

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER06-360-000 ER06-361-000 ER06-362-000 ER06-363-000 ER06-372-000 ER06-373-000
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Midwest Independent Transmission System Operator, Inc. and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc.	ER06-366-000
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ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS AND SERVICE
AGREEMENTS

(Issued February 17, 2006)

1. In this order, we conditionally accept the proposed revisions filed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Transmission Owners of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO TOs)¹ to schedule 23 of the Midwest ISO's Transmission and Energy Markets Tariff

¹ The Midwest ISO TOs, for purposes of this proceeding, consist of: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Company d/b/a AmerenCilco, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc., on behalf of Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); Cinergy Services, Inc. for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Company; City of Columbia Water and Light Department (Columbia, MO); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; LG&E Energy LLC (for

(continued)

(TEMT). The proposed revisions include: (1) revisions to attachment 1 to schedule 23 to correct the names of certain transmission owners, grandfathered agreement (GFA) customers, and contract titles that were misspelled, abbreviated, or omitted in the original version; (2) removal of certain GFAs for which parties have reached settlements; (3) revisions to account for the reclassification of GFA Nos. 410 and 415 as “carved-out” GFAs;² and (4) the addition of new attachment 2, “Form of Schedule 23 Service Agreement,” which implements section 2.3 of schedule 23 (providing procedures for filing of unexecuted service agreements, if necessary, to implement schedule 23). The Commission grants waiver of the 60-day prior notice requirement and makes the revised schedule 23 effective on December 23, 2005, as requested.

2. In this order we also conditionally accept for filing six unexecuted schedule 23 service agreements filed by the Midwest ISO for service to Sioux Falls Municipal Light & Power Department (Sioux Falls), Truman Public Utilities (Truman), the University of North Dakota-Facilities (UND), East Grand Forks Water & Light Department (East Grand Forks), Granite Falls Municipal Utilities (Granite Falls), and East River Electric Power Cooperative (East River), to become effective April 1, 2005, as requested.

Background

3. On January 13, 2005, the Midwest ISO TOs filed proposed schedule 23 of the TEMT, which provides for the Midwest ISO TOs’ recovery of Midwest ISO schedule 10 and schedule 17 costs from customers under specified GFAs carved out of the Midwest ISO energy markets. Schedule 10 (ISO Cost Recovery Adder) of the TEMT provides for recovery of the Midwest ISO’s capital and ongoing operating costs associated with running the Midwest ISO; the ISO Cost Recovery Adder is based on the budgeted expenses to be recovered each month divided by the MWh of transmission service

Louisville Gas and Electric Company and Kentucky Utilities Company); Minnesota Power, and its subsidiary Superior Water, Light & Power; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana; and Wabash Valley Power Association, Inc.

² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,042 at P 279 (GFA Rehearing Order), *order on reh’g*, 112 FERC ¶ 61,311 (2005).

expected to be provided under the TEMT during the same period, subject to a true-up. Schedule 17 (Energy Market Support Administrative Service Cost Recovery Adder) of the TEMT provides for a deferral of start-up costs related to the establishment of energy markets and for the recovery of such deferred costs as well as the ongoing costs of providing energy markets service once the markets are operational.

4. The Commission conditionally accepted schedule 23 on March 24, 2005.³ In the November 2 Order, the Commission conditionally accepted the Midwest ISO TOs' subsequent compliance filing subject to minor revisions.

5. On December 22, 2005, in Docket No. ER06-366-000, the Midwest ISO and the Midwest ISO TOs filed with the Commission several proposed revisions to schedule 23. First, the Midwest ISO and Midwest ISO TOs propose "minor revisions" to attachment 1 to schedule 23 "to spell out potentially confusing abbreviations, correct the names of GFA customers and contracts, and remove GFAs for which there have been settlements."⁴ Second, the Midwest ISO and Midwest ISO TOs propose revisions to account for the Commission's decision in the GFA Rehearing Order to re-classify GFA Nos. 410 and 415 as carved-out GFAs, and the decision by the transmission owner for these GFAs, American Transmission Systems Incorporated (ATSI), to add these GFAs to schedule 23. Third, the Midwest ISO and Midwest ISO TOs propose a new attachment 2, "Form of Schedule 23 Service Agreement." According to the Midwest ISO and Midwest ISO TOs, "[t]his service agreement will be used in accordance with section 2.3 of Schedule 23, which permits the Midwest ISO to 'file a service agreement, either executed or unexecuted, with the Commission to allow charges to the Carved-Out GFA Customer under . . . Schedule 23.'"⁵ The Midwest ISO and the Midwest ISO TOs request waiver of the 60-day prior notice requirement to allow the proposed revisions to schedule 23 to become effective December 23, 2005.

