

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Transmission Owners of the Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-447-000 ER05-447-001 ER05-447-002 ER05-447-003
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ORDER CONDITIONALLY ACCEPTING PROPOSED
TARIFF SHEETS FOR FILING

(Issued March 24, 2005)

1. In this order, the Commission conditionally accepts for filing the Transmission Owners of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO TOs)¹ proposed schedule 23 to the Midwest ISO's Transmission and Energy Markets

¹ The Midwest ISO TOs for purposes of this filing consist of: 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 Company d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; 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 Company, PSI Energy, Inc., and Union Light Heat & Power Company); City of Columbia Water and Light Department (Columbia, MO); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; International Transmission Company; LG&E Energy LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Company; 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 Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

Tariff (TEMT or Midwest ISO Tariff), to be effective April 1, 2005. Proposed schedule 23 provides for the Midwest ISO TOs' recovery of Midwest ISO schedule 10² and schedule 17³ costs from customers under specified grandfathered agreements (GFAs) carved-out of the Midwest ISO energy markets. This order benefits customers by taking measures necessary to ensure that GFA parties and other market participants are treated appropriately upon the start of the Midwest ISO's energy markets on April 1, 2005.

I. Background

2. The Midwest ISO proposed to implement the new TEMT in a filing dated March 31, 2004. When implemented, the TEMT will allow the Midwest ISO to initiate so-called Day 2 operations in its 15-state region, including day-ahead and real-time energy markets and a Financial Transmission Rights (FTR) market.

3. As a threshold issue, the Midwest ISO stated in that filing that it would be unable to operate its proposed energy markets without integrating an estimated 300 GFAs that were effective in the Midwest ISO region. It estimated that up to 40,000 megawatts of transmission service – about 40 percent of total load in the region – was likely to be associated with the GFAs.⁴ The Midwest ISO argued that allowing holders of GFAs scheduling rights similar to their current practice would require a physical reservation, or carve-out, of transmission capacity in the day-ahead energy market and until the scheduling deadline prior to real-time dispatch. It stated that this “cannot be accomplished without negatively impacting the Midwest ISO’s ability to reliably operate the Energy Markets and without placing excessive financial burden on other Market Participants.”⁵

² Schedule 10 (ISO Cost Recovery Adder) of the Midwest ISO Tariff provides for recovery of the Midwest ISO’s costs associated with investment and expenses to run the ISO. The ISO Cost Recovery Adder is based on the budgeted expenses to be recovered that month divided by the MWh of transmission service expected to be provided under the Midwest ISO Tariff during the same period, subject to a true-up.

³ Schedule 17 (Energy Market Service) of the Midwest ISO Tariff provides for a deferral of start-up costs related to the establishment of energy markets and recovery of such deferred costs and the ongoing costs of providing Energy Markets Service once the markets are operational.

⁴ The Midwest ISO’s analysis assumed a peak capacity of 97,000 megawatts.

⁵ Midwest ISO Transmittal Letter at 9 (Mar. 31, 2004).

4. In response, the Commission identified a need for further information about the GFAs and a desire to better understand how the GFAs and the proposed energy markets would affect one another.⁶ In the Procedural Order, the Commission initiated a three-step investigation⁷ of the GFAs under section 206 of the Federal Power Act (FPA)⁸ “to decide whether GFA operations can be coordinated with energy market operations, whether and to what extent the [Transmission Owners] should bear the costs of taking service to fulfill the existing contracts and whether and to what extent the GFAs should be modified.”⁹ The Commission also directed the Midwest ISO to move the start of the energy markets to March 1, 2005.¹⁰

5. Following the GFA investigation, the Commission approved the TEMT in two orders. On August 6, 2004, the Commission accepted and suspended the proposed TEMT and permitted the bulk of it to become effective March 1, 2005, subject to further

⁶ *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 (2004) (Procedural Order), *reh’g pending*.

⁷ The Commission ordered GFA parties to file interpretations of their contracts in Step 1 of the investigation, and established trial-type hearing procedures before administrative law judges – Step 2 of the investigation – to elicit the GFA information from those parties who were not able to agree in Step 1. The Commission also offered GFA holders an opportunity to settle their GFAs by voluntarily accepting the GFA treatment that the Midwest ISO proposed in the TEMT. Step 2 of the investigation concluded on July 28, 2004, with the presiding judges’ oral presentation to the Commission of the results of the hearing and the issuance of their written Findings of Fact. *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 63,013 (2004).

⁸ 18 U.S.C. § 824e (2000).

⁹ Procedural Order at P 67.

¹⁰ *Id.* at P 94. On January 27, 2005, after the Midwest ISO held several conferences with stakeholders, it agreed to a 30-day delay of the market start, to April 1, 2005, to allow for further testing, training and refining of market participants’ internal systems.

orders on subjects including the GFAs.¹¹ On September 15, 2004, in Step 3 of the GFA investigation, the Commission addressed the results of its investigation of the GFAs and how they should be treated in the Midwest ISO's energy markets.¹² The GFA Order found that the GFAs' impact on the energy markets would be much less than the Midwest ISO had estimated,¹³ and that the Midwest ISO could reliably operate its energy markets with some capacity carved out.¹⁴ Thus, the GFA Order, among other things, divided the GFAs into several categories, with differing consequences for their treatment, required the Midwest ISO to carve some of the GFAs out of its markets, and addressed the applicability of charges under schedule 16 and schedule 17 to transactions taking place under GFAs.

6. As relevant here, the Commission directed the Midwest ISO to carve-out those GFAs from the Midwest ISO energy markets, representing transmission service provided under: (1) those GFAs for which the parties have explicitly provided that unilateral modification is subject to the *Mobile-Sierra*¹⁵ "public interest" standard of review; (2) those GFAs that are silent with respect to the standard of review; and (3) those GFAs

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004), *order on reh'g*, 109 FERC ¶ 61,157 (2004), *reh'g pending*. The March 1, 2005 effective date was subsequently extended to April 1, 2005. *See Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169 (2005) (February 17 Order).

¹² *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (GFA Order), *reh'g pending*.

