

125 FERC ¶ 61,038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc. and
Transmission Owners of the Midwest Independent
Transmission System Operator, Inc.

Docket No. ER08-637-002

ORDER ON REQUESTS FOR CLARIFICATION AND REHEARING

(Issued October 16, 2008)

1. This order grants in part and denies in part requests for clarification and/or rehearing of the Commission's June 13 order¹ addressing Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners'² proposal to offer certain services to transmission-owning entities outside of Midwest ISO (Western Markets Proposal). In the June 13 Order, the Commission conditionally accepted Midwest ISO's proposal to offer Reliability Coordination Service (Reliability Service) and Interconnected Operations and Congestion Management Service (Seams Service) under its Open Access Transmission and Energy Markets Tariff

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265 (2008) (June 13 Order).

² For purposes of the filing, Midwest ISO Transmission Owners include: American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

(TEMT).³ The Commission also found the proposed Market Coordination Service (Market Service) to be deficient in the June 13 Order and required additional information to evaluate the proposal.

I. Background

2. On March 4, 2008, Midwest ISO filed a proposal to offer its Reliability, Seams, and Market Services to Mid-Continent Area Power Pool (MAPP) members and other eligible entities under Module F of its TEMT. Under the Reliability Service proposal, Midwest ISO proposed to make available to all eligible customers the reliability coordination services that Midwest ISO currently provides to Midwest ISO Transmission Owners and MAPP members. Under the Seams Service proposal, Midwest ISO proposed to offer to all eligible customers its market-to-non-market seams coordination services, which are currently provided under existing individual seams coordination or joint operation agreements with non-market transmission providers. Under the Market Service proposal, Midwest ISO and the Midwest ISO Transmission Owners⁴ proposed to allow the integration of MAPP members and other eligible entities into Midwest ISO's energy and ancillary services markets without transferring control of their transmission systems to Midwest ISO or providing transmission service over their transmission systems under Module B of the TEMT.

3. In the June 13 Order, the Commission conditionally accepted Midwest ISO's proposed Reliability and Seams Services, subject to a compliance filing to be submitted within 30 days of the date of the order.⁵ The Commission also found the Market Service proposal to be incomplete and therefore deficient and required Midwest ISO and the Midwest ISO Transmission Owners to amend their application to address a series of questions regarding the proposed Market Service in a compliance filing to be submitted within 60 days of the date of the order.⁶

³ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1.

⁴ Midwest ISO Transmission Owners joined in the filing solely with respect to proposed new Schedule 32 (Market Integration Transmission Service) of the TEMT.

⁵ June 13 Order, 123 FERC ¶ 61,265 at P 34, 49.

⁶ *Id.* P 154. The questions that the Commission required Midwest ISO to address in its 60-day amendment can be found in Appendix B.

II. Requests for Rehearing and Clarification and Answer

4. The Commission received timely requests for rehearing to the June 13 Order from Corn Belt Power Cooperative (Corn Belt), Basin Electric Power Cooperative (Basin Electric) and Western Area Power Administration (WAPA), and Manitoba Hydro. The Commission received timely requests for clarification or, in the alternative, rehearing to the June 13 Order from Minnkota Power Cooperative (Minnkota) and Midwest ISO.

5. Basin Electric filed a motion for leave to answer and an answer to Manitoba Hydro's request for rehearing. Manitoba Hydro filed a motion for leave to answer and an answer to Minnkota's request for rehearing.

III. Discussion

A. Procedural Issues

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept Basin Electric's or Manitoba Hydro's answers and will, therefore, reject them.

