114 FERC ¶ 61, 106
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 No. ER06-18-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued February 3, 2006)

1. On October 7, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission and Energy Markets Tariff (TEMT or Tariff) in order to incorporate into the Tariff the application of the Midwest ISO Transmission Expansion Planning (MTEP) protocols, and to institute its transmission expansion cost allocation policy that will allocate and recover costs associated with new transmission projects and system upgrades within the Midwest ISO Transmission System (October 7 Filing). We generally approve the Midwest ISO's proposal, as conditioned herein, with the exception of the proposal for the degree of regional cost sharing for reliability projects at 345 kV and above. For the reasons discussed below, we will conditionally accept the Midwest ISO's cost allocation proposal, and suspend it for a nominal period, to be effective February 5, 2006, subject to further modification as discussed in this order and subject to refund. We also direct Staff to convene a technical conference, with the participation of all interested parties, to discuss the degree of regional cost sharing for reliability projects at 345 kV and above.

Background

2. In the Commission's order[1] on the Midwest ISO's compliance filings to Order Nos. 2003 and 2003-A,[2] the Commission encouraged the Midwest ISO to work with

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[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027 at P 38 (2004) (July 8, 2004 Order) (accepting, in part, the Midwest ISO's compliance filings to Order Nos. 2003 and 2003-A), *order on reh'g*, 109 FERC ¶ 61,085 (2004).

[2] *Standardization of Generator Interconnection Agreements and Procedures*,
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stakeholders to develop a permanent pricing policy based on the Organization of MISO States' (OMS) principle of payment for upgrades by parties that cause and benefit from the upgrades.[3]

3. The Commission's statements in the July 8, 2004 Order are consistent with one of the core mandates set forth in the Energy Policy Act of 2005 (EPAct 2005).[4] In EPAct 2005, Congress made clear that the Commission must act to strengthen our energy infrastructure, especially the transmission grid. Among the efforts to be undertaken by the Commission is the promotion of greater capital investment in new transmission capacity.[5] On a regional level, state governors in the Midwest ISO region also have

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Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005); *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

[3] The OMS is a regional state committee formed in 2003 to address multi-jurisdictional issues in the region served by the Midwest ISO. The OMS is comprised of the public utility regulators with jurisdiction over entities participating in the Midwest ISO (with one provincial and fourteen state members). The OMS coordinates electricity transmission issues relating to pricing, market monitoring, generation and transmission needs, and general coordination with the Commission and the Midwest ISO on issues of mutual concern.

[4] Pub. L. No. 109-58, 119 Stat. 594 (2005); *see also Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 113 FERC ¶ 61,182 at P 2 (2005) (Transmission NOPR).

[5] For example, to address the need for new transmission infrastructure and to encourage necessary investment, section 1241 of EPAct 2005 (Transmission Infrastructure Investment) adds a new section 219 to the Federal Power Act (FPA).

> [T]he new section 219 specifically charges the Commission with the responsibility to establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce that:
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> (1) promote reliable and economically efficient transmission

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recognized the need for increased transmission investment, as well as a need for a cooperative multi-state approach to ensure transmission infrastructure keeps pace with increased generation capacity in the region.[6]

4. The Midwest ISO established the Regional Expansion Criteria and Benefits (RECB) Task Force to "explore the criteria to be used to justify inclusion of expansion proposals in the MTEP and to recommend appropriate tariff structures to recover the costs of such expansions."[7] Over the course of 18 months, the RECB Task Force served

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> and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities;
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> (2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies);
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> (3) encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities; and
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> (4) allow the recovery of all prudently incurred costs necessary to comply with mandatory reliability standards established pursuant to section 215 of the FPA, and all prudently incurred costs related to transmission infrastructure development, pursuant to section 216 of the FPA (transmission national interest corridors).

Transmission NOPR at P 3.

[6] *See* Midwest Governors Association, *Protocol Among the Midwestern Governors Regarding the Permitting and Siting of Interstate Electric Transmission Lines in the Midwestern United States and Manitoba, Canada*, http://www.midwestgovernors.org/issues/Protocol.pdf (MG Protocol). The MG Protocol recognizes the need for regional cooperation in this area and specifically mentions the OMS and the Regional Transmission Organizations (RTOs) in the region as examples of regional cooperation and coordination for transmission planning. *See* MG Protocol at §§ C.1, C.2, D.4, and D.5.

[7] October 7 Filing at 2-3.

as a "stakeholder forum" in which a "compromise" comprehensive cost allocation policy was developed. The proposal of the RECB Task Force was brought before the Midwest ISO Advisory Committee in September 2005. The Midwest ISO Advisory Committee endorsed most, but not all, of the RECB Task Force's proposal. The Midwest ISO Board of Directors made the decision to present the Commission with the original proposal as set forth by the RECB Task Force in the October 7 Filing.

<u>The Filing</u>

5. In the October 7 Filing, the Midwest ISO proposes additions and revisions to its current Tariff to incorporate the application of the MTEP protocols. Principal proposed tariff revisions include newly added Attachment FF (Transmission Expansion Planning Protocol), Attachment GG (Network Upgrade Charges), and Schedule 26 (Network Upgrade Charge From Transmission Expansion Plan).

6. Proposed Attachment FF describes the process to be used by the Midwest ISO in the consideration and development of the MTEP expansion projects. Attachment FF establishes procedures for the development of: Baseline Reliability Projects; New Transmission Access Projects, including Generator Interconnection Projects and Transmission Delivery Service Projects; and Regionally Beneficial Projects. The protocols in Attachment FF designate responsibility in the MTEP regarding funding, constructing, and paying for network upgrades, and the timing of when the new cost allocation policies should take effect. The proposed cost sharing policy is to apply on a going forward basis to all newly identified needs in the next MTEP cycle after the filing of the current proposal.

7. Proposed Attachment GG provides for cost recovery of upgrades through a Network Upgrade Charge for those Network Upgrades that are not subject to the existing cost recovery provisions of Attachment N (Recovery of Costs Associated With New Facilities Resulting From Requests For Transmission Services), Attachment X (Standard Large Generator Interconnection Procedures), or Attachment R (Small Generator Interconnection Procedures) of the Tariff. The cost recovery in Attachment GG will be implemented through a charge to Market Participants and Transmission Customers based on cost responsibility determined in the expansion planning process. Proposed Schedule 26 (Network Upgrade Charge From Transmission Expansion Plan) is the implementation schedule for the formula rate being calculated in proposed Attachment GG. Additionally, Schedule 7 (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service), Schedule 8 (Non-Firm Point-to-Point Transmission Services), and Schedule 9 (Network Integration Transmission Service), including the versions of Schedule 7 and Schedule 8 for Michigan, have been revised to allow adjustment of the rates collected under those service schedules to account for amounts collected under Schedule 26.

8. Other conforming changes are found in: Attachment N, to reflect that cost responsibility for upgrades driven by load growth are now assigned by Attachment FF; and Attachment X, to reference the provisions of Attachment FF as governing repayment requirements.

9. The October 7 Filing does not set forth a permanent methodology for the treatment of Regionally Beneficial Projects, *i.e.*, specific types of economic upgrades. The Midwest ISO proposes to take up this issue in a supplemental revision to Attachment FF to be made by October 7, 2006. In the interim, the October 7 Filing proposes that cost responsibility for Regionally Beneficial Projects will be negotiated with project sponsors, potential beneficiaries, and the OMS on a case-by-case basis.

Notice of the Filing and Responsive Pleadings

10. Notice of the Midwest ISO's filing was published in the *Federal Register*,[8] with interventions, comments, and protests due on or before October 28, 2005. The following parties filed timely motions to intervene: Alliant Energy Corporate Services, Inc.; Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, and Constellation NewEnergy, Inc.; Consumers Energy Company; The Detroit Edison Company and DTE Energy Trading, Inc.; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates FirstEnergy Solutions Corp., American Transmission Systems, Inc., The Toledo Edison Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, and Pennsylvania Power Company; Mittal Steel USA ISG Inc.; National Rural Electric Cooperative Association; Southern Minnesota Municipal Power Agency; Upper Great Plains Transmission Coalition; and Wisconsin Electric Power Company and Edison Sault Electric Company. The following parties filed timely motions to intervene and protest: American Municipal Power-Ohio, Inc. (AMP-Ohio); Basin Electric Power Cooperative (Basin Electric); Calpine Corporation (Calpine); the Coalition of Midwest Transmission Customers, the Illinois Industrial Energy Consumers, Wind on the Wires, and the Environmental Law and Policy Center (Joint Midwest Protesters); Dairyland Power Cooperative (Dairyland); Excelsior Energy Inc. (Excelsior); Indianapolis Power & Light Company (IPL); the Midwest Coalition for Equitable Allocation of Transmission Expansion Costs (Midwest Coalition);[9] the

[8] 70 Fed. Reg. 61,280 (Oct. 21, 2005).

[9] The Midwest Coalition is a consortium of Wisconsin and Upper Peninsula of Michigan utilities and customer groups including the following entities: Wisconsin Electric Power Company; Edison Sault Electric Company; Upper Peninsula Power Company; Municipal Electric Utilities of Wisconsin; Citizens' Utility Board of Wisconsin; American Transmission Company, LLC; Madison Gas and Electric

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Midwest Transmission Dependent Utilities (Midwest TDUs);[10] Wisconsin Industrial Energy Group, Inc. (WIEG); and WPS Resources Corporation and its subsidiaries, Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Energy Services, Inc., and its subsidiary, WPS Power Development, LLC (collectively, WPS). Ameren Services Company (Ameren), Montana-Dakota Utilities Co. (Montana-Dakota), and the Midwest ISO Transmission Owners (Midwest ISO TOs)[11] each filed timely motions to intervene and supportive comments. Great Northern Power Development, L.P. (Great Northern), the Midwest Stand-Alone Transmission Companies (MSATs),[12] and North Dakota Industrial Commission (NDIC) filed comments supporting in part and opposing in part. Supplemental comments were filed by International Transmission

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Company; Wisconsin Power and Light Company; Wisconsin Public Power, Incorporated; Wisconsin Public Service Corporation; Wisconsin Paper Council; Wisconsin Industrial Energy Group; Wisconsin Manufacturers & Commerce; and Upper Peninsula Transmission Dependent Utilities.

