

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company

Docket No. ER05-1235-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued December 16, 2005)

1. In this order, the Commission conditionally accepts, subject to further Commission orders, MidAmerican Energy Company's (MidAmerican) proposed tariff revisions establishing an independent Transmission Service Coordinator (TSC). MidAmerican's filing includes proposed tariff sheets and a draft TSC Agreement. MidAmerican will need to modify the tariff sheets, as discussed below. MidAmerican is also advised that, before the TSC arrangement can become effective, MidAmerican must file an executed TSC Agreement for Commission review under Federal Power Act (FPA) section 205.¹

Instant Submittal

2. On July 22, 2005, MidAmerican filed under FPA section 205 Attachment K to its Open Access Transmission Tariff (OATT) to implement a proposal to contract with an independent third-party, to act as the TSC. MidAmerican proposes that the TSC will administer various OATT-related functions with respect to transmission service provided over MidAmerican's transmission system.² MidAmerican states that its TSC proposal is

¹ 16 U.S.C. § 824d (2000).

² MidAmerican will remain the owner and operator of the transmission system, and will continue to have ultimate responsibility for providing transmission service under its OATT, including sole authority to amend its OATT pursuant to section 205, and for providing transmission service under grandfathered agreements.

modeled after a similar proposal recently filed by Entergy Services, Inc.,³ with differences reflecting the fact that the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) currently provides specific OATT-related services under contractual arrangements with the Mid-Continent Area Power Pool (MAPP) to certain MAPP members, including MidAmerican, through January 31, 2008.⁴

3. MidAmerican also filed a draft copy of the TSC Agreement, which is subject to negotiation between MidAmerican and the TSC selected through a request for proposal (RFP) process. The negotiations will also be coordinated with neighboring non-jurisdictional entities that express interest in using the TSC for regional services. MidAmerican commits to submit to the Commission and post on its OASIS an executed version of the final TSC Agreement to enable interested parties to review it for compliance with Commission-approved Schedule K.

4. MidAmerican states that its proposal will alleviate any residual concerns about the exercise of transmission market power that were expressed by the Commission in the order issued June 1, 2005 regarding MidAmerican's updated market power analysis,⁵ and will address concerns as to compliance with its Standards of Conduct raised in Docket No. PA04-18-000.⁶

³ See *Entergy Services, Inc.*, 110 FERC ¶ 61,295, *clarified*, 111 FERC ¶ 61,222 (2005) (*Entergy*), *reh'g pending*.

⁴ Midwest ISO currently performs certain transmission and reliability functions on a regional basis for those members of MAPP, including MidAmerican, that are not transmission-owning members of the Midwest ISO pursuant to a contractual arrangement between MAPP and the Midwest ISO. Such transmission-related services include serving as the North American Electric Reliability Council (NERC) reliability coordinator for the MAPP region; administering the MAPP Open Access Same Time Information System (OASIS) (which contains a node for the MidAmerican OASIS); implementing the system impact calculator used to determine transmission availability as it is impacted by flows over monitored interfaces and flowgates; and administering Schedule F for short-term point-to-point transactions into, out of and within the MAPP region.

⁵ See *MidAmerican Energy Company*, 111 FERC ¶ 61,320 at P 28-29 (2005) (instituting hearing procedures under FPA § 206 regarding MidAmerican's potential to exercise transmission market power).

⁶ See *MidAmerican Energy Company*, 112 FERC ¶ 61,346 (2005). (approving an audit report finding that MidAmerican did not fully comply with Commission rules, (continued...))

Notice and Responsive Pleadings

5. Notice of MidAmerican's filing was published in the *Federal Register*, 70 Fed. Reg. 44,350 (2005), with comments, protests, and interventions due on or before August 12, 2005. American Public Power Association, Alliant Energy Corporate Services, Inc., Dairyland Power Cooperative, Electric Power Supply Association, Resale Power Group of Iowa, Wisconsin Electric Power Company, Midwest Municipal Transmission Group, and Western Area Power Administration filed timely motions to intervene raising no substantive issues. Additionally, Municipal Energy Agency of Nebraska (MEAN) and Xcel Energy Services Inc. (Xcel) filed motions to intervene out-of-time.

6. The Midwest ISO, Southern Minnesota Municipal Power Agency (SMMMPA) and Nebraska Public Power District (NPPD) filed timely motions to intervene with comments. Missouri River Energy Services (Missouri River) and Great River Energy (Great River) filed timely motions to intervene and protests. On August 29, 2005, MidAmerican filed an answer to the protests.

Discussion

A. Procedural Matters

7. 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 serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motions to intervene of MEAN and Xcel given their interests and given that granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MidAmerican's answer because it has provided information that assisted us in our decision-making process.

regulations, and requirements concerning its transmission service, and directing MidAmerican to enact the report's recommended corrective actions, including some that would be satisfied by the TSC).