¹³ *Id.* at P 130 (The Commission found that, given the number of GFAs for which the parties agreed to settle on one of the Midwest ISO's proposed treatment options under the TEMT, the proper treatment of GFAs representing only 15,378 MW, or only 14.3 percent of the Midwest ISO's peak capacity, remained in dispute. The Midwest ISO's March 31 Filing, in contrast, originally sought modification of contracts representing more than 2½ times that much capacity.").

¹⁴ *Id.* at P 100.

¹⁵ *See United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pacific Power Company*, 350 U.S. 348 (1956) (*Sierra*).

providing for transmission service by an entity that is not a public utility.¹⁶ While carving out these GFAs from the energy markets, the Commission imposed on the Transmission Owner or Independent Transmission Company (ITC) Participant that is taking service under the Midwest ISO Tariff to meet its transmission service obligations the responsibility to pay schedule 17 charges.¹⁷ The Commission, however, did not adopt a tariff mechanism to directly charge GFA customers the schedule 17 charges in the GFA Order, as the Midwest ISO TOs had urged. The Commission stated that a concrete proposal identifying the GFA party that should be responsible for such costs or addressing whether or not the contracts already address responsibility for such costs had not been put forth, and, thus, the proposal was not ripe for consideration.

II. Midwest ISO TOs' Proposal

A. January 13 Filing

7. On January 13, 2005, the Midwest ISO TOs filed proposed schedule 23, which allows for the recovery from GFA customers of schedule 10 and 17 charges that are assessed to Transmission Owners providing service pursuant to carved-out GFAs¹⁸ (January 13 Filing).¹⁹ The Midwest ISO TOs explain that their schedule 23 submittal is

¹⁶ GFA Order at P 4, 141-46. The Commission found that it was just and reasonable to integrate into the energy markets approximately 50 GFAs that did not settle, and which is subject to the “just and reasonable” standard of review. *Id.* at P 137.

¹⁷ *Id.* at P 6.

¹⁸ Attachment 1 to schedule 23 includes a list of the carved-out GFAs to which schedule 23 applies. The Midwest ISO TOs explain that this list does not include all of the GFAs that the Commission listed as being carved out in Appendix B of the GFA Order. Rather, they state, the list includes carved-out GFAs designated by the Transmission Owners for inclusion in schedule 23. The Midwest ISO TOs did not include carved-out GFAs for which cost recovery is not necessary, “such as, for example, where the Transmission Owner and its customers have reached an agreement on the payment of schedule 10 and 17 costs.” January 13 Filing at 5.

¹⁹ The Midwest ISO TOs state that they coordinated their January 13 Filing with the Midwest ISO (and made changes requested by the Midwest ISO) because the filing involves a change to the Midwest ISO Tariff.

in response to the Commission's GFA Order²⁰ and the Commission's March 31, 2004 order²¹ allowing them to file such a provision, and Opinion Nos. 453 and 453-A.²²

8. Under schedule 23, carved-out GFA customers will pay the Midwest ISO, dollar for dollar, the costs assessed to the Transmission Owners by the Midwest ISO; each month, the Midwest ISO will bill carved-out GFA customers "an amount equal to the amount absent schedule 23 it would have billed the Transmission Owner under Section 7 of the Tariff for schedule 10 and 17 charges associated with Carved-Out GFAs."²³ In the event a carved-out GFA customer does not fulfill its payment obligation, the Midwest ISO and/or the affected Transmission Owner can pursue action in the appropriate forum.

9. Further, if the carved-out GFA customer is not a Market Participant or Transmission Customer under the TEMT, the Midwest ISO will file either an executed or unexecuted service agreement to permit the assessment of charges according to schedule 23. If the Midwest ISO receives duplicative payments of schedule 10 and 17 charges from both the Transmission Owner and the carved-out GFA customer, the Midwest ISO must remit the GFA Customer's payment to the appropriate Transmission Owner.²⁴

²⁰ GFA Order at P 301.

²¹ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,337 at P 18 (2004) (March 31 Order) ("The Midwest ISO TOs may make a filing with the Commission that proposes...to recover Schedule 16 and 17 costs from their customers as new services.").

²² *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033 at 61,170-71 (2001), *order on reh'g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192 (2003), *reh'g denied*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, No. 02-1121, *et al.* (D.C. Cir. 2004). There, the Commission held that Transmission Owners that take service under the Midwest ISO Tariff for GFA transactions are required to pay schedule 10 charges for service they take for delivery to load located within the Midwest ISO footprint.

²³ Schedule 23, section 2.2. The Midwest ISO will not bill the Transmission Owners for such charges, although the Transmission Owners will be responsible for these charges if the carved-out GFA customer fails to pay.

²⁴ *Id.* at section 2.4.

10. Schedule 23 also provides that schedule 10 and 17 costs shall not be recovered under schedule 23 if the costs are otherwise recovered from the carved-out GFA customer.²⁵ Thus, schedule 23 provides customers with the ability to obtain information from the Transmission Owner to assure that no double payment occurs. Finally, if a carved-out GFA customer disputes the load data provided by the Transmission Owner to the Transmission Provider, the carved-out GFA customer and the Transmission Owner will work to resolve the dispute and will handle any type of reconciliation between the two parties.

11. The Midwest ISO TOs argue that the schedule 10 and 17 charges to be recovered under schedule 23 involve new services the costs of which, under Commission precedent, they should be allowed to recover from the GFA customers. They explain that these new services and charges arise from the creation of the Midwest ISO and its costs of functioning as the regional transmission provider, functioning as the regional security coordinator, and operating a regional energy market and centrally dispatching generating units throughout the region.²⁶

12. In support, the Midwest ISO TOs assert that in Opinion Nos. 463²⁷ and 477,²⁸ the Commission approved Pacific Gas and Electric Company's (PG&E) recovery of California Independent System Operator Corporation (CAISO) costs from customers under contracts that pre-dated the formation of the CAISO based on a finding that the costs are associated with new services not already provided in the contracts.²⁹ They state

²⁵ *Id.* at section 2.5.

²⁶ January 13 Filing at 5.

²⁷ *California Independent Transmission System Operator, Inc.*, Opinion No. 463, 103 FERC ¶ 61,114 (2003), *order on reh'g and clarification*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004).

²⁸ *Pacific Gas and Electric Company*, Opinion No. 477, 109 FERC ¶ 61,093 (2004), *reh'g pending*.

