UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System System Operator, Inc.	Docket Nos. ER04-691-037 ER04-691-056 ER04-106-008 ER04-106-013
Public Utilities With Grandfathered Agreements in the Midwest ISO Region	Docket Nos. EL04-104-035 EL04-104-053

ORDER ON REHEARING CONCERNING THE TREATMENT OF GRANDFATHERED AGREEMENTS IN MIDWEST ISO ENERGY MARKETS

(Issued September 19, 2005)

1. On May 26, 2004, the Commission issued an order on the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) proposed Transmission and Energy Markets Tariff (TEMT or Tariff)[1] which, among other things, initiated, under section 206 of the Federal Power Act (FPA),[2] a three-step process to address the treatment of transmission service provided under grandfathered agreements (GFAs) in the Midwest ISO energy markets and offered an option for GFA parties to settle.[3] On August 6, 2004,

[1] The TEMT, implemented on April 1, 2005, allowed the Midwest ISO to initiate Day 2 operations in its 15-state region. The Midwest ISO's Day 2 operations include, among other things, a day-ahead energy market and a real-time energy market, with locational marginal pricing (LMP) and financial transmission rights (FTRs) for hedging congestion costs.

[2] 16 U.S.C. § 824e (2000).

[3] *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004) (Procedural Order).

the Commission accepted and suspended the proposed TEMT and permitted it to become effective March 1, 2005, subject to conditions and further orders, and required the Midwest ISO to make compliance filings to implement various Commission directives.[4]

2. Subsequently, on September 15, 2004, the Commission addressed the results of its investigation of the GFAs and their treatment in the Midwest ISO's energy markets.[5] Among other things, the GFA Order required the Midwest ISO to carve some of the GFAs out of its markets and accepted the tariff sheets that described the prospective treatment of GFAs.

3. On April 15, 2005, the Commission issued the GFA Rehearing Order,[6] which addressed: (1) all issues raised on rehearing of both the Procedural Order and the GFA Order; (2) the Midwest ISO's October 18, 2004 compliance filing (October Compliance Filing) and its November 15, 2004 compliance filing (November Compliance Filing), both filed in response to the GFA Order; and (3) the GFA-specific aspects of the Midwest ISO's January 21, 2005 compliance filing (January Compliance Filing), in response to Compliance Order I.

4. This order addresses all issues raised on rehearing of the GFA Rehearing Order.

I. Background

5. The Midwest ISO proposed to implement the new TEMT in a filing dated March 31, 2004. As a threshold issue, the Midwest ISO stated in that filing that it would be unable to operate its proposed energy markets without integrating an estimated 300 GFAs that were effective in the Midwest ISO region. It estimated that up to 40,000 megawatts of transmission service – about 40 percent of total load in the region – was

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[4] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043 (2005). The Commission accepted the Midwest ISO's first of two compliance filings on December 20, 2004, subject to further modifications. *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 (2004) (Compliance Order I), *order on reh'g*, 111 FERC ¶ 61,053 (2005) (Compliance Order II).

[5] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order).

[6] *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,042 (2005) (GFA Rehearing Order).

likely to be associated with the GFAs.[7] The Midwest ISO argued that allowing holders of GFAs to have scheduling rights similar to their current practice would require a physical reservation, or carve-out, of transmission capacity in the day-ahead energy market and until the scheduling deadline prior to real-time dispatch. It stated that this "cannot be accomplished without negatively impacting the Midwest ISO's ability to reliably operate the Energy Markets and without placing excessive financial burden on other Market Participants."[8]

6. In response, the Commission identified a need for further information about the GFAs and a desire to better understand how the GFAs and the proposed energy markets would affect one another. In the Procedural Order, the Commission initiated a three-step investigation[9] of the GFAs under section 206 of the FPA "to decide whether GFA operations can be coordinated with energy market operations, whether and to what extent the [transmission owners] should bear the costs of taking service to fulfill the existing contracts and whether and to what extent the GFAs should be modified."[10] The Commission also directed the Midwest ISO to move the start of the energy markets to March 1, 2005.[11]

7. Following the GFA investigation, the Commission approved the TEMT in two orders. On August 6, 2004, in the TEMT II Order, the Commission accepted and

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[7] The Midwest ISO's analysis assumed a peak capacity of 97,000 megawatts.

[8] Midwest ISO Transmittal Letter at 9 (March 31, 2004).

[9] The Commission ordered GFA parties to file interpretations of their contracts in step 1 of the investigation, and established trial-type hearing procedures before administrative law judges – step 2 of the investigation – to elicit the GFA information from those parties who were not able to agree in step 1. The Commission also offered GFA holders an opportunity to settle their GFAs by voluntarily accepting the GFA treatment that the Midwest ISO proposed in the TEMT. Step 2 of the investigation concluded on July 28, 2004, with the presiding judges' oral presentation to the Commission of the results of the hearing and the issuance of their written Findings of Fact. *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 63,013 (2004) (Findings of Fact).

[10] Procedural Order at P 67.

[11] *Id*. at P 94. The March 1, 2005 effective date was subsequently extended to April 1, 2005. *See Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169 (2005) (February 17 Order).

suspended the proposed TEMT and permitted the bulk of it to become effective March 1, 2005, subject to further orders on subjects including the GFAs.

8. On September 15, 2004, in the GFA Order (step 3 of the investigation), the Commission addressed the results of its investigation of the GFAs and how the GFAs should be treated in the Midwest ISO's energy markets. The results of the fact finding investigation indicated that only approximately 25,000 megawatts of transmission service (23 percent of total Midwest ISO load) was provided under 229 GFAs that would remain in effect when the Midwest ISO commences operation of its energy markets. Of this 25,000 megawatts of transmission service, approximately 9,700 megawatts (9 percent of total Midwest ISO load) would participate in the Midwest ISO's energy markets as a result of GFA parties' voluntary election of one of the Midwest ISO's three options[12] proposed for scheduling and financially settling GFA transactions or by voluntarily converting their service to the TEMT.[13] The Commission found that another approximately 5,000 megawatts (4.5 percent of total Midwest ISO load), representing those GFAs for which modification is subject to the just and reasonable standard of

[12] In its March 31 filing, the Midwest ISO proposed to require GFA parties to schedule and settle their GFA transactions under the Midwest ISO's energy and FTR markets through one of three options. Option A of the TEMT requires the GFA Responsible Entity to nominate and hold FTRs in order to transact under GFAs. The Midwest ISO assesses congestion charges and the cost of losses for all transactions under the GFA. Option B provides that the GFA Responsible Entity will not nominate or receive FTRs. The Midwest ISO will charge the GFA Responsible Entity the cost of congestion for all transactions pursuant to the GFA, but, if the GFA Scheduling Entity submits the bilateral transaction schedule a day-ahead, the Midwest ISO will credit back to the GFA Responsible Entity the costs of congestion resulting from day-ahead schedules that the GFA Responsible Entity clears in the day-ahead market. The Midwest ISO will also charge the GFA Responsible Entity the cost of losses for all transactions under the GFA, then, if the GFA Scheduling Entity has timely submitted a conforming schedule for the GFA, credit back to the GFA Responsible Entity the difference between marginal losses and system losses at the GFA source and sink points. Option C requires the GFA Responsible Entity to pay the costs of congestion for all GFA transactions.