[10] The Midwest TDUs are compromised of the following entities: Great Lakes Utilities; Madison Gas and Electric Company; Midwest Municipal Transmission Group; Missouri Joint Municipal Electric Utility Commission; Missouri River Energy Services; Upper Peninsula Transmission Dependent Utilities; and Wisconsin Public Power Inc.

[11] For the purposes of their intervention and comments, the Midwest ISO TOs include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; 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 of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Lincoln Electric System; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail 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.

[12] The MSATs include: American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

Company and Michigan Electric Transmission Company, LLC (ITC and METC). The Organization of MISO States and its member state commissions (OMS) filed a notice of intervention and comments. The Public Service Commission of Wisconsin (PSCW) filed a notice of intervention and comments as to the October 7 Filing, supporting in part and opposing in part. Comments were also filed by the Public Utilities Commission of Ohio (PUCO). The Electric Power Supply Association (EPSA) filed an untimely motion to intervene and protest. Xcel Energy Services Inc. on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, Xcel) and Southwestern Electric Cooperative, Inc. (Southwestern Electric) filed untimely motions to intervene.

11. On November 14, 2005, the Midwest ISO and the Midwest ISO TOs each submitted an answer to the protests. Prairie State Generating Company, LLC (Prairie State) also filed an untimely motion to intervene and answer to Ameren's request for clarification. On November 28, 2005, WPS submitted an answer to the answers of Midwest ISO and Midwest ISO TOs. On November 29, 2005, Ameren submitted an answer to the answer of Prairie State.

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motions for late intervention of EPSA, Prairie State, Southwestern Electric, and Xcel, given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

13. 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 or another answer unless otherwise ordered by the decisional authority. We will accept the answers of Ameren, the Midwest ISO, the Midwest ISO TOs, Prairie State, and WPS because they have provided information that assisted us in our decision-making process.

Waiver of Issues

14. Order No. 663[13] applies to all pleadings. It requires that any issues that a movant

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

wishes the Commission to address must be specifically identified in a section entitled "Statement of Issues," and states that issues not so listed in a separate section will be deemed to have been waived. Order No. 663 became effective on September 23, 2005. The protests of Dairyland and WIEG and intervention (with comments) of Montana-Dakota omit a Statement of Issues section. For this reason, we deem Dairyland, Montana-Dakota, and WIEG to have waived the issues raised in their protests and comments.

Discussion

15. Our preliminary analysis indicates that the bulk of Midwest ISO's revisions to its TEMT for its cost allocation policy, as conditioned herein, are just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory, or preferential. We commend the Midwest ISO, its stakeholders, and the OMS for their significant efforts to develop the cost allocation policy using an open and collaborative stakeholder process that allowed for extensive participation. As discussed below, we will conditionally accept and nominally suspend the proposed tariff revisions for filing to become effective February 5, 2006, subject to further modification as discussed in this order and subject to refund. We now turn our attention to the issues raised by protestors.

A. Procedural Concerns

1. The Midwest ISO's Process

16. As indicated above, in the July 8, 2004 Order, the Commission encouraged the Midwest ISO to work with stakeholders to develop a permanent pricing policy based on the OMS principle that the parties that cause and benefit from the upgrades should pay for the upgrades.

17. As a result of discussions with the OMS and stakeholders, in early 2004, the Midwest ISO Advisory Committee approved the establishment of a stakeholder-driven task force reporting to the Advisory Committee, the RECB Task Force. "The objective of the RECB [Task Force] is to define criteria to be used to justify inclusion of transmission expansion proposals in the [MTEP], and to recommend a mechanism to allocate the costs of these expansions."[14] According to the October 7 Filing, the RECB

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[14] Midwest Independent Transmission System Operator, Inc., *Regional Expansion Criteria and Benefits Task Force Charter*, http://www.midwestmarket.org/publish/Document/3e2d0_106c60936d4_-74f30a48324a/RECB%; *see also* October 7 Filing at 2-3.

Task Force served as a "stakeholder forum" in which a compromise comprehensive cost allocation policy was established.[15] The Midwest ISO reports that the RECB Task Force stakeholder process was a thorough and involved process, lasting more than 18 months.[16] The Midwest ISO reports that the RECB Task Force relied on its membership and Midwest ISO staff in the development of its proposal, and, on several occasions, polled stakeholders to focus its efforts.[17] The final RECB Task Force meeting was held on September 16, 2005, where the group voted on its final recommendations to the Midwest ISO Advisory Committee. The Midwest ISO maintains that although the RECB Task Force was unable to reach unanimous agreement on all of its final proposals, a majority of stakeholders participating accepted the compromise proposal.[18]

18. The proposal of the RECB Task Force was brought before the Midwest ISO Advisory Committee. On September 22, 2005, the Midwest ISO Advisory Committee held a special meeting in which the RECB Task Force described its proposal and the discussions and background leading up to the proposal. The Midwest ISO Advisory Committee endorsed most, but not all, of the RECB Task Force's proposal.[19]

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[15] October 7 Filing at 4.

[16] *See Id.*; *see also* OMS Comments at 2 ("The OMS recognizes the lengthy, difficult, and contentious nature of the stakeholder process that led up to [the Midwest ISO's] October 7 Filing.").

[17] *See* October 7 Filing at 6-7.

[18] *See Id.* at 11; *see also* OMS Comments at 2 ("The OMS notes that there was significant stakeholder compromise within the process and good faith attempts by the Midwest ISO to achieve consensus. Despite [the Midwest ISO's] efforts, and the efforts of all the various stakeholders and state commissions, consensus among stakeholders was not entirely reached and as such, the OMS expects certain elements of [the Midwest ISO's] October 7 Filing to be protested.").

[19] Stakeholders presented three motions to the Midwest ISO Advisory Committee for consideration. IPL moved that the Midwest ISO Advisory Committee recommend modifications to Attachment FF to include a "Safe Harbor" provisions which would, *inter alia*, limit the financial impacts of cost sharing. This motion failed by a vote of six for and 14 against. Second, a representative of We Energies moved the Midwest ISO Advisory Committee recommend that projects with in-service dates subsequent to the RECB Task Force filing be removed from Attachment FF-1, the list of projects excluded

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19. In the October 7 Filing, the Midwest ISO states that, despite the "great importance" of the advice of the Midwest ISO Advisory Committee, the Midwest ISO believes that the "compromise" reached by the RECB Task Force is the "superior position,"[20] and, accordingly, the Midwest ISO presents the Commission with the original proposal as set forth by the RECB Task Force in the October 7 Filing.

2. Protests

20. Several protesters, including EPSA, the Joint Midwest Protesters, the Midwest TDUs, and WPS, criticize the process used by the Midwest ISO in developing the policies underlying the October 7 Filing, specifically the treatment of generator-

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from the cost sharing allocation policy. This motion failed by a vote of 6.33 in favor, 10 against, and 4.67 abstaining. Third, Calpine moved that the "Advisory Committee recommend[] that the Midwest ISO continue with the current methodology of reimbursing generators for all network upgrades funded by the generator and that such generator funded network upgrades be incorporated into the regional cost sharing matrix accordingly." This motion was approved by the Midwest ISO Advisory Committee by a vote of 12 in favor and nine against. October 7 Filing at 13-14.

[20] October 7 Filing at 14. The Advisory Committee of the Midwest ISO makes recommendations and provides advice to the Midwest ISO management and Board of Directors. From the Midwest ISO Agreement, which has been approved by the Commission, the Advisory Committee's findings are advice, and there is no binding obligation that such advice be taken. *See* Midwest Independent Transmission System Operator, Inc., *Agreement of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1*, at First Revised Sheet No. 44, http://www.midwestmarket.org/publish/Document/2b8a32_103ef711180_-75900a48324a?rev=3 (Midwest ISO Agreement) ("The Advisory Committee shall be a forum for its members to be apprised of the Midwest ISO's activities and to provide information and advice to the Board on policy matters of concern to the Advisory Committee, or its constituent stakeholder groups, but neither the Advisory Committee nor any of its constituent groups shall exercise control over the Board or the Midwest ISO."); *see also* Midwest Independent Transmission System Operator, Inc., *Stakeholder Governance Guide*, App. A at 40 (Nov. 11, 2005), http://www.midwestmarket.org/publish/Document/573257_ffe0fcee0f_-7f950a531528/Stakeholder%; Organization of MISO States, *MISO Advisory Process – Role of State Commission Representatives*, at 1 (Mar. 2005), http://misostates.org/MISOAdvisoryProcessAdoptedMar2005.pdf.

interconnection-driven Network Upgrades. WPS asserts that the RECB Task Force was not comprised of a balanced proportion of stakeholders but rather, was dominated by the vertically-integrated transmission owners. Similarly, EPSA maintains that the composition of the RECB Task Force contradicts the notion of balanced stakeholder process. The Joint Midwest Protesters and the Midwest TDUs also note that the voting of the RECB Task Force does not reflect any sector weighting or recognition. These protesters cite the vote of the Midwest ISO Advisory Committee, which urged the Midwest ISO to reject the RECB Task Force's recommendations on the treatment of generator-interconnection-driven Network Upgrades and continue to provide full crediting but require regional cost sharing pursuant to Attachment FF, as a better reflection of the general perspective of stakeholders.

21. WPS suggests that the proposal is deficient because it was developed solely to address projects constructed in the Midwest ISO by Midwest ISO market participants and contends that the Midwest ISO and PJM will continue to plan projects and allocate costs in isolation, with only the minimal coordination envisioned in the Midwest ISO-PJM May 17, 2005 cross border proposal. Instead, says WPS, the Commission should require the Midwest ISO to develop a pricing policy for new transmission facilities in conjunction with PJM that allocates the costs of new facilities to both RTOs.

3. Answers

22. In its answer, the Midwest ISO maintains that "the RECB Filing was based on an extensive and thorough stakeholder process, the filing of which was ultimately supported by a substantial majority of the Midwest ISO stakeholders."[21] The Midwest ISO TOs state that there is no merit to the allegations that the October 7 Filing is biased in favor of the transmission owners, and assert that concessions were made by all stakeholders in the RECB Task Force process.