²⁹ The Midwest ISO TOs also point to a December 17, 2004 order, where the Commission permitted Xcel Energy affiliate Southwestern Public Service Company (Southwestern) to recover Southwest Power Pool, Inc. (SPP) administrative fees from a GFA customer. They assert that the fees Southwestern sought to recover are the same as the schedule 10 costs to be recovered through schedule 23. *Xcel Energy Services, Inc.*, 109 FERC ¶ 61,284 (2004).

that the costs at issue in both cases were CAISO-created costs arising from the CAISO's obligation to administer the CAISO-controlled grid. In Opinion No. 463, the Commission approved the recovery from GFA customers of costs associated with the CAISO's Grid Management Charge, including the costs of market operations.³⁰ In Opinion No. 477, the Commission allowed the recovery from GFA customers of additional CAISO costs incurred in providing those customers access to the CAISO grid.³¹ The Midwest ISO TOs state that, like the costs at issue in Opinion Nos. 463 and 477, the Midwest ISO costs that they seek to pass through to GFA customers are costs associated with administering the Midwest ISO-controlled grid.

13. The Midwest ISO TOs state that, in both Opinion Nos. 463 and 477, the Commission found that, given the formation of the CAISO, the costs at issue related to a new service, (*i.e.*, "one that the utility has not obligated itself to provide under an existing contract.")³² Here, they argue that there have been fundamental changes in the Midwest due to the formation of the Midwest ISO and that the services being provided by the Midwest ISO are fundamentally different from the services provided by the Transmission Owners under GFAs, similar to the situation the Commission found to exist with respect to the costs at issue in Opinion Nos. 463 and 477.

14. In addition, the Midwest ISO TOs argue that, as was the case with the costs that the Commission allowed PG&E to pass through to GFA customers in Opinion Nos. 463 and 477, the costs they propose to pass through in schedule 23 are not costs that are recovered elsewhere. Moreover, they argue that, because these costs are incurred pursuant to Commission-approved rates, the costs must be considered to be reasonable for downstream recovery from GFA customers.³³

B. Subsequent Schedule 23 Amendments

15. On January 26, 2005, the Midwest ISO TOs filed to amend Attachment 1 to the proposed schedule 23 to remove GFA No. 395 per Alliant Energy Corporate Services, Inc.'s request. On February 11, 2005, the Midwest ISO TOs submitted a further filing

³⁰ January 13 Filing at 6 (*citing* Opinion No. 463 at P 57).

³¹ Opinion No. 477 at P 60.

³² *Id.* at 7 (*citing* Opinion No. 477 at P 57).

³³ January 13 Filing at 8.

containing the first page of proposed schedule 23, Original Sheet No. 238Z.25, which they state is missing from the copy of the January 13 Filing posted on the Commission's website. They state that, to the extent that the page was erroneously omitted when it was filed, the Midwest ISO TOs provide a copy of that page.

16. On February 17, 2005, the Midwest ISO TOs filed a letter explaining that, on January 28, 2005, the Midwest ISO filed a motion to change the effective dates of certain tariff sheets to be consistent with financially binding market operations commencing on April 1, 2005 instead of March 1, 2005.³⁴ Therefore, they request an April 1, 2005 effective date (instead of their original March 1, 2005 requested effective date) for the proposed schedule 23. The Midwest ISO TOs also state that, after the Commission issues an order on the proposed schedule 23, they will revise the tariff sheets to reflect the effective date approved by the Commission, as well as any other changes the Commission requires.

III. Notice of Filings and Responsive Pleadings

17. Notice of the Midwest ISO TOs' January 13 Filing was published in the *Federal Register*, 70 Fed. Reg. 4,117 (2005), with protests and interventions due on or before February 3, 2005. Notice of the Midwest ISO TOs' January 26, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 5,992 (2005), with protests and interventions due on or before February 4, 2005. Notice of the Midwest ISO TOs' February 11, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 9,066 (2005), with protests and interventions due on or before February 25, 2005. Notice of the Midwest ISO TOs' February 17, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 9,943 (2005), with protests and interventions due on or before March 2, 2005.

18. Timely motions to intervene were filed by Alcoa Power Generating Inc.; Minnkota Power Cooperative, Inc.; Wisconsin Electric Power Company; and WPS Resources Corporation. Timely motions to intervene and protests were filed by Basin Electric Power Cooperative, Central Power Electric Cooperative, Inc., and East River Electric Power Cooperative, Inc. (Basin Cooperatives); Southern Minnesota Municipal Power Agency, the Hutchinson Utilities Commission, and the City of Detroit (Carved-Out

³⁴ See Midwest ISO's Filing Informing the Commission of Changes in Planned Market Implementation Dates and Motion for Leave to Change Effective Dates of Certain Tariff Sheets, Docket No. ER04-691-021, *et al.* (January 28, 2005). The February 17 Order extended the effective dates of certain tariff sheets in the TEMT to accommodate an April 1, 2005 market launch date. February 17 Order at P 15.

Customers); Consumers Energy Company (Consumers); Associated Electric Cooperative, Inc. and Northeast Missouri Electric Power Cooperative (Associated); Dairyland Power Cooperative (Dairyland); Detroit Edison Company (Detroit Edison); East Kentucky Power Cooperative, Inc. (East Kentucky); Michigan Public Power Agency and Michigan South Central Power Agency (Michigan Agencies); Midwest Municipal Transmission Group (MMTG); and NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern). Manitoba Hydro filed a motion to intervene out of time on February 7, 2005.

19. On February 18, 2005, the Midwest ISO TOs filed an answer to the protests to their proposed schedule 23. On March 2, 2005, Basin Cooperatives filed an answer to the Midwest ISO TOs' answer. On March 11, 2005, the Midwest ISO TOs filed comments in response to the answer filed by Basin Cooperatives.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the untimely intervention of Manitoba Hydro, given its interest, the early stage of this proceeding, and the absence of any undue prejudice or burden.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answer and comments filed by the Midwest ISO TOs or the answer filed by Basin Cooperatives and will, therefore, reject them.