[13] GFA Order at P 275. Parties settled 52 contracts. Specifically, 14 GFA parties chose to settle on Option A (a total of approximately 1,599 MW); 30 GFA parties chose to settle on Option B (a total of approximately 5,247 MW); 3 GFA parties chose a combination of Options A and B (396 MW); and 5 GFA parties chose to convert their contracts to TEMT service (representing 2,487 MW). *Id.*

review,[14] should also participate in the Midwest ISO's energy markets. This left only approximately 10,385 megawatts (9.6 percent of total Midwest ISO load), which the Commission found should be "carved-out" and therefore not participate in the Midwest ISO's energy markets, representing transmission service provided under: (1) those GFAs (representing 6,914.4 megawatts) for which the parties explicitly provided that modification is subject to the *Mobile-Sierra*[15] public interest standard of review; (2) those GFAs (representing 1,272.9 megawatts) that are silent with respect to the standard of review; and (3) those GFAs (representing 2,198 megawatts) providing for transmission service by an entity that is not a public utility.[16] The Commission found that the Midwest ISO would be able to reliably operate its energy markets with this carve-out of GFAs given the relatively small amount of transmission service involved.[17]

9. The GFA Order also addressed the applicability of charges under schedule 16, Financial Transmission Rights Administrative Service Cost Recovery Adder, and schedule 17, Energy Market Support Administrative Service Cost Recovery Adder, to transactions taking place under GFAs and directed further compliance filings.

10. As noted above, on April 15, 2005, the Commission issued the GFA Rehearing Order, which addressed: (1) all issues raised on rehearing of both the Procedural Order and the GFA Order; (2) the October Compliance Filing and the November Compliance Filing, both filed in response to the GFA Order; and (3) the GFA-specific aspects of the January Compliance Filing, filed in response to Compliance Order. The GFA Rehearing Order also directed the Midwest ISO to make further compliance filings.

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[14] The Commission determined that 50 of the non-settling GFAs (representing 4,992.7 megawatts) were subject to a just and reasonable standard of review. Of those, parties to 31 of these GFAs explicitly agreed that their contracts are subject to a just and reasonable standard of review. For the remaining 19 GFAs, the presiding judges made a finding that the contracts were subject to a just and reasonable standard of review, and we affirmed those findings.

[15] *See United Gas Pipe Line Company v. Mobile Gas Service Corp*., 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pacific Power Company*, 350 U.S. 348 (1956) (*Sierra*).

[16] GFA Order at P 130, 142, and 149. The Commission required the Midwest ISO to carve these GFAs out of its energy markets until the transition period ends in 2008.

[17] *Id*. at P 5.

11. Timely requests for rehearing and clarification of the GFA Rehearing Order were filed by the City of Columbia, Missouri (Columbia); the Detroit Edison Company (Detroit Edison); Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); Hoosier Energy Rural Electric Cooperative, Inc. and Indianapolis Power & Light Company (Hoosier/Indianapolis Power); Lincoln Electric System (Lincoln); Michigan Public Power Agency (MPPA) and Michigan South Central Power Agency (collectively, Michigan Agencies); Xcel Energy Services Inc., on behalf of Northern States Power Company Minnesota (NSP- Minnesota) and Northern States Power Company Wisconsin (NSP-Wisconsin) (collectively, Xcel); and the Cooperatives.[18]

II. Discussion

A. Schedule 17 Charges to GFA Transactions

12. In the GFA Rehearing Order, the Commission denied rehearing of the Commission's findings that the Midwest ISO's energy markets will provide benefits to all customers, including parties to GFA transactions, and that "[s]chedule 17 charges should, therefore, apply to all GFA transactions on the same basis that they apply to non-GFA transactions."[19]

13. The Commission also found that:

> the record in this proceeding is adequate for the purpose of deciding the appropriate allocation of Schedule 17 costs to GFA transactions, including transactions under carved-out GFAs. The Commission's ultimate findings on the allocation of Schedule 17 costs in the GFA Order were based on the record concerning the design of Midwest ISO's TEMT as ultimately modified and approved in this proceeding. Those findings were not based solely on the quantitative cost-benefit analysis filed by the Midwest ISO in response to the Procedural Order. The Midwest ISO's analysis quantified only a subset of near-term benefits associated with more efficient market dispatch. Rather, the findings in the GFA Order were based on consideration of a broader range of economic and reliability benefits that

[18] For the purposes of their May 16, 2005 request for rehearing and clarification, the Cooperatives include: National Rural Electric Cooperative Association, Associated Electric Cooperative, Inc., Basin Electric Power Cooperative, Dairyland Power Cooperative, East Kentucky Power Cooperative, Inc., East River Electric Power Cooperative, Inc., Northeast Missouri Electric Power Cooperative, and Southern Illinois Power Cooperative.

[19] GFA Rehearing Order at P 174.

the Midwest ISO's market is designed to achieve, as enumerated in the GFA Order, and discussed further, below.[20]

1. Requests for Rehearing

14. On rehearing, Hoosier and the Cooperatives assert that the Commission erred by arbitrarily, capriciously, in violation of due process, and in the absence of substantial evidence in the record determining that schedule 17 charges apply to all GFA transactions.

15. Hoosier and the Cooperatives explain that the Procedural Order found that the Midwest ISO did not provide sufficient information to demonstrate the benefits of the proposed TEMT, and required the Midwest ISO to provide additional information. However, they state that despite that directive, the Midwest ISO failed to submit any workpapers or assumptions supporting its quantification of benefits and failed to explain what the cost savings would be in moving from Transmission Line-Loading Relief (TLRs) to LMP-based congestion management as applied to GFAs. Instead, they state that the Midwest ISO submitted only Dr. McNamara's testimony, which presented an analysis that purported to show benefits associated with the implementation of LMP to the Midwest ISO footprint as a whole. Hoosier and the Cooperatives explain that their July 16, 2004 comments in response to the Midwest ISO's testimony called into question whether the benefits of the TEMT outweigh the costs, stating that there was no evidence demonstrating that any particular customer will receive benefits exceeding the costs.

16. Hoosier and the Cooperatives also argue that the Procedural Order's approach to benefits and costs was biased against GFAs and that the factors ignored in the Procedural Order include: (1) the extent to which the formation of the Midwest ISO and design of the TEMT imposes new costs on GFA parties; (2) whether permitting third parties and the Midwest ISO to implement the TEMT alters the terms and conditions of transmission service under the GFAs in a manner that is unjust, unreasonable, or unduly discriminates against GFA parties; and (3) the extent to which implementation of the TEMT might reduce reliability for all Midwest ISO customers, including GFA parties.[21]

17. Furthermore, Hoosier and the Cooperatives state that the GFA Order contained no independent findings relating to purported benefits of the TEMT to GFA parties and that the GFA Order imported findings from the paper hearing order issued in Docket No.

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[20] *Id*. at P 175.

[21] Hoosier Rehearing Request at 4-5; Cooperatives' Rehearing Request at 8.