B. Transmission Service Coordinator**Proposal**

9. Generally, under the proposal, the TSC will assume responsibility for, among other things: (1) evaluation and approval of all transmission service requests,⁷ (2) calculation of TTC and ATC not otherwise calculated by Midwest ISO,⁸ (3) operation and administration of MidAmerican's OASIS, (4) evaluation, processing and approval of all generation interconnection requests, and performance and/or oversight of related interconnection studies, and (5) coordination of transmission planning.

10. More specifically, with respect to facilitating transmission service requests, the TSC will be responsible for performing, or causing to be performed, any system impact studies required by the MidAmerican OATT.⁹ The TSC will also determine any possible dispatch solutions that would relieve congestion to allow for firm requests, consistent with the terms of the MidAmerican OATT. Additionally, the TSC will be given discretion to coordinate with MidAmerican, when it deems it necessary, to obtain information that will assist the TSC in its evaluation of requests for service over MidAmerican transmission or distribution facilities.

11. Under the proposal, the TSC will also receive, confirm and implement OATT transmission schedules on the MidAmerican transmission system using accepted industry practices and standard NERC interchange scheduling protocols and requirements. The TSC will perform the NERC e-tag procedure for MidAmerican. MidAmerican will

⁷ MidAmerican states the Commission has determined that having an independent party performing these roles addresses concerns that a transmission owner could manipulate Total Transfer Capacity (TTC) and Available Transfer Capacity (ATC) calculations or transmission service denials. Transmittal letter at 6, *citing American Electric Power Co.*, 90 FERC ¶ 61,242 at 61,789 (2000).

⁸ *Id.* at 7-8.

⁹ MidAmerican states that during the initial year only, and as a transitional measure, the TSC may have MidAmerican perform the system impact studies.

remain responsible for the Balancing Authority implementation of any interchange schedules.¹⁰

12. MidAmerican states that it will select its TSC as a result of a RFP. Attachment K sets forth a number of requirements that MidAmerican believes will ensure that the entity that is ultimately selected to serve as the TSC will be independent from MidAmerican. Specifically, the TSC and its employees may not be affiliated with MidAmerican, any transmission customer, or any market participant; the TSC may not own any transmission, generation, or distribution facilities in the relevant region (*i.e.*, MidAmerican's control area and all directly interconnected control areas); section 2.3 of Attachment K and the draft TSC Agreement provide that all employees of the TSC will be subject to the Commission's Standards of Conduct as the equivalent of MidAmerican transmission/reliability employees; TSC employees will be subject to restrictions on information sharing; and the TSC will be required to adopt a policy to prevent conflicts of interest or other ethical concerns that could bias the TSC in favor of any market participant.

13. As an independent entity, the TSC will also administer generator requests to interconnect with the MidAmerican system. Attachment K provides that the TSC will have the authority to receive, evaluate, and grant or deny requests for generator interconnection. The TSC will be responsible for implementing and applying MidAmerican's generator interconnection procedures in accordance with MidAmerican's OATT, queuing all such requests, performing studies necessary for such requests,¹¹ and providing all notices related to such requests.

14. The draft TSC Agreement permits the TSC to perform similar services for other parties. MidAmerican explains that public power entities to the west of MidAmerican and within MidAmerican's control area may decide to engage the TSC to provide similar functions for their systems leading to a broader scope of reliability coordination and an enhanced regional planning process. MidAmerican states that it has been involved in

¹⁰ The Balancing Authority is defined as the entity responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within an electrical system bounded by interconnection metering and telemetry and supporting the interconnected transmission grid's frequency in real time.

¹¹ The TSC will assume full responsibility for performing the Interconnection Feasibility Study, Interconnection System Impact Study, and Optional Interconnection Studies. As the Transmission Provider, MidAmerican will continue to be responsible for performing the Interconnection Facilities Study.

preliminary discussions with public power utilities to promote broader regional coordination and has received preliminary indications of support for the TSC model as a vehicle to include non-jurisdictional transmission providers to the west of MidAmerican.