B. Whether Schedules 10 and 17 Constitute New Services

1. Comments

22. Basin Cooperatives and Associated state that the Commission should reject schedule 23 because the services that the Midwest ISO TOs are seeking to pass through to the GFA customers are not new services for these customers and do not benefit any of the carved-out GFA customers. These parties argue that the Commission explained in Opinion No. 463 that the only costs that are potentially eligible for pass-through to GFA customers are costs that relate to new services – that is, services that are not provided pursuant to the GFAs. Basin Cooperatives and Associated state that although the Commission approved PG&E's pass-through to customers taking service under GFAs of costs associated with the CAISO's grid management services, the services included costs

to perform operation studies, system security analyses, emergency management, outage coordination and transmission planning for the entire ISO grid. They argue that the Commission approved PG&E's proposal to pass through these costs to GFA customers because these were new services that had not been provided under the GFAs. However, they note that, in doing so, the Commission distinguished its prior holdings in Opinion Nos. 459 and 459-A,³⁵ where it held that reliability-related costs could not be passed through as a new service to customers taking service under GFAs providing for firm service. The Commission found that reliability was an integral part of those contracts, and not a new service provided by the CAISO or the transmission owners. Rather, the Commission found that if PG&E wanted to pass through the reliability-related costs to its GFA customers, it would have to unbundle its rates for service under the GFAs and provide a full cost of service analysis supporting the unbundled rates.

23. Basin Cooperatives and Associated assert that, consistent with Opinion Nos. 459 and 459-A, the Midwest ISO TOs should not be permitted to pass through the portion of the schedule 17 charge that recovers costs related to the dispatch of generation within the Midwest ISO footprint because the GFA customers already receive such service as part of the firm service provided by their GFAs. Basin Cooperatives and Associated argue that the Commission has reaffirmed on several occasions its conclusion that customers taking firm transmission service under GFAs receive redispatch services as a part of their GFA service, and cannot be charged additional costs associated with redispatch service provided by a regional transmission organization (RTO) or independent system operator (ISO). In addition, these parties argue that they will not be participating in or benefiting from the Midwest ISO's new markets but, instead, will be exercising the scheduling and energy management provisions of their GFAs just as they did before the markets started. They submit that this situation is distinguishable from the situation present in Opinion No. 463, where the Commission found that the CAISO's operations allowed greater access to generation and new market opportunities.

24. MMTG and the Carved-Out Customers argue that the proper mechanism for the Midwest ISO TOs to collect schedule 10 and 17 charges would be to modify the GFAs in question, not through a general Midwest ISO Tariff filing. MMTG and the Carved-Out Customers state that the Commission has consistently declined to authorize the Midwest ISO TOs to generically modify GFAs to pass through costs to their customers without filing individualized amendments. Specifically, these parties argue that any Transmission Owner wishing to pass through schedule 10 charges to its customers must seek

³⁵ *Pacific Gas & Electric Company*, Opinion No. 459, 100 FERC ¶ 61,160 at P 19-20, *reh'g denied*, Opinion 459-A, 101 FERC ¶ 61,139 (2002).

individualized amendments of the affected GFAs pursuant to section 205 of the FPA.³⁶ MMTG and the Carved-Out Customers allege that the Commission cannot legally abrogate these contracts without making a public interest finding and that there is plainly no basis to make a public interest finding with respect to the pass through of schedules 10 and 17 under schedule 23 to customers under carved-out GFAs.

25. In its protest, Dairyland states that the proposed schedule 23 should be rejected since the Midwest ISO TOs have failed to demonstrate that it will produce just and reasonable rates. Dairyland asserts that the Midwest ISO TOs' filing implies that the Commission has already approved the pass-through of schedule 10 and 17 costs to GFA customers as schedule 23 proposes, when the Commission has never generically approved such a pass-through to GFA customers. Dairyland argues that the Commission has consistently held that a case-by-case determination is required before such costs may be passed-through to GFA customers. Furthermore, Dairyland asserts that the Midwest ISO TOs erroneously claim that schedule 23 is consistent with the Commission's invitation in its March 31 and GFA Orders to file such a provision. Specifically, Dairyland argues that the Commission has denied requests to assess schedule 10 charges directly to GFA customers. Furthermore, Dairyland argues that although the Commission, in the GFA Order, determined that all GFA transactions should be assessed schedule 17 charges, the Commission denied the Midwest ISO TOs' request to adopt a mechanism to assess those charges directly to GFA customers because the Midwest ISO TOs had not identified the GFA parties who should be responsible for such costs or whether or not the contracts already address responsibility for such costs.

26. Dairyland also argues that the Midwest ISO TOs' proposal fails to recognize that Mid-Continent Area Power Pool (MAPP) members that are GFA customers are already paying the Midwest ISO for reliability related services. According to Dairyland, pursuant to two agreements dated March 1, 2000, the Midwest ISO currently provides to MAPP COR, at cost, for MAPP members that do not join the Midwest ISO, transmission and reliability related services for which MAPP COR is responsible under the January 12, 1996 Restated Mid-Continent Area Power Pool Agreement.³⁷

27. MMTG and the Carved-Out Customers state that the Commission lacks jurisdiction to authorize assessment of Midwest ISO administrative costs to the non-jurisdictional entities taking service under carved-out GFAs. MMTG and the Carved-Out Customers argue that schedule 23, as proposed, would improperly apply to non-

³⁶ 18 U.S.C. § 824d (2000).

³⁷ Dairyland protest at 14.

jurisdictional entities that are not Market Participants or Transmission Customers under the Midwest ISO Tariff, without any nexus for liability between the Midwest ISO and the customer and, thus, outside the Commission's statutory authority.

2. Discussion

28. In Opinion Nos. 463 and 463-A,³⁸ and in Opinion No. 477,³⁹ the Commission found that certain costs that PG&E incurs under the CAISO's tariff, for transactions under GFAs, are associated with a new and different service that is not already addressed in the GFAs. On the basis that the costs are associated with a new service, the Commission found that PG&E's proposal to pass these costs through to its GFA customers did not constitute an amendment to, or modification of, the GFAs.