ER02-2595-000[22] to support its assertion that GFAs will receive benefits. However, Hoosier and the Cooperatives state that the Commission subsequently recognized that it erred by relying on the Schedule 16/17 Order to support a finding of net benefits from the TEMT. As a result, in the TEMT II Rehearing Order, the Commission stated that the Cooperatives were:

> correct that the paper hearing in Docket No. ER02-2595 only addressed the allocation of Schedules 16 and 17 charges, and that the Commission should not have relied upon that proceeding, still in progress at the time of the TEMT II Order, to provide evidence that there would be net benefits from the energy markets.[23]

Hoosier and the Cooperatives state that the TEMT II Rehearing Order, however, characterized that error as harmless because "the Commission was investigating the net benefits of the energy markets in the instant [TEMT] dockets."[24]

18. Further, Hoosier and the Cooperatives argue that the GFA Rehearing Order, for the first time, stated that the findings were based on design of the energy markets implemented by the Midwest ISO's TEMT rather than substantial evidence in the record demonstrating that the benefits of implementing the TEMT will outweigh the cost.[25] They argue that the Commission's reliance on the design of the energy markets is a marked shift in the approach to this docket, and is an attempt to assume away the question of benefits. They also assert that there is nothing in the record to support a finding that the design of the energy markets to be implemented by the TEMT will provide net benefits (in excess of costs necessary to implement the markets) generally, or for GFAs generally, or for any specific GFA. Hoosier and the Cooperatives argue that no Commission order has ever evaluated the costs necessary to implement the TEMT's energy markets, much less determined that the benefits the market is "designed" to provide will exceed those costs. Thus, they state that they, and other parties, have not been able to review the Midwest ISO's claimed factual bases and assumptions for its claims of benefits resulting from the TEMT, much less challenge the Midwest ISO's

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[22] *Midwest Independent Transmission System Operator, Inc*., 108 FERC ¶ 61,235 (2004) (Schedule 16/17 Order).

[23] TEMT II Rehearing Order at P 67.

[24] *Id*.

[25] Hoosier Rehearing Request at 7; Cooperatives' Rehearing Request at 11 (*citing* GFA Rehearing Order at P 175).

claims through discovery, cross-examination, and the submittal of appropriate responsive testimony.

19. Finally, Hoosier and the Cooperatives argue that cost causation principles require more than an amorphous finding of generic and undifferentiated benefits to support a conclusion that a rate is just and reasonable as applied to a particular class of customers. They state that compliance with these principles requires that the Commission compare the costs assessed in light of the burdens imposed or benefits drawn by a party. Therefore, they argue that because a sufficient analysis to allocate schedule 17 costs to GFAs has not been performed, the application of schedule 17 charges to all GFA transactions is arbitrary, capricious, in violation of due process, and without the support of substantial evidence in the record.

2. Commission Determination

20. The nearly identical requests for rehearing filed by Hoosier and the Cooperatives consist almost entirely of a history of this proceeding, quotes from Commission orders, and a recap of Hoosier and the Cooperatives' opposition to the allocation of schedule 17 charges to all transactions, as expressed in previous pleadings. Their arguments regarding due process, cost-causation, and sufficiency of the record are the same as those brought up in their requests for rehearing of both the GFA Order and the Procedural Order, which were addressed in the GFA Rehearing Order.[26] Accordingly, we will deny their requests for rehearing on this issue for the reasons given in the GFA Rehearing Order.

21. Hoosier and the Cooperatives also allege that, in the GFA Rehearing Order, the Commission changed its rationale for allocating schedule 17 costs to all GFAs because the Commission, for the first time, stated that it considered the "design" of the energy

[26] *See, e.g.*, GFA Order at P 89-102 (regarding the Commission's findings that, based on the evidence and analysis presented, including the sufficiency of Dr. McNamara's analyses, even with a carve-out, the Midwest ISO's Day 2 energy markets will be more reliable and efficient overall than the Day 1 energy market); and GFA Rehearing Order at P 56-57, 59 (summarizing Hoosier and the Cooperatives' due process concerns with respect to the Procedural Order), P 63-67 (regarding the Commission's discussion in response to parties' Procedural and GFA Order due process concerns), P 166-70 (summarizing Hoosier and the Cooperatives' concerns regarding the Commission's determination that schedule 17 charges should apply to all GFA transactions), and P 171-81 (regarding the Commission's explanation for its determination in the GFA Order that all GFAs should be allocated schedule 17 charges and because all parties to GFAs will benefit from the Midwest ISO energy markets).

markets in its decision. We note that Hoosier and the Cooperatives are correct that the Commission did not use the word "design" when it explained its rationale for allocating schedule 17 costs in the GFA Order.[27] However, Hoosier and the Cooperatives's focus on that one word, "design," ignores that, in the GFA Rehearing Order, the Commission fully explained the reasons behind its finding that all customers will benefit from the energy markets.[28] That full explanation in the GFA Rehearing Order is consistent with the Commission's determination in the GFA Order that all GFAs should be allocated schedule 17 charges because parties to GFAs will benefit from the Midwest ISO energy markets and we will not repeat that reasoning here. Therefore, we find that Hoosier and the Cooperatives' allegation that the Commission attempted to assume away the question of benefits, by relying on the "design" of the energy markets, to be without basis and we deny their request for rehearing on this issue.

B. Unilateral Conversion of GFAs From Carved-Out Status and Pass-Through of Costs

22. In the GFA Rehearing Order, the Commission accepted the Midwest ISO's proposal to allow carved-out GFAs the opportunity to choose between Option A and Option C treatment, or to convert to service under the TEMT, but stated that carved-out GFAs making such a selection would not be allowed to convert back to carved-out status.[29] The Commission also stated that, as explained in the GFA Order:

> the transmission owner or [Independent Transmission Company (ITC) Participant] is the billing entity and will be billed for the costs related to the carved-out GFAs, unless otherwise agreed to by the parties to the carved-out GFAs.[30] While we expect that transmission owners or ITC participants will consult with GFA customers before any conversion from carved-out GFA to Option A, Option C, or TEMT service, the customers are currently protected from additional costs and obligations arising from the conversion. If the transmission owner or ITC participant unilaterally converts to one of

[27] *See* GFA Order at P 297-99.

[28] *See* GFA Rehearing Order at P 175-81 (outlining the benefits of the energy markets, including a more reliable and efficiently-used transmission grid, clear price signals for better infrastructure siting, better opportunities for demand response to participate in the markets, and price transparency.).

[29] GFA Rehearing Order at P 129.

[30] GFA Order at P 300.

> the options or TEMT service, that transmission owner or ITC participant will be responsible for any additional costs incurred by its actions, as it will continue to be responsible for Schedule 17 charges. Should the transmission owner or ITC participant file to pass these costs to a customer, the customer can oppose the pass-through on the basis of its initial opposition to the conversion from carved-out GFA.[31]

1. Request for Rehearing

23. On rehearing, the Cooperatives allege that the GFA Rehearing Order erred by failing to clearly articulate how carved-out GFA customers are protected against the pass-through of costs imposed by the unilateral conversion of their GFAs from carved-out status. They state that the GFA Rehearing Order rejected as premature their protest of the Midwest ISO's proposal to allow carved-out GFAs to convert to Option A or Option C service or to convert to service under the TEMT, but not allow GFAs to convert back to carved-out status. The Cooperatives' explain that their protest argued that if the GFA customer were to become the GFA Responsible Entity[32] (as opposed to the Midwest ISO transmission owner), or otherwise becomes directly or indirectly responsible for the costs associated with that conversion, the Midwest ISO transmission owner's election to convert the contract from carved-out status may impose costs and obligations on the GFA customer to which it did not agree. In such circumstances, the Cooperatives argued that the GFA customer should have the right to re-convert to carved-out status, and that any other result would constitute a unilateral modification of the customer's rights under its contract.