Comments

15. Generally, the protesters argue that the filing lacks sufficient detail to evaluate the filing since MidAmerican has not yet identified the TSC. Specifically, the parties contend that they are not able to determine if the TSC will be independent until they know its identity. Missouri River states that, of the three proposals to form a TSC, MidAmerican's proposal is the most regionally ambitious and is the one about which the least is known.¹² Missouri River contends that proposals for independent transmission coordinators filed by Duke Power (Duke) and Entergy Services, Inc., (Entergy) resulted from extensive discussions with regulators and interested parties.¹³ Missouri River also notes that Duke included with its filing its agreement retaining Midwest ISO, a Commission-approved regional transmission organization (RTO), as its independent transmission coordinator, and Entergy provided in its filing that SPP, a Commission-approved RTO, would likely serve as its independent transmission coordinator. Since the proposals filed by Duke and Entergy identified existing RTOs as their independent transmission coordinators, Missouri River notes that the Commission could take comfort that those independent transmission coordinators would be independent. In this case, however, MidAmerican has not yet selected a TSC, and Missouri River asserts that the Commission and market participants cannot have that level of comfort.¹⁴ Therefore, Missouri River states that the Commission must condition any acceptance of the proposal until the Commission has, among other things, approved the selection of the TSC. Missouri River adds that no TSC Agreement for the administration of MidAmerican's transmission system should become effective until: (a) MidAmerican has notified all interested market participants that are members of MAPP of its proposed selection before

¹² SMMPA states that it does not have adequate information to understand the operational details of the TSC. Great River states that, among other things missing from MidAmerican's filing, the proposal does not provide an estimate of the costs and benefits of its proposal, much less a formal cost/benefit analysis.

¹³ Great River adds that other proposals have undergone substantial revision due to stakeholder comments and have resulted in more complete filings and lower costs. However, Great River is unaware of any comparable stakeholder meetings conducted by MidAmerican.

¹⁴ SMMPA is also concerned about the independence of the TSC.

the TSC Agreement has been negotiated; and (b) the Commission has explicitly approved MidAmerican's choice of the TSC and the TSC Agreement.

16. Further, the protestors contend that the identity of the TSC is necessary to determine the effect on regional coordination and seams. Missouri River states that, without knowing the identity of the TSC, the Commission and interested parties will not know whether the TSC will enhance coordination or exacerbate seams in the area.¹⁵ Missouri River contends that the Commission should condition any order approving the TSC on a requirement that any TSC Agreement provide for as seamless coordination with market participants in the Midwest ISO footprint as possible.¹⁶ Similarly, Great River states that MidAmerican should be required to demonstrate that the selection of a TSC will not have an adverse impact on regional transmission service. Great River is concerned that the proposed splitting of functions between the TSC, MidAmerican, and other regional entities (e.g., Midwest ISO, MAPP and the Midwest Reliability Organization) as proposed could create more interfaces, thereby adversely impacting coordination. Great River contends that MidAmerican should strive to coordinate its system with other regional transmission systems such that a virtually seamless regional footprint is formed. SMMPA seeks to ensure that the proposal will improve rather than exacerbate the seams and/or pancaking among MidAmerican, Midwest ISO and MAPP.

17. Missouri River also states that any order approving the TSC proposal should contain a requirement that MidAmerican file with the Commission the terms of any arrangement between the TSC and third party systems before such agreements go into effect.¹⁷ Because the terms and conditions of any arrangement between the TSC and a third-party will involve the operation and administration of the FPA-jurisdictional MidAmerican transmission system, it will involve the Commission's jurisdiction under the FPA, and so requiring the filing of such agreements would be within the Commission's authority under the FPA. Such a requirement would also ensure that the TSC's administration of adjoining and interconnected transmission systems will be as compatible as possible with the Midwest ISO.

18. Great River is concerned that, since Midwest ISO already performs many functions for MidAmerican, through MAPP, selecting a TSC other than Midwest ISO

¹⁵ Missouri River protest at 7.

¹⁶ *Id.* at 8.

¹⁷ NPPD states that it has been meeting with MAPP transmission owners, including MidAmerican, to begin exploring the possibility of expanding the TSC services to MAPP members that have not joined the Midwest ISO.

could, at best, cause a duplication of some functions and time-consuming conflicts and, at worst, lead to conflicting actions that could undermine reliability in the region. Great River contends that the Midwest ISO already has many, if not all, of the systems in place to perform the functions that are to be assigned to the TSC and has the experience to perform the required functions. Great River states that the Commission should condition its approval upon MidAmerican's demonstration that the selection of an entity other than the Midwest ISO as the TSC will not interfere with current Midwest ISO operations.

19. Midwest ISO states that it does not object to the proposal and is encouraged by MidAmerican's effort in this regard. Midwest ISO confirms that the filing will not impede the Midwest ISO or interfere with the Midwest ISO's current RTO responsibilities and/or the OATT-related services provided to those members of MAPP that are not transmission-owning members of the Midwest ISO, including MidAmerican.