6. Also on December 22, 2005, the Midwest ISO filed unexecuted schedule 23 service agreements to allow recovery of schedule 23 charges from customers under six carved-out GFAs. The customers under these GFAs are: Sioux Falls (in Docket No. ER06-360-000); Truman (in Docket No. ER06-361-000); UND (in Docket No.

³ *Transmission Owners of the Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,339 (March 24 Order), *order on reh'g*, 113 FERC ¶ 61,122 (2005) (November 2 Order).

⁴ December 22, 2005 Filing, Docket No. ER06-366-000 at 3.

⁵ *Id.* at 4.

ER06-362-000); East Grand Forks (in Docket No. ER06-363-000); Granite Falls (in Docket No. ER06-372-000); and East River (in Docket No. ER06-373-000). The Midwest ISO reports that it attempted to obtain customer signatures from each of these entities but was unsuccessful. The Midwest ISO requests that the Commission grant an effective date of April 1, 2005 for each of these service agreements.

Notices and Responsive Filings

7. Notices of the filings in Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-366-000, ER06-372-000, and ER06-373-000 were published in the *Federal Register*, 71 Fed. Reg. 1,423-24 (2006), with interventions and protests due on or before January 12, 2006. East Grand Forks filed a timely motion to intervene and motion for an extension of comment period in Docket No. ER06-363-000. The Commission granted an extension in Docket No. ER06-363-000 for comments to and including January 23, 2006.

8. Granite Falls and East Grand Forks filed a timely joint motion to intervene in Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-366-000, ER06-372-000, and ER06-373-000, and filed a motion to consolidate all seven dockets.

9. Xcel Energy Services Inc. (Xcel), on behalf of Northern States Power Company (NSP), filed a timely motion to intervene and comments in Docket Nos. ER06-360-000, ER06-362-000, ER06-363-000, ER06-372-000, and ER06-373-000.

10. Truman filed a timely motion to intervene in Docket No. ER06-361-000.

11. Timely motions to intervene were filed in Docket No. ER06-366-000 by: (1) Xcel; and (2) Basin Electric Power Cooperative (Basin Electric), Central Power Electric Cooperative, Inc. (Central Power), and East River. International Transmission Company (ITC) filed a timely motion to intervene and comments in Docket No. ER06-366-000. Michigan Electric Transmission Company, LLC (METC) filed a timely motion to intervene and protest in Docket No. ER06-366-000. On January 27, 2006, METC filed a notice of withdrawal of its protest.⁶

⁶ Pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216 (2005), METC's withdrawal of its protest became effective on February 13, 2006.

12. A timely motion to intervene, protest, and request for hearing was filed on behalf of Basin Electric and East River in Docket No. ER06-373-000.

13. On January 27, 2006, the Midwest ISO filed individual answers in Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-366-000, ER06-372-000, and ER06-373-000. On February 13, 2006, Basin Electric and East River filed an answer to the Midwest ISO's answer in Docket No. ER06-373-000.

Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene of Basin Electric, Central Power, East Grand Forks, East River, Granite Falls, ITC, METC, Truman, and Xcel serve to make them parties to the respective proceedings in which they filed motions to intervene.

15. Order No. 663⁷ applies to all pleadings, including answers. It requires that any issues that a movant wishes the Commission to address must be specifically identified in a section entitled "Statement of Issues," and states that issues not so listed will be deemed to have been waived. Order No. 663 became effective on September 23, 2005. The answers of the Midwest ISO omit a separate Statement of Issues section. For this reason, we deem the Midwest ISO to have waived the issues raised in its answers. Since we reject the Midwest ISO's answers, we will dismiss Basin Electric and East River's answer to the Midwest ISO's answer in Docket No. ER06-373-000.

B. Analysis

16. We find that the proposed revisions to schedule 23, as conditioned as discussed below, are just and reasonable, and we will accept the revisions effective December 23, 2005, as requested. Furthermore, we will conditionally accept the six unexecuted schedule 23 service agreements effective April 1, 2005, as requested.

⁷ *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 70 Fed. Reg. 55,723 (Sept. 23, 2005), FERC Stats. & Regs. ¶ 31,193 (2005).