B. Flowgate Management

1. Continuation of Current North Dakota Export Flowgate (NDEX) Treatment

7. As discussed in the June 13 Order, NDEX is a stability limit flowgate consisting of several Alternating Current transmission lines owned by various entities. Pursuant to section 82.5 of the Seams Service proposal, Midwest ISO and the Seams Service customer will manage congestion on NDEX consistent with existing agreements among the owners of such privileges, rather than as a Reciprocal Coordinated Flowgate (RCF) under Attachment LL of the TEMT.⁷ Among other things, some parties suggested that NDEX should be subject to the same process as other interfaces under the Seams Service proposal and be treated as an RCF subject to economic redispatch under Attachment LL of Midwest ISO's TEMT.⁸

8. In the June 13 Order, the Commission accepted Midwest ISO's proposal to continue treating NDEX under the proposed Seams Service the same way Midwest ISO

⁷ Midwest ISO's March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, section 82.5, Original Sheet No. 850Z.16.

⁸ June 13 Order, 123 FERC ¶ 61,265 at P 92.

currently treats the interface under existing agreements for an interim period of three years. The Commission directed Midwest ISO to work with affected parties to explore a longer-term solution for NDEX and to file, at least 60 days prior to June 1, 2011, a compliance filing justifying the continuation of the existing treatment of NDEX or, alternatively, a new proposal for the treatment of NDEX.⁹

a. Requests for Rehearing

9. Basin Electric and WAPA argue in their request for rehearing that the Commission does not have jurisdiction to require Midwest ISO either to justify the continuation of current NDEX capacity determinations or to file proposed new Total Transfer Capability (TTC)¹⁰ determinations. They contend that the Commission's jurisdiction is limited to transmission service provided by public utilities and that the Commission does not have jurisdiction over transmission service provided by the United States, a state or any political subdivision thereof, or any electric cooperative that receives financing under the Rural Electrification Act of 1936.¹¹

10. According to Basin Electric and WAPA, the key factor in determining whether the Commission has jurisdiction over transmission service provided by a non-public utility is whether the non-public utility has transferred control of its transmission facilities to a public utility. They argue that mere agreement between a non-public utility and a public utility to take specific actions does not give rise to Commission jurisdiction, even if the agreement is filed with the Commission. Basin Electric and WAPA state that most NDEX facilities are owned by non-public utilities.

11. Basin Electric and WAPA further contend that the Commission does not have the authority to require Midwest ISO to take any action that affects the rights of non-public utilities to NDEX transfer capability and that the Commission exceeded its jurisdiction in ordering Midwest ISO to justify the determination of each NDEX owner's TTC on the NDEX facilities. They argue that the fact that public and non-public utilities have agreed to limit the use of lines to below their thermal capability does not mean that the Commission can determine whether the limits on the usage of their shares are just and reasonable. Furthermore, Basin Electric and WAPA add that Midwest ISO cannot make a filing justifying the continuation of the TTC determinations on NDEX because Midwest

⁹ *Id.* P 108.

¹⁰ TTC is defined in section 1.313a of the TEMT.

¹¹ Basin Electric and WAPA's July 14, 2008 Rehearing Request at 7 (citing 16 U.S.C.A. §§ 824(b) and 824(f) (2008)).

ISO does not own, operate or control most of the NDEX facilities and was not a party to the agreements that determined the TTC on those facilities.

12. Basin Electric and WAPA request that the Commission require the public utility owners of NDEX and like facilities to enter into negotiations with non-public utilities to establish the TTC on the flowgates and to make an informational filing on the negotiations by April 1, 2011. They state that Xcel Energy Inc. and Manitoba Hydro want to coordinate TTC on NDEX with the other flowgate owners because any changes in the allocation of TTC on one flowgate would impact the TTC on the other two flowgates.

b. Commission Determination

13. We deny Basin Electric and WAPA's request for rehearing. In the June 13 Order, the Commission directed Midwest ISO to work with affected parties to explore possibly changing the terms and conditions related to providing Seams Service in Midwest ISO's TEMT. While the Commission directed Midwest ISO to justify the continuation of the existing treatment of NDEX or to propose a new treatment of NDEX, the Commission's directive related to the Seams Service that Midwest ISO, a jurisdictional public utility, provides under its TEMT (a jurisdictional agreement). The Commission did not impose any requirements on non-jurisdictional entities or require any changes to non-jurisdictional agreements.