MidAmerican's Answer

20. MidAmerican states that, notwithstanding protesters' claims of insufficient information, no one has identified any specific operational, technical, or tariff administration issues that they believe should have been addressed in the filing that were not, nor has anyone contended that a necessary element of the TSC arrangement is missing. MidAmerican states that its proposal was based on Entergy's proposal, with certain differences to account for MidAmerican's relationship with MAPP and other independent entities. Further MidAmerican contests the claim that it has not discussed the proposal with stakeholders, by identifying several meetings it held with potentially affected parties to discuss the proposal.¹⁸ MidAmerican continues that there is no need for the formalized stakeholders process used in connection with forming an RTO and the development of an entirely new OATT that will impact many entities, because it is not forming an RTO. Additionally, MidAmerican argues that a cost-benefit analysis is not required for the TSC proposal, as the Commission did not require a cost-benefit analysis for Entergy, and does not even require a cost-benefit analysis to create an RTO.

21. MidAmerican states that it should not be required to choose Midwest ISO as the TSC just as Entergy was not required to choose a particular entity as its independent transmission coordinator. MidAmerican maintains that in *Entergy*,¹⁹ the Commission held that, if SPP were the chosen entity, SPP's independence from Entergy should be further examined at the time Entergy makes its section 205 filing. Similarly,

¹⁸ MidAmerican Answer at 4-6.

¹⁹ *Entergy*, 111 FERC ¶ 61,222 at P 18.

MidAmerican has committed that, following receipt of Commission approval of Attachment K and its selection of the TSC through the RFP process, MidAmerican will submit a copy of the final, executed TSC Agreement to the Commission and stakeholders, thereby providing an opportunity to address the independence and qualifications of the TSC.

22. MidAmerican contends that concerns about regional coordination are without basis because MidAmerican would be the party most affected by the TSC's failure to coordinate regionally or perform in a reliable manner. Additionally, Article five of Attachment K, Reliability Coordinator, requires the TSC to coordinate with the Midwest ISO, MidAmerican's Reliability Coordinator. MidAmerican argues that the proposal will actually enhance regional coordination as it will "further the management" of the MAPP-Midwest ISO Seams Agreement, and will provide additional opportunities for the MAPP transmission owners to commence regional services and to establish a seams agreement between MAPP and GridWest (the evolving entity to the west of the MAPP transmission system).

23. MidAmerican states that it does not have the right to dictate to the TSC which third-party arrangements the TSC may enter. According to MidAmerican, it will not be a party to those negotiations unless the negotiations require the TSC to amend its TSC Agreement with MidAmerican in which case the Commission will have an opportunity to review any such changes. Otherwise, the TSC and third-party systems will determine whether to file their arrangements with the Commission. Moreover, MidAmerican adds that the TSC may enter into arrangements with public power entities over whom the Commission does not have jurisdiction.

Commission Determination

24. We will conditionally accept MidAmerican's TSC proposal²⁰ subject to certain conditions discussed below and subject to further Commission orders. The Commission believes that MidAmerican's TSC proposal is likely to produce considerable benefits by improving transparency of transmission information and improving access to MidAmerican's transmission system. The Commission finds that the proposal meets the "consistent with or superior to" standard of review for departures from the *pro forma*

²⁰ Although MidAmerican refers to its proposed TSC Agreement as a *pro forma* agreement, in reality it is a draft agreement, prepared as a starting point for negotiations with the TSC.

OATT, as specified in Order No. 888,²¹ as well as helping to address concerns about MidAmerican's noncompliance with its Standards of Conduct and other requirements raised in an audit report.²² Nonetheless, MidAmerican expects that modifications in the TSC Agreement are likely to result from negotiations with the entity selected to serve as the TSC. Accordingly, the Commission conditionally accepts Attachment K, subject to the conditions discussed below and subject to further Commission orders.²³

25. MidAmerican has included provisions in Attachment K that help support a finding of independence. Attachment K provides that the TSC will not be a market participant and may not own any transmission, distribution or generation in the relevant region.²⁴ Employees of the TSC may not have any financial interest in any market participant and will be subject to the Standards of Conduct, subject to information sharing restrictions, and may not be otherwise affiliated with MidAmerican, any transmission customer or market participant. Further, the TSC decision-making process will be independent of control from any market participant. For example, the TSC shall maintain its offices separate from the offices of MidAmerican and its affiliates. Moreover, to foster greater TSC independence, MidAmerican's proposal grants the TSC with authority to collect and analyze data relevant to its responsibilities and submit periodic and ad hoc reports to the Commission. MidAmerican reserves the right to comment on the TSC's draft reports and the TSC may or may not make changes recommended by MidAmerican prior to

²¹ See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000) (TAPS), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002).

²² See *supra* note 7.

²³ As discussed more fully below, the Commission finds the TSC Agreement must be on file with the Commission. See 16 U.S.C. § 824d (2000).

