

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 Operator, Inc.

Docket Nos. ER06-27-000  
ER04-691-063

Public Utilities With Grandfathered Agreements  
in the Midwest ISO Region

Docket No. EL04-104-060

ORDER ACCEPTING COMPLIANCE FILING AND TARIFF SHEETS

(Issued November 22, 2005)

1. On February 18, 2005, the Commission accepted for filing a settlement agreement among the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the transmission owners in its region (Balancing Authority Settlement).<sup>1</sup> The Balancing Authority Settlement allocated between the Midwest ISO and the control areas – now called Balancing Authorities – within its footprint the functional responsibilities, costs and liabilities associated with the Midwest ISO’s role as energy market operator. In today’s order, we will accept the Midwest ISO Transmission Owners’ (Midwest ISO TOs)<sup>2</sup> filing to

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<sup>1</sup> *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,177 (Balancing Authority Settlement Order), *clarification granted*, 111 FERC ¶ 61,367 (2005).

<sup>2</sup> The transmission owners are: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren UE, Central Illinois Public Service Company d/b/a AmerenCIPS, and Central Illinois Light Co. d/b/a Ameren Cilco; American Transmission Systems, Inc., 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 Co.); City Water, Light & Power (Springfield, Illinois); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; International Transmission Company; Indianapolis Power & Light Company; LG&E Energy Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States

(continued)

comply with the Balancing Authority Settlement Order, as well as a concurrent rate filing under section 205 of the Federal Power Act (FPA).<sup>3</sup>

## I. Background

2. In a July 25, 2003 filing (July 25 Filing), the Midwest ISO filed a proposed Transmission and Energy Markets Tariff (TEMT) pursuant to section 205 of the FPA. The July 25 Filing proposed to implement day-ahead and real-time energy markets, as well as a financial transmission rights market, within the Midwest ISO region. The new energy markets would operate under the TEMT, which the Midwest ISO proposed as a replacement for its open access transmission tariff. The July 25 Filing met with numerous protests, and following a stakeholder vote, the Midwest ISO filed a motion to withdraw it.

3. The Commission granted the Midwest ISO's motion to withdraw the proposal. It also provided, on an advisory basis, guidance on a number of issues raised in the July 25 Filing in order to better enable the Midwest ISO to revise and re-file the TEMT.<sup>4</sup> Among other things, the Commission advised the Midwest ISO and stakeholders to adopt the North American Electric Reliability Council (NERC) Reliability Functional Model (Functional Model) as a basis for discussions on the allocations of responsibilities for reliable market and power system operations.<sup>5</sup> The Commission also advised that the revised TEMT "state clearly the current responsibilities under each of these categories and the proposed changes in those responsibilities."<sup>6</sup>

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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.

<sup>3</sup> 16 U.S.C. § 824d (2000).

<sup>4</sup> *See Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,145, *reh'g dismissed*, 105 FERC ¶ 61,272 (2003).

<sup>5</sup> *See Id.* at P 46.

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

4. The Midwest ISO filed a revised TEMT proposal on March 31, 2004. Section 38.6 of the proposed TEMT assigned responsibility to the Midwest ISO, control area operators, transmission owners, transmission operators and generation owners for three primary roles with authority to carry out reliability functions – Reliability Authority, Balancing Authority and Interchange Authority.<sup>7</sup> Numerous intervenors filed protests that sought further clarification of the Midwest ISO’s proposed division of functions between itself and other entities within its footprint.

5. The Commission found that the proposed TEMT appropriately used the NERC Functional Model as a basis for defining roles and responsibilities within the Day 2 energy markets,<sup>8</sup> and established settlement judge proceedings to address a number of unresolved issues surrounding the allocation of functions between the Midwest ISO and the control areas.<sup>9</sup> The parties filed an Offer of Settlement, which featured a Balancing Authority Agreement as its principal component, and the Commission accepted the settlement in the Balancing Authority Settlement Order.

6. The Balancing Authority Settlement Order found that it was reasonable for Balancing Authorities to recover the costs of implementing the Balancing Authority Agreement.<sup>10</sup> As further detailed below, the order approved a new schedule to the TEMT that would permit the Balancing Authorities to recover such costs “together with, and in the same manner as,

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<sup>7</sup> Reliability Authority refers to performing the functions of ensuring real-time operating reliability, performing transmission security analysis, approving generation and transmission outages, and performing regional and inter-regional coordination. The term “Balancing Authority” is used instead of “Control Area Operator” to reflect the new NERC Functional Model. The Balancing Authority maintains load-resource balance within the Balancing Authority Area. Interchange Authority relates among other things to the responsibility to serve as Scheduling Agent. The TEMT identifies the Midwest ISO as both transmission service provider and Interchange Scheduling Agent.

