UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER06-18-000 ER06-18-001 ER06-18-002 ER06-18-003

ORDER ON TECHNICAL CONFERENCE, REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued November 29, 2006)

1. On February 3, 2006, the Commission issued an order conditionally accepting and suspending proposed tariff revisions submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) to incorporate into its Open Access Transmission and Energy Markets Tariff (TEMT or Tariff) the application of the Midwest ISO Transmission Expansion Planning (MTEP) protocols, and to institute its transmission expansion cost allocation policy that allocates and recovers costs associated with new transmission projects and system upgrades within the Midwest ISO Transmission System as proposed by the Regional Expansion Criteria and Benefits (RECB) Task Force.[1] As discussed below, the Commission rejects the requests for rehearing and clarification of the February 3 Order.

2. The February 3 Order also directed a technical conference to discuss the degree of regional cost sharing for Baseline Reliability Projects rated at 345 kV and above. The technical conference was held on April 21, 2006. In this order, the Commission addresses supplemental evidence originating from the technical conference proceeding and, as discussed below, accepts the Midwest ISO's proposed methodology for cost allocation for Baseline Reliability Projects rated at 345 kV and above.

[1] *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (2006) (February 3 Order).

3. Finally, the February 3 Order directed the Midwest ISO to file, within 60 days, a compliance filing making certain changes to the language proposed in its original proposal. As discussed below, the Commission accepts the revised tariff sheets effective February 5, 2006.[2]

I. Background

4. On October 7, 2005, the Midwest ISO filed with the Commission proposed tariff revisions to its TEMT to implement the transmission expansion cost allocation policy of its RECB Task Force (October 7 Filing). In the February 3 Order, the Commission conditionally accepted the Midwest ISO's cost allocation proposal, and suspended it for a nominal period, to become effective February 5, 2006, subject to refund. The Commission also directed staff to convene a technical conference to discuss the degree of regional cost sharing for reliability projects at 345 kV and above.

5. Pursuant to the February 3 Order, on April 21, 2006, a technical conference was convened to discuss the cost allocation methodology for high-voltage Baseline Reliability Projects in the Midwest ISO region.

6. On April 4, 2006, as corrected on April 28, 2006, the Midwest ISO filed a compliance filing revising the tariff revisions proposed in the October 7 Filing to comply with the February 3 Order.

II. Notices and Responsive Filings

7. Timely requests for rehearing and/or clarification were filed by: American Transmission Company LLC (ATC) and International Transmission Company (ITC) (jointly); Constellation Energy (Constellation);[3] Indianapolis Power & Light Company (IPL); the Midwest ISO and Midwest Stand-Alone Transmission Companies (MSATs)[4] (jointly); the Midwest Coalition for Equitable Allocation of Transmission Expansion

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[2] We note that on November 1, 2006 (as revised on November 8, 2006), the Midwest ISO filed a compliance filing in Docket Nos. ER06-18-004 and ER06-18-005, making further revisions to its TEMT consistent with the February 3 Order. Those proposed revisions will be considered in a future order.

[3] For the purposes of its filing, Constellation includes: Constellation Generation Group, LLC; Constellation Energy Commodities Group, Inc.; and Constellation NewEnergy, Inc.

[4] For the purposes of their filing, the MSATs include: ATC; ITC; and Michigan Electric Transmission Company, LLC (METC).

Costs (Midwest Coalition);[5] the Midwest TDUs;[6] and the Public Service Commission of Wisconsin (PSCW). The Midwest TDUs and Midwest ISO Transmission Owners[7] each filed an answer to the Midwest ISO and MSATs' joint pleading.

8. As to Constellation's requests for rehearing, we note that Constellation did not protest the Midwest ISO's October 7 Filing, and only first raised its concerns on rehearing. The Commission normally does not allow parties to raise new issues on rehearing, and we will not allow Constellation to do so here.[8] We find that Constellation

[5] For the purposes of its filing, the Midwest Coalition includes: Wisconsin Electric Power Company; Edison Sault Electric Company; Upper Peninsula Power Company; Municipal Electric Utilities of Wisconsin; Citizens' Utility Board of Wisconsin; ATC; Wisconsin Power and Light Company; Madison Gas and Electric Company; Wisconsin Public Power, Inc.; Wisconsin Public Service Corporation; Wisconsin Paper Council; Wisconsin Industrial Energy Group; and Wisconsin Manufacturers & Commerce.

[6] For the purposes of their filing, the Midwest TDUs include: 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.

[7] For the purposes of their filing, the Midwest ISO Transmission Owners include: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); 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.; Indianapolis Power & Light Company; E.ON U.S. 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; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

[8] *See, e.g.*, *Baltimore Gas & Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000).

has not demonstrated that there was good cause for its failure to timely raise these issues. Constellation filed a timely motion to intervene; we see no reason why Constellation could not have identified these issues in that filing.[9]

9. On April 6, 2006, Old Dominion Electric Cooperative (Old Dominion) filed an untimely motion to intervene. On April 13, 2006, Allegheny Power filed an untimely motion to intervene.[10] On April 20, 2006, Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC (collectively, the PSEG Companies) filed an untimely motion to intervene.

10. Notice of the Midwest ISO's April 4 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 23,913 (2006), with protests and interventions due on April 25, 2006. None was filed.

11. Notice of the Midwest ISO's April 28 corrections to its April 4 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 27,489 (2006), with protests and interventions due on May 19, 2006. None was filed.

12. Post-technical conference comments were filed on May 5, 2006 by: American Municipal Power-Ohio, Inc. (AMP-Ohio); Basin Electric Power Cooperative (Basin Electric); Exelon Corporation (Exelon); Great Northern Power Development, L.P. (Great Northern); IPL; ITC and METC; the Midwest TDUs; the Midwest ISO; the Public Utilities Commission of Ohio (PUCO); and Wisconsin Electric Power Company (Wisconsin Electric). The remarks of Mr. Gary Mathis, on behalf of the Midwest TDUs, from the April 21 Technical Conference, were also filed. On May 22, 2006, reply comments were filed by IPL, the Midwest ISO Transmission Owners, and the MSATs.

III. Discussion

A. Procedural Matters

13. We will grant the late interventions of Old Dominion, Allegheny Power, and the PSEG Companies given the absence of any undue prejudice or burden to the parties.

14. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005), prohibits answers to requests for rehearing. We may, for good

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[9] We note, however, that several of the issues raised on rehearing by Constellation were raised by other parties, and are addressed on the merits herein. *See* section III.D., *infra*.

[10] Allegheny Power is the trade name for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

cause shown, waive this provision. *See* 18 C.F.R. § 385.213(a)(2) (2005). We will accept the answers from the Midwest TDUs and Midwest ISO Transmission Owners as they provided information that assisted us in our decision-making. We will also accept the post-technical conference reply comments of IPL, the Midwest ISO Transmission Owners, and the MSATs as they provided information that assisted us in our decision-making.

B. Procedural Concerns

1. The February 3 Order

15. In a July 8, 2004 Order,[11] the Commission encouraged the Midwest ISO to work with stakeholders to develop a permanent pricing policy based on the Organization of MISO States' (OMS) principle that the parties that cause and benefit from the upgrades should pay for the upgrades. As a result of discussions with the OMS and stakeholders, in early 2004, the Midwest ISO Advisory Committee approved the establishment of a task force reporting to the Advisory Committee; the RECB Task Force served as a "stakeholder forum" in which a compromise comprehensive cost allocation policy was established.[12] The Midwest ISO reported that the RECB Task Force stakeholder process was a thorough and involved process, lasting more than 18 months.[13] The Midwest ISO reported 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.[14] As described in the October 7 Filing, the recommendations of the RECB Task Force were brought before the Midwest ISO Advisory Committee and the Midwest ISO Advisory Committee endorsed most, but not all, of the RECB Task Force's proposal.[15] In the October 7 Filing, the Midwest ISO stated that, despite the "great importance" of the advice of the Midwest ISO Advisory Committee, the Midwest ISO

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[11] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027, at P 38 (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).