²⁴ MidAmerican defines the relevant region as MidAmerican's "control area and first-tier control areas or any of [MidAmerican's] affiliates." See Attachment K, section 2.2(a).

submitting such reports to the Commission. These provisions, as modified below, are consistent with or superior to the *pro forma* OATT and help ensure the TSC's independence.

26. However, MidAmerican will need to modify Attachment K in several regards to eliminate provisions that would impair the independence of the TSC.²⁵ Section 7.1.2 of Addendum B, Transmission Service Protocol, allows MidAmerican to perform system impact studies if requested by the transmission customer and with the consent of MidAmerican, and it allows the TSC to have MidAmerican perform system impact studies during the first year of the agreement between the TSC and MidAmerican as a transitional mechanism. In MidAmerican's Answer, MidAmerican states that the system impact studies are the primary driver of what the costs will be to provide the requested transmission service.²⁶ Since the system impact study is so important to determining the costs to provide the requested service, and given the Commission's findings in the audit report concerning the potential exercise of transmission market power by MidAmerican,²⁷ the Commission finds that it impairs the independence of the TSC for MidAmerican, rather than the TSC, to perform these services even if the customer requests it and even as a transitional mechanism. Indeed, there may even be instances in which MidAmerican will be a transmission customer and this section would allow MidAmerican to perform system impact studies for itself which impacts independence. Rather, the Commission expects that any entity selected to be the TSC should have experience performing system impact studies and should be sufficiently knowledgeable about MidAmerican's system to permit it to perform these studies from the effective date of the TSC Agreement. Accordingly, MidAmerican will need to revise this section of Attachment K when it files its final executed TSC Agreement.

27. In addition, to ensure the independence of the TSC and compliance with the audit report, MidAmerican will need to take three further steps. First, MidAmerican must

²⁵ Our action here is without prejudice to Commission review of the final, negotiated TSC Agreement. Thus, when MidAmerican files its final executed TSC

Agreement and revised tariff sheets under FPA section 205, additional modifications to the TSC Agreement and Attachment K may be required at that time.

²⁶ MidAmerican transmittal letter at 8-9.

²⁷ See *supra* note 7.

modify section 2.2 of Attachment K to require the TSC to file its periodic and ad hoc reports directly with the Commission without prior review by MidAmerican.²⁸ Consistent with section 2.2 of the proposal, MidAmerican can review the report and provide comments to the Commission on the TSC's filed report.²⁹ Second, the TSC should continue all the third-party audits identified in the audit report and use its periodic and ad hoc reports for the first twelve months after operation to, among other things, inform the Commission as to whether MidAmerican is successfully avoiding the prohibited practices identified in the audit report. For example, the reports should address, among other things, whether MidAmerican permitted its wholesale merchant function to use network service to import power into MidAmerican's system to make possible off-system sales; MidAmerican provided transmission services to its wholesale merchant function that were not available to non-affiliates; and MidAmerican did not require its wholesale merchant function to comply with applicable tariff provisions regarding the designation of network resources. After the first twelve months of operation, the TSC should file a report with the Commission to explain whether all the Commission's findings in the audit report have been resolved. Third, MidAmerican will need to modify Attachment K to ensure that not only employees (which would include officers) but also directors of the TSC may not have any financial interest in any market participant, will be subject to the Standards of Conduct and the information sharing restrictions, and may not be otherwise affiliated with MidAmerican, any transmission customer or market participant.

28. The Commission will defer addressing regional coordination/seams issues because it would be premature to do so at this time. The Commission expects the selected TSC to effectively manage seams and to coordinate regionally. Protesters may raise concerns regarding regional coordination and seams when MidAmerican has filed its final executed TSC Agreement under FPA section 205.³⁰ Similarly, the Commission will also defer making a finding regarding Great River's concerns about the splitting of functions among various entities until MidAmerican files the final executed TSC Agreement.

²⁸ We note that MidAmerican was found in the audit report not to be in compliance with its Standards of Conduct and other Commission rules and regulations regarding its transmission service. *See supra* note 7. This modification to section 2.2 will help alleviate any remaining concerns about MidAmerican's prospective compliance with its OATT, Standards of Conduct and OASIS requirements.

²⁹ See *MidAmerican Energy Company*, 112 FERC ¶ 61,346 (2005).

³⁰ Given Midwest ISO's comments, the Commission is satisfied that there will be no effect on Midwest ISO's operations.

29. The Commission acknowledges MidAmerican's discussions with neighboring entities concerning its TSC proposal. While these discussions may not have taken the form of formal stakeholder conferences as preferred by Great River, the Commission has not required such discussions to be formal stakeholder conferences and the Commission will not require one here. Moreover, the Commission will not require MidAmerican to notify all interested market participants that are members of MAPP of its proposed TSC selection before the TSC Agreement has been negotiated. To the extent that parties are unsure of the operational details of the TSC, they may raise any remaining concerns when MidAmerican files the final TSC Agreement under FPA section 205.