14. Midwest ISO's treatment of NDEX in its TEMT may involve entities and/or agreements that are not Commission-jurisdictional, but that does not limit the Commission's authority to require Midwest ISO to collaborate with all parties (jurisdictional and non-jurisdictional) to explore a longer-term solution to the treatment of NDEX under Seams Service. If a non-jurisdictional entity does not want to work with Midwest ISO, the June 13 Order does not force them to do so. Likewise, if Midwest ISO cannot change the treatment of NDEX under Seams Service because a non-jurisdictional entity refuses to change a non-jurisdictional agreement, Midwest ISO can explain that to the Commission in its required compliance filing. We expect, however, that parties can work together to find a reasonable solution to the treatment of NDEX.

2. Minnkota's NDEX Rights

15. Minnkota requests that the Commission clarify that Midwest ISO must treat Minnkota's rights on the NDEX flowgate pursuant to section 82.5 of the TEMT even if Minnkota does not become a Seams Service customer. Minnkota argues that section 82.5 does not mention treating any entities with rights on the NDEX flowgate differently, even those that do not take Seams Service.

16. We deny Minnkota's request for clarification. Section 82.5 and all Seams Service terms and conditions apply only to Seams Service customers. Section 82.5 states that

Midwest ISO will manage congestion over any capacity rights that a Seams Service customer has on the NDEX flowgate consistent with existing arrangements instead of under the Congestion Management Process at Attachment LL of the TEMT. We note that if Minnkota does not become a Seams Service customer, then Attachment LL would not apply to it and, therefore, any existing arrangements that apply to Minnkota's capacity rights on NDEX would be unaffected.

3. Other Flowgates

a. Requests for Clarification and Rehearing

17. Minnkota requests clarification, or in the alternative, rehearing as to whether the Commission-ordered stakeholder process to address all NDEX-related issues includes the treatment of other flowgates similarly situated to NDEX (e.g., MHEX).¹² Minnkota argues that the Commission failed to discuss its concerns regarding the treatment of similarly-situated flowgates within the exception for the NDEX flowgate. Minnkota contends that, similar to NDEX, MHEX is a stability-limited, multi-party-owned flowgate.¹³

18. Minnkota argues that if NDEX is excluded from being treated as an RCF, then other similarly-situated flowgates should also be excluded. Minnkota asserts that the Western Markets Proposal offers no justification as to why the special carve-out treatment should be limited to NDEX. Minnkota adds that the existing Midwest ISO-MAPP Seams Operating Agreement (SOA) excludes flowgates that are similarly situated to NDEX because the agreement states that certain flowgates "such as but not limited to [NDEX]" are excluded from RCF treatment.¹⁴

b. Commission Determination

19. We will grant Minnkota's request for rehearing of Midwest ISO's proposal to exclude only NDEX from being classified as an RCF. We are unable to determine from the procedural history, discussed further below, or the record in this proceeding whether Minnkota is correct that NDEX and MHEX are similarly-situated flowgates, and that MHEX should thus be given the same treatment as NDEX. Therefore, we will direct Midwest ISO to either include MHEX as part of the stakeholder process to address all

¹² MHEX is short for the Manitoba Hydro Export Interface flowgate.

¹³ Minnkota's July 14, 2008 Rehearing Request at 8.

¹⁴ *Id.* at 11.

NDEX-related issues or to demonstrate why MHEX is not similarly situated to NDEX and should be treated differently.