1. Form of Service Agreement and Unexecuted Service Agreements

17. In Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-366-000, ER06-372-000, and ER06-373-000, Granite Falls and East Grand Forks raise concerns that they state are not explicitly addressed by the provisions of schedule 23, but which they argue relate to the implementation and invoicing of schedule 23. First, Granite Falls and East Grand Forks state that the information to be provided by the Midwest ISO TOs to their GFA customers does not necessarily include megawatt-hour data upon which schedule 23 charges are assessed, but note that counsel for the Midwest ISO had indicated that such data would be provided. Second, Granite Falls and East Grand Forks note that schedule 23 does not specify the payment procedures for non-market-participant carved-out customers. Third, Granite Falls and East Grand Forks state that the form of service agreement includes language providing that “the Tariff, in its entirety, is incorporated herein and made a part hereof,” and maintain that this statement is inconsistent with section 38.8 of the TEMT, which provides that “Carved-Out GFAs shall be subject only to section 38.8.4 of this Tariff.” Finally, Granite Falls and East Grand Forks argue that a service agreement (and any associated obligations under schedule 23) should automatically terminate upon termination of the underlying carved-out agreement.

18. In Docket No. ER06-373-000, Basin Electric and East River argue that the Midwest ISO has not provided the details, the support or the methodology for calculating the load data used to implement and collect the schedule 23 charges. Basin Electric and East River request that the Commission set this filing for hearing, because the Midwest ISO has provided insufficient information. Basin Electric and East River also contend that the provision in the service agreement requiring the customer to provide all information reasonably necessary to enable the Midwest ISO to implement schedule 23 is too open-ended, and may impose unjust and unreasonable obligations on the customer.

19. We agree with Granite Falls and East Grand Forks that the language in the form of service agreement which provides that “the Tariff, in its entirety, is incorporated herein and made a part hereof,” is inconsistent with the TEMT, which requires “Carved-Out GFAs shall be subject only to section 38.8.4 of this Tariff.” We also agree with Granite Falls and East Grand Forks that a service agreement (and any associated obligations under schedule 23) should automatically terminate upon termination of the underlying carved-out agreement, and that the service agreement should specify payment procedures. In addition, we agree with Basin Electric and East River that the service agreement should specify the information required of the customer. We therefore direct the Midwest ISO and Midwest ISO TOs to file revisions to the proposed Form of Schedule 23 Service Agreement, as well as the six schedule 23 unexecuted service agreements to: (1) incorporate only those provisions of the TEMT that are applicable to carved-out GFA

customers under schedule 23; (2) provide for the service agreement to automatically terminate upon termination of the underlying carved-out agreement; (3) specify payment procedures; and (4) specify the information required to be provided by the customer.

20. With respect to concerns that the Midwest ISO has not provided the details, the support or the methodology for calculating the load data used to implement and collect the schedule 23 charges, we first note that the service agreement implements schedule 23, and the Commission has found that schedule 23 contains adequate specificity as a formula rate to pass through schedule 10 and 17 charges assessed to the transmission owner for transacting under the GFA.⁸ In addition, section 2.5 of schedule 23 already provides that the Transmission Owner and the Midwest ISO shall provide supporting detail for invoices, including information adequate to allow carved-out GFA customers to back-calculate their schedule 23 invoices, as required by the March 24 and November 2 Orders.⁹

21. Further, above we have required additional specificity in the service agreement concerning certain matters and, with these modifications, we find that the methodology and procedures for implementing schedule 23 under the service agreements will be adequately specified. Therefore, we will deny the request for hearing of Basin Electric and East River.

2. Effective Date

22. In Docket No. ER06-366-000, the Midwest ISO and Midwest ISO TOs request waiver of the 60-day prior notice requirement to allow revised schedule 23 to become effective December 23, 2005, the day after it was filed. In support of that request, the Midwest ISO and Midwest ISO TOs state that the filing merely provides corrections to existing schedule 23, adds GFA Nos. 410 and 415 in accordance with prior Commission determinations, and adds a form of service agreement to implement already-existing section 2.3 of schedule 23. In Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-372-000, and ER06-373-000, the Midwest ISO requests the Commission grant an effective date of April 1, 2005 for each of the six unexecuted schedule 23 service agreements. In support of those requests, the Midwest ISO states that schedule 23 is silent on the timeframe within which the service agreement must be filed. The Midwest ISO also maintains that the Commission has held that certain

⁸ November 2 Order, 113 FERC ¶ 61,122 at P 45.