30. With respect to Great River's concern about the lack of a cost/benefit analysis, MidAmerican has not proposed to include the costs of the TSC in its OATT rates. If MidAmerican seeks approval to include costs related to the TSC in its OATT rates, MidAmerican will have the burden under FPA section 205 to show the costs are reasonable.

31. With respect to SMMPA's comment on pancaking, the filing is not proposing to create an RTO which would require the elimination of pancaked transmission rates;³¹ therefore, the Commission does not require MidAmerican's proposal to eliminate the pancaking of transmission rates.

32. Missouri River requests that the Commission also review all agreements between the TSC and third-party, non-jurisdictional entities. Because the TSC is not yet known and has not yet entered into any such agreements, it would be premature to address this question at this time. In any event, the issue may ultimately be rendered moot depending on what parties enter what agreements, and what does or does not get filed as a result. Missouri River may raise this issue at a later, more appropriate time; that time could be as early as when MidAmerican submits its FPA section 205 filing.

³¹ See *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,108, 31,174-75 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Reg. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F. 3d 607 (D.C. Cir. 2001) (*Order No. 2000*).

C. Specific Provisions of Proposal

1. Facilities Studies

33. Section 7.2 of the proposed Addendum B to Attachment K provides that the facilities agreement shall be a three-party agreement among the TSC, the transmission customer and MidAmerican. Under section 7.2, after confirming that all applicable requirements have been met by the transmission customer, the TSC shall direct MidAmerican to perform a Facilities Study. MidAmerican would perform the Facilities Study and the TSC would review and validate the results of the Facilities Study.

34. Great River states that the design characteristics and cost of transmission system upgrades identified in a Facilities Study are often contentious and Great River claims the Commission has found the results of such studies to have been used to thwart competition. Great River argues that the TSC must have control of Facilities Studies, as Great River claims Midwest ISO does, to ensure that the results do not favor MidAmerican. Great River acknowledges that MidAmerican might often be selected to perform such studies, but Great River believes that ultimately the authority for these studies should be vested in the TSC.

35. MidAmerican responds that the proposed allocation of responsibilities between the TSC and MidAmerican is consistent with the practice in the Midwest ISO where the Midwest ISO typically delegates the Facility Study to the transmission owner. MidAmerican also notes the proposal is consistent with the independent transmission coordinator proposals made by Entergy and Duke. Additionally, MidAmerican states that it is appropriate for the transmission owner to perform these studies because they have the detailed knowledge of the system and they will ensure that the facilities are built based upon the same practices, standards and specifications as the rest of the system, thereby reducing the chances of safety or reliability problems from incompatible or inadequately designed facilities. Finally, MidAmerican notes that the System Impact Study, which is proposed to be performed by the TSC, determines the type of upgrade that is necessary, if any. As such, MidAmerican believes the System Impact Study is the primary driver of what the costs to provide the requested service will be, and that study will be performed by the TSC.

Commission Determination

36. The Commission finds MidAmerican's proposal to be reasonable, as modified below. Because the transmission owner is well-suited to performing these studies, it may ultimately be selected to perform the studies, as Great River concedes. Moreover, MidAmerican's performance of these Facilities Studies will be overseen by the TSC. For example, section 7.2 provides for the TSC to determine whether a transmission customer has complied with the information requirements, to provide the updated Base Case

Models to MidAmerican to perform the studies, and to verify the results of the studies. The TSC will have an opportunity to comment on the Facilities Study report and if the TSC and MidAmerican cannot resolve their disputes, the TSC will identify the areas of dispute in the Facilities Study report and provide a copy to the transmission customer. If the TSC and MidAmerican cannot agree on the results of the study, or if the transmission customer does not agree with the results of the study, the transmission customer can request that MidAmerican file an unexecuted transmission service request. Under these circumstances, the TSC is able to exert significant influence on the results of the Facilities Study even if the study was performed by MidAmerican.

37. Nevertheless, in order to further ensure the independence of the TSC and to ensure the Commission has all pertinent information when deciding the outcome of such disputes, MidAmerican is required to modify section 7.2 to explicitly require the TSC to timely file with the Commission, as comments in any contested proceeding, the Facility Study and identify all areas of dispute between the TSC and MidAmerican.³²

2. Transmission Planning

38. MidAmerican, as a member of MAPP, is bound by MAPP's open-forum regional planning process which results in the development of the MAPP regional transmission plan.³³ Under the proposal, the TSC will also participate in the MAPP planning process and will independently provide planning for facilities necessitated as a result of transmission service requests or generation interconnection requests. The TSC will coordinate these facilities with MidAmerican's reliability planning. The parties will also coordinate system studies and technical analyses functions with respect to data inputs to enable each party to perform its respective duties.