20. The Midwest ISO-MAPP SOA, as accepted by the Commission, provides for special treatment for NDEX by excluding it from classification as an RCF.¹⁵ As the Commission explained in the June 13 Order, the Western Markets Proposal merely allows the compromise on NDEX that was agreed to by the parties, and previously accepted by the Commission, to continue.¹⁶ In recognition of concerns that it may not be appropriate to continue treating NDEX differently than other flowgates, the Commission directed Midwest ISO to work with affected parties to explore a longer-term solution.¹⁷

21. Unlike the NDEX flowgate, however, parties to the Midwest ISO-MAPP SOA did not agree on whether the SOA would, or should, provide similar special treatment for MHEX. When Midwest ISO and MAPP originally filed their SOA, section 5.1.10 explicitly provided the same treatment for NDEX *and* MHEX. However, in response to concerns raised by Manitoba Hydro, Midwest ISO, and MAPP deleted the reference to MHEX in section 5.1.10 so that the section specifically mentioned only NDEX. Midwest ISO and Manitoba Hydro agreed to treat MHEX as a third-party flowgate (i.e., not treat it as an RCF) for an interim period while Midwest ISO and Manitoba Hydro negotiated their own SOA.¹⁸

22. When Midwest ISO and Manitoba Hydro subsequently filed their SOA with the Commission, Minnkota protested the treatment of MHEX under the agreement. Minnkota argued that MHEX should not be subject to allocation sharing as an RCF under

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,290 (2005). Midwest ISO-MAPP SOA, Article V at section 5.1.10 reads as follows:

Each [p]arty will identify and document rights to capacity of [f]lowgates comprised of multiple elements owned by multiple parties, such as but not limited to NDEX. These rights, other than transmission tariff service entitlements, have been established through existing contracts, operating agreements and operating guides. Each [p]arty agrees to honor transmission service up to the rights of affected parties established for these [f]lowgates.

¹⁶ June 13 Order, 123 FERC ¶ 61,265 at P 106.

¹⁷ *Id.* P 107.

¹⁸ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,290, at P 46 (2005).

the Midwest ISO-Manitoba Hydro SOA, with Minnkota relying in part on its interpretation of section 5.1.10 in the Midwest ISO-MAPP SOA.¹⁹ In response to Minnkota's concerns, the Commission set the Midwest ISO-Manitoba Hydro SOA for trial-type hearing and settlement procedures.²⁰ The parties ultimately entered into an uncontested settlement agreement that the Commission accepted,²¹ which, among other things, revised the Midwest ISO-Manitoba Hydro SOA so that a flowgate would not be considered an RCF under the Midwest ISO-Manitoba Hydro SOA if a MAPP transmission provider, by relying on section 5.1.10 of the Midwest ISO-MAPP SOA, does not recognize an obligation to share or transfer unused capacity with respect to its facilities.²²

23. Minnkota takes the position that, pursuant to section 6.6.3 of the Manitoba Hydro-MAPP SOA, MHEX is currently not treated as an RCF. It is not clear, however, whether MHEX will be considered an RCF going forward since that treatment is controlled by a provision in the Midwest ISO-Manitoba Hydro SOA that relies on parties' interpretation of the to-be-cancelled Midwest ISO-MAPP SOA. In addition, while Minnkota argues that MHEX is similarly situated to NDEX, the issue of whether NDEX and MHEX should be treated the same has been, as we discuss above, a disputed issue in other proceedings. We do not have sufficient information in the record in this proceeding to make a determination in this matter.

24. Therefore, we direct Midwest ISO, in the compliance filing directed below, to: (1) explain if and on what basis it will treat MHEX as an RCF for Seams Service customers (e.g., how does the cancellation of the Midwest ISO-MAPP SOA affect the Midwest ISO-Manitoba Hydro SOA); (2) confirm whether or not it will include MHEX in the stakeholder process it must conduct to explore a longer-term solution for NDEX;²³ and (3) to the extent it intends to treat MHEX as an RCF and not to include MHEX in the stakeholder process, Midwest ISO must justify its differing treatment of NDEX and MHEX and demonstrate that NDEX and MHEX are not similarly-situated flowgates.