23. In their answer to the answers of the Midwest ISO and Midwest ISO TOs, WPS reasserts that the October 7 Filing is not the product of a robust stakeholder process, noting that the RECB Task Force was not a representative stakeholder body, but rather, favors the perspective of vertically integrated transmission owners. WPS further argues that "there was no compromise of all or even a majority of the stakeholders."[22]

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[21] Midwest ISO Answer at 3.

[22] WPS Answer at 3.

4. **Discussion**

24. We find the procedure used in the adoption of the cost allocation policy proposed in the October 7 Filing reasonable and consistent with the OMS principle of payment for upgrades by parties that cause and benefit from the upgrades as noted in, and encouraged by, the Commission's July 8, 2004 Order. We find the process adopted by the Midwest ISO, as described in the October 7 Filing, was an open, transparent, and collaborative stakeholder process and commend the Midwest ISO, its stakeholders and the OMS for their significant efforts to use a process that allowed for extensive participation in the development of the cost allocation policy. Concerns regarding the precise makeup of the RECB Task Force, although relevant, are not sufficient to alter the Commission's decision herein. The proposals set forth in the October 7 Filing reflect the independent judgment of the Midwest ISO. Accordingly, the Commission considers each of the substantive issues raised by protestors, below.

25. Finally, any concerns regarding the sufficiency of coordinated expansion planning between the Midwest ISO and PJM should be addressed in Docket No. ER05-6-023, *et al.*, the proceeding which addresses the proposal by PJM and the Midwest ISO to allocate costs for facilities that have cross-border impacts.

B. **Baseline Reliability Projects**

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

26. Baseline Reliability Projects include projects of 100 kV and above needed to maintain reliability[23] while accommodating the ongoing needs of existing transmission customers. According to the Midwest ISO, these facilities, along with existing transmission facilities, define the base transmission system needed to meet existing and forecast obligations. In this way, the Midwest ISO claims it can draw a distinction between upgrades needed to provide new services and those needed as part of baseline needs.

27. Under Attachment FF, Baseline Reliability Projects in the MTEP must meet the following criteria in order to receive regional cost sharing. First, the Baseline Reliability

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[23] Attachment FF specifies reliability requirements as those of North American Electric Reliability Council (NERC), regional reliability councils, or successor organization, Transmission Owners' planning criteria filed with federal, state, or local regulatory authorities, and applicable federal, state, and local planning and operating reliability criteria.

Project must have a project cost of $5 million or more or, in the alternative, the project costs must constitute five percent or more of the transmission owner's net plant as established in Attachment O of the TEMT. Second, once it passes the cost/voltage threshold, the Baseline Reliability Project is subject to voltage criteria in order to determine if there will be a system-wide component to the cost allocation.

28. For Baseline Reliability Projects with a voltage class of 345 kV and higher, 20 percent of project costs will be allocated on a system-wide basis to all Transmission Customers and 80 percent will be allocated sub-regionally to all Transmission Customers in the designated pricing zone(s) impacted by the project.[24] For Baseline Reliability Projects with a voltage class of 100 kV through 344 kV, 100 percent of the costs are allocated sub-regionally to all Transmission Customers in the designated pricing zones.

29. The Midwest ISO explains that the designated pricing zones for the sub-regional cost allocation component will be determined on a case-by-case basis in accordance with a Line Outage Distribution Factor (LODF) analysis. The percentage of sub-regional allocation to each zone is based on the relative share between pricing zones of the sum of the absolute value of the product of the LODF on each Branch Facility in a pricing zone and the length in transmission line miles of the Branch Facility.[25] The Midwest ISO states that both the system-wide component and the sub-regional component grew out of and were part of, an overall stakeholder-driven compromise.

2. <u>Protests</u>

30. Comments on the regional/sub-regional allocation vary significantly. Certain commenters, including Ameren and the Midwest ISO TOs, support the allocation as part of a wider compromise package and urge the Commission to accept the proposal. According to the Midwest ISO TOs, both the 20 percent allocation and the use of LODF methodology for sub-regional allocation were important elements of the stakeholder compromise.

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[24] The Midwest ISO states that a key concept emerging from the RECB Task Force's work was that a sub-regional component allocated to pricing zones in closer proximity to a beneficial upgrade was appropriate to reflect that in a very large region, not all projects benefit all transmission grid users equally. October 7 Filing at 7.

[25] The Midwest ISO defines a Branch Facility as a facility located within a pricing zone having a defined LODF. *See* October 7 Filing at Third Revised Sheet No. 52.

31. Certain commenters, including Basin Electric, Great Northern, and WPS, maintain that expansion facilities' costs (both for economic and reliability projects) should be recovered under a single system-wide rate basis. Basin Electric maintains that zonal pricing for new network resources is generally unjust and unreasonable as it does not match cost responsibility with the benefits from the new facilities and acts as a disincentive to construct new facilities. Basin Electric also encourages the Commission not to evaluate the Midwest ISO's proposal in the context of whether the majority supported it in the stakeholder process, but rather, evaluate whether it is just and reasonable under section 205 of the FPA.[26] Great Northern states that it will support the 20 percent system-wide recovery of Baseline Reliability Projects only if it is a transition (possibly a five-year transition period) toward a fully rolled-in system-wide rate for projects 345 kV and above.

32. Other commenters, such as NDIC, the Midwest TDUs, and ITC and METC, advocate greater system-wide cost sharing than the 20 percent proposed. While it supports the October 7 Filing as a compromise, NDIC would have preferred a system-wide component such as 50 percent for facilities at 230 kV and above. NDIC further states that the system-wide allocation percentage proposed is extremely modest and at the minimum range of what they would characterize as just and reasonable.

33. The Midwest TDUs argue that the 20 percent system-wide portion of the allocation is unjust, unreasonable, and unduly discriminatory and fails to reflect the true regional benefits of such upgrades. According to the Midwest TDUs, due to the highly integrated nature of the AC grid, high voltage upgrades provide broad economic and reliability benefits in the Midwest ISO region. Furthermore, the Midwest TDUs claim that, in the EPAct 2005, Congress has recognized the importance of these facilities by providing for federal backstop siting authority for national interest electric transmission corridors. Moreover, the Midwest TDUs argue that the Commission largely approved a 33 percent regional allocation proposal for Southwest Power Pool, Inc. (SPP). The Midwest TDUs request that the system-wide portion of the allocation be increased to as much as 50 percent but at least raised to the one-third share used in SPP to apply to all Baseline Reliability Projects of 60 kV and above.

34. According to ITC and METC, the nature of the centrally dispatched system, which is highly dependent on high voltage facilities that often cross state lines, weigh in favor of a regional allocation far in excess of 20 percent and perhaps as high as 100 percent in

[26] 16 U.S.C. § 824d (2000).

some cases. ITC and METC request that the Commission either increase the regional allocation percentage or condition acceptance of the proposal on the performance of ongoing reevaluation of the percentage.

35. In contrast, commenters such as PUCO oppose the system-wide cost sharing proposal. According to PUCO, consumers in Ohio represent approximately 17 percent of the total Midwest ISO load and will be required to pay a disproportionate share of the system-wide component under the proposal. PUCO claims that the cost of each project should be allocated only to those who benefit as demonstrated through the LODF analysis. PUCO supports the 345 kV limitation of regional cost sharing if the Commission accepts a system-wide component but requests that the Midwest ISO be required to review transmission projects in order to prevent gaming whereby a project is increased to 345 kV solely for regional cost sharing when a lower voltage project would have been sufficient.

36. Other commenters take issue with the mechanisms for determining the regional and sub-regional allocation and, therefore seek to have the proposal applied differently. For example, AMP-Ohio argues that the proposal is unjust, unreasonable and unduly discriminatory as it requires load serving entities in transmission areas that do not require the addition of new 345 kV facilities to meet reliability standards to pay the entire costs of the existing facilities within their zones as well as a portion of the costs of 345 kV and higher facilities for reliability purposes in other regions. According to AMP-Ohio, this will result in a cost shift in one of their transmission zones leading to additional costs of $1 million per year. Basin Electric faults the proposed project cost criteria of $5 million or five percent of net plant to qualify for cost-sharing as being unsupported.

37. Although PSCW agrees that regional cost sharing is a necessary complement to regional transmission planning, it states that such cost sharing should reflect the benefits to the region that such regional planning is expected to produce. Thus, according to PSCW, the amount of regional cost sharing should be positively related to the incremental benefit to the region from coordinated regional planning rather than the status-quo in transmission planning.

38. WPS contends that the 80 percent allocation on a sub-regional basis under LODF analysis is flawed as it fails to account for the initial beneficiaries of the facilities likely changing over the life of the facility. It contends the cost sharing proposal is insufficient because the determination of the beneficiaries will change repeatedly over the forty-year useful life of the facility as the system changes. WPS is also concerned that the determination of which facility falls into each category is subject to manipulation and may result in internal disputes and litigation. Moreover, WPS claims that by implementing single-system cost allocation, a first step will be taken in the development of an RTO-wide rate required for PJM in 2006 and for the Midwest ISO in 2008. With

both the Midwest ISO and PJM running centrally dispatched markets, WPS contends that market participants in both markets are using the entire integrated transmission system to buy and sell power. According to WPS, the Midwest ISO's proposal to limit cost sharing to reliability projects and not economic projects is arbitrary and misplaced. WPS further argues that the Midwest ISO proposal is deficient because it does not propose joint planning of transmission projects for the Midwest ISO and PJM.

39. Finally, the OMS pleading indicates that the Illinois Commerce Commission (ICC) does not support the load ratio share approach for allocating the 20 percent system-wide cost component. The ICC requests that the Commission replace this aspect with some measure of energy imports or other approach that reflects the incremental capacity deliverability resulting from the upgrade. The ICC argues that generally, load in exporting zones does not receive equivalent benefits from these types of upgrades, and this is particularly true in Illinois, a retail access state, since state regulators cannot ensure that off-system sales are used to offset increases in retail rates as the generation is not owned within the vertically integrated utility structure.

3. Answers

40. The Midwest ISO answers generally that the Commission should defer to the RECB Task Force stakeholder process that arrived at the filed proposal.