29. Specifically, in Opinion Nos. 463 and 463-A, the Commission approved PG&E's pass-through to its GFA customers of the CAISO's Grid Management Charge, which provides for recovery of the CAISO's overarching costs of maintaining the reliability of the regional transmission grid, and planning and operating that grid. In doing so, the Commission found that the CAISO's service associated with the Grid Management Charge was a new service because the CAISO plans and operates the combined CAISO grid on a regional basis in a manner that is significantly different than the individual utility-by-utility planning and operations that predated the CAISO's existence.⁴⁰ The Commission found that, by consolidating the pre-existing individual control areas and eliminating pancaked rates, the CAISO's operations:

allow greater access to generation alternatives so that the [CAISO] can provide ancillary services to the existing transmission contracts in the most cost-effective and efficient manner possible on a broad regional basis. Regional planning and operation of the combined [CAISO] grid maximizes efficiencies when compared to the pre-existing utility operations. Consolidating scheduling maximizes transmission usage, reduces ancillary service requirements and provides greater reliability by allowing the operation of more facilities to respond to contingencies.⁴¹

³⁸ See *supra* note 28.

³⁹ See *supra* note 29.

⁴⁰ See Opinion No. 463 at P 50-52; Opinion No. 463-A at P 25-31.

⁴¹ Opinion No. 463-A at P 26.

The Commission also found that the CAISO's operations provided new market opportunities to the customers under the GFAs, which it stated was an additional benefit supporting a "new service" finding.⁴² It also affirmed the presiding administrative law judge's findings that these services cannot be duplicated or self-provided by any party operating in a smaller area within the CAISO's footprint and, thus, could not have been provided by PG&E under the GFAs prior to the CAISO's existence.⁴³

30. In addition, in Opinion No. 477, the Commission found that costs that PG&E incurs under the CAISO tariff for certain additional services for transactions under GFAs, including energy imbalance and losses, are associated with new services.⁴⁴ (A second phase of the hearing in that proceeding is currently under way. Among the issues being addressed in the second phase is whether specific provisions in individual GFAs should absolve GFA customers from some or all of the costs that PG&E proposes to recover for such services.)⁴⁵

31. Order No. 2000 explains that transmission facilities can be operated more reliably and efficiently when coordinated over large geographic areas, and that RTOs would achieve this result by establishing regional transmission pricing;⁴⁶ eliminating rate

⁴² *Id.* at P 27.

⁴³ *See* Opinion No. 463 at P 48.

⁴⁴ *See* Opinion No. 477 at P 54-65.

⁴⁵ *California Independent Transmission System Operator, Inc.*, 107 FERC ¶ 63,030 at P 145 (2004).

⁴⁶ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,108 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

pancaking;⁴⁷ improving congestion management;⁴⁸ more efficiently planning for transmission and generation investment;⁴⁹ and improving grid reliability.⁵⁰

32. In Opinion Nos. 453 and 453-A, the Commission found not only that, as an RTO, the Midwest ISO would produce such benefits, but that such benefits would flow to *all* users of the Midwest ISO grid (expressly including transactions under GFAs).⁵¹ The Commission determined that the Midwest ISO's planning and operation of its grid on an independent and regional basis, in contrast to the pre-existing utility-by-utility approach, should result in more efficient siting of transmission facilities from a regional perspective and increased transmission system reliability. In addition, it found that more efficient operation of the regional grid by the Midwest ISO, including an effective congestion management scheme, should result in the ability of the regional grid to accommodate greater power flows, and thus more transactions than otherwise possible, and that this should increase the supply of competing generation available to load-serving entities.⁵²

33. Schedules 10 and 17 of the Midwest ISO TEMT recover the costs of providing such benefits. Schedule 10 is designed to recover the Midwest ISO's non-market related costs associated with administration of transmission service over its regional transmission grid under the TEMT, including costs associated with reliability coordination, operation and facility planning, maintenance coordination and tariff administration. Schedule 17 is designed to recover the Midwest ISO's costs of providing energy market services, including market modeling and scheduling, market bidding support, locational marginal pricing support, market settlements and billing, and market monitoring. The Commission has found that the Midwest ISO's markets will produce global benefits to those transacting over the Midwest ISO grid, not the least of which are a more reliable and efficiently-used transmission grid, clear price signals for better infrastructure siting, better

⁴⁷ *Id.* at 31,174.

⁴⁸ *Id.* at 31,126.

⁴⁹ *Id.* at 31,024.

⁵⁰ *Id.*

⁵¹ *See* Opinion No. 453 at 61,169; Opinion No. 453-A at 61,412.

⁵² *See* Opinion No. 453-A at 61,412.

opportunities for demand response to participate in the markets, and price transparency, which benefits even bilateral contract formation.⁵³

34. Similarly, the GFA Order concluded that the service associated with schedule 17 would produce more reliable service and energy markets that would benefit all customers transacting over the Midwest ISO grid, including parties transacting under GFAs.⁵⁴ Furthermore, the Commission determined that parties under GFAs would benefit from using the transmission grid, which is made more reliable and efficient because of the security-constrained economic dispatch that the Midwest ISO will operate and monitor in its energy markets.⁵⁵ The Commission stated that these transactions would benefit from the efficient and transparent pricing, and that the contract holder would benefit from the ability to use spot markets if it were economically beneficial.⁵⁶

35. When protestors assert that they will be exercising the scheduling and energy management provisions of their GFAs just as they did before the markets started, they ignore the benefits they will experience because the transmission grid over which they transact will be more reliable and efficient because of the security-constrained economic dispatch that the Midwest ISO will operate and monitor in its energy markets. They also ignore the benefits that efficient and transparent pricing will provide them when managing their power resources, including the opportunity to use the more efficient spot and bilateral markets when it is economical to do so.

36. We disagree with Basin Cooperatives and Associated that the costs included in schedule 17 associated with the Midwest ISO's dispatch of generation in its footprint duplicates reliability services already provided by the GFAs or that the pass-through of such costs to GFA customers is inconsistent with Opinion Nos. 459 and 459-A. The costs at issue in Opinion Nos. 459 and 459-A were the costs of generation redispatch itself, *i.e.*, the actual costs of operating generating units out of merit order to maintain system security, and the Commission explained there that the firm transmission contracts executed prior to CAISO's existence inherently included redispatch costs as part of that firm service. In contrast, the costs at issue here are the costs associated with the Midwest

⁵³ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,235 at P 43 (2004), *reh'g pending*.

⁵⁴ GFA Order at P 297-98; *see also id.* at P 46.

⁵⁵ *Id.* at P 297.