¹⁹ See, e.g., Minnkota's October 18, 2006 Protest, Docket No. ER08-560-000.

²⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,230 (2006).

²¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,140 (2007).

²² See Midwest ISO-Manitoba Hydro SOA, Attachment B at section 6.6.3, Midwest ISO FERC Electric Tariff, Original Rate Schedule No. 8, Substitute Sheet No. 91.

²³ June 13 Order, 123 FERC ¶ 61,265 at P 107.

C. Reciprocal Entity

25. Manitoba Hydro argues that the Commission failed to consider its comments on the definition of “Reciprocal Entity” in the proposed tariff revisions. It contends that the proposed tariff revisions contain two different definitions of “Reciprocal Entity,” one that would include Manitoba Hydro and one that would not. Specifically, Manitoba Hydro states that section 1.257b of the TEMT²⁴ defines a “Reciprocal Entity” as one that has executed the Congestion Management Process document, and the Congestion Management Process document is defined as the process described in Attachment LL of the TEMT.²⁵ Manitoba Hydro argues that it would not be considered a Reciprocal Entity under the definition at section 1.257b because Attachment LL contains a newly revised Congestion Management Process that is substantially similar but not identical to the Congestion Management Process in the Midwest ISO-Manitoba Hydro SOA. Manitoba Hydro states that in contrast, the definition of “Reciprocal Entity” in Appendix A of Attachment LL includes entities that have executed a Congestion Management Process that is “substantially similar” to the Congestion Management Process in Attachment LL.²⁶ Manitoba Hydro asks the Commission to require Midwest ISO to either eliminate the definition of “Reciprocal Entity” in section 1.257b, or to revise it to be consistent with the definition of “Reciprocal Entity” in Appendix A of Attachment LL.

26. We grant Manitoba Hydro’s request for rehearing and require Midwest ISO to revise the definition of “Reciprocal Entity” in the TEMT. As Manitoba Hydro points out, it would be considered a “Reciprocal Entity” under the definition in the Congestion Management Process at Attachment LL to the TEMT, but it would not be considered a Reciprocal Entity under the definition in section 1.257b of the TEMT. We direct Midwest ISO to revise the definition of “Reciprocal Entity” in section 1.257b to match the definition of that term in the Congestion Management Process document described in Attachment LL of the TEMT.

²⁴ Midwest ISO’s March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, First Revised Sheet No. 116B.

²⁵ Section 1.37b, Midwest ISO’s March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Seventh Revised Sheet No. 56.

²⁶ Midwest ISO’s March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 2004.

D. Participation by Electric Cooperatives

1. Requests for Rehearing

27. In its request for rehearing, Corn Belt argues that the Commission failed to address its request that Midwest ISO accommodate the participation of electric cooperatives under the Western Markets Proposal. Corn Belt says that the changes it requests address issues unique to electric cooperatives as borrowers of funds from the Rural Utilities Service (RUS) and that wish to retain tax-exempt status. Electric cooperatives are subject to the Rural Electrification Act of 1936 (REA), 7 U.S.C. § 901-950b, and are required to maintain tax-exempt status under the Internal Revenue Code (IRC), 26 U.S.C. § 501(c)(12).

28. Corn Belt requests that Midwest ISO modify the Western Markets Proposal to provide electric cooperatives that are Module F customers but are not public utilities under the FPA protection similar to the protection that Midwest ISO has afforded to public power entities. Corn Belt notes that the Western Markets Proposal accommodates public power entities when conflicts arise between the proposed tariff revisions and applicable state laws, regulations or rate schedules.²⁷ For example, public power entities may terminate Reliability and Seams Service with reduced notice if future TEMT modifications conflict with state laws, regulations or rate schedules.