<sup>8</sup> See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 120-21 (TEMT II Order), *order on reh’g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order).

<sup>9</sup> See *Id.* at P 137-38.

<sup>10</sup> Balancing Authority Settlement Order at P 59; *clarified*, 111 FERC ¶ 61,367 at P 11.

Schedule 17 costs.”<sup>11</sup> Further, the Balancing Authority Settlement Order accepted the Midwest ISO TOs’ offer to provide additional accounting detail to further clarify their proposal to recover Balancing Authority costs under the terms of the Balancing Authority Agreement, and required them to make such a filing.<sup>12</sup>

7. The Midwest ISO TOs submitted a compliance filing on June 6, 2005, as amended on June 10 and 20, 2005. The filing included revisions to Schedules 1 and 24 of the TEMT, together with a newly-proposed Schedule 24-A. The filing contained a change in rate design from a regional rate design to a license-plate, zonal rate design.

8. On August 5, 2005, the Commission found that the Midwest ISO TOs’ compliance filing did not fulfill the requirements of the Balancing Authority Settlement Order because it did not make the cost recovery process more transparent and easier to audit.<sup>13</sup> The Commission stated that by allowing the Balancing Authorities to choose – and freely alternate – between recovering costs under Schedules 1 and 24, the Midwest ISO TOs’ proposal would make it possible for some zones to over-recover costs. Further, the Commission found that the proposal would decrease, rather than increase, clarity as to how the recovered costs are accounted for. The Commission rejected the compliance filing and required the Midwest ISO TOs to file a new compliance filing within 60 days. The Commission stated, however, that its decision was without prejudice to the Midwest ISO TOs’ making future filings under section 205 of the FPA to propose a new cost recovery mechanism.

## **II. The Midwest ISO TOs’ Filing**

9. The Midwest ISO TOs submitted a compliance filing on October 4, 2005, in response to the August 5 Order. The filing includes revisions to Schedules 1 and 24 of the TEMT,

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<sup>11</sup> *Id.* at P 16.

<sup>12</sup> Balancing Authority Settlement Order at P 54, 59. Subsequently, the Commission twice extended the deadline for the Midwest ISO TOs to make this compliance filing. *See Notice of Extension of Time*, Docket Nos. ER04-691-002 and EL04-104-002 (Mar. 29, 2005); *Errata Notice*, Docket Nos. ER04-691-002 and EL04-104-002 (Mar. 31, 2005); *Notice of Further Extension of Time*, Docket Nos. ER04-691-002 and EL04-104-002 (May 9, 2005).

<sup>13</sup> *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,169 (2005) (August 5 Order).

together with a newly-proposed Schedule 24-A. The filing contains a regional rate design similar to the rate design used in Schedule 17, and proposes to modify Schedule 1 to provide consistency and to prevent double recovery of costs. The filing also establishes Account No. 561.BA to track a number of labor costs.

10. The proposed filing also allows each Balancing Authority to seek to recover additional costs, other than labor costs, on a case-by-case basis. According to the Midwest ISO TOs, the Balancing Authorities prefer a case-by-case approach because, for reasons including their varying corporate structures, applying a standard labor ratio to recover general and administrative costs produces uneven results. The Midwest ISO proposes an effective date of June 1, 2006 for Schedule 24-A.

### **III. Notice, Interventions and Protests**

11. Notice of the Midwest ISO TOs' filing was published in the *Federal Register*, 70 Fed. Reg. 61,280 (2005), with interventions and protests due on or before October 25, 2005. Wisconsin Electric Power Company filed an intervention.

### **IV. Discussion**

#### **A. Procedural Matters**

##### **1. Interventions and Answers to Protests**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motion to intervene of Wisconsin Electric Power Company serves to make it a party to this proceeding.

##### **2. The Midwest ISO TOs' Section 205 Filing**

###### **a. Background**

13. The Midwest ISO TOs' filing includes both a compliance filing and a rate filing under section 205 of the FPA. The Midwest ISO TOs' section 205 filing includes the proposed Schedule 24-A, which adopts a regional rate design methodology, and revisions to Schedule 24 which reference that new methodology. The Midwest ISO TOs also propose modifications to Schedule 1 for consistency and to eliminate the potential for the double recovery of costs.