⁵⁶ *Id.*

ISO's administration of its energy markets, which, as discussed above, constitutes a fundamentally different service than the Transmission Owners provided, or could have provided, prior to the advent of these new markets.

37. The Midwest ISO's coordination of generation redispatch under schedule 17 is inherently included in the operation and management of its energy markets. Under those markets, the Midwest ISO will coordinate redispatch, through both its day-ahead unit commitment process and its real-time market, on a more extensive, regional basis than the individual Transmission Owners did heretofore. In addition, through its centralized, regional bid-based market, the Midwest ISO will effect redispatch on a least-cost basis across the region, compared to the practice of decentralized redispatch and *pro rata* curtailment employed previously. As discussed above, this regional, least-cost dispatch will result in more efficient utilization of the transmission system, which should increase the supply of competing generation available to serve load and result in more reliable service to all those who transact over the Midwest ISO system. In addition, the energy markets will provide transparent price signals, which will facilitate more efficient infrastructure siting, and better opportunities for demand response to participate in the markets, which will reduce the likelihood of supply shortages that can lead to system emergencies or price spikes. Moreover, the carved-out GFA customers will gain access to competitive and efficient markets that they could not have had access to prior to the creation of the Midwest ISO and the Midwest ISO energy markets. Thus, we disagree that the costs included in schedule 17 associated with the Midwest ISO's dispatch of generation in its footprint are for services that the Transmission Owners already provide, or could provide, under the GFAs or that the services provided by the Midwest ISO will not provide benefits to GFA customers.

38. Based on the forgoing, we find that the services associated with the Midwest ISO's schedules 10 and 17, as a whole, represent a monumental transformation with respect to the way that electricity is sold and distributed in the Midwest ISO region – a change that will bring substantial benefits to all those transacting over the Midwest ISO grid, including GFA customers. These services cannot be duplicated or provided by any party operating in a smaller footprint than the Midwest ISO. These services, therefore, could not have been provided by the Midwest ISO TOs to the carved-out GFA customers prior to the advent of the Midwest ISO, and the costs that the Midwest ISO TOs propose to pass through to GFA customers under schedule 23 thus are separate and distinct from the costs that the Midwest ISO TOs recover under current GFA provisions. In short, schedules 10 and 17 address new services and new costs.

39. While protestors are correct that the Commission previously rejected proposals to directly assess schedule 10 and schedule 17 charges to GFA customers, those proposals were either not supported on the basis of providing new services, in the case of Opinion No. 453-A, or were not concrete proposals identifying the GFA party that should be

responsible for such costs or addressing whether or not the contracts already address responsibility for such costs. Thus, those proposals were not ripe for acceptance. Here, the Midwest ISO TOs have made a proposal that allows us to find that the services are new for the GFAs at issue and that the contracts do not address responsibility for such costs.

40. We also disagree with Dairyland that the proposed schedule 23 will result in double charges to MAPP members who are already paying the Midwest ISO for transmission and reliability services that the Midwest ISO currently provides to MAPP COR. The services which the Midwest ISO provides to MAPP COR relate to operation of and administration of transmission service over the transmission system owned by MAPP members that have not joined Midwest ISO. In contrast, the schedule 10 and 17 costs at issue here pertain to the administrative costs to operate the Midwest ISO transmission system and energy markets, and administer the Midwest ISO Tariff, and, under schedule 23, MAPP members who are GFA customers should and will pay for the costs associated with the transmission service they take under the GFAs over the Midwest ISO-controlled transmission grid.

41. We also do not agree with the assertion by MMTG and the Carved-Out Customers that the Commission lacks jurisdiction to assess Midwest ISO schedule 10 and 17 costs to non-public utility GFA customers. The Commission regulates transmission services, not customers.⁵⁷ Furthermore, as explained above, even non-public utilities listed in Attachment 1 of schedule 23 benefit from the creation of the Midwest ISO, which provides new market opportunities that are not otherwise provided under current GFAs. The aforementioned non-public utilities will take transmission service under the GFAs over the Midwest ISO-controlled transmission grid, and receive benefits that cannot be duplicated or self-provided by any other party.

C. GFAs Nos. 205-207, 209, 210 and 267-269

1. Comments

42. Detroit Edison and Consumers are co-owners of the Ludington Pumped Storage Hydroelectric Plant and receive transmission service under GFAs Nos. 205-207, 267-269 to wheel the output of the plant and serve the pumping load of the plant. They argue that proposed schedule 23 is unclear regarding the application of schedule 17 charges to transactions to and from the Ludington plant under GFAs Nos. 205-207, 267-269. Detroit Edison and Consumers state that it appears the Midwest ISO TOs propose to

⁵⁷ 16 U.S.C. §§ 824, 824d, 824e (2000).

assess schedule 17 charges on both injections into the Midwest ISO transmission system from the Ludington plant as well as its extractions from the Midwest ISO transmission system, in the same manner that the schedule 17 charges would be assessed to the other GFAs included in Attachment 1. Detroit Edison and Consumers contend that the Commission has made clear that schedule 17 charges may only be assessed on the pumped storage facility's injections into the transmission system under these GFAs.⁵⁸ Accordingly, Detroit Edison and Consumers request that the Commission order the Midwest ISO TOs to clarify that schedule 17 charges will not be assessed on the Ludington plant's extractions of energy from the transmission grid under GFA Nos. 205-207 and GFA Nos. 267-269 in Attachment 1.

43. In their protest, the Michigan Agencies state that GFA Nos. 209 and 210 provide for wheeling over the International Transmission Company's (International Transmission) transmission system of the output associated with Michigan Public Power Agency's share of certain jointly-owned generation resources located in the International Transmission pricing zone to the Michigan Electric pricing zone, where MPPA's load is located. MPPA asserts that schedule 10 is a load-based rate, and, since MPPA does not have any load in the International Transmission pricing zone, any transmission service that MPPA receives over the ITC transmission system under GFA Nos. 209 and 210 should not incur schedule 10 charges. MPPA requests that the Commission order the Midwest ISO TOs to include a notation in Attachment 1 of schedule 23 to confirm that schedule 10 charges do not apply to GFA Nos. 209 and 210.

44. Dairyland requests that Attachment 1 of schedule 23 be revised to make clear that GFA Nos. 20 and 21 will not be subject to duplicate charges because these GFAs ultimately establish one service.