29. Corn Belt asks the Commission to modify section 12E of Module A to allow electric cooperatives to identify and resolve conflicts that arise between Module F and the cooperatives' RUS obligations and/or IRC requirements. In the event that a cooperative identifies a conflict, Corn Belt proposes tariff language to require the cooperative to submit to the Commission a filing identifying and explaining the conflict and what actions it is taking in response. Corn Belt also proposes changes to certain definitions and provisions to further accommodate the cooperatives in a manner similar to public power entities. In addition, Corn Belt requests the following exception for electric cooperatives to the proposed Market Service (if Market Service is adopted): "An electric cooperative taking [Market Service] shall have the right to forgo any receipt of revenue or funds in order to maintain tax-exempt status pursuant to section 501(c) of Title 26 of the United States Code."²⁸

²⁷ See *id.*; Midwest ISO's March 4, 2008 Transmittal Letter at 10 and 20.

²⁸ Corn Belt's July 14, 2008 Rehearing Request at 8.

30. Basin Electric states that it supports Corn Belt's request for rehearing and seeks rehearing on this issue for the reasons stated by Corn Belt.²⁹

2. Commission Determination

31. We deny Corn Belt and Basin Electric's requests for rehearing. The protections for public power entities proposed by Midwest ISO were designed to correspond to provisions in existing section 12D.1 of the TEMT, addressing public power participation in independent transmission companies within Midwest ISO, which the Commission required in an earlier order.³⁰ No such comparable provisions exist in the TEMT for electric cooperatives. Corn Belt has not justified treating new electric cooperatives differently from existing Midwest ISO Transmission Owners under Reliability or Seams Services. Additionally, the fact that current Midwest ISO Transmission Owners that are electric cooperatives have successfully managed any conflicts with federal or local law suggests that other electric cooperatives would be able to do the same.

32. We note that the Commission withheld judgment on the Market Service portion of the Western Markets Proposal in the June 13 Order. To the extent that any additional protections are necessary for electric cooperatives under the Market Service provisions, we deny rehearing here and will address such issues in the Commission's order on Market Service.

E. Transition Timelines

1. Requests for Clarification

33. Midwest ISO requests clarification, or in the alternative, rehearing, regarding the necessity of renegotiating two previously-negotiated contractual agreements. First, Midwest ISO notes that in the June 13 Order the Commission required Midwest ISO to establish a schedule for moving from any existing bridge agreements to Reliability Service to ensure a smooth transition.³¹ Midwest ISO argues that this requirement could be interpreted as overriding the transition provisions currently set forth in the MAPP Reliability Coordination Agreement. In addition, Midwest ISO is concerned that the

²⁹ Basin Electric and WAPA indicate that WAPA does not seek rehearing on this issue because WAPA is not an electric cooperative. Basin Electric and WAPA's July 14, 2008 Rehearing Request at 13, n.17.

³⁰ See *TRANSLink Development Company, LLC*, 104 FERC ¶ 61,148 (2003).

³¹ Midwest ISO's July 14, 2008 Rehearing Request at 5 (citing June 13 Order, 123 FERC ¶ 61,265 at P 34).

Commission's directive may require it to provide service under the MAPP Reliability Coordination Agreement until the customer decides to transition. Midwest ISO notes that it will not cease providing reliability coordination service if an operating entity has no other service provider. If such an instance occurs, Midwest ISO will file an unsigned service agreement with the Commission in the form of Attachment KK-1 to continue service under Reliability Service, rather than continuing service under the pre-Module F contract.

34. Midwest ISO argues that any requirement to renegotiate the agreement would be arbitrary and capricious and a violation of our observance of contract sanctity. Accordingly, Midwest ISO asks the Commission to clarify that a transition arrangement must be provided "if one has not already been agreed to by the parties." It also asks the Commission to clarify that the Midwest ISO is not required to modify or renegotiate the existing transition provisions of the MAPP Reliability Coordination Agreement.