39. Great River states that the TSC should oversee MidAmerican's transmission planning process. In general, Great River contends the proposal should include the type of detailed provisions set forth in Duke's proposal. For example, in Duke's proposal, the independent transmission coordinator's responsibilities include: (1) reviewing, evaluating and commenting on Duke's transmission expansion plan, (2) monitoring Duke's

³² Section 2.2 of Attachment K provides for the TSC to submit periodic and *ad hoc* reports directly to the Commission; however, it does not explicitly reference contested Facilities Studies.

³³ Because of MidAmerican's participation in MAPP's planning process, MidAmerican is not proposing a detailed set of planning protocols, as MidAmerican states Entergy did in its proposal.

transmission facility ratings, and (3) reviewing Duke's planning criteria. Great River states that the Commission should condition approval of MidAmerican's proposal on greater transmission planning authority being vested in the TSC.

40. MidAmerican responds that Great River misunderstands the regional transmission expansion process in the MAPP region and the TSC's role in that process. Under the proposal MidAmerican, as the transmission provider, has the obligation to plan and operate its system to provide safe and reliable service; therefore, MidAmerican states it will retain the obligation to develop transmission plans and that function will not transfer to the TSC. Nonetheless, under the proposal MidAmerican and the TSC will be members of MAPP and the collaborative joint transmission planning will be performed according to MAPP procedures. The TSC would be able to voice its concerns in the sub-regional planning groups applicable to MidAmerican and at the regional level when the sub-regional plans are combined into the MAPP regional plan. MidAmerican states that, with the TSC's participation in these meetings, MidAmerican's proposal ensures that the TSC will be able to review, evaluate, and comment on MidAmerican's transmission expansion plans.

41. MidAmerican also states that it would be inappropriate to transfer to the TSC the responsibility for establishing transmission facility ratings because MidAmerican is not proposing a RTO. Moreover, its transmission facility ratings are based upon standards and criteria contained in MidAmerican's FERC Form No. 715. These ratings are based on industry standards and manufacturer recommendations and, as appropriate, detailed physical reviews of equipment on a case-by-case basis. MidAmerican argues that ratings should not be determined using merely standardized approaches that ignore specific attributes of the facilities. Further, MidAmerican contends that the TSC, with experience, will become familiar with the ratings and, in any event, any concerns can be raised in MAPP meetings.

42. Further, MidAmerican argues that the TSC need not review MidAmerican's planning criteria because MidAmerican publicly files its planning criteria as part of its FERC Form No. 715 filing. MidAmerican states that it uses planning criteria for facilities over 100 kV that are consistent with NERC's and MAPP's current standards and it uses voltage criteria that have been long-standing criteria used by utilities in Iowa. The TSC will be able to voice any concerns regarding the planning criteria in MAPP's transparent transmission planning process.

Commission Determination

43. The Commission disagrees with Great River that more transmission planning authority should be vested with the TSC. There already exists a regional planning process overseen by entities independent of MidAmerican which provides a check on MidAmerican's influence. Further, under the NERC Functional Model, MidAmerican is

not the Transmission Planning Authority over its system,³⁴ whereas Entergy and Duke are the Transmission Planning Authorities over their respective systems.³⁵ Thus, requiring MidAmerican to abide by the same requirements as Duke and Entergy would be misplaced.

3. Termination Provision

44. The draft TSC Agreement has an initial term of three years and continues year to year thereafter until terminated. As proposed, either party may terminate the TSC Agreement at the end of the term without Commission approval, if both parties mutually agree to terminate or a governmental authority places additional conditions on MidAmerican which makes the TSC Agreement, in MidAmerican's judgment, no longer viable. Additionally, the parties may terminate the contract for cause subject to approval by the Commission. Generally, the reasons for terminating for cause include: (1) TSC fails to retain independence, approval from this Commission, or NERC certification; (2) financial distress of other party; (3) failure to prevent disclosure of confidential information; (4) gross negligence; (5) failure to perform; and (6) material breach. The draft TSC Agreement also includes provisions for transferring duties from one TSC to a subsequent TSC in the event of termination, because termination of the TSC Agreement will not result in termination of the TSC provisions in Attachment K to MidAmerican's OATT, which would require a filing under section 205.

45. Great River states that the Commission should have the authority to approve all terminations.

46. MidAmerican responds that, for all terminations for cause, Commission approval is required, and for the few instances where the termination may be effective immediately, the provision simply implements previously agreed-upon events of termination. MidAmerican claims these provisions are nearly identical to the provisions in Entergy's proposal. Moreover, MidAmerican states that, because the OATT will require MidAmerican to have a TSC in place unless the Commission approves the withdrawal of Attachment K, the termination of the TSC Agreement would not negate the independence achieved under MidAmerican's proposal. MidAmerican adds that in section 4.9 of the TSC Agreement, MidAmerican has committed to have a replacement TSC in place.