41. The Midwest ISO TOs argue that the Commission should reject the arguments that some upgrades benefit the grid as a whole and thus 100 percent of the costs should be allocated on a regional, postage stamp basis. The Midwest ISO TOs state that a 100 percent system-wide allocation would involve serious cost-shifting concerns as it would fail to recognize the concentration of benefits occurring in those zones closer to the project. Additionally, the Midwest ISO TOs argue that if the Commission modifies the 20 percent allocation, the entire compromise may fail and the region will be left with no allocation methodology – an outcome that will discourage needed transmission infrastructure. Finally, they contend that as demonstrated in the recent SPP orders on cost allocation policies,[27] the Commission does not require 100 percent system-wide allocations of upgrades.

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[27] *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 (*SPP I*), *order on reh'g*, 112 FERC ¶ 61,319 (2005) (*SPP II*).

4. **Discussion**

42. We note that the October 7 Filing references studies that suggest a range for a regional-wide pricing component of between 20 and 30 percent, and that this proposal adopts the low end of that range.[28] The Midwest ISO TOs support the 20 percent allocation by agreeing that it was an important element of the stakeholder compromise. In fact, the Midwest ISO TOs' witness, Dr. Martin Blake, states that alternatives to the 20 percent were explored but that it became apparent that if the percentage was higher or lower than that, the compromise would fall apart.[29] Other commenters, however, advocate a different level of system-wide cost sharing. For example, ITC and METC argue the nature of the centrally dispatched system weigh in favor of a regional allocation far in excess of 20 percent, and perhaps as high as 100 percent in some cases. We are concerned that the proposed regional cost sharing for extra high voltage facilities (at 345 kV and above) is insufficient given the reliability impacts of such facilities. We will convene a technical conference for the limited purpose of supplementing the record on this issue.

43. Our preliminary analysis indicates that the Midwest ISO's proposal for the degree of regional cost sharing for reliability projects at 345 kV and above has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposal for filing, suspend it for a nominal period, and make it effective on February 5, 2006, subject to further modification as discussed in this order and subject to refund.

44. As to other elements of this proposal pertaining to Baseline Reliability Projects, we believe that the use of the flow-based LODF methodology to allocate the remaining costs (those not recovered under a postage stamp rate) for facilities rated at 345 kV and above to Market Participants and Transmission Customers that are electrically closer is a reasonable approach.[30] We further find it reasonable that facilities rated below 345 kV would not see the same system-wide effects as higher voltage facilities and therefore 100 percent of costs may be allocated using the LODF methodology.

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[28] October 7 Filing at 8.

[29] Midwest ISO TOs Comments, Blake Aff. at 10.

[30] *See Id.* at 19-20.

45. Finally, we are mindful that gaming to increase the voltage level of some projects so as to be eligible for regional cost sharing could be attempted; but we expect the Midwest ISO, as an approved independent regional transmission provider, to carefully monitor projects in this area. Additionally, we will accept the proposal conditioned upon the Midwest ISO's commitment to clarify certain aspects of the proposal as requested by the OMS.[31]

C. Generation Interconnection Projects

1. The Midwest ISO's Proposal

46. Under the Midwest ISO's proposal,[32] all costs of Generator Interconnection Projects will be paid for by the Interconnection Customer in accordance with the provisions of Attachments R or X for generator interconnections, as applicable. However, an Interconnection Customer whose interconnection requires Network Upgrades may share the costs equally with Transmission Owners (the Interconnection Customer would be responsible for 50 percent of the project costs) if the output of the generator is committed by a contract of at least one year to serve Midwest ISO Network Customers or the Generator Facility has been designated as a Network Resource at the time of Commercial Operation. If the Interconnection Customer commits only a portion of the Generator Facility's capacity, this cost sharing would be prorated. Otherwise, if the Interconnection Customer can not demonstrate such commitment at or before the beginning of Commercial Operation, network upgrade costs will be fully assigned to the

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[31] *See* discussion regarding the "Expansion Planning Process," *infra*.

[32] As noted in the October 7 Filing, remarked upon by certain protesters, such as Calpine, the treatment of Generator Interconnection-driven Network Upgrades was not supported by the Midwest ISO Advisory Board. The Midwest ISO Advisory Board "recommend[ed] that the Midwest ISO continue with the current methodology of reimbursing generators for all network upgrades funded by the generator and that such generator funded network upgrades be incorporated into the regional cost sharing matrix accordingly." October 7 Filing at 14 citing Midwest ISO Advisory Committee Special Meeting Minutes, September 22, 2005 at 7. We note that, although not irrelevant to our consideration of the proposal, the lack of Advisory Board support is not dispositive as to whether that recommendation is ultimately offered by the Midwest ISO to the Commission or whether the Commission should accept the original or modified proposal. This is a matter to be resolved within the procedural framework set forth in the Midwest ISO's procedural process and therefore, not necessary to our findings herein. *See* note 20, *supra*.

Interconnection Customer. If the Interconnection Customer qualifies for cost sharing, those costs not assigned to the Interconnection Customer are recovered from Transmission Owners based on cost and voltage thresholds and according to the methodology applied to Baseline Reliability Projects.[33]

2. Protests

47. PUCO supports the Midwest ISO's Generator Interconnection cost recovery proposal as being fair and equitable. PUCO contends that while this proposal will increase the cost to generators for Generator Interconnection, generators will be able to recover this increased cost through energy or capacity payments.

48. Several commenters, including Great Northern, the Joint Midwest Protesters, Excelsior, WPS, the MSATs, the Midwest TDUs, and Calpine, raise the concern that the Midwest ISO's proposal does not adequately justify its departure from the Commission's policies for Generator Interconnection established in Order Nos. 2003 and 2003-A. That is, the proposed 50 percent-50 percent cost sharing does not amount to an "innovative cost-recovery method[]"[34] that warrants a departure from the Order No. 2003 methodology. Thus, the proposal should be rejected by the Commission as being unjust and unreasonable.

49. Certain commenters, such as the Joint Midwest Protesters, WPS, NDIC, EPSA, the Midwest TDUs, and Calpine, also argue that the Midwest ISO's proposal will actually be a disincentive to transmission development. These commenters maintain that the proposed cost sharing mechanism will discourage transmission development by requiring market participants willing to construct the needed facilities to pay the equivalent of an "and" rate.

50. The protestors also argue that it is unclear from the language in section 46 of the TEMT whether an Interconnection Customer would qualify for any FTRs in return for the upgrade costs that are directly assigned if the Interconnection Customer qualifies for

[33] *See* October 7 Filing at Original Sheet No. 1848. The proposed tariff language also states that for projects rated at less than 100 kV, such costs will be allocated consistent with the allocation applied to qualifying Baseline Reliability Projects of 100 kV through 344 kV (*i.e.*, 100 percent of costs are shared sub-regionally based on an LODF analysis).

[34] July 8, 2004 Order at P 39.

cost sharing and crediting under the tariff.[35] Calpine disputes the value of FTRs arguing that, because value is tied to the level of congestion, the value of the FTRs is diminished due to the easing of congestion that the upgrade is providing. EPSA contends that FTRs in the Midwest ISO will not have great utility due to the Midwest ISO's lack of experience with transmission planning and lack of a capacity market.

51. EPSA also finds the cost split between Transmission Owners and Interconnection Customers unfair because rate-based generators do not need to include transmission interconnection costs in their bid/offers since regulated utilities that own generation and transmission are able to recover all transmission costs in their state retail rates. Merchant generators, on the other hand, cannot pass-through these costs and therefore must include them in their offers; this puts them at a competitive disadvantage, and may lead to less independent generation in the region. Accordingly, EPSA asserts that network upgrades, which can be demonstrated to serve the long-term needs of native load customers, should not be directly-assigned but should see cost-sharing similar to that of Baseline Reliability Projects.

52. EPSA also protests the Midwest ISO's proposal to assess 100 percent of the Network Upgrade costs to generation projects that do not have a one-year contract with a network customer at the time of commercial operation. EPSA questions why these generators cannot receive reimbursement at any point once they meet the one year threshold.

53. Another concern, raised by commenters such as Excelsior and the OMS, is the lack of provisions to prevent gaming. They argue Transmission Owners that are part of vertically integrated utilities will drive the identification of Baseline Reliability Projects. This provides an economic incentive for those entities to favor their own generation at the expense of other market participants. This uneven playing field will cause non-vertically integrated generators to leave the market, to the harm of consumers.

54. Excelsior submits that it is unjust and unreasonable to change "the rules of the road" midstream where Excelsior has entered the Midwest ISO interconnection queue under the current Tariff provisions, based upon the expectation that it would be refunded 100 percent of costs incurred in funding its Mesaba Project. Thus, it asks that this proposal be rejected or, in lieu of rejection, that the Mesaba Project be exempted from the cost allocation methodology of this proposal.

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[35] *See* Tariff, section 46 (Issuance of FTRs for Network Upgrades) at Third Revised Sheet No. 674.

55. The OMS believes that the pricing policy, discussed in greater detail below, which permits cost-sharing where a Regionally Beneficial Project defers or displaces a Baseline Reliability Project up to the cost of the deferred or displaced project, should likewise apply to Generator Interconnection Projects. The OMS also contends that it is unclear whether the Midwest ISO's proposed tariff language concerning cost allocation for generator-related transmission upgrades allows for network resource designation of any time length or requires a term of at least one year.

56. Finally, NDIC argues that the low repayment level (50 percent versus 100 percent crediting) proposed by the Midwest ISO will favor gas-fired peaking and intermediate generation located near load centers at the expense of denying consumers low cost and reliable energy from renewable natural resources that by their nature are difficult to locate near load centers.

3. Answers

57. The Midwest ISO and Midwest ISO TOs answer that the arguments for cost allocation of Generator Interconnection projects ranged from a preference for zero to 100 percent participant funding. They recognize that the proposed 50 percent-50 percent cost sharing proposal between the Interconnection Customer and the Transmission Owners is not the preferred choice of many, but maintain that the proposal reflects a true compromise between the opposite extremes and firmly held positions among the RECB Task Force stakeholders.

58. The Midwest ISO reaffirms its support for the requirement to limit cost sharing for generator interconnection projects by imposing a one-year network resource designation or alternative contract with Midwest ISO network customers as a means of generators showing a level of commitment to serving Midwest ISO customers before "but for" upgrades are partially paid for by other Market Participants and Transmission Customers.

59. The Midwest ISO also clarifies that the language in section III.A.2.d of Attachment FF requires that to the extent that the required commitment is met by network resource designation, such designation must be for a minimum term of one year.