[12] October 7 Filing at 4.

[13] *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.").

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

[15] *See Id.* at 13-14.

believed that the "compromise" reached by the RECB Task Force is the "superior position,"[16] and, accordingly, the Midwest ISO presented the Commission with the original proposal as set forth by the RECB Task Force in the October 7 Filing.

16. The February 3 Order found that the procedures used in the adoption of the cost allocation policy proposed in the October 7 Filing were reasonable and consistent with the OMS's 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. The February 3 Order found that the process adopted by the Midwest ISO, as described in the October 7 Filing, was an open, transparent, and collaborative stakeholder process and commended 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. The February 3 Order noted that although protesters' concerns regarding the precise makeup of the RECB Task Force were relevant, such concerns were not sufficient to alter the Commission's decision, finding that the proposals set forth in the October 7 Filing reflect the independent judgment of the Midwest ISO.

2. Requests for Clarification and Rehearing

17. Several entities argue on rehearing that the Commission erred in its reliance on the findings of the RECB Task Force and the process through which the recommendations of the October 7 Filing were developed.

18. For example, IPL maintains that the Commission erred in its disparate treatment of stakeholder compromises underlying the filing, arguing that it was inconsistent for the Commission to rely on stakeholder compromise in rejecting its request for a safe harbor period,[17] but dismiss the stakeholder compromise regarding the cost allocation for certain Baseline Reliability Projects.

19. The Midwest Coalition and the PSCW argue on rehearing that the Commission erred in deferring to the stakeholder process in its conclusion to accept the Excluded Projects List, to the exclusion of independent analysis of the merits of the proposed methodology underlying the Excluded Projects List.[18] The Midwest Coalition argues that "the fact that the proposed Exclude[d Projects] List was a product of stakeholder process and was supported by the [Regional State Committee] is not dispositive regarding the question of whether the Midwest ISO's proposal is unjust, unreasonable and unduly

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[16] *Id.* at 14.

[17] *See* section III.C., *infra*.

[18] *See* section III.E., *infra*.

discriminatory."[19] The Midwest Coalition also notes that OMS's support of the Excluded Projects List was fractured, with four OMS members supporting the position of the Midwest Coalition. The Midwest Coalition further notes that the Advisory Committee's support of the Excluded Projects List was also divided. Finally, the Midwest Coalition maintain that, rather than a "compromise position" by RECB Task Force members, the Excluded Projects List was a "tyranny of the majority."[20]

20. The Midwest TDUs argue that the Commission erred by overlooking the preferences of the Midwest ISO's official, balanced stakeholder group, the Advisory Committee, over the RECB Task Force on the issue of the Midwest ISO's proposal for 50 percent direct assignment for Network Upgrades associated with generator interconnection.[21] The Midwest TDUs argue that the February 3 Order "sends the strong message that stakeholder input only matters if [the Midwest ISO] happens to agree with it," and that "[t]his approach fundamentally undermines the Commission's [Regional Transmission Organization (RTO)] accountability goals, and efforts to establish and maintain vibrant, balanced stakeholder processes."[22] In their post-technical conference comments, the Midwest TDUs also raise the issue that Commission deference to the stakeholder consensus regarding the cost allocation for Baseline Reliability Projects[23] would be misplaced, noting the fact that "the stakeholder process was long and contentious does not assure a just and reasonable outcome."[24]

3. **Commission Determination**

21. We deny rehearing of this issue. While no stakeholder process will be considered perfect by all participants when controversial matters are under discussion, we find that due consideration should be given to a stakeholder process that is open to all interested parties and allows representatives of the various stakeholder sectors to participate. We

[19] Midwest Coalition Request for Rehearing at 25-26.

[20] *Id.* at 28.

[21] *See* section III.D., *infra*.

[22] Midwest TDUs Request for Rehearing at 5.

[23] *See* section III.C., *infra*.

[24] Midwest TDUs Post-Technical Conference Comments at 13.

affirm the conclusion of the February 3 Order that the process for development of the cost allocation policy was "an open and collaborative stakeholder process that allowed for extensive participation."[25]

22. As to whether the Commission should have provided due consideration to the preferences of the Midwest ISO's Advisory Committee over that of the RECB Task Force, we note that the Midwest ISO Board of Directors made the decision to present the Commission, in the October 7 Filing, with the original proposal as set forth by the RECB Task Force. While the Advisory Committee's findings serve as advice to the Board of Directors, the Board is under no binding obligation that such advice be taken.[26] As noted in the February 3 Order, although relevant to our consideration of the proposal, the Advisory Committee's 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 because "[t]his 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. . . ."[27]

23. We agree with the requests for rehearing that just because those contested provisions were a product of stakeholder process, that fact is not dispositive as to whether those provisions are unjust, unreasonable or unduly discriminatory. The February 3 Order, however, independently found that each of the contested elements of the proposed cost allocation policy was just and reasonable, as conditioned therein. While the Commission noted the stakeholder compromises with favor, the February 3 Order did not exclusively "rely on" the compromises as justification for the justness and reasonableness of the various aspects of the Midwest ISO proposal. Accordingly, it was not inconsistent for the Commission to recognize most stakeholder compromises but require the additional conditions as to certain aspects of the Midwest ISO's proposal and require additional review regarding the cost allocation for certain Baseline Reliability Projects as set forth in the February 3 Order. Accordingly, the "disparate" treatment of the stakeholder compromises underlying the filing was appropriate. The substance of each of the contested issues that are implicated in the requests for rehearing as to procedure are discussed in greater detail below.

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[25] February 3 Order at P 15.

[26] *Id.* P 19 & n.20.

[27] *Id.* at n.32.

C. Baseline Reliability Projects

1. The February 3 Order

24. As defined in the October 7 Filing, "Baseline Reliability Projects" include projects of 100 kV and above needed to maintain reliability while accommodating the ongoing needs of existing transmission customers. Under the Midwest ISO's proposal, Baseline Reliability Projects meeting certain criteria are eligible to receive regional cost sharing. For Baseline Reliability Projects with a voltage class of 345 kV and higher, 20 percent of project costs is allocated system-wide, on a load ratio share basis, to all Transmission Customers and 80 percent is allocated sub-regionally to all Transmission Customers in the designated pricing zone(s) affected by the project. For Baseline Reliability Projects with a voltage class of 100 kV through 344 kV, 100 percent of the costs would be allocated sub-regionally to all Transmission Customers in the designated pricing zones. The designated pricing zones for the sub-regional cost allocation component are determined on a case-by-case basis in accordance with a Line Outage Distribution Factor (LODF) analysis.

25. The February 3 Order expressed the Commission's concern that the proposed regional cost sharing for extra-high-voltage facilities (at 345 kV and above) may be insufficient given the reliability impacts of such facilities, and directed a technical conference for the limited purpose of supplementing the record on this issue. Accordingly, the February 3 Order suspended the Midwest ISO's proposed tariff revisions for a nominal period, effective on February 5, 2006, subject to further modification as discussed in the February 3 Order and subject to refund.[28]

26. The February 3 Order found 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. The order also found it reasonable that facilities rated below 345 kV would not see the same system-wide effects as higher voltage facilities, and that 100 percent of costs may be allocated using the LODF methodology. The February 3 Order accepted those aspects of the proposal conditioned upon the Midwest ISO's commitment to clarify certain aspects of the proposal as requested by the OMS.[29]

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[28] *Id.* P 42-43.

[29] *Id.* P 44.