35. Second, Midwest ISO makes a similar request regarding the Commission's requirement that Midwest ISO establish a schedule for moving from existing individualized seams agreements to Seams Service.³² Midwest ISO requests clarification that the June 13 Order requires a transition to Seams Service to be scheduled only "if one has not already been agreed to by the parties."³³ Midwest ISO submits that it would be inconsistent with the Commission's policy on the non-impairment of contracts to compel Midwest ISO to renegotiate a freely-negotiated contractual arrangement, in this case the Midwest ISO-MAPP SOA.

2. Commission Determination

36. We agree that the Midwest ISO should not be required to renegotiate transition provisions contained in existing agreements. We note that the June 13 Order did not require Midwest ISO to renegotiate the transition provisions of any agreements and merely required Midwest ISO to specify its schedule for moving from existing agreements to Reliability and Seams Services. In its 30-day compliance filing, Midwest ISO provides information on the transition schedules, consistent with existing agreements, and we accept those transition timelines in the concurrent order on the

³² *Id.* at 9-10 (citing June 13 Order, 123 FERC ¶ 61,265 at P 54).

³³ Midwest ISO is prepared to file a non-conforming service agreement to continue seams coordination for certain Nebraska utilities that plan to join the Southwest Power Pool (SPP). The transition service would be consistent with the terms and conditions already negotiated under the Midwest ISO-MAPP SOA to avoid the difficulty of administering multiple seams agreements with different obligations.

compliance filing.³⁴ Accordingly, to the extent that further clarification is required, we clarify that the June 13 Order does not require Midwest ISO to renegotiate the transition provisions of the MAPP Reliability Coordination Agreement and Midwest ISO-MAPP SOA.

F. Midwest ISO Request for Clarification on Reliability Service

37. Midwest ISO comments that the June 13 Order incorrectly states that Reliability Service includes the provision of operating reserves and mitigation of potential problems in customer systems.³⁵ Midwest ISO states that the reliability coordinator does not provide operating reserves because that is a balancing authority function. Furthermore, it adds that the mitigation of problems on a customer's system is the customer's responsibility as a transmission operator that responds to directives from the reliability coordinator. To address this issue, Midwest ISO requests that the Commission correct the second sentence of paragraph 8 to read as follows: "This includes coordinating with [Reliability Service] customers to assist them with providing generation operating reserves, issuing directives to protect transmission system security and to mitigate any potential problems on customers' systems."³⁶

38. We agree that the June 13 Order incorrectly described the provision of operating reserves and mitigation of potential problems in customer systems under Reliability Service. We agree with Midwest ISO's proposed correction and clarify our June 13 Order as requested.

G. Market Service Issues

1. Requests for Rehearing

a. Congestion Management

39. Manitoba Hydro argues that the Commission failed to adequately address its concerns regarding the treatment of Market Service customers for the purposes of managing congestion. Manitoba Hydro contends that it is unclear how Midwest ISO will manage congestion over the transmission facilities of Market Service customers (who may be contracting parties to various congestion management agreements with Midwest ISO). In particular, Manitoba Hydro argues that, other than for the NDEX flowgate, sections 90.2.9 and 90.5 are unclear on whether Midwest ISO will treat Market Service

³⁴ Midwest ISO July 14, 2008 Filing, Docket No. ER08-637-003.

³⁵ June 13 Order, 123 FERC ¶ 61,265 at P 8.

³⁶ Midwest ISO July 14, 2008 Rehearing Request at 4.

customers' flowgates that are subject to existing agreements in the same manner as it treats the flowgates of Midwest ISO transmission owners. Manitoba Hydro argues that the Commission mistakenly assumed that Manitoba Hydro's argument related solely to NDEX, when the opposite was true. Manitoba Hydro only mentioned NDEX to show that other flowgates should be treated as RCFs for managing congestion.