14. The Midwest ISO TOs seek an effective date of June 1, 2006 for the newly-proposed Schedule 24-A. They nonetheless ask the Commission to act on their filing promptly,

stating that the filing proposes a formula that relies on booked amounts from 2005, and that those booked amounts will reflect accounting changes implemented as a result of this filing.

**b. Commission Determination**

15. The Commission generally does not permit public utilities to submit rate filings under section 205 of the FPA together with compliance filings.<sup>14</sup> The Commission has, however, accepted a section 205 filing in combination with a compliance filing when the compliance directives in question warranted changes to other, related tariff provisions.<sup>15</sup> The tariff changes proposed here are closely and plainly related to the Commission's compliance requirements. In addition, the proposed rate changes show a common factual nexus with the compliance filing and do not undo or contravene the compliance requirements. As such, on these facts we will consider the section 205 filing in this proceeding.

16. For good cause shown, we will grant the Midwest ISO TOs' request for waiver of the Commission's regulations, which require public utilities to submit rate filings no earlier than 120 days prior to the proposed effective date.<sup>16</sup>

**B. Cost Recovery**

**1. The Midwest ISO TOs' Proposal**

17. The Balancing Authority Settlement Order approved a new schedule to the TEMT (Schedule 24), to provide a mechanism for Balancing Authorities to recover costs that related to the implementation of the Balancing Authority Agreement. Under the new schedule, all control area operators shall recover costs incurred as a result of implementing the energy markets and services pursuant to the TEMT, including: (1) daily operation and maintenance costs; (2) administrative and general costs; (3) capital costs; and (4) costs for systems-in-place, training, and from the performance of obligations imposed by the TEMT. All costs to be recovered must relate to control area actions in implementing, or performing obligations under, the TEMT and cannot include costs recovered under the TEMT or

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<sup>14</sup> See, e.g., *ISO New England, Inc.*, 99 FERC ¶ 61,070 at 61,322-23 (2002).

<sup>15</sup> See *New England Power Pool*, 85 FERC ¶ 61,141 at 61,550 (1998), *order on reh'g*, 87 FERC ¶ 61,043, *reh'g denied*, 88 FERC ¶ 61,276 (1999).

<sup>16</sup> 18 C.F.R. § 35.3(a) (2005).

otherwise reimbursed by the Midwest ISO. Because the Balancing Authority costs were related to implementation of the energy markets, the Commission approved these costs to be recovered together with, and in the same manner as, Schedule 17 costs.<sup>17</sup>

18. As proposed in the instant filing, Balancing Authorities will recover their costs under Schedule 24 of the TEMT. Section I of Schedule 24-A provides that Balancing Authorities may recover certain categories of labor costs associated with implementing the Balancing Authority Settlement.<sup>18</sup> The costs include salary but not benefits. If personnel split their functions, the Balancing Authority shall allocate their time to perform balancing authority settlement functions.

19. Section II addresses the cost recovery mechanism for costs recovered under section I. The costs booked to Account 561.BA for the calendar year shall be recoverable beginning June 1 of the next calendar year. These costs shall be billed and collected in the same manner as the costs recovered under Schedule 17. Basically, the prior year's costs will be divided by the same denominator used in Schedule 17 to determine a monthly charge which will be applied to the same monthly billing determinants as the Schedule 17 charge.

20. Section III distributes the revenues generated by the regional cost recovery to each Balancing Authority, based on the ratio of the Balancing Authority's labor attributed to

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<sup>17</sup> Schedule 17, Energy Market Support Administrative Service Costs, provides for the Midwest ISO to recover all costs related to its energy markets including costs associated with market modeling and scheduling functions, market bidding support, locational marginal pricing support, market settlements and billing, market monitoring functions, and enabling least-cost, security-constrained dispatch. Schedule 17 specifies that each market participant shall be billed for a share of the Energy Market Support Administrative Service Cost Recovery Adder, depending on the number of megawatts that market participants has injected into, or withdrawn from, the Midwest ISO transmission system in that month. The rate is, therefore, uniform for all market participants in the region.