2. Requests for Clarification and Rehearing and Answers

27. The Midwest ISO and MSATs filed a joint request for clarification or, in the alternative, rehearing and request for expedited consideration as to the "subject to refund" condition imposed by the February 3 Order. The Midwest ISO and MSATs argue that the Commission should clarify that costs associated with Baseline Reliability Projects will not be reallocated on a retroactive basis if the Commission adopts a revised cost allocation methodology in a future order. Among other things, the Midwest ISO and MSATs request that, if the Commission denies the request for clarification, the condition must at least be modified so that the cost allocation methodology applicable to Baseline Reliability Projects is subject to refund and surcharge. The Midwest ISO and MSATs also note their confusion as to whether the subject-to-refund condition referenced in paragraph 121 of the February 3 Order is the same condition imposed by paragraph 43.

28. The Midwest ISO Transmission Owners filed comments in support of the Midwest ISO and MSATs' joint filing. In opposition to the Midwest ISO and MSATs' joint filing, the Midwest TDUs argue that the Midwest ISO and MSATs' alternative request for surcharge authority is premature; the costs of extra-high-voltage Baseline Reliability Projects is currently unknown, and it is possible that no refunds at all will be necessary.

29. In its request for rehearing, IPL argues that the Commission erred by failing to explain why the use of the LODF analysis to support a flow-based modeling in the instant proceeding was acceptable, when in prior orders the Commission "rejected the use of a flow-based model in part due to questions regarding the accuracy of results."[30]

30. Moreover, IPL argues that the Commission erred by failing to provide "[a] safe harbor provision or some other reasonable measure to cap the potential cost impact" on IPL.[31] IPL contends that the February 3 Order's discussion denying the safe harbor provisions fails to address why IPL's particular circumstances do not warrant the requested relief and to address the specific facts, circumstances, and arguments placed on the record by IPL. IPL also argues that the Commission erred in failing to address "the incomplete nature of the proposal and the enormous uncertainty created by this open-ended filing."[32]

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[30] IPL Request for Rehearing at 7-8 (citing *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168, at P 65 (2004)).

[31] *Id.* at 5 (emphasis omitted).

[32] *Id.* at 6.

3. **April 21 Technical Conference**

31. At the April 21 technical conference, participants were afforded the opportunity to express their positions either for or against the proposed cost allocation methodology for high-voltage reliability projects. Additionally, the Commissioners and Commission staff were able to question directly those best able to explain their issues and concerns on the proposed cost allocation.

32. At the conference, supporters of the proposed 20 percent postage stamp rate discussed: (1) the development of the proposal to include options for allocation that were considered, but rejected; (2) the cost sharing that would occur under both the system-wide postage stamp rate (20 percent) and the sub-regional rate (80 percent); and (3) suggested factors as the Commission evaluates the proposal.

33. Mr. Clair Moeller of the Midwest ISO described how the RECB Task Force initially sought to find a protocol to allocate costs and benefits on a project-by-project basis. He stated that "the notion of every project needing to go through . . . [an] engineering analysis before costs could be allocated, was troubling, particularly to the OMS. . . ."[33]

34. Mr. Martin Blake, representing the Vertically-Integrated Transmission Owners Tariff Working Group, related that during the development of the proposal, "we recognized . . . the reliability benefits to the system, as a whole, were likely to be small, given the geographic scope of the Midwest ISO. . . ." He stated that the RECB Task Force considered but "drifted away from" applying a postage stamp rate by sub-zones within Midwest ISO, rather than across the entire Midwest ISO footprint. The sub-regional rate that allocates the bulk of the costs (*i.e.*, 80 percent) based on LODF analysis was adopted instead.[34]

35. Mr. Doug Collins, representing Vertically-Integrated Transmission Owners,[35] described the proposal as allocating 20 percent of the costs "across the footprint" with "the rest allocated by distribution factors. . . What you really end up with, is floating regions. You're taking the circle around the project, rather than having defined boundaries."[36]

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[33] Technical Conference Transcript at 10.

[34] *Id.* at 13.

[35] Mr. Collins describes this group as diverse, consisting of investor-owned utilities, municipal agencies, co-operatives and a coordinating member. *Id.* at 15.

[36] *Id.* at 32.

36. Suggesting that the Commission take several factors into account when analyzing the Midwest ISO proposal, Mr. Steve Gaw, Chairman of the Missouri Public Service Commission and current president of the OMS, stated that the importance of sub-regional differences within the large Midwest ISO footprint, cannot be overstated. Mr. Moeller reported that, based on power flow studies where in-zone loads are assumed to be served by in-zone generation, the Mid-Continent Area Power Pool (MAPP) area had a high percentage of external flows on other zones (63 percent) while the Mid-America Interconnected Network, Inc. (MAIN) and East Central Area Reliability (ECAR) regions indicated lower percentages of external flows on other zones (approximately 20 percent for each).[37] In response to questioning, Mr. Moeller opined that:

> We're plowing some new ground there on the electric side. We're asking our states to acquiesce to costs that are incurred in other states, in other jurisdictions, so that they need to rely on their neighbors to judge both the prudence of the investment in terms of the cost control and the need for the investment. It's not an insignificant policy shift on behalf of the states as we work through this cost sharing.[38]

37. In response to questioning regarding when the proposed cost allocation would be applied to projects, Mr. Randy Rismiller, of the Illinois Commerce Commission also representing the OMS, offered, "[g]iven that there is an exclude list in this case the practical reality is that perhaps this method may not actually be used for a while on a real project in the ground."[39]

38. Opponents of the proposal advocated a strict beneficiaries-based approach or alternatively, for more expansive postage stamp allocation. For example, Ms. Kim Wissman, representing PUCO, supported a beneficiary-based approach as the only one permissible under the just and reasonable standard set out in section 205 of the Federal Power Act (FPA). She stated that "it appears to Ohio that we are being penalized for . . . having a significant customer base to start . . . [and] for having previously invested in a robust transmission system."[40]

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[37] *Id.* at 23-25, 29-30. We note that the dispatch method results reported here assumed that in-zone load is served by in-zone generation.

[38] *Id.* at 38-39.

[39] *Id.* at 67.

[40] *Id.* at 71.

39. Mr. Glen Skarbakka of the North Dakota Industrial Commission, calling for greater regional cost sharing, posited that "[i]t is difficult to go back and revisit allocations in the future, having made them once. . . . [I]t's important that . . . the allocation be done in a manner that takes into consideration the entire life and future uses of the transmission addition."[41]

40. Representing ITC and MTEC, Mr. Larry Bruneel noted that it is a challenge to "[a]ccurately predict[] the set of beneficiaries over the cost recovery horizon of a long-life transmission project." Mr. Bruneel asserted that this limitation "is really one of [the] most redeeming qualities" of the postage stamp rate, arguing that the postage stamp rate leaves aside the issue of who benefits, "implicitly recogniz[ing] that there are widely dispersed benefits of an interim temporal nature that accrue from large-scale upgrades."[42]

41. Mr. Dan Klempel, representing Basin Electric Power Cooperative, argued for greater regional cost sharing and asserted that "the Midwest ISO's studies have confirmed what is intuitively obvious. Since generating resources throughout the Midwest ISO are now supplying loads throughout the Midwest ISO on a security-constrained economic dispatch basis, all portions of the transmission grid are being used to serve all loads."[43]

42. Mr. Mathis, representing the Midwest TDUs, asserted that 100 percent of costs should be recovered through the regional rate but allowed that, "[a]s a minimum starting point the regional component should be raised to 33 percent, the share that [Southwest Power Pool, Inc. (SPP)] applies not only to these high voltage highway facilities but all base plant facilities of 60 kV and higher."[44]

4. <u>Post-Technical Conference Comments</u>

43. The Midwest ISO argues that there is more than one just and reasonable manner to allocate costs for transmission expansion and that its proposal reflects a just and reasonable balancing of interests within the Midwest ISO region. The Midwest ISO maintains that its wide geographic region and the more expansive nature of its transmission lines, justifies its departure from the proposal accepted by the Commission

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[41] *Id.* at 77-78.