⁹ *Id.* at P 67; *Midwest ISO Transmission Owners*, Docket No. ER05-447-006 (Jan. 9, 2006) (unpublished letter order).

categories of GFAs would be carved out from the Midwest ISO's energy market and be required to pay certain charges under the TEMT,¹⁰ and therefore those carved-out GFA customers were already on notice that they would be responsible for certain charges under the TEMT. The Midwest ISO further maintains that the carved-out GFA customers were given notice in Docket No. ER05-447-000 of their potential responsibility for charges under the TEMT.¹¹

23. In Docket Nos. ER06-360-000, ER06-362-000, ER06-363-000, ER06-372-000, and ER06-373-000,¹² Xcel argues that, since April 1, 2005, the Midwest ISO has been collecting schedule 23 charges from NSP rather than the carved-out GFA customers. Xcel states that the proposed April 1, 2005 effective date for these unexecuted service agreements should be granted to ensure that the Midwest ISO may collect the schedule 23 charges from the carved-out GFA customers, and then credit those dollars to NSP. Further, Xcel argues that an April 1, 2005 effective date is consistent with prior Commission orders regarding GFAs and schedule 23.

24. In Docket No. ER06-373-000, Basin Electric and East River state that the Midwest ISO's request for waiver of the Commission's 60-day prior notice requirement to allow the unexecuted service agreement between the Midwest ISO and East River to become effective April 1, 2005, should be denied. Basin Electric and East River argue that the Midwest ISO's reasons for filing the unexecuted service agreements "nearly nine months late" are insufficient to meet the "extraordinary circumstances" standard for granting such waiver, and therefore the agreement should be made effective 60 days from the date of the Midwest ISO's filing, that is February 21, 2006. Basin Electric and East River note that, where a service agreement under an umbrella tariff is filed more than 30 days after the commencement of service, the Commission requires a utility to show "extraordinary circumstances" for granting waiver.¹³

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 at P 131, 161 (2004) (GFA Order), *order on reh'g*, 111 FERC ¶ 61,042 (GFA Rehearing Order), *order on reh'g*, 112 FERC ¶ 61,311 (2005).

¹¹ See March 24 Order, 110 FERC ¶ 61,339 at P 41.

¹² Xcel does not request that the Commission consolidate the five proceedings in which it filed its intervention and comments.

¹³ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993); see also *Central*

25. Basin Electric and East River add that the Commission's prior orders involving schedule 23 provided inadequate notice to carved-out GFA customers as to the timing of charges. Basin Electric and East River state that the fact that schedule 23 is silent with respect to the time when the service agreements were to be filed is insufficient for the Midwest ISO to meet the Commission's extraordinary circumstances standard. Basin Electric and East River also state that the Midwest ISO made no attempt to obtain East River's agreement to the terms of the unexecuted service agreement.

26. With respect to the decision by ATSI to add GFA Nos. 410 and 415 to schedule 23 in Docket No. ER06-366-000, we consider this to be new service, and therefore we find good cause to grant waiver of notice to allow an effective date of December 23, 2005 to add GFA Nos. 410 and 415 to schedule 23.¹⁴ The Commission also finds good cause to grant waiver of notice to permit a December 23, 2005 effective date for the balance of the proposed revisions to schedule 23 in Docket No. ER06-366-000, as these revisions have no rate impacts.¹⁵ We agree with the Midwest ISO that parties to carved-out GFAs were put on notice through the Commission's schedule 23 orders that they would be subject to the schedule 10 and 17 charges pursuant to schedule 23.¹⁶ We note the Midwest ISO TOs' original schedule 23 filing in Docket No. ER05-447-000, made on January 13, 2005, *i.e.*, made more than 60 days in advance of the requested effective date of April 1, 2005, included the carved-out GFAs and also expressly named all of these customers.¹⁷ We further note, in this regard, that Basin Electric and East River were active parties in those schedule 23 proceedings.¹⁸ Accordingly, we find the customers to the six

Hudson Gas & Elec. Corp., 60 FERC ¶ 61,106 at 61,338-39 (*Central Hudson*), order on *reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁴ *Central Hudson*, 60 FERC ¶ 61,106 at 61,339 (waiver of notice granted for the provision of new service if the filing is made prior to the proposed effective date).

¹⁵ *Id.* at 61,338.

¹⁶ *See supra* notes 3, 10-11.