³⁴ See <http://www.nerc.com/~org/entities/mro.html>.

³⁵ See <http://www.nerc.com/~org/entities/serc.html>.

Commission Determination

47. MidAmerican has filed a draft TSC Agreement and has stated that it would file the final executed TSC Agreement with the Commission; however, it remains unclear whether MidAmerican intends to file the TSC Agreement under section 205 of the FPA. The TSC will grant access to the transmission grid through its acceptance or rejection of transmission requests and interconnection requests and will operate MidAmerican's OASIS. These activities affect significantly the jurisdictional service provided under MidAmerican's OATT. Therefore, the Commission finds that, consistent with FPA section 205(c) and our regulations,³⁶ the TSC Agreement must be filed with the Commission pursuant to FPA section 205. Any change to the TSC Agreement, including a change in the identity or the existence of the TSC, would constitute a change in the rate schedule and likewise would require a filing pursuant to FPA section 205. Hence, here all terminations would need to be filed with the Commission for Commission approval.³⁷

4. Confidentiality Provisions

48. Under section 6.4 of Attachment K,³⁸ upon a request by the Commission or the Independent Market Monitor to disclose confidential information of any entity including MidAmerican, the TSC is required to provide notice to the disclosing party prior to release of the information, and the TSC may not release the information until the disclosing party has given its written consent, which may not be unreasonably withheld if the Commission or Independent Market Monitor maintains the confidentiality of the information with a protective order.

Commission Determination

49. The ability to obtain necessary information on a timely basis is critical to the Commission's ability to monitor and address market power concerns and ensure that rates remain just and reasonable and not unduly discriminatory or preferential. The

³⁶ 16 U.S.C. § 824d(c) (2000); 18 C.F.R. § 35.1 (2005) (providing that "[e]very public utility shall file with the Commission and post, in conformity with the requirements of this part . . . all contracts which in any manner affect or relate to such rates, charges, classifications, services rules, regulations or practices . . .").

³⁷ 18 C.F.R. § 35.15 (2005).

³⁸ Section 6.4 of Attachment K also refers to section 6.3 of Attachment K, which contains similar provisions.

Commission must be able to obtain information within specified time frames, including the confidential information at issue here. Therefore, MidAmerican is directed to modify section 6.4 of Attachment K to include the following language regarding the release of confidential information to the Commission or its staff:

Notwithstanding anything in this section or in section 6.3 to the contrary, if the Commission or its staff, during the course of an investigation or otherwise, request information from the TSC that it is otherwise required to maintain in confidence pursuant to this Attachment K, the TSC shall provide the requested information to the Commission or its staff, within the time provided for in the request for information. In providing the information to the Commission or its staff, the TSC may, consistent with 18 C.F.R. § 388.112, request that the information be treated as confidential and non-public by the Commission and its staff and that the information be withheld from public disclosure. The TSC shall notify the party when it is notified by Commission or its staff that a request for public disclosure of, or decision to publicly disclose, confidential information has been received, at which time either the TSC or the party may respond before such information is made public, pursuant to 18 C.F.R. § 388.112.

50. As we have explained previously,³⁹ the Commission does not believe that either party to an agreement should be required to notify the other party of the receipt of a request for information by the Commission or its staff.⁴⁰ Further, neither party should notify the other party prior to the release of the confidential information to the Commission or its staff. That information will, in any event, upon request be treated confidentially under the Commission's regulations until the Commission rules otherwise.⁴¹ Furthermore, the Commission's regulations specifically provide for the notification of both the request for disclosure of confidential information⁴² and of a

³⁹ See *PJM Interconnection, L.L.C.*, 93 FERC ¶ 61,269 (2000); *Carolina Power & Light Company*, 97 FERC ¶ 61,098 (2001).

⁴⁰ See *Carolina Power & Light Company*, 97 FERC ¶ 61,193 (2001). The Commission based its determination, in part, on FPA section 301(b), 16 U.S.C. § 825(b) (2000). The Commission requires MidAmerican to incorporate the language cited above to ensure that the Commission is able to obtain necessary information.

⁴¹ 18 C.F.R. § 388.112(c)(1) (2005).

⁴² 18 C.F.R. § 388.112(d) (2005).

decision to disclose.⁴³ As a result, MidAmerican and the TSC will have the opportunity to respond before such information is made public.

The Commission orders:

MidAmerican's proposed Attachment K is hereby conditionally accepted for filing, subject to further Commission orders, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴³18 C.F.R. § 388.112(e) (2005).