[42] *Id.* at 83.

[43] *Id.* at 90.

[44] *Id.* at 89.

for SPP.[45] The Midwest ISO also reiterates that the allocation was reached through a stakeholder process, and the compromises reached through that process should be granted deference by the Commission.

44. In a reversal of the position taken in its request for rehearing,[46] IPL filed post-technical conference comments stating that it no longer seeks to change or amend the compromise proposal at this time. IPL finds the proposal is not perfect but "reasonable enough" for the Commission to accept for filing. IPL asserts that the Commission has legal authority to accept the compromise for filing – even though this specific allocation has not been supported with rigorous quantitative analysis.[47] However, IPL urges the Commission to require the Midwest ISO and Midwest ISO Transmission Owners to re-evaluate the cost allocation proposal in June 2007 when the Midwest ISO Transmission Owners will study whether to continue the transmission pricing approach used during the Midwest ISO's first six years and asks that such re-evaluation seriously consider a safe harbor proposal as part of that re-evaluation.

45. Wisconsin Electric also filed comments stating its support of the Midwest ISO's proposal at this time. Wisconsin Electric states that it is hard to imagine benefits from extreme reaches of the Midwest ISO footprint, and although it supports some regional sharing, 20 percent should be the maximum percentage to be socialized across the entire Midwest ISO footprint.

46. Several opponents of the Midwest ISO's cost allocation proposal, including AMP-Ohio, Basin Electric, and ITC and METC, reiterate their positions that the proposed allocation has not been shown to be just, reasonable and not unduly discriminatory, assert

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[45] Midwest ISO Post-Technical Conference Comments at 7-8.

[46] *Supra* P 29-30 and notes 30-32; IPL Request for Rehearing at 7-8 (citing *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168, at P 65 (2004)).

[47] IPL Post-Technical Conference Comments at 9-12 (citing, *inter alia*, *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope*); *Exxon v. FERC*, 182 F.3d 30 (D.C. Cir. 1999); *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 96 FERC ¶ 61,155, at 61,672 n.29, *order on reh'g*, 97 FERC ¶ 61,024 (2001) (quoting *Hope*, 320 U.S. at 602 for the proposition that "[u]nder the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling"); *San Diego Gas & Electric Company*, 93 FERC ¶ 61,121, at 61,382 (2000) (quoting *Hope*, 320 U.S. at 602 for the proposition that courts have found that the Commission is not "bound to the use of any single formula or combination of formulae in determining rates")).

that the "consensus" of the RECB Task Force is insufficient to warrant a finding that the result is just and reasonable, and argue that insufficient support has been offered for the proposal.

47. PUCO states that it "is inclined to oppose" the postage stamp method of cost recovery without some type of benefits test, arguing that the cost of each project should be allocated only to those that can be shown to benefit such as can be demonstrated through the LODF evaluation.[48] PUCO also fears additional costs for its rate payers if PJM Interconnection, L.L.C. (PJM), another RTO in which Ohio is situated, should adopt similar transmission pricing policies.

48. PUCO states, however, that it is not contesting the study results of the Midwest ISO at this time yet cautions the Commission to scrutinize the results. The "Dispatch Method" study and LMP analysis conducted by the Midwest ISO, argues PUCO, yielded varying results across the Midwest ISO region.

49. If the Commission endorses a postage stamp component, PUCO supports the original limitations of the cost allocation methodology, that is, the postage stamp component is limited to bulk transmission of 345 kV and above, and the postage stamp will not apply to those items on the Excluded Projects List.

50. Exelon filed comments in support of the PUCO position.[49] Exelon also asks the Commission not to influence the outcome of the PJM rate design proceeding in Docket No. EL05-121 nor the outcome of the joint Midwest ISO/PJM filing regarding the re-evaluation of the fixed cost recovery for pricing transmission service between the RTOs and the proposed rate design for the combined Midwest ISO/PJM region to take effect February 1, 2008.[50]

51. AMP-Ohio argues that the discussion of the Midwest ISO's analyses at the technical conference reveals that the Midwest ISO's only analysis of regional effects focused on economic impacts and that the Midwest ISO has not evaluated the impacts of its proposal on individual Midwest ISO systems. AMP-Ohio asserts that the Midwest ISO's own support of its proposal indicates that reliability benefits of a new transmission facility generally are local in character. AMP-Ohio also argues that the proposal would fail to promote needed transmission investment and instead create "a round-robin

[48] PUCO Post-Technical Conference Comments at 1.

[49] Exelon Post-Technical Conference Comments at 3.

[50] *Id.* (citing *Midwest Independent Transmission System Operator, Inc.*, 109 FERC 61,168, at P 62 (2004)).

exercise in cost shifting."[51] AMP-Ohio also argues that the factors described by certain panelists, including achieving buy-in on the present proposal and the consequence of the Commission ignoring such buy-in on the future stakeholder processes, are irrelevant to the Commission's determination of whether the proposal is just and reasonable. Finally, AMP-Ohio posits that even if uniform region-wide cost allocation is deemed reasonable, the Midwest ISO fails to explain why the proposal should be limited to new facilities.[52]

52. On the other end of the spectrum, several protestors argue that a higher regional allocation is justified.

53. ITC and METC argue that numerous factors support the allocation of 100 percent of the costs of high-voltage transmission on a postage stamp basis: (1) such cost sharing would recognize the fact that usage of the transmission system changes over time, as do the beneficiaries of such usage; (2) there is no legitimate distinction between economic and reliability projects and the market-related benefits of high-voltage transmission justify a broad regional allocation of costs; (3) such allocation is justified by the regional reliability benefits associated with high-voltage transmission; (4) such cost sharing would promote transmission investment; (5) such allocation is easy to administer and would minimize disputes; and (6) system-wide cost allocation is well accepted in the electric industry.

54. ITC and METC fault the "load flow theory" advocated by proponents which posits that because of the Midwest ISO's size, it is unlikely that many transmission facilities will provide benefits throughout the entire region. ITC and METC suggest that even if flows in a particular area of the Midwest ISO are not materially improved, "the addition of a new transmission element . . . provides regional benefits to the extent it helps facilitate a robust and competitive energy market and/or minimizes the potential for cascading system reliability failures."[53] ITC and METC acknowledge that cost/benefit discrepancies may emerge to the extent that transmission investments are not made at a

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[51] AMP-Ohio Post-Technical Conference Comments at 13.

[52] The MSATs filed limited reply comments to AMP-Ohio's post-technical conference comments. The MSATs state that AMP-Ohio's statement that most of the near-term projects built in Michigan and Wisconsin are "for the purpose of bringing the systems in those states into compliance with NERC standards." MSATs Post-Technical Conference Reply Comments at 2 (citing AMP-Ohio Post-Technical Conference Comments at 11). The MSATs maintain that existing and ongoing transmission investments are not at issue in this proceeding because the proposed cost allocation mechanism applies to new transmission projects only.

[53] ITC and METC Post-Technical Conference Comments at 15.

uniform rate, but argue that such discrepancies are likely to be short-term in nature and to levelize in time with changes in transmission usage and establishment of normal construction cycles.

55. Finally, ITC and METC ask that PUCO clarify comments made in the instant proceeding insofar as the positions voiced at the technical conference appear to be inconsistent with those recently expressed by PUCO in Docket No. EL05-121 where, according to ITC and METC, PUCO expressed support for the system-wide allocation of costs associated with both existing and new high-voltage transmission facilities rated 345 kV and above, which was proposed by American Electric Power Service Corporation and Allegheny Power for use within PJM.[54]

56. The Midwest TDUs argue that the Midwest ISO's proposal to use a regional rate to allocate 20 percent of these upgrades fails to reflect the true regional benefit of these facilities. The Midwest TDUs argue that the Commission has already found that all Midwest ISO loads and generators have access to and benefit from a Midwest ISO-wide regional generation market, arguing that it would be inconsistent to decide that the benefits of new extra-high-voltage transmission facilities are mostly local, but that the vast bulk of their cost should be assigned just to the sub-regions where the facilities happen to be located.[55] The Midwest TDUs opine that the Midwest ISO's proposed 20 percent postage stamp rate for new high-voltage lines would entrench the sub-regional cost allocation scheme, encouraging stakeholders to resist efforts to increase the regional share for new facilities in the future.