40. Manitoba Hydro notes that section 92.4 provides that the flows of Market Service customers shall be included with the market flows of Midwest ISO to calculate impacts on Coordinated Flowgates and RCFs for the purposes of existing congestion management agreements. However, Manitoba Hydro states that section 90.2.9 allows Midwest ISO and a Market Service customer to develop a methodology for calculating Available Transfer Capability (ATC),³⁷ Available Flowgate Capability (AFC),³⁸ and TTC. Section 92.5 allows a Market Service customer to designate an independent transmission provider as the manager of studies for the forward coordination of the customer's flowgates. According to Manitoba Hydro, these two provisions would be unnecessary if Midwest ISO were performing these roles, as suggested by section 92.4.

41. Manitoba Hydro argues that the Commission should find that the designation of Coordinated Flowgates and RCFs and their allocations under the Midwest ISO-Manitoba Hydro SOA should apply to Market Service customers in the same manner as applied to Midwest ISO Transmission Owners. To do this, Manitoba Hydro contends that Midwest ISO should remove sections 90.2.9 and 92.5 to alleviate any confusion regarding the application of congestion management for Market Service customers under existing seams operating agreements, such as the Midwest ISO-Manitoba Hydro SOA.

b. Security Constrained Economic Dispatch

42. Manitoba Hydro argues that the Commission failed to respond to its comments requesting that the Commission direct Midwest ISO to clarify the implementation of security constrained economic dispatch on the NDEX flowgate (if Market Service is adopted). Midwest ISO's proposed section 90.2.2 provides that Midwest ISO "will implement [security constrained economic dispatch] on the NDEX flowgate consistent with existing agreements among the holders of such rights..."³⁹ Manitoba Hydro contends that Midwest ISO's proposed congestion management scheme is not a unified

³⁷ ATC is defined in section 1.16 of the TEMT.

³⁸ AFC is described in Attachment C, "Methodology to Assess Available Transfer Capability," of the TEMT.

³⁹ Midwest ISO's March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, section 90.22, Original Sheet No. 850Z.41.

scheme and does not apply security constrained economic dispatch to the Market Service customer's side of the NDEX flowgate. Manitoba Hydro adds that such a policy may be incompatible with Midwest ISO's stated goals. Accordingly, it requests that the Commission direct Midwest ISO to clarify the implementation of security constrained economic dispatch on the NDEX flowgate in accordance with the NDEX operating guides or, if security constrained economic dispatch cannot be used in the standard fashion, to revise section 90.2.2, as appropriate.

2. Commission Determination

43. We agree with Manitoba Hydro that our acceptance of Midwest ISO's NDEX proposal and the directive for Midwest ISO to revisit NDEX in three years does not address Manitoba Hydro's request to delete proposed Market Service sections 90.2.9 and 92.5. However, Manitoba Hydro's request to delete these two sections and its concern about Midwest ISO's method of performing security constrained economic dispatch both relate solely to the Market Service section of the Western Markets Proposal. In the June 13 Order, the Commission found the Market Service section of the Western Markets Proposal to be deficient and did not address its merits. Therefore, it would be premature to make a finding here on Manitoba Hydro's concerns. Instead, to the extent the issues of congestion management for Market Service customers and Midwest ISO's method of performing security constrained economic dispatch are not otherwise resolved in the ongoing proceedings, the Commission will address Manitoba Hydro's concerns in a further order on the merits of the Market Service proposal. Accordingly, we deny Manitoba Hydro's request for rehearing on these issues.

The Commission orders:

(A) The request for clarification or, in the alternative, rehearing of Midwest ISO is hereby granted, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to submit a compliance filing addressing its treatment of MHEX and reflecting revision to the definition of "Reciprocal Entity" in section 1.257b of its TEMT, within 30 days of the date of this order, as discussed in the body of this order.

(C) The request for rehearing of Manitoba Hydro is hereby granted in part and denied in part, as discussed in the body of this order.

(D) The requests for rehearing of Corn Belt and Basin Electric and WAPA are hereby denied, as discussed in the body of this order.

(E) The request for clarification or, in the alternative, rehearing of Minnkota is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.