2. Discussion

45. In response to the concerns raised by Detroit Edison and Consumers, we note that the GFA Order explained that the schedule 17 charge should only be assessed on the pumped storage facility's injections into the transmission system under GFA Nos. 205-207 and 267-269. Specifically, the Commission determined that since the extractions from the transmission system occurring when the facility is in pumping mode are "not to serve load in the traditional sense," schedule 17 charges should not be assessed.⁵⁹ Proposed schedule 23 provides that the Midwest ISO will bill carved-out GFA customers

⁵⁸ GFA Order at P 299.

⁵⁹ GFA Order at P 299.

“an amount equal to the amount absent schedule 23 it would have billed the Transmission Owner under Section 7 of the Tariff for schedule 10 and 17 charges associated with Carved-Out GFAs.” We do not find the Midwest ISO TOs’ proposed schedule 23 to be inconsistent with these directives in the GFA Order, as Detroit Edison and Consumers fear, and will, therefore, not require modification of schedule 23 as Detroit Edison and Consumers request.

46. Similarly, we will deny the Michigan Agencies and Dairyland’s requests that schedule 23 be modified to clarify the applicability of schedule 10 and 17 charges to transactions under their GFAs. Because proposed schedule 23 simply passes through to the GFA customer the schedule 10 and 17 charges applicable to transactions under the GFA, such clarification is unnecessary.

D. Carved-Out GFA Nos. 256, 257, and 266

1. Comments

47. In its protest, the Michigan Agencies assert that GFA Nos. 256, 257, and 266 should not be included in the list of GFAs to which schedule 23 applies because the Commission accepted for filing, in Docket Nos. ER03-668-000 and ER03-1003-000, amendments to these GFAs pursuant to which the Michigan Agencies agreed to the pass through of schedules 10 and 17 charges. The Michigan Agencies contend that schedule 23 expressly does not apply to GFAs where the Transmission Owner and the transmission customer have reached an agreement on the payment of schedule 10 and 17 costs. The Michigan Agencies request that the Commission order the Midwest ISO TOs to remove GFA Nos. 256, 257, and 266 from Attachment 1 of schedule 23 to ensure that they do not experience duplicative billing.

2. Discussion

48. We will deny Michigan Agencies’ request. Proposed schedule 23 provides that the Midwest ISO will bill carved-out GFA customers “an amount equal to the amount absent schedule 23 it would have billed the Transmission Owner under Section 7 of the Tariff for schedule 10 and 17 charges associated with Carved-Out GFAs.”⁶⁰ The amendments to GFA Nos. 256, 257, and 266 accepted in Docket Nos. ER03-668-000 and ER03-1003-000 pass through schedule 10 and 17 costs billed by the Midwest ISO to Michigan Electric on a dollar for dollar basis. Therefore, the practical effect of proposed schedule 23 on GFA Nos. 256, 257, and 266 would be simply to transfer billing

⁶⁰ Schedule 23, § 2.2.

responsibilities from Michigan Electric to the Midwest ISO, without resulting in double charges to the Michigan Agencies.

E. Carved-Out GFA No. 220

1. Comments

49. In its protest, East Kentucky states that schedule 23 should not apply to base load amounts under GFA No. 220. It notes that footnote 4 to Attachment 1 of schedule 23 states that GFA No. 220 “is subject to proceedings in Docket No. ER02-2560, in which [Louisville Gas and Electric Company] has requested cost recovery of schedule 10 and 17 charges. [Louisville Gas and Electric Company] lists this GFA here in the event that the Commission denies recovery in Docket No. ER02-2560.” East Kentucky asserts that the Midwest ISO TOs’ filing misstates the Commission’s determination, in Docket No. ER02-2560, concerning pass through of schedule 10 and 17 charges for base load amounts under GFA No. 220. East Kentucky asserts that the Commission concluded in those proceedings that the Midwest ISO schedule 10 adder cannot be passed through under GFA No. 220 for base load amounts because the rates for base load amounts are fixed, and that charges under future schedules under the Midwest ISO Tariff, such as schedule 17, cannot be automatically passed through to East Kentucky without a section 205 filing.⁶¹ East Kentucky further states that because of the fixed nature of the rates on base load amounts under GFA No. 220, schedule 17 would not qualify for pass through for the same reasons the Commission found that schedule 10 does not qualify for pass through. It requests that the Commission require the Midwest ISO TOs to modify Attachment 1 of schedule 23 to state that schedules 10 and 17 do not apply to base load amounts under GFA No. 220.

2. Discussion

50. While East Kentucky is correct that the Commission previously rejected the proposal by Louisville Gas and Electric Company and Kentucky Utilities Company in Docket No. ER02-2560-000 to pass through schedule 10 charges for base load amounts under GFA No. 220, the proposal in that proceeding was not supported on the basis that schedule 10 was associated with a new service not already provided by the GFA. Thus, that proposal was not ripe for acceptance. Here, the Midwest ISO TOs have made a proposal that allows us to find that the services are new for the GFAs at issue and that the contracts do not address responsibility for such costs. Thus, we will not require the

⁶¹ East Kentucky protest at 3 (*citing Louisville Gas & Electric Company and Kentucky Utilities Company*, 109 FERC ¶ 61,330 at P 8, 9 (2004), *reh’g pending*).

Midwest ISO TOs to modify schedule 23 to state that schedules 10 and 17 do not apply to base load amounts under GFA No. 220.

F. Implementation Issues

1. Comments

51. Carved-out Customers and MMTG argue that schedule 23 subjects customers to a significant risk of duplicative or unverifiable charges, including schedule 10 and 17 charges that they are already paying under other arrangements. They state that, while the Midwest ISO TOs' filing acknowledges the risk of double billing, it fails to provide meaningful protection or notice to the customer. They argue that the proposal inappropriately puts the onus on the transmission customer to detect and seek remedies for double billing while providing it little or no basis for ascertaining rudimentary data necessary to determine the amount for which it should be billed in the first place or whether the Midwest ISO or the Transmission Owner should be billing the schedule 23 charges. They request that the Commission require the Midwest ISO or the Transmission Owner be responsible for preventing double billing. Dairyland requests that the proposal be revised to include a clear dispute resolution process.