57. Great Northern argues that immediate implementation of a fully rolled-in, postage stamp rate for 345 kV and above facilities is just and reasonable, consistent with Commission policy, and more beneficial for the development of needed transmission additions. Great Northern states, however, that it can support a 20 percent postage stamp component for high-voltage transmission if it is a first step in a transition toward a single, system-wide rate.

58. Basin Electric argues that the Midwest ISO's studies indicate that it is just and reasonable to allocate 100 percent of the costs of all network upgrades on a system-wide basis, noting that the Midwest ISO's Security Constrained Economic Dispatch analyses demonstrate that in an LMP environment, customers throughout the entire Midwest ISO grid benefit from expansion projects.

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[54] *Id.* at 16.

[55] Midwest TDUs Post-Technical Conference Comments at 5 (citing *Wisconsin Electric Power Company*, 110 FERC ¶ 61,340, at P 21, *reh'g denied*, 111 FERC ¶ 61,361 (2005)).

59. Basin Electric argues that limiting the cost allocation proposal's application to only new customers and projects is unduly discriminatory. Basin Electric also asserts that zonal pricing for new Network Upgrades at 345 kV and above is unjust and unreasonable because it does not match cost responsibility with the benefits derived from new transmission facilities.

60. In their reply to post-technical conference comments, the Midwest ISO Transmission Owners maintain that the 20 percent postage stamp component is supported by substantial evidence. The Midwest ISO Transmission Owners also assert that a 100 percent postage stamp rate (or phase-in to such a rate) will not necessarily facilitate the construction of new facilities.

61. In its reply to post-technical conference comments, IPL argues that the Commission should not adopt a higher postage stamp percentage for cost sharing for high-voltage Baseline Reliability Projects. IPL also argues that the Midwest ISO's power flow analysis results are flawed, and should not be relied upon as a justification for a higher regional cost allocation.

4. **Commission Determination**

62. Based on the case record, as supplemented by the presentations at the technical conference and post-technical conference comments, we find that the proposed 20 percent system-wide postage stamp rate for baseline reliability facilities is just and reasonable. Under the FPA, if we find that the Midwest ISO has successfully supported the justness and reasonableness of its proposal, we must approve it even if there are other just and reasonable ways to allocate transmission costs. We note that the Commission has found that different approaches to cost allocations work for different regions of the country.[56] However, we direct the Midwest ISO to review the effectiveness of the postage stamp rate when it reviews its rate design for existing transmission facilities.

63. We disagree with protestors that application of a regional postage stamp rate would only result in "a round-robin exercise in cost shifting." While cost shifts are possible under a postage stamp rate, by focusing solely on these cost shifts, such

[56] *See Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, at P 25, 31, *order on reh'g*, 112 FERC ¶ 61,319 (2005) (permitting 33 percent of new Base Plan upgrades to be allocated on a regional basis); *New England Power Pool and ISO New England, Inc.*, 105 FERC ¶ 61,300, at P 3, 21-23 (2003), *order on reh'g*, 109 FERC ¶ 61,252 (2004) (allowing 100 percent of costs of upgrades rated at 115 kV and above that meet certain non-voltage criteria to be allocated on a regional basis).

arguments ignore the reliability benefits arising from high-voltage Baseline Reliability Projects and the regional nature of those reliability benefits. We also note that regional cost sharing through postage stamp rates has been approved for other RTOs.[57]

64. We also disagree with protestors that the information provided thus far is insufficient to permit a 20 percent postage stamp rate for baseline reliability projects. Indeed, it appears that the study results, if adjusted to assume that in-zone loads are served by centralized economic dispatch rather than just in-zone generation, could, under different circumstances, warrant a *higher* postage stamp rate.

65. However, while we understand the arguments advanced to promote greater regional cost sharing, these arguments ignore the practical challenges of implementing regional cost sharing for new facilities across such an expansive and diverse region, as was articulated by several panelists at the technical conference. Moreover, we view this 20 percent postage stamp rate as an initial step toward regional cost sharing in the Midwest ISO.

66. We will direct the Midwest ISO and the Midwest ISO Transmission Owners to study the effectiveness of the cost sharing methodology accepted here for new facilities in June 2007, when they will revisit base rates for existing facilities as part of the transition period.[58]

67. Regarding IPL's suggestion that a safe harbor proposal be reconsidered as part of the effectiveness study, we note that existing language in Attachment FF requires the Transmission Provider to calculate the cost allocation impacts in each pricing zone. The results will be reviewed for unintended consequences by the Transmission Provider and the Tariff Working Group and any such identified consequences shall be reported to the Planning Advisory Committee, and the OMS. Thus, existing tariff language requires a review of cost allocation impacts and identification of unintended consequences arising

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[57] *See supra* note 56.

[58] *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*, FERC Electric Tariff, First Revised Rate Schedule No. 1, Appendix C, § II.B.1.d at Original Sheet No. 124 and Technical Conference Transcript at 66-67.

from designations of cost assignment under the MTEP process.[59] We view this requirement as providing an on-going opportunity to identify whether additional protections should be considered.

68. We disagree that cost sharing of new facilities can not be implemented separately from pricing of existing facilities – existing facilities were planned under a different regime of cost responsibility. Moreover, we note that the Midwest ISO Transmission Owners will revisit base rates for existing facilities next year as part of the transition period.

69. Regarding Exelon's request, our acceptance herein of the Midwest ISO's filing is without prejudice to any findings or orders to be made by the Commission in any other cost allocation proceedings now pending or instituted in the future by or against the Midwest ISO or PJM. We will address such matters when they are before us.

70. Finally, the Commission also clarifies that the subject to refund condition referenced in paragraph 121 of the February 3 Order is the same condition imposed by paragraph 43.

D. Generator Interconnection Projects

1. The February 3 Order

71. Under the Midwest ISO's proposal in the October 7 Filing, an Interconnection Customer whose interconnection requires Network Upgrades may share the costs equally with Transmission Owners (*i.e.*, the Interconnection Customer and Transmission Owner would be responsible for 50 percent of the project costs each) 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 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.

[59] *See* Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Third Revised Volume No. 1, Attachment FF, § III at Substitute Original Sheet No. 1840.

72. The February 3 Order found that the cost allocation for the Midwest ISO's Generator Interconnection proposal to be just and reasonable and consistent with Commission policy, and accepted the proposal subject to limited modifications. The February 3 Order required that Attachment FF (Transmission Expansion Planning Protocol) 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. The February 3 Order also accepted the Midwest ISO's proposed modification to 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.

2. <u>Requests for Clarification and Rehearing</u>

73. ATC and ITC (jointly), and the Midwest TDUs request rehearing of the Commission's acceptance of the Midwest ISO's proposal to require generators to fund a minimum of 50 percent and as much of 100 percent of network upgrade costs associated with Generator Interconnection Projects without reimbursements.