24. The Cooperatives argue that it is not clear from the GFA Rehearing Order how GFA customers will be protected. They explain that the GFA Rehearing Order stated that the "transmission owner or ITC participant will be responsible for any additional costs incurred by its actions, as it will continue to be responsible for Schedule 17 charges," even though at the time the GFA Rehearing Order was issued the Commission had already conditionally accepted the Midwest ISO transmission owners' schedule 23 to the TEMT that permits the pass-through of schedule 17 charges to GFA customers.[33]

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[31] GFA Rehearing Order at P 304.

[32] Section 1.127 of the TEMT defines GFA Responsible Entity as "[a]n entity financially responsible for all costs incurred by transactions pursuant to [GFAs] under this Tariff."

[33] *See Transmission Owners of the Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,339 (2005) (Schedule 23 Order), *reh'g pending*.

The Cooperatives state that it is not clear how a GFA customer can oppose the pass-through on the basis of its initial opposition to the conversion from carved-out GFA status should the transmission owner or ITC participant file to pass these costs to a customer, when the schedule 23 pass-through of schedule 17 charges has already been accepted by the Commission.

25. The Cooperatives state that, in the event the Commission does not clarify how GFA customers are protected from additional costs and obligations arising from the conversion, they seek rehearing of this aspect of the GFA Rehearing Order.

2. Commission Determination

26. We deny the Cooperatives' request for rehearing of the Commission's finding that concerns about the potential unilateral conversion of carved-out GFAs are premature. We note that the Cooperatives do not allege that any carved-out GFA has been converted over the opposition of a customer nor do they point to any situation where an entity has requested unilateral conversion of a carved-out GFA.

27. In addition, the Cooperatives' concern regarding schedule 23 is misplaced. In the GFA Rehearing Order, the Commission agreed with the Cooperatives that if a transmission owner or ITC participant converted a carved-out GFA to another GFA treatment option without the customer's consent, then the customer could dispute attempts to pass-through any additional costs to that customer resulting from the unilateral conversion.[34] The Cooperatives argue that the Commission's acceptance of schedule 23 adversely affects their ability to dispute schedule 23 if, in the future, a carved-out GFA is converted without the customer's consent. However, schedule 23 passes through to customers under currently carved-out GFAs charges associated only with schedules 10 and 17. The applicability of schedules 10 and 17 to a specific GFA is unrelated to whether a GFA is carved-out or is converted to any one of the GFA treatment options. Therefore, the Commission's acceptance of schedule 23 will not cause the Cooperatives to be subject to additional costs, even if a transmission owner or ITC Participant unilaterally converts a carved-out GFA to another option. We reiterate that the Cooperatives will have the opportunity to challenge the prudence of any costs that are caused specifically by a unilateral conversion of any carved-out GFA by the transmission owner (*e.g.*, costs that would have been lessened or avoided under another treatment option) if a filing is made by the transmission owner to pass those costs through to its GFA customers.

[34] GFA Rehearing Order at P 304.

C. Scheduling of Carved-Out GFAs

28. In the GFA Rehearing Order, the Commission clarified that the Midwest ISO may create alternate scheduling requirements for carved-out GFAs that allow those GFAs to make changes that are consistent with the terms and conditions of a particular carved-out GFA if the Midwest ISO believes that would be helpful in its operation of the transmission system, including possible scheduling at the kilowatt level.[35] The Commission also explained that "the Midwest ISO may not be able to make formal changes to accommodate the particulars of all the carved-out GFAs, but parties to the carved-out GFAs must cooperate with the Midwest ISO to arrive at an acceptable procedure to accommodate the particulars of their agreements."[36] Likewise, the Commission stated that the Midwest ISO should provide information and clear procedures that parties to carved-out GFAs may require, such as the information on how generator outages and back-up power will be handled.

29. In paragraph 360 of the GFA Rehearing Order, the Commission reiterated that:

> the schedules submitted for the carved-out GFAs must be as accurate as possible, and we note that the accuracy of the schedules will be apparent in the quarterly filings the Midwest ISO makes with the Commission. The [Independent Market Monitor (IMM)] will also be monitoring the schedules submitted for carved-out GFAs. While there may not be a financial incentive to submit accurate schedules for carved-out GFAs (since there is no penalty for deviations from the schedules when changes are allowed under the terms of a carved-out GFA), we expect the transmission owners and ITC participants to use all the information at their disposal so that the day-ahead schedules submitted for carved-out GFAs need as few changes as possible. Though we continue to believe the size of the carve-out is entirely manageable, parties should strive to make the Midwest ISO's administration of the carve-out effective and efficient.

1. Rehearing Request

30. On rehearing, Michigan Agencies ask that the Commission clarify paragraphs 359 and 360 of the GFA Rehearing Order such that the requirement to cooperate to arrive at acceptable procedures to accommodate the particulars of the carved-out GFAs is a mutual obligation among the parties to the carved-out GFAs and the Midwest ISO. They state

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[35] *Id.* at P 359.

[36] *Id.*

that, if the Commission declines to so clarify, then they seek rehearing.

31. Michigan Agencies explain that they are parties to certain carved-out GFAs and have attempted to engage the Midwest ISO in discussions to resolve issues specific to their carved-out GFAs, but that they have not been successful in resolving those matters. They request that the Commission clarify that the Midwest ISO has an affirmative obligation to address specific scheduling issues in cooperation with Michigan Agencies relative to their carved-out GFAs, rather than permitting the Midwest ISO to dictate its practices to Michigan Agencies without addressing the particulars of Michigan Agencies' carved-out GFAs, or directing them to the terms of the TEMT, which do not address the particulars of their carved-out GFAs.

32. Specifically, Michigan Agencies explain that paragraph 359 states that the Midwest ISO "may" create alternate scheduling requirements. However, Michigan Agencies believe that this language is intended to "permit" the Midwest ISO to modify certain of its scheduling requirements or adopt other scheduling practices on a case-by-case basis; "and, where the Midwest ISO so accommodates, the Commission will not consider such accommodation to be in violation of the terms of the Midwest ISO's TEMT scheduling requirements."[37] Thus, they are concerned that the Midwest ISO may conclude that while it "may" create alternative scheduling arrangements, it is not required to do so, and that while Michigan Agencies "must" cooperate with the Midwest ISO, the Midwest ISO is not likewise required to cooperate with the Michigan Agencies. Therefore, Michigan Agencies seek clarification that the Commission intended to not only authorize but direct the Midwest ISO to work with Michigan Agencies to find arrangements that accommodate both the Midwest ISO's needs and those of the Michigan Agencies insofar as scheduling to load in kW-increments is concerned.

33. Michigan Agencies also request that the Commission clarify that the Midwest ISO must work with them to resolve other scheduling concerns. They state that the current GFA scheduling requirements are not only onerous and go beyond requiring information for reliability purposes, but are premised upon assumptions or conditions that do not exist in the State of Michigan (where transmission has been divested and where neither the GFA Scheduling Entity[38] nor the GFA Responsible Entity serve as the control area operator). Michigan Agencies assert that the Midwest ISO's only proposed "resolution" of the matter has been to direct them to renegotiate the current agreements, or enter into

[37] Michigan Agencies' Rehearing Request at 3-4.