60. Finally, the Midwest ISO agrees to provide for cost-sharing where a Generator Interconnection project displaces or defers a Baseline Reliability Project similar to that permitted for Regionally Beneficial Projects.[36]

[36] *See* Midwest ISO Answer at 12.

4. **Discussion**

61. We find the cost allocation for the Midwest ISO's Generator Interconnection proposal just and reasonable and consistent with Commission policy. Accordingly, we will accept it subject to the Midwest ISO making the limited modifications discussed below in a compliance filing to be filed within 60 days of the issuance of this order.[37]

62. While several commenters argue that the proposed cost sharing is not an "innovative cost-recovery method" and therefore it is improper for the Midwest ISO to deviate from the cost allocation methodology of Order Nos. 2003 and 2003-A, we find that the proposal is consistent with recent Commission precedent,[38] and is neither unjust nor unreasonable. Other commenters argue that the proposal constitutes "and" pricing. As discussed below, this proposal is consistent with the principle, articulated in Order No. 2003, of permitting an independent entity to propose participant funding (in this context, direct assignment of costs) for network upgrades when the Interconnection Customer receives well-defined congestion rights in return.[39]

63. In its treatment of Generator Interconnection cost sharing, the Midwest ISO proposes that an Interconnection Customer must have a contract of at least one year to serve Midwest ISO Network Customers or that the Generator Facility be designated as a Network Resource, at the time of Commercial Operation, in order to receive 50 percent-50 percent cost sharing. The Midwest ISO included this requirement to ease the concerns of state regulatory participants of the RECB Task Force that expressed concern about the temptation for Interconnection Customers to locate in the Midwest ISO "because the Midwest ISO's cost allocation policy for such upgrades may be construed by Interconnection Customers as more favorable than that of adjacent Transmission Providers" such as PJM, where similar project costs are 100 percent directly assigned to

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[37] Because we are acting here prior to acting in Docket No. ER05-1475, a proceeding in which the Midwest ISO seeks to revise its *pro forma* Attachment X, our acceptance is further conditioned on the outcome in that proceeding.

[38] *See PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025 (2004) (*PJM I*), *order on reh'g*, 110 FERC ¶ 61,099 (2005).

[39] *See* Order No. 2003-A at P 587.

Interconnection Customers.[40] We accept the proposed requirement. We believe this provision is a reasonable approach to mitigate any incentive for generators to locate in the Midwest ISO solely to take advantage of the 50 percent-50 percent cost sharing.

64. In its protest, EPSA questions why generators cannot receive 50 percent reimbursement at any point once they meet the one year threshold to serve Midwest ISO load. We find that making cost allocation determinations at or before the time Commercial Operations begin is reasonable and consistent with the Midwest ISO's and state regulators' stated objective of preventing Interconnection Customers from manipulating project location for financial gain. Allowing an Interconnection Customer to request 50 percent-50 percent cost allocation at any point detracts from the goal of encouraging efficient project location for serving Midwest ISO Network Customers.

65. Regarding the concern that it is unclear whether Interconnection Customers will receive FTRs for their transmission expansion investments, we believe that section 46 of the TEMT allows Interconnection Customers to receive FTRs made feasible by such projects, equal to the capability created by the investment made in the Network Upgrade(s) (as agreed to by the Transmission Provider and Market Participant(s) funding the upgrade). For an Interconnection Customer that is responsible for 50 percent of the costs of a network upgrade, that Interconnection Customer may receive FTRs made feasible by 50 percent of the capability created by network upgrade. We will require, however, that Attachment FF reference section 46 of the TEMT, recognizing the potential for an Interconnection Customer to receive FTRs equal to the capability created by the Interconnection Customer's investment in a Network Upgrade.

66. We have previously addressed arguments that FTRs lack value relative to the investment in a Network Upgrade.[41] Assuming that the Network Upgrades

> are a form of participant [funding or] financing that may be required by an independent Transmission Owner, there is no requirement that [the capacity rights being] awarded for Network Upgrades have equal value to the cost of the Network Upgrades, as the costs would not exist "but for" the proposed interconnection. They are part of a project's construction cost and business risk, and the Interconnection

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[40] October 7 Filing at 10.

[41] *See, e.g.*, *PJM I*, 108 FERC ¶ 61,025 at P 20.

> Customer must consider those cost[s] in determining whether the project is economically worthwhile.[42]

We regard EPSA's arguments that FTRs within the Midwest ISO (in contrast with capacity rights held by transmission customers in PJM) lack value, as speculative and unsupported.

67. EPSA also argues that the proposed cost allocation would be unfair to merchant generators in that they cannot include interconnection costs in rate base (as vertically integrated utilities do) and, therefore, must include these costs in their offers, placing them at a competitive disadvantage with vertically-integrated utilities. We first note that EPSA's concern, as we understand it, pertains to states in which retail access does not yet exist (i.e., where functional unbundling has not yet occurred). The competitive disadvantage results from some generators having cost-based rates as well as market-based rates, while merchant generators only have market-based rates.

68. At issue here is the just and reasonable cost allocation of interstate transmission facility upgrades. As such, we find that the Midwest ISO's 50 percent-50 percent cost sharing fairly apportions the costs between those responsible for the costs and those that benefit from the upgrades, even if the generators recover the costs in different ways.

69. We reject as speculative the concerns raised that Transmission Owners will "drive" the identification of Baseline Reliability Projects and thereby gain an unfair competitive advantage based on the Transmission Owners' input under Attachment FF. This issue has been raised and addressed by the Commission in other cost allocation proceedings.[43] The Commission is aware of the concern and the potential for abuse and has directed changes to ensure the independence of the ISO/RTO planning protocols so that no one gains an unfair advantage. Here, we find that Attachment FF vests the Midwest ISO with the proper authority to develop the MTEP independently and expect the Midwest ISO planning staff to exercise its expertise and independent judgment to prevent unfair practices.

70. Excelsior requests that its Mesaba Project be exempted from the cost sharing provision since it entered Midwest ISO's interconnection queue in 2004 expecting a 100 percent reimbursement for its costs. The proposed modifications to Attachment X will

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[42] *Id.* (internal citation omitted).

[43] *See, e.g.*, *ISO New England, Inc.*, 91 FERC ¶ 61,311 at 62,075-76 (2000); *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110 at P 188 (2004).

become effective February 5, 2006. Additionally, the Midwest ISO has not proposed in its October 7 Filing to modify the applicable Tariff language as to existing generator interconnection agreements. Thus, generator interconnection agreements filed before February 5, 2006 must conform to the Attachment X that was in effect before February 5, 2006. Generator interconnection agreements filed on or after February 5, 2006 will have to conform to the newly effective Attachment X, as accepted in this order. This is without prejudice to the Midwest ISO's ability to seek modification to the applicable tariff language as to existing generator interconnection agreements. Excelsior has not provided sufficient justification as to why it merits extraordinary treatment and therefore, we deny their request.

71. We are sensitive to NDIC's concerns that generator interconnection customers that use renewable natural resources tend to be located in relatively remote locations and that therefore the proposal presents a disadvantage to such generators compared with other generators. However, even under the Midwest ISO's current tariff provisions for cost sharing of system upgrades, an interconnecting generator would still be directly assigned the cost of any radial lines necessary to attach to the grid.

72. We will accept the Midwest ISO's proposal, as noted in its answer, to further modify Attachment FF to afford cost-sharing when a Generator Interconnection defers or displaces a Baseline Reliability Project similar to the cost-sharing permitted for Regionally Beneficial Project that defers or displaces a Baseline Reliability Project.

D. Requests For New Transmission Service Projects

1. The Midwest ISO's Proposal

73. Existing Attachment N of the Midwest ISO Tariff addresses cost recovery for Direct Assignment Facilities in addition to Network Upgrades driven by load growth, Designations of Network Resources via requests for Transmission Service, and Point-To-Point Transmission Service. Under this framework, Transmission Customers are directly assigned Network Upgrade costs until the Transmission Owner is able to fully recover its revenue requirements by rolling-in (*i.e.*, include with its other transmission facilities in deriving rates) such facilities in federal and state regulated rates.

74. The October 7 Filing proposes several revisions to Attachment N. First, Attachment N no longer addresses cost responsibility and charges for network upgrades driven by load growth (now covered under Attachment FF), but has been narrowed to

address only cost responsibility and charges for Direct Assignment Facilities and Network Upgrades required to accommodate requests for Firm Point-To-Point or Network Integration Transmission Service, or new designations of Network Resources.[44]

75. The Midwest ISO also seeks to incorporate new language as follows:

> For Network Upgrades, which are not directly assigned pursuant to section B.2 and which the Transmission Provider requires to be constructed, all costs of the Network Upgrades shall be allocated according to the provisions of Attachment FF of this Tariff.[45]

76. The Midwest ISO further proposes to modify language in Attachment N that currently permits a Transmission Owner to elect to roll-in the costs of a facility recovered in its zonal rate and any average Transmission Provider rate in lieu of direct assignment. Here, Midwest ISO proposes to require that such an election be made on a non-discriminatory and consistent basis.

2. Protests

77. The MSATs support the Midwest ISO's proposal to retain the Attachment N methodology for recovering costs associated with transmission projects to accommodate requests for new transmission service under Module B. The MSATs point to language in Attachment N where direct assignment of costs is only to be used until the Transmission Owner is able to fully recover its revenue requirements by roll-in. The MSATs assume that under Attachment O such a roll-in of directly assigned costs will occur on an annual basis, so that Attachment N directly assigned costs should be temporary. Provided the Attachment N directly assigned costs are temporary, the MSATs do not oppose the Midwest ISO's proposal.

78. The Midwest TDUs believe that direct assignment provisions for Network Upgrades should be eliminated from both the generator interconnection and transmission service requests. The Midwest TDUs also point to the proposal's different approach to Network Upgrades arising from Generator Interconnection (up to 50 percent cost sharing)

[44] Network Resources may continue to be designated consistent with the provisions of Module E of the Tariff, by nominating deliverable resources and contracting with those resources.