74. ATC and ITC argue that the Midwest ISO should be required to provide full reimbursement when generators fund network upgrades. ATC and ITC argue that without reimbursement, generators will be discouraged from siting within the Midwest ISO region. ATC and ITC assert that the February 3 Order fails to consider that the Midwest ISO's proposal will chill investment in transmission infrastructure associated with generator interconnections. ATC and ITC urge the Commission to recognize the "regional value and attributes of transmission (*e.g.*, enhanced reliability, reduced congestion, role as market enabler, etc.), rather than viewing transmission investments narrowly as a means to accommodate new interconnections."[60]

75. ATC and ITC also argue that the Commission erred in finding that the Midwest ISO has met the evidentiary burden required to deviate from the Commission's full reimbursement policy. ATC and ITC maintain that the February 3 Order's reliance on acceptance of similar cost allocation methodologies filed by other RTOs, particularly PJM is flawed because there are factual distinctions between the regions that make comparison irrelevant. ATC and ITC argue that "mere reference to PJM" is insufficient to support the Midwest ISO's proposal and that its "concerns warrant comprehensive analysis by the Commission in this proceeding."[61]

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[60] ATC and ITC Request for Rehearing at 7.

[61] *Id.* at 6.

76. In the alternative, ATC and ITC seek clarification that the new methodology does not apply to interconnection agreements that were filed before the February 3 Order's effective date, even if such agreements are subject to a refiling requirement imposed by the Commission. ATC and ITC state that the February 3 Order noted Midwest ISO's preexisting cost allocation methodology (which provides for 100 percent reimbursement) applies to existing agreements filed prior to February 5, 2006, but it is not clear which methodology applies to agreements that were filed prior to February 5, 2006 but that are subject a refiling requirement imposed by the Commission.

77. Similarly, the Midwest TDUs argue that the Commission erred in accepting the Midwest ISO's proposal for 50 percent direct assignment for Network Upgrades associated with generator interconnection, maintaining that split has "the veneer of Solomon-like evenhandedness," but comes at a cost.[62] The Midwest TDUs argue that the acceptance of the 50 percent direct assignment proposal is unjust, unreasonable, and unduly discriminatory, based on its departure from the 100 percent crediting espoused in Order No. 2003, the transmission siting policies set forth in the Energy Policy Act of 2005, and the Midwest ISO's prior generator interconnection procedures, not to mention the poor track record of participant funding in getting needed transmission built.

78. The Midwest TDUs argue that the February 3 Order fails to address the effects of the Midwest ISO's 50 percent direct assignment proposal in the specific context of the Midwest ISO. The Midwest TDUs argues that the February 3 Order "appears to start from the presumption that Order No. 2003 authorizes virtually *any* participant funding proposal for Network Upgrades associated with generator interconnection, so long as the proposal is submitted by an independent transmission provider,"[63] but the inquiry cannot end there. The Midwest TDUs argue that "[p]articipant funding is not inherently just and reasonable," and that the direct assignment proposal is both unduly discriminatory and unsupported.[64] The Midwest TDUs maintain that the Midwest ISO's proposal ignores the broad benefits that new baseload and renewable units can provide to all loads, noting that under the Midwest ISO's generator interconnection requirements, "when a TDU constructs a new generating facility to serve its own loads, the Network Upgrades needed to qualify for [Network Resource Interconnection Service] may have little or nothing to do with facilitating specific deliverability from that generator to the TDU's loads, or lowering the LMPs paid by the TDU."[65] The Midwest TDUs argue that the effect of the

[62] Midwest TDUs Request for Rehearing at 14.

[63] *Id.* at 6-7 (emphasis in the original).

[64] *Id.* at 7.

[65] *Id.* at 8.

Midwest ISO's proposal is to shift to individual customers the costs for the failure of transmission owners and the Midwest ISO to plan for the needs of network and native load customers, and this burden will fall disproportionately on TDUs.

79. The Midwest TDUs assert that the Midwest ISO's cost allocation policy will impede transmission and fuel-diverse generation investment mandated by EPAct 2005 and discourage construction of the next generation of baseload and renewable generation. The Midwest TDUs maintain that experience with participant funding in other regions, such as PJM, has not demonstrated that it is effective at getting needed transmission and generation built.

3. Commission Determination

80. We deny rehearing on this issue. Order No. 2003 allows for deviations from the 100 percent reimbursement regime for generation interconnection customers when the Commission makes a finding that there is an "innovative cost recovery method[]."[66] As discussed in the February 3 Order, and elaborated upon below, the Commission has found sufficient evidence in the public record to support the finding that the proposed generator interconnection cost allocation methodology is an "innovative cost recovery method," and, therefore, generator interconnection customers do not have to be 100 percent reimbursed through credits for their investments in network upgrades associated with Generator Interconnection Projects.

81. The Commission finds unsupported the protestors' assertions that introducing a higher level of cost responsibility to generator interconnection customers will chill transmission expansion. The Commission finds that there is no demonstrated threat to investment in transmission infrastructure associated with Generator Interconnection Projects if generator interconnection customers are required to pay some of the network upgrade costs associated with those projects while being eligible to receive valuable transmission rights in return. Moreover, given that valuable FTRs can be granted in exchange for financing transmission upgrades, the record does not show that, absent 100 percent reimbursement through credits, generators will be discouraged from siting within

[66] *Standardization of Generator Interconnection Agreements and Procedures*, 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, at P 691 (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), *appeal docketed sub nom. National Association of Regulatory Utility Commissioners, et al. v. FERC*, Nos. 04-1148, *et al.* (D.C. Cir. filed Apr. 29, 2004 and later); February 3 Order at P 62; July 8, 2004 Order at P 39.

the Midwest ISO region. The Commission reaffirms its desire to see a more robust and reliable electric infrastructure both regionally and nationally, and finds that the allocation of some of the network upgrade costs associated with generator interconnection to the generator within regions controlled by an RTO or ISO has not been shown to be a threat to this objective.

82. As a general matter, the Commission finds unsupported the Midwest TDUs' assertion that new baseload and renewable generation units will not be built solely because the generator interconnection customers are being required to pay for some of the network upgrade costs associated with those projects. In most cases, we do not believe that such costs have been the determining parameter in deciding whether or not a particular project is going to be built. For the majority of projects requiring generator interconnection, the network upgrade costs associated with generator interconnection are likely to be only a small percentage of the overall project costs and, thus, not determinative of whether the project will be built.

83. That said, intervenors have asserted that the Midwest ISO's proposal presents a disadvantage to smaller generation projects that are located remotely from the transmission grid or aggregate load.[67] Therefore, while we deny rehearing, we direct the Midwest ISO to file, within 12 months from the date of this order, an informational report on its experience under its innovative cost recovery methodology.[68] The Midwest ISO shall include in the report, among other things, a listing of interconnection requests for generation projects received during the period, the projected cost of network upgrades associated with each project, the projected total generator interconnection costs for each project, the projected total cost of each project, the planned MW size of each project, the type of interconnection service requested for each project, and whether each project is remotely located from the transmission grid or aggregate load. Based on the report, the Midwest ISO shall also provide, within 12 months from the date of this order, either: (a) a detailed and supported explanation as to how smaller-scale generation projects remotely located from the transmission grid or aggregate load are not disproportionately affected by the cost allocation methodology, such that no revision is necessary to that methodology; or (b) proposed revisions to the cost allocation methodology that correct any disproportionate impact on remotely located, smaller-scale generation.

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[67] We also observe that smaller-scale, remotely located generation facilities are likely to include renewable resources.

[68] This Midwest ISO cost recovery methodology does not affect the allocation of costs for radial transmission facilities, which will continue to be directly assigned to the interconnection customer.

84. We also deny rehearing as to protestors' concerns about the Commission's reliance on the comparison to PJM's cost allocation policy in the February 3 Order. The Commission believes that these arguments miss the point. In the February 3 Order, the Commission did not apply PJM's generator interconnection cost allocation model to the Midwest ISO but rather, the Commission adopted a methodology, as proposed by the Midwest ISO, to allocate costs for Generator Interconnection Projects that conforms to the goal of assigning costs to those that both cause and benefit from those projects. Moreover, we note that ATC and ITC are correct in stating that there are factual distinctions between the Midwest ISO and PJM that make a direct comparison irrelevant. However, the Commission's intent in the February 3 Order was not to imply that the two regions are exactly alike and should therefore have identical generator interconnection cost allocation treatments. Rather, the Commission acknowledged that the Midwest ISO and PJM have articulated innovative cost-recovery methods that are similar in that they deviate from the default cost recovery regime of Order No. 2003 by using participant funding.