[38] Section 1.128 of the TEMT defines GFA Scheduling Entity as "[a]n entity responsible for scheduling transmission service or energy transactions related to [GFAs] under this Tariff."

new agreements to accommodate the Midwest ISO's scheduling needs, which is unacceptable.

34. Further, Michigan Agencies state that they recognize the need to submit some non-binding information to the Midwest ISO for purposes of reliability, but that the Midwest ISO continues to insist on scheduling practices that go beyond collecting information from the carved-out GFA sufficient to ensure reliability, and instead seek information related to financial settlement. They state that this is unduly burdensome, and in some cases, impossible.[39]

35. Michigan Agencies also argue that it is impossible for them to comply with the scheduling requirements in the event of a unit outage. They state that MPPA advised the Midwest ISO that it cannot provide schedules for back-up under its GFAs because it does not have that information. They explain that MPPA's back-up energy is supplied by Consumers Energy Company (Consumers) or Detroit Edison with the determination of the source and cost under the controlling GFA documents determined by Consumers or Detroit Edison on an after-the-fact basis. Michigan Agencies state that, in conversations with MPPA, the Midwest ISO admitted that MPPA could not readily comply with the scheduling requirements, but that the Midwest ISO's only response has been to direct MPPA to negotiate new agreements with Consumers and Detroit Edison.[40]

36. Michigan Agencies also request that the Commission clarify that, because the Midwest ISO cannot or will not accommodate schedules at the kilowatt level, and because the Midwest ISO has directed them knowingly to submit schedules that will not balance on the hour, that Michigan Agencies will not face the financial risk associated with any such imbalances. They also request that the Commission clarify that the Midwest ISO must identify what system changes would be necessary to accommodate

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[39] Michigan Agencies' Rehearing Request at 6. For example, Michigan Agencies state that MPPA has gone from submitting a single schedule each hour (pre-Day 2) to submitting over 32 schedules each hour (1 schedule per city, per supply resource), assuming there are no system outages. In the case of an outage, MPPA does not have the information requested because it does not supply the back-up power, but they state that, even if it did have such information, it would have to evaluate over 100 possible delivery scenarios for each hour of the outage, which information is submitted after the outage and after deliveries have already occurred, and is used for financial settlement purposes. A more balanced approach, they state, would involve MPPA submitting a single schedule for its bulk deliveries under the carved-out GFAs for each control area for each hour, or to provide "shadow schedules."

[40] *Id*. at 7.

such schedules. Further, Michigan Agencies request that the Commission clarify that the Midwest ISO may accept "shadow schedules"[41] from them as a means of avoiding the financial risk of the unnecessary imbalance charges until such time as the Midwest ISO and Michigan Agencies work out a mutually agreeable solution.

37. Finally, Michigan Agencies request that the Commission clarify that the Midwest ISO must advise the Commission of its progress in resolving outstanding carved-out GFA issues. They request that the Commission require the Midwest ISO to submit a compliance filing within 30 days of the instant order advising the Commission of how the issues between the Midwest ISO and Michigan Agencies have been resolved. In the event resolution has not occurred at that time, Michigan Agencies request that the Commission adopt settlement judge procedures to ensure final resolution of the matter.[42]

2. Commission Determination

38. The Commission's goal in the GFA Rehearing Order with respect to scheduling of carved-out GFAs was for both the Midwest ISO and the GFA parties to cooperate to arrive at mutually agreeable procedures, when possible. As noted above, in the GFA Rehearing Order, the Commission stated that the "Midwest ISO may create alternative scheduling requirements for carved-out GFAs that allow those GFAs to make changes that are consistent with the terms and conditions of a particular carved-out GFA if the Midwest ISO believes that would be helpful in its operation of the transmission grid."[43] Our intent was to allow, but not require, flexibility in the scheduling of carved-out GFAs and make assessments of any alternative scheduling arrangements on a case-by-case basis. In evaluating the requests for GFA schedule alterations, such as the request made by Michigan Agencies, the Commission expects that both the Midwest ISO and the GFA parties will actively seek mutually agreeable outcomes. However, if it cannot accommodate a particular GFA parties' request, such as, here, Michigan Agencies, the Midwest ISO must inform that GFA party of the specific reason(s) that the request for scheduling alterations was denied and should also recommend any alternatives that might mitigate their scheduling concerns.

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[41] Michigan Agencies propose that the Midwest ISO be directed to either permit parties with carved-out GFAs to schedule at the kilowatt level (as provided for under certain GFA entitlements), or make a corresponding adjustment in the settlement process to hold the GFA party harmless from the Midwest ISO's scheduling limitations. *Id*. at 3.

[42] *Id*. at 11.

[43] GFA Rehearing Order at P 359.

39. Further, although there may be valid reasons (*e.g.*, software limitations) that the Midwest ISO is not able to accommodate schedules at the kilowatt level, Michigan Agencies should not be penalized because a GFA that has historically submitted schedules at the kilowatt level cannot do so under the current system. Therefore, if the Midwest ISO cannot address Michigan Agencies' concern by some mutually agreeable process, we direct the Midwest ISO to accept shadow schedules for settlement purposes. The Midwest ISO must use these shadow schedules to determine what charges for imbalances are a result of the Midwest ISO's inability to accept schedules at the kilowatt level. The Midwest ISO can charge Michigan Agencies only for those imbalances that would have occurred even if the Midwest ISO had allowed schedules at the kilowatt level. We believe that this is a reasonable accommodation in this specific instance because it protects those customers with carved-out GFAs that have traditionally scheduled at the kilowatt level. For carved-out GFAs not historically scheduled at the kilowatt level, we find that the Midwest ISO's current scheduling requirements are appropriate. However, as noted above, we expect that the Midwest ISO will act in good-faith in accommodating specific carved-out GFA requests for reasonable changes to the Midwest ISO's scheduling requirements.

40. In addition, we direct the Midwest ISO to work with Michigan Agencies to address scheduling requirements for back-up energy. Michigan Agencies state that it is impossible for them to comply with scheduling requirements in the event of a unit outage because of the unique circumstances surrounding certain of its GFAs. Michigan Agencies state that the Midwest ISO acknowledged that it is impossible for Michigan Agencies to comply with certain requirements, but told them to negotiate new agreements that would allow compliance. Michigan Agencies do not propose a solution that would address their concerns, but, without further information from the Midwest ISO, it is not clear that re-negotiation of the GFAs in question is the only solution. Therefore, the Midwest ISO should work with Michigan Agencies to identify a mutually agreeable solution on the issue of scheduling back-up energy. They may seek the assistance of the Commission's dispute resolution staff for this process. The Midwest ISO and Michigan Agencies are directed to make a joint compliance filing, within 90 days of the date of this order, stating whether or not the issue of scheduling of back-up energy has been resolved. If the issue has not been resolved, the parties are directed to include in the compliance filing a detailed description of the issues that remain unresolved and the positions of the parties.