¹⁷ *See* Transmission Owners Filing to Recover Schedule 10 and Schedule 17 Costs from Customers under Grandfathered Agreements, Docket No. ER05-447-000 (Jan. 13, 2005); *see also supra* note 3.

¹⁸ *See* Motion to Intervene and Protest of Basin Electric Power Cooperative, Central Power Electric Cooperative, Inc. and East River Electric Power Cooperative, Inc. to the Midwest ISO Transmission Owners' Schedule 23 Filing, Docket Nos.

(continued)

unexecuted schedule 23 service agreements received adequate prior notice that the schedule 23 charges would be charged to them and we find good cause to grant the proposed April 1, 2005 effective date for the unexecuted service agreements consistent with the provisions of schedule 23.¹⁹

3. Requirement to Sign the Appendix I Supplement Agreement

27. In Docket No. ER06-366-000, ITC states that all Midwest ISO participants seeking status as a Transmission Owner, as that term is defined in the TEMT and the Midwest ISO Transmission Owners Agreement, should be required to sign the Appendix I Supplemental Agreement. The Appendix I Supplemental Agreement provides for ITC's participation in the Midwest ISO as an independent transmission company. ITC notes that Michigan Public Power Agency (MPPA) is listed as a Transmission Owner under attachment 1 of schedule 23, but has yet to sign the Appendix I Supplemental Agreement. ITC requests that the Commission direct MPPA to execute the Appendix I Supplemental Agreement prior to accepting the proposed schedule 23 amendments.

28. The Commission has stated that it is "reasonable [to] require potential Midwest ISO [transmission] owners to sign the Supplemental Agreement committing the applicant to be bound by all terms of the agreement,"²⁰ and has already required that MPPA become a signatory to the Appendix I Supplemental Agreement.²¹ We find that the January 20 Order sufficiently addresses ITC's request, and therefore will deny ITC's request in Docket No. ER06-366-000.

ER05-447-000 and ER05-447-001 (Feb. 4, 2005); Motion for Leave to Respond and Response of Basin Electric Power Cooperative, Central Power Electric Cooperative, Inc. and East River Electric Power Cooperative, Inc. to the Midwest ISO Transmission Owners' Answer to Protests, Docket No. ER05-447-000 (Mar. 2, 2005); *see also* Request for Rehearing of Dairyland Power Cooperative, Basin Electric Power Cooperative, East River Electric Power Cooperative, Inc., and Central Power Electric Cooperative, Inc., Docket No. ER05-447-005 (Apr. 25, 2005).

¹⁹ *Central Hudson*, 60 FERC ¶ 61,106 at 61,338 (waiver of notice granted when effective date already prescribed).

²⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,053 at P 21 (2006) (January 20 Order) (citing *Int'l Transmission Co.*, 97 FERC ¶ 61,328 at 62,542 (2001)).

²¹ *Id.*

4. Request for Consolidation

29. Granite Falls and East Grand Forks filed a motion to consolidate Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-366-000, ER06-372-000, and ER06-373-000. Granite Falls and East Grand Forks maintain that the issues in each of these proceedings are “intimately related” and “[b]ecause the affected customers are similarly situated . . . and the agreements should be treated uniformly,” the seven proceedings should be consolidated.²²

30. We deny Granite Falls and East Grand Forks’ request for consolidation. The Commission formally consolidates cases for purposes of hearing and subsequent decision, *i.e.*, when instituting a trial-type evidentiary hearing. Since we are not instituting a trial-type evidentiary hearing, formal consolidation is not warranted.²³

The Commission orders:

(A) The Midwest ISO and Midwest ISO TOs’ December 22, 2005 filing in Docket No. ER06-366-000 is hereby conditionally accepted for filing, effective December 23, 2005, as discussed in the body of this order.

(B) The Midwest ISO’s December 22, 2005 filings in Docket Nos. ER06-360-000, ER06-361-000, ER06-362-000, ER06-363-000, ER06-372-000, and ER06-373-000 are hereby conditionally accepted for filing, effective April 1, 2005, as discussed in the body of this order.

(C) The Midwest ISO and the Midwest ISO TOs are hereby directed to make compliance filings consistent with this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²² Granite Falls and East Grand Forks Motion, Docket Nos. ER06-360-000, *et al.* at 2.

²³ *E.g.*, *City of Holland, Mich. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,076 at P 18 n.22, *order on reh’g*, 112 FERC ¶ 61,105 (2005).