85. Finally, regarding ATC and ITC's request for clarification that the new methodology does not apply to interconnection agreements that were filed before the February 2 Order's effective date, even if such agreements are subject to a re-filing requirement imposed by the Commission, we have recently spoken on this question in our order on a Midwest ISO proposal in Docket No. ER06-1439-000,[69] and refer the parties to that order.

E. <u>Excluded Projects List</u>

1. <u>The February 3 Order</u>

86. As part of the October 7 Filing, the Midwest ISO proposed Attachment FF-1, otherwise known as the Excluded Projects List, which 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 (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 planned. The Midwest ISO stated 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.

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[69] *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,128 (2006).

87. The February 3 Order accepted the Midwest ISO's proposal with minor modification, finding that the proposed Excluded Projects List was 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. The February 3 Order noted the concerns raised by the intervenors which highlight the effect of the proposal on Wisconsin's projects, but did not find that the Excluded Projects List places an undue disadvantage on any one party. The February 3 Order concluded that the 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. In addition, the February 3 Order directed the Midwest ISO to make minor corrections to the 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.

2. <u>Requests for Clarification and Rehearing</u>

88. The Midwest Coalition argues that the Commission should have rejected the Midwest ISO's proposed Excluded Projects List. First, the Midwest Coalition argues that the Commission erred in failing to recognize that the Excluded Projects List is unduly discriminatory. The Midwest Coalition argues that the Commission erred in finding that all stakeholder were on equal footing because ATC's unique "extensive, annual planning process with a ten-year planning horizon and a mid-cycle update" put a relatively large number of its planned projects in MTEP 05.[70] The Midwest Coalition argues that the record demonstrates that the Excluded Projects List was "designed to . . . eliminate the maximum number of [ATC] projects from cost-sharing consideration,"[71] arguing that because a majority of stakeholders and the Midwest ISO intended for the planning criteria not to apply to projects deemed planned, "the Exclude[d Projects] List criteria were purposely crafted to ensure that [ATC's] projects would be excluded from cost-sharing in an unduly discriminatory fashion – as evidenced by the fact that 52% of the projects (55% of the dollar value) on the Exclude[d Projects] List belong to [ATC], which comprises only 10% of the transmission assets in the Midwest ISO."[72]

89. Moreover, the Midwest Coalition argues that the February 3 Order fails to address, or even acknowledge, the argument that the Excluded Projects List excludes a substantial number of ATC's projects, while permitting projects of "nearly of the same age and

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[70] Midwest Coalition Request for Rehearing at 3.

[71] *Id.* at 2.

[72] *Id.* at 4-5.

vintage" in neighboring states to be eligible for cost sharing.[73] The Midwest Coalition notes that neighboring states and different regions of Wisconsin are on the cusp of significant transmission expansion, but all of their respective costs would be eligible for consideration under the Midwest ISO's proposal.

90. The Midwest Coalition also argues that basing the Excluded Projects List on projects designated as "planned" in the MTEP 05 creates a perverse incentive by penalizing entities such as ATC that provided current and long-range transmission expansion plans. The Midwest Coalition argues that the Commission "entirely failed to consider an important aspect of the problem," and therefore, erred.

91. In the alternative, the Midwest Coalition requests that the Commission clarify that the load-serving market participant members of ATC would receive the financial transmission rights associated with the full amount of capacity added to the Midwest ISO's system through these upgrades, and not solely allocated to ATC.

92. The PSCW similarly objects to the Commission's acceptance of the Excluded Projects List as unjust, unreasonable, unduly discriminatory and preferential, and therefore impermissible under the standards of sections 205(b) and 206(a) of the FPA. The PSCW maintains that the Excluded Projects List would have a disproportionate impact on Wisconsin electricity consumers. The PSCW asserts that statutory guidelines and the Commission's precedent mandates "legally-required (and economically rational) cost-causation principles" be applied to the Midwest ISO's proposal, arguing that the Excluded Projects List was "conceived and agreed upon with no regard for cost causation principles," and uses arbitrary cost allocations.[74] The PSCW further argues that the Midwest ISO's reliance on Transmission Owners' statement of what was "needed" or "preferred" is arbitrary. The PSCW maintains that to allocate the cost of the excluded transmission upgrades without regard for their "regional nature" is unfair, unjust, and unduly discriminatory.

93. The PSCW maintains that the fairest and most reasonable alternative to the Excluded Projects List would be to adopt the proposal of the Midwest Coalition, that would require the Midwest ISO to consider for cost sharing all projects with an in-service date after October 7, 2005, the proposal's filing date. As an additional alternative, the PSCW asks the Commission to consider adopting the proposal it proposed in its protest: (1) that projects with expected in-service dates before January 1, 2007 are ineligible for cost sharing; (2) transmission projects are eligible for cost sharing according to the formula set forth in the October 7 Filing if they are (a) classified as a "Baseline

[73] *Id.* at 18.

[74] PSCW Request for Rehearing at 9, 11.

Reliability Project," (b) included in the most current MTEP approved by the Midwest ISO Board of Directors, and (c) in service on January 1, 2007 or later; and (3) transmission projects are eligible for cost sharing according to an existing applicable formula if they are (a) Regionally Beneficial Projects (b) included in the most current MTEP approved by the Midwest ISO Board of Directors, and (c) in service on January 1, 2007 or later, with the proviso that if no applicable formula exists for these sort of projects by January 1, 2007, then such projects remain eligible for cost sharing according to the formula ultimately adopted.[75]

3. <u>Commission Determination</u>

94. We deny requests for rehearing of this issue. In the February 3 Order, the Commission found that the Excluded Projects List is a reasonable compromise position from which the Midwest ISO may start to apply regional cost sharing of transmission expansion projects. We are not persuaded that we erred.

95. While the Midwest Coalition disagrees with the use of the phrase "compromise position," its request for rehearing does not change our findings in the February 3 Order with regard to the appropriateness of the RECB Task Force process.[76]

96. The Midwest Coalition argues that the Excluded Projects List is unduly discriminatory because, in planning the method for regional cost sharing, the Midwest ISO and its stakeholders knew of ATC's planned process beforehand and designed the Excluded Projects List so as to prevent regional cost sharing of those projects. We note, however, that when the MTEP 05 (and all MTEPs prior to 2005), was being negotiated and planned, parties had no way of foreseeing how the RECB Task Force negotiations would come out on the cost allocation mechanism. Parties moved forward with those projects without any assurance that such projects would be candidates for regional cost sharing. Nonetheless, certain of those parties, critics of the Midwest ISO's proposal for leaving previously planned projects untouched by the proposed cost sharing, are primarily concerned with their local previously planned project not experiencing the benefits of the proposed cost sharing.

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[75] *Id.* at 5.

[76] *See supra* section III.B.

97. In particular, as noted in the October 7 Filing,[77] the February 3 Order,[78] and even requests for rehearing,[79] a primary concern for participants is the Arrowhead-Weston project, a 220-mile 345 kV electric transmission line from the Weston Power Plant near Wausau, Wisconsin to the Arrowhead Substation near Duluth, Minnesota which was approved by the PSCW in October 2001 and re-approved in December 2003. This Arrowhead-Weston project would benefit the most from cost sharing were we to revise the parameters of the Excluded Projects List. Seeing as this project is already under construction,[80] it is perfectly reasonable for the Midwest ISO to set forth a proposal that excludes this project from cost sharing. The cost responsibility for this, and comparable projects has already been determined; such projects moved forward based on that existing allocation.