D. Ludington Hydroelectric Pumped Storage Plant

41. In the GFA Rehearing Order, the Commission stated that:

> we reject Detroit Edison's request that the Commission affirm that the carve-out of the Ludington GFAs, granted in the GFA Order, will continue

> beyond the transition period. The Commission, in the GFA Order, made no determination regarding, *i.e.*, either precluding or continuing, the carve-out beyond 2008. In the GFA Order, the Commission accepted the provision that the Midwest ISO will evaluate the impact that the optional treatments for GFAs have on the Energy Markets 24 months prior to February 1, 2008, and that it will make a section 205 filing 12 months prior to February 1, 2008 (*i.e.*, due on or before February 1, 2007) that details a new proposal for the treatment of GFAs after the transition period concludes. In this order, the Commission requires the Midwest ISO to include in its February 2007 filing a proposal for the post-transition-period status and treatment of carved-out GFAs. Once the Midwest ISO's proposal is filed, the Commission will evaluate any proposals to extend the carve-out for the Ludington GFAs and any other GFAs beyond February 1, 2008.[44]

1. Request for Rehearing

42. On rehearing, Detroit Edison asserts that the Commission erred in failing to affirm that the agreements governing the Ludington Hydroelectric Pumped Storage Plant (Ludington Agreements) cannot be modified in any way after the transition period ending February 1, 2008 absent a showing under the *Mobile-Sierra* standard that such modification is required by the public interest. It states that no party disputes that the Ludington Agreements are subject to the *Mobile-Sierra* standard of review.[45] Moreover, it states that the rights established in the Ludington Agreements are essential to the effective functioning of the Ludington Pumped Storage Generating Plant, a hydroelectric facility licensed by the Commission in the public interest under Part I of the Federal Power Act (Project No. 2680).

43. Detroit Edison also asserts that, the Commission's decision to delay ruling on Detroit Edison's request until the Midwest ISO initiates a new FPA section 205[46] proceeding in February 2007 is unnecessary and leaves the parties to the Ludington Agreements in a state of continued uncertainty, both as to their ongoing "fixed" contractual rights and obligations as well as the Midwest ISO's longer-term willingness to accommodate the unique attributes of the Ludington facilities. Detroit Edison argues that the Commission must provide as much certainty as possible to all market participants as energy markets develop in the Midwest ISO, and is concerned that the uncertainties

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[44] *Id*. at P 204.

[45] Detroit Edison Rehearing Request at 2 (*citing* GFA Order at P 179).

[46] 16 U.S.C. § 824d (2000).

created by "shelving" such clear-cut legal issues serve to undermine, rather than further, the Commission's ultimate goals.

2. Commission Determination

44. We deny Detroit Edison's request for rehearing on this issue. We continue to find that it is premature to make a determination on how any particular GFA will be treated after the transition period ends on February 1, 2008. Detroit Edison will have the opportunity to raise any and all of its concerns when the Midwest ISO files, on or before February 1, 2007, the details of a new proposal for the treatment of GFAs after the transition period concludes. The Commission will consider post-transition period issues at that time.

E. Standard of Conduct Issues

45. On rehearing of the GFA Order, Xcel argued that, in the GFA Order, the Commission ordered NSP's wholesale merchant function[47] to have access to certain information prohibited under Order No. 2004[48] to fulfill its role as a GFA Responsible/Scheduling Entity. Xcel explained that, in compliance with Commission's directives, NSP separated its wholesale merchant function from its transmission function. It stated that the wholesale merchant function of NSP will be the market participant in the Midwest ISO energy markets, and will perform functions such as nominating FTRs and scheduling, while the transmission function will not be a market participant and will perform only transmission functions. Xcel argued that the NSP merchant function must have access to certain GFA customer transmission information in order to fulfill its role as the Responsible and/or Scheduling Entity for these GFAs but that this information is restricted under Order No. 2004. To remedy this, Xcel suggested that the Commission clarify that if the wholesale merchant function of a vertically integrated utility is the market participant in the Midwest ISO markets and the GFA Responsible Entity, and the merchant function obtains customer consent from affected GFA customers as outlined in Order No. 2004, then the wholesale merchant function may receive access to any information concerning that customer's GFA transactions necessary to fulfill its roles as

[47] NSP is an affiliate of Xcel.

[48] *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, 69 Fed. Reg. 23,562 (Apr. 29, 2004), FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, 69 Fed. Reg. 48,371 (Aug. 10, 2004), FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, 70 Fed. Reg. 284 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,172 (2005), *reh'g pending* (Standards of Conduct).

GFA Responsible Entity and/or GFA Scheduling Entity.

46. In the GFA Rehearing Order, the Commission granted Xcel's request and clarified that:

> …if the wholesale merchant function of a vertically integrated utility follows the Standards of Conduct non-discrimination requirements[49] and receives voluntary consent in writing from a non-affiliated transmission customer, and posts that information on its [Open-Access Same-Time Information System (OASIS)], then it may obtain from its affiliated transmission function the information needed for the wholesale merchant function to fulfill its role as a Responsible and or Scheduling Entity for an Option A, B, or C GFA or as a transmission owner or ITC participant for a carved-out GFA.[50]

1. Request for Rehearing

47. On rehearing, Xcel requests that the Commission clarify that the GFA Rehearing Order addressed all GFA customers when it stated that the merchant function of a vertically integrated utility would not violate Order No. 2004 if it followed certain procedures delineated in the GFA Rehearing Order when obtaining information from its affiliated transmission function in order to fulfill its Commission-mandated GFA Responsible Entity and Scheduling Entity obligations. Specifically, it states that the GFA Rehearing Order is unclear with respect to the Standards of Conduct compliance procedures necessary to satisfy Order No. 2004 when a vertically integrated utility's merchant function needs transmission-related information in order to act on behalf of GFA customers. Xcel asserts that the NSP companies' wholesale merchant function has been ordered to act as the GFA Responsible and Scheduling Entity for both carved out GFAs and those GFAs subject to the just and reasonable standard of review that are integrated into the Day 2 market. It asserts that, regardless of whether a particular GFA is carved-out, the Standards of Conduct compliance procedures delineated in the GFA Rehearing Order should provide sufficient protection with respect to the exchange of transmission-related information for all GFAs.

48. Further, Xcel explains that, since it and the NSP companies want to be in full compliance with Order No. 2004 without ambiguity, Xcel requests that the Commission clarify that the procedures described in paragraph 194 of the GFA Rehearing Order are

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[49] 18 C.F.R. § 358.5(b)(4) (2005).

[50] GFA Rehearing Order at P 194.

equally applicable when the wholesale merchant function of a vertically integrated public utility is seeking transmission-related information from its transmission function in order to act as the GFA Responsible Entity and/or GFA Scheduling Entity for either carved out GFA customers not integrated into the Day 2 market or GFAs subject to the just and reasonable standard of review, that are integrated into the Day 2 market.

2. Commission Determination

49. We grant Xcel's request and clarify that if the wholesale merchant function of a vertically integrated utility follows the Standards of Conduct non-discrimination requirements, as laid out in 18 C.F.R. § 358.5(b)(4), and receives voluntary consent in writing from a non-affiliated transmission customer, and posts that information on its OASIS, then it may obtain from its affiliated transmission function the information needed for the wholesale merchant function to fulfill its role as a GFA Responsible and/or Scheduling Entity for (1) an Option A, B, or C GFA or (2) as a transmission owner ITC participant for a carved-out GFA.

