

42. In addition, Seams Service is a voluntary service that MISO offers under its Tariff on a non-discriminatory basis to all eligible customers. A prospective Seams Service customer can weigh all of the obligations and all of the benefits associated with taking that service, including the new capacity sharing provision, and make a voluntary decision whether or not to sign up for Seams Service under the Tariff. Similarly, if an existing customer no longer wants Seams Service because it finds that Seams Service would no longer benefit it given its particular situation (e.g., due to the loss of pancaked transmission service revenues as a result of the reciprocal sharing of contract path capacity) it can exercise its right to terminate its Seams Service Agreement.<sup>38</sup>

43. We understand that the IS Parties believe the capacity sharing provision is unfair as applied to them and that MISO will receive more benefits under the provision from the IS Parties than the IS Parties will receive from MISO. However, assuming, *arguendo*, that the capacity sharing provision actually would benefit MISO more than IS Parties, we do not find that a convincing basis to reject the proposal. If we rejected as unjust and unreasonable a single reciprocal coordination provision of Seams Service because that one provision viewed in isolation may benefit IS Parties more than MISO, then any other individual reciprocal coordination provision of Seams Service that may benefit IS Parties more than it benefits MISO would likewise be unjust and unreasonable. Therefore, even if we assume that proposed reciprocal contract path sharing in section 82.5a provides greater benefits to MISO as compared to the IS Parties, there may be other reciprocal coordination provisions under Seams Service that provide greater benefits to IS Parties than MISO. If all of the benefits and burdens are considered collectively, Seams Service may remain desirable to IS Parties. If that were not the case and the collective benefits to the IS Parties of reciprocal coordination under Seams Service are outweighed by the

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<sup>37</sup> *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,008 (2004), *reh'g denied*, 110 FERC ¶ 61,031 (2005); *Midwest Indep. Trans. Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251, *order on reh'g and compliance*, 108 FERC ¶ 61,143, *reh'g denied*, 109 FERC ¶ 61,166 (2004).

<sup>38</sup> Pursuant to Module F, section 88.1 of the Tariff, a Seams Service Agreement has an initial three year term and shall automatically renew thereafter for successive one year terms unless written notice of termination is provided not less than 1 year prior to the end of the initial or any subsequent term of a Seams Service Agreement. WAPA (on behalf of the IS Parties) executed a Seams Service Agreement on March 31, 2009. On March 30, 2011, WAPA provided written notice to MISO of the termination of its Seams Service Agreement, to be effective March 31, 2012. *See* IS Parties Protest at Attachment C.

collective burdens of such reciprocal coordination, then the IS Parties may terminate their Seams Service as it is voluntary.

44. We also disagree with IS Parties' claim that the capacity sharing provision creates disincentives to construct adequate transmission capacity. MISO will still have to plan and construct adequate transmission capacity to meet the firm point-to-point and network transmission service needs of its customers. MISO and a Seams Service customer can each rely on the other party's capacity that would be shared under the new provision only on a non-firm basis. As MISO explains, if shared capacity reaches its operating limit and requires congestion relief, the Congestion Management Process that MISO and the Seams Service customer must follow provides that MISO and the Seams Service customer will be curtailed to their historic parallel flow impacts.<sup>39</sup> Therefore, MISO cannot rely on transmission capacity it may be able to share on a Seams Service customer's transmission facilities to grant firm transmission service. Although it can make more efficient use of transmission capacity that may be available under the capacity sharing provision, MISO cannot rely on the shared capacity in place of upgrades to its transmission system that it otherwise needs. Further, MISO has an open and transparent transmission planning process that must comply with the transmission planning requirements of Order No. 890.<sup>40</sup> Nothing in the capacity sharing provision changes MISO's transmission planning obligations.

45. A benefit of the capacity sharing provision that MISO highlights is the ability of MISO and the Seams Customer to rely on each other to integrate a load or a generator when a line outage occurs. We agree with IS Parties that the capacity sharing provision as proposed is not limited to outages and that sharing can occur under normal operating conditions. However, the fact that one of the benefits of the capacity sharing provision could be provided under more limited circumstances is not sufficient to find the more expansive provision to be unjust and unreasonable.

46. IS Parties are also incorrect in their assertion that the Commission does not have statutory authority to accept the capacity sharing provision. Midwest ISO has the right under section 205 of the Federal Power Act to propose this change to the Seams Service section of its own Tariff, and the Commission has authority to accept this change. The IS Parties voluntarily signed a Seams Service Agreement and agreed to take Seams Service

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<sup>39</sup> MISO Transmittal Letter at 6.

<sup>40</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

pursuant to the terms and conditions in the MISO Tariff, with no limitation on MISO's statutory right to propose changes to its Tariff.<sup>41</sup> In addition, we note that the Seams Service Agreement and the MISO Tariff contain several provisions that explicitly protect the jurisdictional status of Seams Service customers. For example, section 17 of the Seams Service Agreement states:

No Waiver of Jurisdictional Immunity. If the Congestion Management Customer is not subject to the jurisdiction of the FERC as a "public utility" under the Federal Power Act, the Congestion Management Customer shall not be required to take any action or participate in any filing or appeal that would confer FERC jurisdiction over the Congestion Management Customer. Nothing in this Service Agreement waives any objection to, or otherwise constitutes a consent to, the jurisdiction by FERC over the Congestion Management Customer or its transmission service, facilities and rates.

47. In addition, sections 88.2 and 88.3 in Module F of the MISO Tariff explicitly allow a Seams Service customer that is not a "public utility" within the meaning of the Federal Power Act to terminate its Seams Service Agreement with less than the required one-year notice in the event that statutes governing the Seams Service customer, or any provisions of the Tariff, are changed or modified in a manner that causes a conflict with state law, regulations or rate schedules. In addition, section 12(B) of the MISO Tariff outlines applicability of Tariff provisions to WAPA, and section 12(E) outlines applicability to Public Power entities. Accordingly, nothing in the new capacity sharing provision alters the jurisdictional relationship between the Commission and the IS Parties.

48. Therefore, based on the foregoing, we accept MISO's proposed revision to add a new section 82.5a to Part II of Module F of its Tariff, to be effective June 1, 2011, as requested.

49. In response to SPP, we confirm that our acceptance of the capacity sharing provision as section 82.5a Part II of Module F of the MISO Tariff in this proceeding does not affect matters pending in Docket No. EL11-34-000.

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<sup>41</sup> *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271 (2008), *order on reh'g*, 128 FERC ¶ 61,103, at P 23 (2009) (rejecting jurisdictional challenge on the basis that non-jurisdictional governmental entities are affected by the Integrated Balancing Authority Area Proposal only insofar as they choose to transact within the California Independent System Operator-controlled grid), *aff'd sub nom, Trans. Agency of N. Cal. v. FERC*, 628 F.3d 538, at 546 (D.C. Cir. 2010).

The Commission orders:

(A) MISO's proposed revisions to its Tariff at Part I of Module F, Reliability Service, are hereby conditionally accepted, to be effective June 1, 2011, as requested, as discussed in the body of this order.

(B) MISO's proposed revisions to its Tariff at Part II of Module F, Seams Service, are hereby accepted, to be effective June 1, 2011, as requested.

(C) MISO is hereby directed to submit a compliance filing within thirty (30) days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.