<sup>18</sup> The three categories of labor costs are: (1) the costs of shift personnel and supervisors of shift personnel performing the functions required by the Balancing Authority Settlement; (2) the costs of personnel, as well as their supervisors, performing the after-the-fact check-out required of Balancing Authorities; and (3) the costs of personnel and their supervisors directly supporting the functions required by the Balancing Authority Settlement, including information technology support personnel. See Schedule 24-A, section I, Original Sheet No. 1050S.01.

balancing authority activities to the total value of all Balancing Authorities' labor attributable to balancing authority activities. This is intended to reimburse each Balancing Authority for its labor costs.

21. Under section IV, the Balancing Authorities propose a placeholder for the recovery of costs not included under section I. In order to recover said costs, the individual Balancing Authority must submit a separate filing to the Commission. That filing must: (1) justify the proposed costs to be recovered, (2) show that there is not duplicative recovery of those costs, and (3) set forth the proposed accounting for the costs.

22. However, under section IV, each Balancing Authority may propose a different rate design than that found in section II. No other details were provided. Additionally, section IV states that any entity may challenge any such filing, including the rate design of that filing.

23. In addition to the proposed Schedule 24-A, the Midwest ISO TOs propose to modify Schedule 1 to provide that costs recovered under Schedule 24 via Schedule 24-A shall not be included in the costs associated with Schedule 1.

## **2. Commission Determination**

24. In the Balancing Authority Settlement Order, the Commission accepted the concept of a cost recovery mechanism for Balancing Authorities to recover costs incurred under the Balancing Authority Agreement.<sup>19</sup> The Balancing Authority Settlement filing stated that those costs would be collected “in the same manner as costs recovered under Schedule 17”<sup>20</sup> – *i.e.*, on a regional basis, using postage-stamp pricing. The Commission reviewed the proposal under the “just and reasonable” standard of section 205 of the FPA because the proposal was presented in the form of a contested settlement.<sup>21</sup> The Commission conditionally approved the settlement, ordered a compliance filing to implement the proposal, and required the Midwest ISO TOs to submit accounting details.

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<sup>19</sup> Balancing Authority Settlement Order at P 59.

<sup>20</sup> Explanatory Statement at 7, Docket Nos. ER04-691-002 and EL04-104-002 (Oct. 5, 2004).

<sup>21</sup> See *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 314 (1974).

25. The August 5 Order rejected the Midwest ISO TOs' earlier compliance filing because that filing did not make the cost recovery process more transparent and easier to audit, as the Balancing Authority Settlement Order required. The Commission also found that allowing the Balancing Authorities to choose – and freely alternate – between recovering costs under Schedule 1 or under Schedule 24 would make it possible for some zones to over-recover costs. Further, the Commission found that the proposal would decrease, rather than increase, clarity as to how the recovered costs are accounted for.

26. In the instant filing, the Midwest ISO TOs have altered their approach from the previous filing. Here, the Midwest ISO TOs have proposed a cost recovery methodology that is consistent with our original directives.<sup>22</sup> The proposed Schedule 24-A will track costs through the use of Account 561.BA. The costs in this account will then be divided by the same denominator used in Schedule 17 to determine the regional rate.

27. The Midwest ISO TOs have proposed to allow the Balancing Authorities to seek to recover additional costs under section IV of Schedule 24-A. In order to collect, the Balancing Authority must make a filing with the Commission to: (1) justify the proposed costs to be recovered, (2) show that there is not duplicative recovery of those costs, and (3) set forth the proposed accounting for the costs. In addition, the filing Balancing Authority may seek a different rate design from that found in section I.

28. We will accept this provision in the filing. However, we emphasize that such recovery of costs associated with the Balancing Authority Settlement must occur in the same manner as cost recovery under Schedule 17. In addition to the conditions on filing under section IV proposed in the instant proceeding, all previous orders on the subject remain in effect.

29. We will accept the revision to Schedule 1, as it adds clarity and prevents the double recovery of costs under Schedules 1 and 24.

30. The TEMT sheets submitted contain a typographical error. They incorrectly identify the prior order, with which they are intended to comply, as having been issued in Docket No. ER04-691-00045. As there is no such subdocket number in this proceeding, we direct the Midwest ISO to make a filing to correct this problem.

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<sup>22</sup> See Balancing Authority Settlement Order at P 16.

The Commission orders:

(A) The Midwest ISO TOs' compliance filing is hereby accepted. The Midwest ISO TOs are hereby directed to make a new compliance filing, within 30 days of the date of this order, to correct the typographical error in its revised tariff sheets.

(B) The Midwest ISO TOs' section 205 filing is hereby accepted to become effective June 1, 2006.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.