F. GFA Nos. 186 and 199

50. In the GFA Rehearing Order, with regard to GFA Nos. 186 and 199, the Commission explained that the Agreement in Principle filed by Hoosier and Indianapolis Power failed to reference the specific GFA(s) covered by that agreement, and thus, the Commission did not recognize that it was meant to apply to GFA No. 186, which is an interconnection agreement dated December 1, 1981, between Hoosier and Indianapolis Power (1981 Agreement).[51] Accordingly, the Commission held that:

> [w]hile Hoosier requests that service it provides under the 1981 Agreement remain carved-out, it also asks that service Indianapolis Power provides to Hoosier under the 1981 Agreement be designated as Option B. However, GFA No. 186 covers only service Hoosier provides to Indianapolis Power under the 1981 Agreement; service Indianapolis Power provides to Hoosier under the 1981 Agreement is designated separately…[t]herefore, we deny Hoosier's request that Appendix B be changed to list GFA No. 186 as Option B for service provided by Indianapolis Power.[52]

51. With respect to GFA No. 199, the Commission held that, if GFA No. 199 was incorrectly deleted from the Midwest ISO's Attachment P, Hoosier and Indianapolis Power should request that the Midwest ISO file with the Commission a revised

[51] *Id*. at P 213.

[52] *Id*. at P 214.

Attachment P that includes GFA No. 199.

52. Further, the Commission explained that, Hoosier stated that service provided to it by Indianapolis Power under the 1981 Agreement (GFA No. 199, if it is reinstated) should be Option B because it was chosen in the Agreement in Principle. However, the Commission explained that the Agreement in Principle states:

> [i]n the event that, in the opinion of either Party, there is hereinafter a material change in the treatment of GFAs under the EMT as a result of proceedings in FERC Docket Nos. ER04-691-000 or EL04-104-000 … either party may terminate this Agreement upon sixty (60) days' advance written notice to the other Party stating an intention to terminate this Agreement at the end of such sixty (60)-day period.[53]

53. Because the parties did not unconditionally select a GFA treatment option, the Commission found that the above clause did not satisfy the Procedural Order's requirement that entities' choosing to select one of the Midwest ISO's proposed treatment options, or convert to TEMT service, make a simple statement indicating such choice. [54] Therefore, the selection of Option B did not apply if GFA No. 199 was reinstated. Further, because the agreement is subject to the just and reasonable standard of review, the Commission held that GFA No. 199 would have to be Option A, Option C or be converted to TEMT service if it was incorrectly deleted from Attachment P.[55]

1. Rehearing Request

54. On rehearing, Hoosier/Indianapolis Power state that the Commission erred by determining that they did not choose to convert Indianapolis Power's service to Hoosier to Option B. They state that the GFA Rehearing Order marked the first time that the Commission clarified that Hoosier's service to Indianapolis Power and Indianapolis Power's service to Hoosier were considered separate GFAs.

55. Hoosier/Indianapolis Power explain that, on June 16, 2004, Hoosier protested the

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[53] *Id*. at P 216 (*citing* Agreement in Principle between Hoosier and Indianapolis Power, section 5.0 (June 25, 2004)).

[54] Procedural Order at P 69.

[55] GFA Rehearing Order at P 217.

exclusion of its GFA with Indianapolis Power from the list of GFAs filed by the Midwest ISO, stating that the Midwest ISO was incorrect that all transmission service under the contract would be provided pursuant to the Midwest ISO Tariff. Hoosier also requested that Hoosier's 1981 Agreement with Indianapolis Power be included in Attachment P, but it did not distinguish between service Hoosier provides to Indianapolis Power under the contract and service Indianapolis Power provides to Hoosier under the same contract.[56]

56. Hoosier/Indianapolis Power further explain that, on June 24, 2004, the Midwest ISO filed a motion for reconsideration, attaching an updated list of GFAs. Regarding GFA No. 186 between Hoosier and Indianapolis Power, the Midwest ISO noted: "Deleted in 5/26/04 Attachment P filing. Indianapolis Power requests reinsertion. The Midwest ISO files contain a modification No. 6 to the Interconnection between HE [Hoosier] and IPL that unbundled transmission." They also explain that, on June 25, 2004, Hoosier submitted a template with information concerning its GFA with Indianapolis Power and jointly submitted the Agreement in Principle regarding their contractual arrangements, including conversion to Option B for transmission service provided to Hoosier by Indianapolis Power.

57. Hoosier/Indianapolis Power explain that the presiding judges, in their Findings of Fact, found that, for GFA No. 186, "Joint-filed data appears sufficient."[57] Regarding GFA No. 199, they explain that the Findings of Fact indicated only that GFA No. 199 could be withdrawn from the hearing because the "service provided under the GFA is such that it will not impact operation of Midwest ISO's energy markets."[58]

58. Hoosier/Indianapolis Power state that Appendix B to the GFA Order described GFA No. 186 as receiving "carve out" status and, for GFA No. 199, the Commission said that it was affirming the presiding judges' decision to exclude it from the hearing.[59] However, they state that, in the Midwest ISO's November 15, 2004 compliance filing, Attachment P did not include either GFA Nos. 186 or 199. Accordingly, Hoosier filed a protest, but, they explain, because Hoosier at that time still believed that GFA No. 186

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[56] Motion to Intervene and Protest of Hoosier Energy Rural Electric Cooperative, Inc., Docket No. ER04-106-002, at 3 (June 16, 2004).

[57] Findings of Fact, Attachment B at 14.

[58] *Id*. at P 31.

[59] Hoosier/IPL Rehearing Request at 6 (*citing* GFA Order at Appendix B and P 218 n.172).

encompassed all service between Hoosier and Indianapolis Power pursuant to the 1981 Agreement, it did not explicitly protest the exclusion of GFA No. 199. However, they state that Hoosier did protest the exclusion of both halves of the contract from Attachment P. Hoosier's protest clarified that, "With regard to GFA 186, service provided by Hoosier to Indianapolis Power should be carved out, while service provided by IPL to Hoosier pursuant to Service Schedule G should be provided according to Option B."[60]

59. Hoosier/Indianapolis Power explain that, in the GFA Rehearing Order, the Commission clarified, for the first time, that it considered GFA No. 186 to refer only to transmission service provided by Hoosier to Indianapolis Power, while service provided by Indianapolis Power to Hoosier is encompassed by GFA No. 199. They state that, while this has not previously been Hoosier's or Indianapolis Power's understanding, they are not opposed to this treatment, provided that the Midwest ISO recognizes that all service provided pursuant to this contract meets the definition of a GFA in the Midwest ISO Tariff. Accordingly, Hoosier/Indianapolis Power, in accordance with the Commission's invitation, request that the Midwest ISO file with the Commission a revised Attachment P that includes GFA No. 199.

60. Hoosier/Indianapolis Power also request rehearing of the Commission's determination that they did not effectively choose to convert Indianapolis Power's service to Option B through their Agreement in Principle. They state that the Commission's decision turns on application of a criterion that it had not previously announced, through the Procedural Order or otherwise, and of which Hoosier/Indianapolis Power had no notice prior to choosing Option B. They state that "because the Commission has allowed other contracts to receive Option B treatment in similar circumstances, the Commission's decision to deny Option B treatment to [Indianapolis Power's] service to Hoosier pursuant to GFA No. 199 is arbitrary and capricious, and not the product of reasoned decisionmaking."[61]

61. Further, they argue that the Commission discriminatorily singled out Hoosier/Indianapolis Power for application of the alleged rule barring Option B treatment where the parties reserved their rights to reconsider their choice based upon action by the Commission subsequent to the parties choosing Option B, because, for example, the Commission approved Option B treatment for GFA No. 214, between LG&E Energy LLC and Indiana Municipal Power Agency, notwithstanding a similar clause in their filed

[60] Protest of Hoosier Energy Rural Electric Cooperative, Inc., Docket No. ER04-106-005, at 4 (November 29, 2004).