[45] October 7 Filing at Third Revised Sheet No. 1306.

and Transmission Requests (usually no cost sharing) and state that this treatment is irrational and has not been justified. They argue that under the proposed policy, a transmission dependent utility that constructs a new Network Resource may be directly-assigned 50 percent of the cost of the Network Upgrades associated with Network Resource Interconnection Service (NRIS) for the generator. Yet if the same transmission dependent utility designates an existing generator as a new Network Resource, it could be assigned 100 percent of the costs of new Network Upgrades under Attachment N. The Midwest TDUs assert that the disparity in cost assignment will be destructive, encouraging Market Participants to favor new resources over existing ones.

79. The Midwest TDUs also argue that it is unclear from the language in section 46 of the Tariff whether Transmission Customers who are required to fund Network Upgrades under Attachment N would be allocated FTRs in exchange for bearing those costs. The Midwest TDUs ask the Commission to direct the Midwest ISO to re-evaluate Attachment N, as well as section 46, to assure that the tariff does not discriminate against particular types of resources.

3. Discussion

80. Direct assignment occurs until each Transmission Owner is permitted to fully roll-in its revenue requirements in federal and state regulated rates.[46] From newly proposed language, cost sharing would be possible, if the Midwest ISO otherwise required the Network Upgrade to be constructed.[47] We do not interpret the direct-assignment of Network Upgrade costs under Attachment N to be temporary, as suggested by the MSATs.

81. While language in Attachment N potentially permits assignment of 100 percent of Network Upgrade costs to the customer, to date, to the extent that facilities have been required and constructed for transmission service, these costs have been recovered through Transmission Owners' rates.[48] Were a jurisdiction to reject roll-in rate treatment,

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[46] This circumstance is set forth in existing language under section B.1.a of Attachment N. The plant amounts to be rolled-in shall be reduced to reflect any return of capital under assignment provisions in Attachment N, thus precluding double-recovery. October 7 Filing at Third Revised Sheet No. 1302.

[47] This circumstance is set forth in the proposed language under section D of Attachment N. October 7 Filing at Third Revised Sheet No. 1306.

[48] To the Commission's knowledge, there has been a single filing, in Docket No. ER04-1093-000, to directly assign costs of network upgrades under Attachment N and

(continued)

however, section 46 of the TEMT provides that customers may receive FTRs equal to the capability created by their investment in Network Upgrades (as agreed to by the Transmission Provider and Market Participant(s) funding the upgrade) and consistent with the existence of FTRs previously issued.[49] Similar to our requirement regarding network upgrades that are required for interconnection service, we will require that Attachment FF reference section 46 of the TEMT, recognizing the potential for a Transmission Customer to receive FTRs equal to the capability created by the Transmission Customer's investment in a Network Upgrade.

82. We have previously permitted different pricing for expansion for interconnection service, new transmission service and existing transmission reservations within an RTO.[50] Therefore, we will not require identical cost recovery among these different services within the Midwest ISO.

E. Regionally Beneficial Projects

1. The Midwest ISO's Proposal

83. Proposed section 1.262a of the Tariff defines Regionally Beneficial Projects to be network upgrades that are proposed by the Transmission Provider, Transmission Owner(s), ITC(s), Market Participant(s), or regulatory authorities as beneficial to one or more Market Participant(s) but that are not determined by the Transmission Provider to be Baseline Reliability Projects or new Transmission Access Projects and that provide sufficient benefits as determined by the transmission provider to justify inclusion in the MTEP. Proposed section III.A.f of Attachment FF provides that until such time as alternative provisions are filed to address cost allocation for Regionally Beneficial Projects, such filing to be made within twelve months from the date when this Attachment FF is filed, cost responsibility for Regionally Beneficial Projects shall be negotiated on a case-by-case basis. Under the interim proposal, any individual Market Participant that agrees to fund all or part of an economic project shall be entitled to FTRs or other rights as provided by Midwest ISO's Tariff. In the event that a Regionally Beneficial Project defers or displaces the need for a less costly Baseline Reliability

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those costs ultimately were not assigned; however, the filing was ultimately withdrawn.

[49] *See* Tariff, at section 46, Third Revised Sheet No. 674.

[50] *See, e.g.*, *SPP I*, 111 FERC ¶ 61,118 at P 39.

Project, the costs of the Regionally Beneficial Project up to the costs of the deferred or displaced Baseline Reliability Project shall be allocated consistent with the allocation for the Baseline Reliability Project.

84. The Midwest ISO proposes to file a permanent methodology on or about October 7, 2006, thereby allowing the RECB Task Force to continue its work in this area.

2. Protests

85. The Midwest TDUs maintain the Commission should direct the Midwest ISO to develop pricing mechanisms that recognize the broad, regional benefits of a robust grid, and that support the type of economic upgrades Congress sought to encourage with backstop federal siting in the EPAct 2005. They argue that participant funding is inconsistent with these goals, and that instead, the cost of such regionally beneficial network upgrades should be broadly spread. The Midwest TDUs also maintain that the Commission should provide the Midwest ISO with guidance now that will facilitate the timely development of new rules for Regionally Beneficial Projects.

86. The MSATs argue that there should be no distinction between reliability and economic projects for cost allocation and recovery purposes. They say that such a distinction lacks an operational justification and chills investment in cost-effective transmission infrastructure, such as in transmission facilities that may significantly reduce or eliminate congestion, but are not (yet) categorized as Baseline Reliability Projects. They argue that most transmission investments exhibit both reliability and economic characteristics, and projects considered economic today will often become necessary for reliability projects in the future.

87. The MSATs also argue that the interim treatment of Regionally Beneficial Projects will create substantial uncertainty and invite protracted litigation any time a regionally beneficial project of any magnitude is proposed. They also point to the benefits of synchronizing discussion of economic projects within the Midwest ISO with similar discussions relating to the combined footprints in the Midwest ISO and PJM. Stakeholders in the two RTOs have agreed to work together to develop a cost-allocation mechanism to apply to economic projects within one RTO that benefit the other. A filing is due on this topic by June 1, 2006. The MSATs submit that the 12 month deferral of a regionally beneficial projects policy proposed by the Midwest ISO is too long, and propose that the Commission require a supplemental filing on this topic no later than March 31, 2006. In the alternative, the MSATs propose a June 1, 2006 deadline, to coincide with the Midwest ISO-PJM filing.

88. The OMS also believes that the importance of future transmission infrastructure development warrants timely attention to this aspect of cost allocation. The OMS

maintains that a statement from the Commission about the importance of Regionally Beneficial Projects may be needed for the Midwest ISO and stakeholders to complete the next phase of the cost allocation policy development on, or before schedule.

3. Answers

89. The Midwest ISO recognizes the concerns of the parties and notes that the RECB Task Force spent considerable time in its initial discussions attempting to develop a way to accurately measure the lifetime economic benefits of projects for non-reliability needs. On this basis, stakeholders agreed to temporarily "shelve" the discussion of how to treat regionally beneficial projects. The Midwest ISO asserts that, as it has consistently maintained, it will work diligently with customers and strive to make another cost allocation filing within 12 months to determine if the filed definition and treatment of Regionally Beneficial Projects is sufficient.

4. Discussion

90. We believe that it is important for the Midwest ISO and market participants to address the issue of cost allocation for Regionally Beneficial Projects in a timely manner. We recognize the need for such projects as part of a strong transmission infrastructure, and are concerned that the October 7, 2006 target date for a cost allocation plan as to Regionally Beneficial Projects is not sufficiently timely. Thus, we will require the Midwest ISO to file a proposal for cost allocation of Regionally Beneficial Projects on or before June 1, 2006. As such, the development of the proposal can coincide with and benefit from the development of the Midwest ISO-PJM proposal, already due to the Commission by June 1, 2006, intended to address the distinction between reliability and economic transmission projects; whether and how these two categories of projects should be planned for differently; and how costs should be allocated for economic projects between the two RTOs.[51]

F. Excluded Projects List

1. Midwest ISO's Proposal

91. Attachment FF-1, otherwise known as the Excluded Projects List, identifies projects that are not eligible for the cost sharing proposal set forth in Attachment FF. The list was generated by examining the latest Midwest ISO Transmission Expansion Plan

[51] *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194 at P 12, 24 (2005).

(MTEP 05) for projects that were either listed as "planned" or were sufficiently advanced in the planning process that even if they were listed as "proposed" they were viewed by the Midwest ISO as being, for practical purposes, "planned." The Midwest ISO states that these projects were excluded from cost sharing because they would be moving forward with development and construction regardless of whether the RECB Task Force was successful in developing a regional cost allocation policy.

92. The Midwest ISO states that although the RECB Task Force tried to reach consensus on all the cost allocation issues, it was not able to achieve that goal. The Midwest ISO states that different stakeholders supported different starting points for beginning cost sharing. Among the proposals put forward was a proposal to use a project's in-service date rather than the status of the project at the time MTEP 05 was approved by the Midwest ISO Board of Directors. The Midwest ISO states that other stakeholders suggested that cost sharing should apply immediately upon filing with the Commission and that cost sharing should apply to all MTEP 05 projects from that point forward. The Midwest ISO avers that the implications and complications arising from starting cost sharing on an in-service date rather than the projects listed as "planned" in MTEP 05 would not be optimal. Rather, the RECB Task Force reached a consensus that all projects listed as "planned," would be excluded from the proposed funding mechanisms.

2. <u>Protests</u>

93. The OMS was fragmented in responding to this aspect of the proposal. Six OMS members[52] recommend the Commission initiate a closed-ended, mediated/arbitrated stakeholder process with Commission oversight and Midwest ISO participation to examine: (1) the difference of opinion between the Midwest ISO and some parties on whether MTEP 05 has captured all of the Baseline Reliability Projects that will occur during the five-year horizon; and (2) whether the failure to distinguish in MTEP 05 between projects that would now fit the proposed definition of Baseline Reliability Project and those that fit the proposed definition of Regionally Beneficial Projects affects the "fairness" of the Excluded Projects List. The OMS pleading indicates that the Montana Public Service Commission does not support this proposal because it is concerned that any mediation process may be viewed as state regulators pre-approving certain projects.

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[52] Michigan Public Service Commission, Missouri Public Service Commission, North Dakota Public Service Commission, Pennsylvania Public Utility Commission, Illinois Commerce Commission, and the Nebraska Power Review Board.