98. We note that the Midwest ISO's Excluded Projects List is not unduly discriminatory because ATC will benefit from the cost sharing proposal in the future. For example, four projects by ATC, amounting to over $350 million, should qualify for regional and/or sub-regional cost sharing under the Midwest ISO cost allocation policy. However, unlike the Arrowhead-Weston project, these projects are long-term proposed projects with expected in-service dates of 2010, 2011, and 2014.[81] Moreover, we note that ATC is not the only Transmission Owner that is affected by the Excluded Projects List. Ameren and Ameren IP projects amounting to $141 million are excluded, and ITC projects amounting to $102 million are also excluded. ATC projects on the Excluded Projects List, other than those associated with the Arrowhead-Weston project, amount to $273 million ($693 million - $420 million).

99. Moreover, we reject the Midwest Coalition's argument that the February 3 Order failed to consider the argument that the Excluded Projects List is discriminatory because

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[77] October 7 Filing at 12.

[78] February 3 Order at P 111 and n.58.

[79] Midwest Coalition Request for Rehearing at 3, 6.

[80] *See* Arrowhead-Weston Transmission Project, *Estimated Construction Schedule*, at http://www.arrowhead-weston.com/interface/flash/code.html. Click on a region to find out about progress and project status.

[81] *See Midwest ISO Transmission Expansion Plan 2005 – Appendix A, Form 1 of 2 (For Reporting Lines and Transformers In the Baseline Reliability Study (MTEP 05) 2004 through 2009 Plus some "Long-term" facilities beyond 2009), at* http://www.midwestmarket.org (see projects with Branch ID numbers: 1372, 486, 1266, and 1267).

of differential treatment of projects in comparable stages of development. As stated in the February 3 Order, reliance on the designation of "planned" or "proposed" but in advanced stages of planning was in error. As noted in the February 3 Order, the Midwest ISO afforded Transmission Owners the opportunity to rebut the Midwest ISO's determination that specific projects were not planned. We do not find the Transmission Owners' designation of projects as planned or proposed to be discriminatory given that, as discussed above and in the February 3 Order, at the time of the designation, parties had no way of foreseeing how the RECB Task Force negotiations would come out on the cost allocation mechanism.

100. We do not believe that the Midwest ISO's reliance on Transmission Owners' statement of what was "needed" or "preferred" is arbitrary. We further note that the proposal's reliance on Transmission Owners' assessment passed several procedural hurdles to end up before the Commission, the RECB Task Force, the Advisory Committee (which, we note, has market-sector-weighted voting), and Board of Directors.

101. In addition, we note that the alternative proposal – to require the Midwest ISO to consider for cost sharing all projects with an in-service date after the date of filing – is subject to many of the same "arbitrary" criticisms to which the Midwest ISO's proposal has been subject. And, as indicated previously, the Commission has approved different approaches towards cost allocations for different regions.[82]

102. Finally, we will deny the request for clarification of the Midwest Coalition that the load-serving market participant members of ATC would receive the financial transmission rights associated with the full amount of capacity added to the Midwest ISO's system through these upgrades, and not solely allocated to ATC. We find this issue is beyond the scope of the instant proceeding. This proceeding involves changes to the TEMT. The Midwest Coalition has not identified specific TEMT language that precludes the outcome it requests. If changes to the TEMT here result in vagueness in existing governance documents of other public utilities, that issue is best addressed as part of those entities' governance process.

F. Compliance Filing

1. February 3 Order

103. In the February 3 Order, the Commission required several revisions to the Midwest ISO's proposed tariff language in Attachment FF to be made in a subsequent compliance filing. First, as to Generator Interconnection Projects, the February 3 Order required the Midwest ISO to revise Attachment FF to reference section 46 of the TEMT,

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[82] *See supra* note 56.

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.[83] The February 3 Order also accepted the proposal of the Midwest ISO, as set forth in its November 14 answer to comments and protests, to further modify Attachment FF to afford cost-sharing when a Generator Interconnection Project defers or displaces a Baseline Reliability Project similar to the cost-sharing permitted for Regionally Beneficial Projects that defer or displace a Baseline Reliability Project.[84]

104. Second, as to the Excluded Projects List, the February 3 Order directed the Midwest ISO to revise the language in section III.A.2.b. on Sheet No. 1841 to reflect that the Excluded Projects List is based on planned projects with some additions of projects that the Midwest ISO has determined to be in the advanced stages of planning.[85]

105. Third, as to the Expansion Planning Process, the February 3 Order accepted the proposal of the Midwest ISO, as set forth in its November 14 answer to comments and protests, to revise Attachment FF consistent with the OMS's concerns regarding the October 7 Filing's proposed language. The Midwest ISO agreed to replace "MTEP" with "Base Case"; delete " all applicable criteria" in favor of references to the commonly applicable national Electric Reliability Organization standards as the basis for determining projects that qualify for cost sharing as Baseline Reliability Projects.[86] In its November 14 answer, the Midwest ISO also agreed to include language in Attachment FF to address the OMS's concern that when a Market Participant is also a vertically integrated Transmission Owner, it will act in a non-discriminatory manner when dealing with affiliated generators with respect to the Option to Fund in section III.A.2.a of Attachment FF.[87]

106. Finally, as to Regionally Beneficial Projects, the February 3 Order required the Midwest ISO to file its cost allocation of Regionally Beneficial Projects on or before June 2006.[88]

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[83] February 3 Order at P 65.

[84] *Id.* P 72.

[85] *Id.* P 113.

[86] *Id.* P 120-21.

[87] Midwest ISO November 14 Answer at 11.

[88] February 3 Order at P 90.

2. April 4 and April 28 Compliance Filings

107. On April 4, 2006, as corrected on April 28, 2006, the Midwest ISO filed a compliance filing revising its tariff sheets pursuant to the February 3 Order. The Midwest ISO also notes that it will correct all other relevant filing sheets to reflect the effective date of February 5, 2006, in a subsequent clean-up filing to be made within 60 days of the compliance filing.[89] On May 18, 2006, the Midwest ISO filed a motion for an extension of time to submit its cost allocation methodology for Regionally Beneficial Projects.

3. Commission Determination

108. The Commission accepts for filing the revisions submitted by the Midwest ISO in its April 4 and April 28 filings, with the effective date of February 5, 2006. With respect to the Midwest ISO's cost allocation methodology for Regionally Beneficial Projects, the Commission granted the Midwest ISO's request for an extension of the compliance deadline to and including November 1, 2006.[90]

The Commission orders:

(A) The requests for rehearing and clarification of the issues discussed above are hereby rejected, as discussed in the body of this order.

(B) The Midwest ISO's cost allocation proposal for Baseline Reliability Projects rated at 345 kV and above is hereby accepted, as discussed in the body of this order.

(C) The Midwest ISO is directed to file, within 12 months from the date of this order, an informational report on its experience under its innovative cost recovery methodology. The Midwest ISO shall include in the report, among other things, a listing of interconnection requests for generation projects received during the period, the projected cost of network upgrades associated with each project, the projected total generator interconnection costs for each project, the projected total cost of each project, the planned MW size of each project, the type of interconnection service requested for each project, and whether each project is remotely located from the transmission grid or aggregate load.

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[89] Midwest ISO April 4 Transmittal Letter at 1, n.2.

[90] *Midwest Independent Transmission System Operator, Inc.*, Notice of Extension of Time, Docket No. ER06-18-000 (Aug. 17, 2006).

(D) Based on the report required in Ordering Paragraph (C), the Midwest ISO is directed to provide, within 12 months from the date of this order, either: (a) a detailed and supported explanation as to how smaller-scale generation projects remotely located from the transmission grid or aggregate load are not disproportionately affected by the cost allocation methodology, such that no revision is necessary to that methodology; or (b) proposed revisions to the cost allocation methodology that correct any disproportionate impact on remotely located, smaller-scale generation.

(E) The Midwest ISO's April 4, 2006 compliance filing, as corrected on April 28, 2006, is accepted as compliant with the February 3, 2006 order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.