52. Carved-out Customers and MMTG also argue that, if the Commission approves the pass through of schedule 10 and 17 charges to GFA customers, the Midwest ISO Tariff will require revision to ensure the GFA customers are treated equitably along with other entities paying the same charges. For instance, they note that section 45.6 of the Midwest ISO Tariff provides for the distribution of surplus revenues generated by FTR auctions to transmission customers taking point-to-point or network integration transmission service under the Midwest ISO Tariff, in proportion to schedule 10 charges associated with such transmission service. They state that this provision would exclude customers paying the Midwest ISO's administrative costs through schedule 23, because they are not the entity taking service directly under the Midwest ISO Tariff. They state that schedule 23 should include a specific provision entitling GFA customers paying the Midwest ISO administrative charges, either through schedule 23 or directly to the Transmission Owners, to any associated benefits, entitlements or credits.

53. In addition, if the Commission approves schedule 23, Carved-out Customers and MMTG request that the Midwest ISO be required to make a compliance filing to modify any aspect of the Midwest ISO Tariff that would discriminate against customers liable for schedule 23 relative to customers paying the administrative charges directly under schedules 10 and 17, and afford affected entities an opportunity to comment and raise additional issues not identified by the Midwest ISO. They state that customers targeted by schedule 23 could not have anticipated the myriad of provisions that might adversely impact them prior to implementation of schedule 23 and should not be prejudiced by that

fact. They state that, in order to ensure fair implementation of schedule 23, GFA customers must be afforded an opportunity to seek revision to any aspect of the Tariff that would impact their interests in relation to their liability for Midwest ISO administrative costs.

2. Discussion

54. In order to prevent double recovery, the Midwest ISO TOs' proposal provides that GFA customers will not be assessed charges under schedule 23 if they are already being assessed schedule 10 and 17 charges by the Midwest ISO not under schedule 23 or if schedule 10 and 17 charges are otherwise being recovered from the GFA customer. It also provides that the Transmission Owner shall provide information in response to reasonable requests by GFA customers in order to ensure that there is no double recovery of costs by schedule 23. We find these provisions are inadequate to address the potential of duplicative or unverifiable charges; the Midwest ISO and the Transmission Owners should be responsible in the first instance for affirmatively demonstrating to GFA customers that there are no duplicative charges and for providing GFA customers with a detailed reckoning of schedule 10 and 17 costs billed to the GFA customers under schedule 23 and other arrangements in order to affirmatively demonstrate that no double billing occurs. We will, therefore, require the Midwest ISO TOs to file as a compliance filing modifications to their proposal, within 30 days of the date of this order, to include provisions for the Midwest ISO and the Transmission Owners to affirmatively verify schedule 10 and 17 charges to the GFA customers to ensure that there are no duplicative charges and to affirmatively demonstrate that no double counting occurs (which would include providing GFA customers with the necessary supporting information) and also to specify the process through which disputes will be resolved.

55. With respect to the request that GFA customers paying the Midwest ISO administrative charges under schedule 23 should be entitled to any benefits, entitlements or credits associated with such charges, we agree. Accordingly, we will require the Midwest ISO TOs to file as a compliance filing modifications to schedule 23, within 30 days of the date of this order, to identify all credits that the Transmission Owners receive under the Midwest ISO tariff based schedule 10 and 17 charges applicable to the carved out GFAs and provide for offset of schedule 23 charges by the amount of such credits.

56. However, we will reject Carved-out Customers and MMTG's request that the Midwest ISO be required to make a compliance filing to modify any aspect of the Tariff that arguably would somehow discriminate against customers liable for schedule 23 relative to customers paying the administrative charges directly under schedules 10 and 17. In the GFA Order, the Commission approved the treatment of carved-out GFAs and found the application of schedule 10 and 17 charges to carved out GFAs to be just and reasonable. Any concerns about the justness and reasonableness of the treatment of

carved-out GFAs should have been raised in that proceeding. We will not allow parties to relitigate those issues here.

The Commission orders:

(A) The Midwest ISO TOs' proposed schedule 23 is hereby conditionally cepted, as discussed in the body of this order.

(B) The Midwest ISO TOs are hereby required to make a compliance filing, within 30 days of the date of this order, as described in the body of this order.

By the Commission. Commissioner Kelliher dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket Nos. ER05-447-000
ER05-447-001
ER05-447-002
ER05-447-003

(Issued March 24, 2005)

Joseph T. KELLIHER, Commissioner *dissenting*:

I disagree with the Commission's decision to accept schedule 23 to permit the Midwest Independent Transmission System Operator, Inc. Transmission Owners (Midwest ISO TOs) to recover schedule 10 and 17 costs from customers under certain grandfathered agreements carved out of the Midwest ISO energy markets without setting the filing for hearing to resolve what I believe are material issues of fact.

As I explained in the March 31 Order, I do not believe that a general declaration that benefits spring from the establishment of the Midwest ISO provides a sufficient basis for allowing pass-through of these costs under a "new services" rationale.¹ Instead, I believe that the Commission needs to make certain specific findings before it determines whether to grant recovery of the costs at issue here as "new services."² I believe that the Commission should determine what services are being provided under the existing contracts, and whether customers are in fact receiving new services.³ The Commission should also make certain that the costs are not already being recovered through existing rates. Because the scope of services provided under the grandfathered agreements may vary, I believe these issues are best resolved through hearing procedures so that an adequate record can be developed. That is precisely the approach the Commission took with respect to a recent filing seeking to recover these same kinds of costs in *Otter Tail*

¹ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,337 at 62,313 (2004) (Kelliher concurring).

² *Id.*

³ *Id.*

Power Company, 110 FERC ¶ 61,220 (2005), as well as in other similar cases.⁴ The Commission provides no basis for departing in this instance from its past practice of setting filings for pass-through of “new service” costs for hearing, and I see no reason for doing so here.

Joseph T. Kelliher

⁴ See *California Independent System Operator Corp.*, 93 FERC ¶ 61,337 (2000)(setting for hearing proposed grid management charge pass-through filing); *Pacific Gas & Electric Company*, 90 FERC ¶ 61,020 (2000)(setting for hearing proposed Scheduling Coordinator Services Tariff as a “new service”).