94. Four OMS members[53] alternatively recommend that the Commission substitute an "Exclude[d] List" limited to projects with in-service dates before January 1, 2007 and contend that basing the projects that will be excluded from eligibility for the Midwest ISO's proposed cost allocation method (*i.e.*, Attachment FF-1) on projects included in MTEP 05 is problematic because projects of the same vintage and level of development will not be similarly eligible to receive regional cost allocation.

95. PSCW supports the alternative Excluded Projects List proposal of the Midwest Coalition wherein only projects with an in-service date prior to October 7, 2005 are excluded. PSCW also claims that the proposed methodology will result in Wisconsin customers subsidizing customers in other states, since the other states will pay a price for transmission that is below the marginal benefit they receive.

96. PSCW states that the Midwest ISO's proposal provides inconsistent and discriminatory criteria for selecting projects to be included or excluded from regional cost sharing by containing projects that are listed as "proposed" in the MTEP 05. PSCW states that American Transmission Company, LLC (ATCLLC) employs a 10 year planning horizon, volunteers its projects for inclusion in the MTEP, and thus, places at the Midwest ISO's disposal for inclusion in the MTEP several "proposed" projects that, according to some ill-defined criteria, the Midwest ISO could consider "planned." PSCW contends that this is why ATCLLC's projects comprise the majority of items on the Excluded Projects List.

97. PSCW further states that any subsidies the Wisconsin Upper Michigan System receives from expanded congestion cost hedges protection previously granted to Wisconsin will pale in comparison to uplift charges for grandfathered agreement protection, to which Wisconsin customers contribute, and certainly in comparison to the subsidized benefits other states will receive if Wisconsin pays for 100 percent of the costs of transmission upgrades in Wisconsin.

98. PSCW maintains that the Midwest ISO's proposal does not consider whether a project provides regional benefits and that the proposed Excluded Projects List effectively punishes good planning and volunteering for projects inclusion in the MTEP 05 at the expense of Wisconsin customers. PSCW claims that if the Commission approves the Midwest ISO's proposed Excluded Projects List, the Commission will be

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[53] Iowa Utilities Board, Minnesota Public Utilities Commission, Minnesota Department of Commerce, South Dakota Public Utilities Commission, and PSCW.

providing an incentive for areas without regional cost allocation to wait to build new transmission until such a policy is in place. Consequently, transmission needed now or very soon likely could be delayed unnecessarily, unfairly and inefficiently.

99. Finally, OMS notes that the Excluded Projects List contains 37 projects that are listed as “proposed” in the MTEP 05 and suggests that the Midwest ISO’s intent may have been to include all planned projects and proposed projects that could have been classified as planned due to their in-service dates or other criteria.[54] Accordingly, the OMS states that if the Midwest ISO wants to include certain proposed projects on its Excluded Projects List, it should make the language on Sheet Nos. 1841, 1875, and 1876 consistent.

100. The Midwest Coalition states that the Midwest ISO’s proposal will require Wisconsin to build and pay for a substantial number of regional and sub-regional projects without cost sharing and force Wisconsin to partially subsidize other states’ projects. To prevent this scenario, the Midwest Coalition requests that the Midwest ISO be directed to predicate a project’s eligibility on its in-service date rather than its status on MTEP 05. The Midwest Coalition argues that the Midwest ISO should remove from its Excluded Projects List any project with an in-service date after October 7, 2005.[55]

101. The Midwest Coalition supports its position by stating that ATCLLC projects account for 52 percent of the projects on the proposed Excluded Projects List. The Midwest Coalition further states that a motion to supplant the proposed Excluded Projects List was put before the Midwest ISO Advisory Committee. That motion failed with 6.33 in favor, 10 against and 4.67 abstaining. The Midwest Coalition states that the instructions given during the MTEP 05 process do not indicate that planned projects are those that will actually be undertaken by a utility. Planned projects were simply depicted as preferred solutions.

102. The Midwest ISO TOs filed comments in support of Midwest ISO’s filing. While supporting the proposed filing, many Transmission Owners would not support individual components outside of a compromise. The Midwest ISO TOs also state that the Commission should accept the proposed filing which was supported by two-thirds of the

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[54] *See* OMS Comments at 10.

[55] In its protest, Calpine states that it supports the comments of the “Wisconsin Coalition for Equitable Allocation of Transmission Expansion Costs.” Calpine Comments at 9. We interpret this as Calpine supporting Midwest Coalition’s comments because no group by the former name has filed comments in this proceeding.

RECB Task Force process, without modification. In his testimony submitted with the Midwest ISO TOs comments, Dr. Blake states that the cost allocation of reliability projects that are identified as “planned” in MTEP 05 have already been addressed, and the majority of stakeholders felt there was no point in re-visiting this issue. Furthermore, Dr. Blake states that, at the August 19, 2005 stakeholders meeting, the stakeholders voted to use the list of projects that were identified as “planned” in MTEP 05 or that were identified as “proposed” but were so far along that they really should be identified as “planned” as the list of projects to which the new regional cost allocation would not apply. The vote was 39 in favor and five opposed. Dr. Blake further explains that another advantage of using the proposed list is that it would prevent any gaming because the development of those projects were agreed to before the regional cost sharing rules were even developed.

103. Ameren requests clarification that any transmission upgrades related to generator interconnections for generators placed in-service after October 7, 2005 are subject to cost allocation procedures contained in the October 7 Filing.

3. <u>Answers</u>

104. In its answer, the Midwest ISO responds that the filing satisfies the Commission’s just and reasonable standard and that the Commission should defer to the immense efforts of the RECB Task Force stakeholders in arriving at the current cost allocation proposal. The Midwest ISO states that the Excluded Projects List is based on a straightforward principle that if a Transmission Owner represented to the Midwest ISO during the MTEP 05 planning process, that a project was needed, and was the preferred project to resolve the need, then such projects would be grandfathered with regard to the new cost sharing policy. The Midwest ISO further states that it will continue to track all planned projects from MTEP 05 and that no conflict with any projects identified in future MTEPs will arise. The Midwest ISO also states that there are adequate safeguards in place to eliminate gaming the system by withdrawing projects in MTEP and later reestablishing projects under a later MTEP, which would then make the projects eligible for regional cost sharing.

105. The Midwest ISO TOs strongly urge the Commission to disregard the allegations that the proposed filing is biased in favor of the transmission owners. The Midwest ISO TOs state that the limitation of the proposed cost allocation mechanism to new baseline reliability facility upgrades is reasonable. The Midwest ISO TOs further state that the Excluded Projects List was regarded by the majority of participants as an essential part of the overall compromise that was finally reached.

106. In its answer, Prairie State argues against Ameren’s request for clarification that a generator’s in-service date is relevant to whether the cost sharing proposals are

applicable. Prairie State maintains that the Commission should not allow existing interconnection agreements to be automatically amended through this proceeding. Prairie State also agues that Ameren's request is a collateral attack on the proceedings in Docket No. ER05-215. In response to Prairie State, Ameren responds that it is appropriate to incorporate the Midwest ISO's new cost allocation procedures into existing generator interconnection agreements. Ameren also maintains that Prairie State itself seeks to collaterally attack the Commission's prior orders in Docket No. ER05-215.

107. In its answer to the answers of the Midwest ISO and the Midwest ISO TOs, WPS states that the Excluded Projects List is arbitrary and capricious. WPS states that by arbitrarily creating the Excluded Projects List, the Midwest ISO has ignored the fact that, in Wisconsin, excluding "planned" projects creates greater exclusions based solely on the fact that Wisconsin has been highly proactive in its transmission planning and has a longer planning horizon than the MTEP. WPS further states that just because a group of vertically integrated transmission owners and the Midwest ISO agree to a proposal that is opposed by many does not make the proposal a compromise and does not make the proposal just and reasonable.

4. <u>Discussion</u>

108. We will accept the Midwest ISO's proposal with minor modification. The Midwest ISO's proposal represents the culmination of significant stakeholder discussions regarding expansion of the transmission grid. The proposed Excluded Projects List is a reasonable compromise position from which this independent transmission provider, with significant stakeholder input, may start to apply regional cost sharing of transmission expansion projects.

109. While we are sympathetic to the concerns raised by the intervenors which highlight the effect of the proposal on Wisconsin's projects, we do not find that the Excluded Projects List places any undue disadvantage on any one party.[56] The Midwest ISO's proposal merely advances a method for regional cost sharing for future projects leaving previously planned projects untouched by the proposed cost sharing. Similarly, we are not swayed by the arguments that the proposal penalizes proactive planning. All stakeholders were on equal footing in so far as they were unaware of what, if any, future cost sharing might be available and were therefore unable to manipulate the process by

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[56] In particular, we are encouraged by the Wisconsin requirement to have a 10 year planning horizon. However, no party has been able to demonstrate that the Excluded Projects List should have changed in regards to the status of ATCLLC's projects.

how they designated their projects. The Excluded Projects List does not penalize proactive planning, but simply recognizes the existing state of the system along with those projects which were already planned.

110. We find that PSCW's concerns that the proposal does not consider regional benefits are misplaced. The Excluded Projects List merely determines where regional cost sharing may begin. The purpose of the Excluded Projects List was not to determine the regional nature of any planned or advanced-stage project, but rather the identified need by the Transmission Owner. As such, any need identified and listed as planned by the Transmission Owner is already accounted for under a previous cost recovery construct. For any projects not grandfathered, the proposed regional cost sharing plan does indeed consider the regional nature of a project.[57]

111. We find that using the MTEP 05 projects as a starting point for regional cost sharing allows for all parties to be on equal footing – no stakeholder knew that MTEP 05 would be used as the basis for cost sharing. The Midwest ISO states that its proposal addresses stakeholder concerns regarding being held responsible for costs of projects that are in advanced stages of planning. Using either January 1, 2007 or October 7, 2005 to begin cost sharing for "in-service" projects would produce similar results – requiring cost-sharing for several advanced stage projects, including one large-scale project that has already received state regulatory approvals for construction.[58] Thus, this Excluded Projects List has the advantages of: (1) using a starting point which was unknown to the parties and thus project sponsors were on an equal footing in designating their projects in MTEP 05; and (2) applying cost-sharing on a going forward basis.