[61] Hoosier/Indianapolis Power Rehearing Request at 8-9.

agreement to the one in the Agreement in Principle.[62] Thus, Hoosier/Indianapolis Power argue that, because GFA No. 199 is similarly situated to GFA No. 214 with regard to the circumstances surrounding the parties' statement of their selection of Option B, the Commission erred by rejecting the choice of Option B for GFA No. 199.

2. Commission Determination

62. We note that the Midwest ISO has fulfilled IPL and Hoosier's request and, on May 27, 2005, it filed to reinsert GFA No. 199 in Attachment P.[63] In addition, on reconsideration, we grant rehearing and find that GFA No. 199 should be listed as Option B on Attachment P.[64]

G. GFA No. 445

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[62] *Id*. at 10 (*citing* Joint Filing of LG&E Energy LLC and Indiana Municipal Power Agency of Information Regarding Grandfathered Agreement, Docket Nos. ER04-691-000 and EL04-104-000, at 3 (June 25, 2004)). That agreement states that:

> in the event that there is hereafter a material change in the treatment of GFAs under the TEMT as a result of proceedings in Docket Nos. ER04-691-000 or EL04-104- 000, or as a result of similar proceedings before the Commission, the parties reserve their rights individually, or collectively, to revise, amend or otherwise supplement the information and statements provided in this filing; provided that, the parties agree to discuss in good faith any revision, amendment or supplement in order to attempt to submit a mutually acceptable, joint filing addressing any such material change.

[63] *See* Midwest ISO filing to revise Attachment P in Docket No. ER04-106-011, *et al.* (May 27, 2005).

[64] On July 15, 2005, in Docket No. ER04-691-056, *et al*., Hoosier sought rehearing of a June 15, 2005, unpublished Commission letter order approving a May 16, 2005 Midwest ISO filing, proposing to revise section 38.8.3(A) of the TEMT to require that GFAs that are added to Attachment P of the TEMT after September 16, 2004, and that do not meet the criteria for being carved out of the Energy Markets, must choose among Option A treatment, Option C treatment, or full conversion to service under the TEMT. Hoosier sought clarification that, should the Commission grant its May 16, 2005 rehearing request of Hoosier/Indianapolis Power in the instant docket, section 38.8.3 (A) will not prevent GFA No. 199 from receiving Option B treatment. Because the Commission grants Hoosier/Indianapolis Power's rehearing request here, Hoosier's July 15, 2005 request for rehearing, in Docket No. ER04-691-039, *et al*., is now moot.

63. In the GFA Rehearing Order, the Commission stated that the Midwest ISO agreed in its answer filed in Docket No. ER04-106-005 to re-list GFA No. 445 to reflect the proper transmission owner. As a result, the Commission stated that it would amend Appendix B to remove Columbia as the transmission owner.[65]

1. Rehearing Request

64. On rehearing, Columbia requests that the Commission correct an error in Appendix B to the GFA Rehearing Order with respect to GFA No. 445. Columbia explains that it takes transmission service under GFA No. 445 from its GFA counter-party, Ameren Service Company (Union Electric). It states that Columbia is the GFA Responsible Entity and GFA Scheduling Entity and elected Option B treatment for GFA No. 445. Specifically, it states that, for GFA No. 445, the Commission incorrectly listed, under the GFA Responsible Entity column of Appendix B, that "The Midwest ISO will amend Attachment P to list the proper RE." Columbia states that the Commission should have listed "Columbia" under that section. It also states that, for GFA No. 445, the Commission incorrectly listed, under the GFA Scheduling Entity column of Appendix B, that "The Midwest ISO will amend Attachment P to list the proper SE." Columbia states that the Commission should have listed "Columbia" under that section. In the column for Comments on Changes, the Commission listed "Deleted References to the City of Columbia," whereas Columbia states that the Commission should have written "Amended to reflect the proper Transmission Owner/GFA customer relationship." Columbia requests that, on rehearing, the Commission correct these errors. Alternatively, Columbia seeks clarification that the rulings in the GFA Rehearing Order, and not the Appendix, govern future treatment of GFA No. 445, to the extent that they are inconsistent.

2. Commission Determination

65. The Commission grants Columbia's request for rehearing. As Columbia correctly notes, the errors made in Attachment B with respect to GFA No 445 were simply typographical errors. Thus, the Commission finds that Columbia is both the GFA Scheduling Entity and the GFA Responsible Entity for GFA No. 445.

H. Lincoln Electric System

1. Rehearing Request

66. On rehearing, Lincoln seeks clarification that the GFA Rehearing Order did not

[65] GFA Rehearing Order at P 284.

intend to address Lincoln's GFA treatment, which will be determined when it becomes possible for Lincoln to fully participate in the Midwest ISO markets. Lincoln states that the GFA Rehearing Order does not purport to address Lincoln's unique situation, which

is not directly comparable to any of the circumstances raised in these proceedings, and states that its GFAs were not explicitly discussed in the GFA Rehearing Order.

67. Lincoln explains that, although it became a non-jurisdictional transmission-owning member of the Midwest ISO in 2001, it is not currently participating in the Midwest ISO Day 2 markets because Lincoln is not yet contiguous with the Midwest ISO footprint.[66] Its states that it is surrounded by, and transmission-dependent upon, non-Midwest members, which is why the presiding judges granted a motion, filed by the Midwest ISO prior to the commencement of the step 2 hearing, excluding Lincoln's GFAs from the hearing process.[67] Thus, Lincoln states that the GFAs to which it is a party, though included in Midwest ISO Tariff Attachment P, were excluded from the hearing and settlement process. Thus, Lincoln asserts that the GFA Rehearing Order does not address the particulars of its situation, and any such consideration would be premature, given that technical conditions necessary to Lincoln's full participation in the Day 2 markets have not yet occurred.

2. Commission Determination

68. We grant Lincoln's request and clarify that the GFA Order did not address the treatment of Lincoln's GFAs since Lincoln was removed from the hearing and settlement judge process and because Lincoln is not currently participating in the Midwest ISO markets. Though the Commission will consider its prior determinations on GFAs when addressing Lincoln's GFAs, the treatment of Lincoln's GFAs will be resolved only after Lincoln is able to fully participate in the Midwest ISO markets.

The Commission orders:

(A) The requests for rehearing of the GFA Rehearing Order are hereby granted in part and denied in part, as discussed above.

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[66] Lincoln Rehearing Request at 2. Lincoln explains that, given that full participation in the Day 2 markets was impracticable, it was excluded from various aspects of Day 2 implementation, including FTR allocation.

[67] *See Order Granting Motion for Substitution of List of Grandfathered Agreements*, Docket Nos. ER04-691-000 and EL04-104-000 (June 23, 2004). *See also* Findings of Fact at P 8-10 & n.8 (2004).

(B) The Midwest ISO and Michigan Agencies are hereby directed to make a compliance filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.