112. Parties question the use of the definitions of "planned" versus "proposed" in MTEP 05. The Midwest ISO states that it has proposed to exclude from the regional cost recovery all projects which were listed, by the Transmission Owner, as "planned" or

[57] We reject arguments that the beginning point proposed in the October 7 Filing would provide an incentive for areas without regional cost allocation to wait to build new transmission until such policy is in place. Transmission owners will build network upgrades as required to comply with reliability requirements and meet their system needs.

[58] PSCW has authorized public utilities to construct a 220-mile 345 kV electric transmission line from the Weston Power Plant near Wausau, Wisconsin to the Arrowhead Substation near Duluth, Minnesota. *See* Public Service Commission of Wisconsin, *Arrowhead-Weston Transmission Line Part B Construction and Mitigation Plans*, *at* http://psc.wi.gov/utilityinfo/electric/cases/arrowheadweston/awPart3.htm.

which were designated as "proposed" but were in advanced stages of planning.[59] The Midwest ISO states that it has used the same designations for projects in MTEP 03 and MTEP 05. Moreover, the Midwest ISO afforded Transmission Owners the opportunity to rebut the Midwest ISO's determination that specific projects were not planned. Here, the concerned parties have not provided any evidence that a project should be removed from the Excluded Projects List because the project was not in advanced stages of planning.

113. We direct the Midwest ISO to correct language in section 3.A.2.b. on Sheet No. 1841 which describes the Excluded Projects List as based on the planned projects of the MTEP 05. Consistent with the Midwest ISO's representations, the actual list is based on the planned project list with some additions of proposed projects that the Midwest ISO has determined to be in advanced stages of planning.

114. Regarding the OMS's concerns, the Midwest ISO states that it will track all projects to ensure that the identified needs are met. We find this proposal to be reasonable, and will rely on the Midwest ISO to carry through that responsibility.

115. Finally, Ameren and Prairie State have raised issues regarding the application of the proposed cost allocation policy to an existing generator interconnection agreement. The proposed modifications to Attachment X will become effective February 5, 2006, as discussed above. However, the Midwest ISO has not proposed in the October 7 Filing to modify the applicable Tariff language as to existing generator interconnection agreements, and we will not require it to do so. Thus, generator interconnection agreements filed on or after February 5, 2006 must conform to the effective Attachment X, as accepted in this order. This is without prejudice to the Midwest ISO's ability to seek modification to existing generation interconnection agreements.

G. Expansion Planning Process

1. The Midwest ISO's Proposal

116. Attachment FF incorporates existing language from Appendix B, "Planning Framework" of the Midwest ISO Agreement,[60] describing the process for considering and developing expansion projects for the MTEP.

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[59] October 7 Filing at 13.

[60] Midwest ISO Agreement at App. B, Sheet Nos. 103-16.

2. <u>Protests</u>

117. The OMS requests changes to clarify proposed language in section II.A.1, "Baseline Reliability Projects." Several edits pertain to the following paragraph:

> The Midwest ISO shall test the MTEP for adequacy and security based on all applicable criteria, and under likely and possible dispatch patterns of actual and projected Generation Resources within the Transmission System and of external resources, and produces an efficient expansion plan that includes all Baseline Reliability Projects determined by the Midwest ISO to be necessary through the planning horizon of the MTEP.

118. The OMS asserts that "Base Case" should be defined in the MTEP process to identify deficiencies in the existing transmission system and that "Base Case" should replace "MTEP" as it is highlighted in the sentence above. Further, contends the OMS, "all applicable criteria" is overly broad and potentially opens the door for the inclusion of stronger or otherwise non-uniform reliability criteria that may only be needed for the local system and do not otherwise provide regional benefits. "[E]fficient expansion plan" should be clearly defined (*i.e.*, if "efficient" means "least cost," among what set of alternatives is the comparison being made).

119. Finally, the OMS maintains that the Midwest ISO Board must approve major changes (*e.g.*, project additions or deletions) to the MTEP in the same way as it approves the MTEP.

3. <u>Answers</u>

120. In response to the OMS's concerns, the Midwest ISO agrees to replace "MTEP" with "Base Case," and to delete "all applicable criteria" and instead reference commonly applicable national Electric Reliability Organization standards as the basis for determining projects that qualify for regional and sub-regional cost sharing as Baseline Reliability Projects.[61]

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[61] *See* Midwest ISO Answer at 10-11.

4. Discussion

121. We will conditionally accept Attachment FF subject to the Midwest ISO making the modifications as agreed to in its answer and subject to refund.

122. As for the OMS's concern regarding the term "efficient expansion plan," we believe that the proposed language in Attachment FF requiring Midwest ISO to: (1) analyze projects with regional and inter-regional impact to be analyzed for their combined effects on the Transmission System; (2) give full consideration to the needs of all Market Participant and to demand-side options; and (3) seek out opportunities to coordinate or consolidate, where possible, individually defined projects, will ensure that the planning considers regional and inter-regional impacts, that the set of possible solutions is sufficiently large, and that recommended expansion solutions are cost effective.

123. Regarding the OMS's concern that the Midwest ISO Board must approve significant changes to an MTEP, we believe the proposed Attachment FF language in fact addresses that concern. This language is currently effective and on file as part of Appendix B of the MISO Agreement.[62] Thus, parties must adhere to these provisions.

124. Attachment FF describes the process to develop the MTEP, relying on existing language from Appendix B from the Midwest ISO Agreement. At this time, we will allow the Midwest ISO to implement the new cost responsibility policies, as modified by this order, without requiring additional changes or detail to the planning mechanisms that are on file.

H. Miscellaneous

1. Safe Harbor Provision

a. Protests

125. IPL requests that the Commission approve the overall framework of the filing but require the Midwest ISO to include a safe harbor provision in order to avoid rate shocks potentially associated with the cost allocation methodology. Alternatively, IPL asks the Commission to set the issue of a safe harbor provision for hearing or settlement proceedings. IPL maintains that SPP proposed and the Commission accepted a similar safe harbor provision in the SPP orders.

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[62] *See* Midwest ISO Agreement at Original Sheet No. 113.

126. According to IPL, the Midwest ISO's proposal fails to adequately show how parties may be financially impacted under the cost allocation provisions. For instance, IPL notes that under the 80 percent sub-regional allocation, it has no way of knowing what it will be required to pay as there have been no cost benefit analysis completed and rather cost allocation issues will be done on a case-by-case basis using a LODF table developed by Midwest ISO. Moreover, IPL fears that additional protections are warranted since LODF is a form of flow-based modeling and not as precise. For instance, IPL argues that this model involves more than establishing a revenue requirement and assigning it to customers based on a verifiable factor such as load ratio share. Also, IPL asserts that since the details of the LODF model have not been included, customers will be left to guess at potential rate increases under this allocation.

127. IPL advocates a cap on new cost allocations based upon the five year average of existing expenditures for new facilities additions and upgrades to existing facilities for capacity as reported in the FERC Form No. 1. According to IPL, the cap should be established at double the historic spending levels for companies who can demonstrate that their systems have been designed using enhanced NERC criteria and up to five times historic spending levels for companies who have not designed their systems under such criteria.

128. IPL further requests that the Midwest ISO include a voluntary process for obtaining waiver from cost allocation of costs in excess of the safe harbor limits as well as requiring periodic reports similar to those required in the SPP orders in order to ensure the accuracy of the safe harbor limit.

b. <u>Answer</u>

129. The Midwest ISO responds that IPL's request for a safe harbor provision was not accepted by a majority of the RECB Task Force stakeholders and instead the Midwest ISO included language in Attachment FF that the stakeholder process will address any unintended consequences in an effort to address IPL's concerns. Midwest ISO requests that the Commission defer to the RECB Task Force stakeholder process.

c. <u>Discussion</u>

130. We find that the bulk of Midwest ISO's proposal is just and reasonable. We therefore find that a safe harbor provision is optional, rather than required and reject IPL's request for hearing or settlement judge procedures as to this issue. The safe harbor provision accepted for SPP was created through its stakeholder process and was filed in its initial cost allocation filing. In contrast, the safe harbor provision sought by IPL was

expressly rejected by the RECB Task Force stakeholder process and, therefore, was not initially filed.[63] We recognize that the cost allocation provisions filed by the Midwest ISO are the product of negotiation and compromise, and that the balance embodied in them could be undone by directing the Midwest ISO to include requirements the majority of stakeholders do not support.[64] Finally, we note that language in Attachment FF, commits the Transmission Provider and the Tariff Working Group to review designations of cost responsibility for unintended consequences and to report such consequences to the Planning Advisory Committee and the OMS.[65]

2. Effective Date

a. Protests

131. The OMS requests the Commission consider whether an effective date earlier than the February 4, 2006 effective date proposed by the Midwest ISO is feasible.

b. Discussion

132. The Commission recognizes the importance of the Midwest ISO's cost allocation policy and the need for promptness. However, given the complexity of the proposals set forth herein, an effective date earlier than February 5, 2006 is neither feasible nor warranted. As discussed above, the Commission will conditionally accept the Midwest ISO's proposed revisions herein, and does not believe any of the conditions set forth herein would hinder or otherwise the delay those proposed policies. The conditionally accepted proposed tariff revisions will also become effective February 5, 2006, as discussed in the body of this order.

The Commission orders:

(A) The Midwest ISO's cost allocation plan and cost allocation and cost recovery provisions in Attachments FF and GG and Schedule 26, with conforming changes in Attachments N and X and Schedules 7, 8, and 9, are hereby conditionally

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[63] *See* Midwest ISO Answer at 9.

[64] *Id.* at 13-14.

[65] October 7 Filing at Original Sheet No. 1840.

accepted for filing ,and suspended for a nominal period, to become effective February 5, 2006, subject to further modification and subject to refund, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to submit a compliance filing, consistent with the discussion herein, within 60 days of the date of this order, as discussed in the body of this order.

(C) The Commission's Staff is hereby directed to convene a technical conference to explore the issues raised by the Midwest ISO's proposal for the degree of regional cost sharing for reliability projects at 345 kV and above, and to report the results of the conference to the Commission within 120 days of the date of the issuance of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc. — Docket No. ER06-18-000

(Issued February 3, 2006)

KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *ISO New England Inc.*, 114 FERC ¶ 61,055 (2006), I do not believe that the Commission should strictly apply Order No. 663 to waive commenters' issues so soon after its enactment.

Therefore, I respectfully dissent in part from this order.

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Suedeen G. Kelly