

126 FERC ¶ 61,142  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

Docket No. ER08-637-006

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING  
AND REQUIRING A FURTHER COMPLIANCE FILING

(Issued February 19, 2009)

1. In this order, we conditionally accept the compliance filing of Midwest Independent Transmission System Operator, Inc. (Midwest ISO), filed in response to the Commission's October 16, 2008 orders addressing the Reliability Coordination Service and Interconnected Operations and Congestion Management Service sections of Midwest ISO's Module F proposal.<sup>1</sup>

**I. Background**

2. On March 4, 2008, as amended on March 24, 2008, Midwest ISO and Midwest ISO Transmission Owners<sup>2</sup> submitted a proposed new Module F to Midwest ISO's Open

---

<sup>1</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,037 (2008) (October 16 Compliance Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,038 (2008) (October 16 Rehearing Order).

<sup>2</sup> Midwest ISO Transmission Owners join in the filing solely with respect to Schedule 32 (Market Integration Transmission Service). For purposes of this filing, Midwest ISO Transmission Owners include: American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Manitoba Hydro; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northern States Power Co., a Minnesota corporation, and Northern States Power Co., a Wisconsin corporation, subsidiaries of Xcel; Northwestern

(continued...)

Access Transmission and Energy Markets Tariff (tariff). Module F described three new services that Midwest ISO intended to offer to Mid-Continent Area Power Pool (MAPP) members and other eligible entities: a Reliability Coordination Service (Reliability Service), an Interconnected Operations and Congestion Management Service (Seams Service), and a Market Coordination Service (Market Service). Under the Reliability Service proposal, Midwest ISO proposed to make available to eligible customers the reliability coordination services it currently provides to Midwest ISO Transmission Owners and MAPP members. Under the Seams Service proposal, Midwest ISO proposed to offer all eligible customers its market-to-non-market seams coordination services, which are currently provided under existing individual seams coordination or joint operation agreements with non-market transmission providers. The Market Service proposal would provide access to Midwest ISO's energy and operating reserve markets over the systems of eligible transmission owners to market participants on those transmission owners' systems located in MAPP and elsewhere. Market Service customers would not transfer control of their transmission systems to Midwest ISO or provide transmission service over their systems under Module B of the tariff.

3. In an order issued on June 13, 2008, the Commission conditionally accepted Midwest ISO's proposed Reliability and Seams Services, subject to compliance.<sup>3</sup> The Commission also found that the proposed Market Service was incomplete and therefore deficient and raised several policy questions regarding the Market Service proposal for discussion. On July 14, 2008, Midwest ISO submitted a compliance filing in response to the Commission's directives regarding the proposed Reliability and Seams Services.<sup>4</sup> On October 16, 2008, the Commission conditionally accepted Midwest ISO's July 14

---

Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co.; Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265 (2008) (June 13 Order).

<sup>4</sup> Midwest ISO also submitted a compliance filing on August 12, 2008 that responded to the Commission's directives and questions regarding the proposed Market Service. The Commission conditionally accepted the Market Service filing on October 10, 2008, subject to further order after a technical conference. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,029 (2008). We are issuing a final ruling on the Market Service proposal in a concurrent order today. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139 (2009).

compliance filing, subject to further compliance.<sup>5</sup> Also on October 16, 2008, the Commission issued a separate order addressing requests for rehearing and clarification of the Commission's June 13 Order.<sup>6</sup>

4. On November 17, 2008, Midwest ISO submitted a compliance filing in response to the Commission's October 16 Compliance and Rehearing Orders. Among other things, Midwest ISO clarifies its treatment of the Manitoba Hydro Export Flowgate (MHEX) and its use of the Midwest ISO-MAPP Seams Operating Agreement's (SOA) existing total transfer capability (TTC)/available transfer capability (ATC)/available flowgate capability (AFC)<sup>7</sup> and Transmission Service Request Evaluation Protocols under Seams Service, as discussed in greater detail below.

5. Notice of Midwest ISO's filing was published in the *Federal Register*, 74 Fed. Reg. 3584 (2008), with comments due on or before December 8, 2008. Manitoba Hydro; Minnkota Power Cooperative, Inc. (Minnkota); and (jointly) Xcel Energy Services, Inc. (Xcel),<sup>8</sup> Otter Tail Power Co. (Otter Tail), and Allete, Inc. (Allete) filed timely comments. MAPP and (jointly) Basin Electric Power Cooperative (Basin Electric) and Western Area Power Administration (WAPA) filed timely protests.

6. On December 23, 2008, Midwest ISO filed an answer to the protest and comments filed by MAPP and Minnkota, and Manitoba Hydro filed an answer to the comments filed by Minnkota. On January 7, 2008, Minnkota filed a reply to the answers of Midwest ISO and Manitoba Hydro, and MAPP filed a reply to the answer of Midwest ISO.

---

<sup>5</sup> October 16 Compliance Order, 125 FERC ¶ 61,037.

<sup>6</sup> October 16 Rehearing Order, 125 FERC ¶ 61,038.

<sup>7</sup> ATC and TTC are defined in sections 1.33 and 1.661, respectively, of Midwest ISO's tariff. *See* Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 84, 294. In the Midwest ISO-MAPP SOA, the terms ATC and AFC "are used synonymously...to describe the remaining capability on a flowgate." *See* "Seams Operating Agreement Between the Midwest Independent Transmission System Operator, Inc and MAPPCOR," Att. A at 2 (Midwest ISO-MAPP SOA).

<sup>8</sup> Xcel submitted the filing on behalf of Northern States Power Co., a Minnesota corporation, and Northern States Power Co., a Wisconsin corporation.

## II. Discussion

### A. Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>9</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of Midwest ISO and Manitoba Hydro, and the replies of Minnkota and MAPP, as they have provided information that assisted us in our decision-making process.

### B. Substantive Matters

#### 1. Manitoba Hydro Export Flowgate Treatment

##### a. June 13 Order

8. As discussed in the June 13 Order, the North Dakota Export Flowgate (NDEX) is a stability limit flowgate consisting of several alternating current transmission lines owned by various entities. Pursuant to section 82.5 of the tariff, Midwest ISO and the Seams Service customer will manage congestion on NDEX consistent with existing agreements, rather than as a Reciprocal Coordinated Flowgate under Attachment LL of the Midwest ISO tariff.<sup>10</sup> In response to concerns raised by some parties that NDEX should not receive special treatment, the Commission accepted the non-standard NDEX treatment only for an interim period of three years. The Commission directed Midwest ISO to work with affected parties to explore a longer-term solution for NDEX and to file, at least 60 days prior to June 1, 2011, a compliance filing justifying the continuation of the existing treatment of NDEX or, alternatively, a new proposal for the treatment of NDEX.<sup>11</sup>

##### b. October 16 Rehearing Order

9. On rehearing, Minnkota argued that MHEX is similarly situated to NDEX and that Midwest ISO should therefore provide MHEX the same treatment as NDEX. Minnkota claimed that NDEX and MHEX were already treated the same way under both the Midwest ISO-MAPP SOA and the Midwest ISO-Manitoba Hydro SOA. In the October 16 Rehearing Order, the Commission stated that it was unable to determine from

---

<sup>9</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>10</sup> Midwest ISO's March 4, 2008 Filing, FERC Electric Tariff, Third Revised Vol. No. 1, section 82.5, Original Sheet No. 850Z.16.

<sup>11</sup> June 13 Order, 123 FERC ¶ 61,265 at P 107.

the procedural history or the record in this proceeding whether Minnkota is correct that NDEX and MHEX are similarly-situated flowgates that should be treated the same. The Commission therefore directed Midwest ISO to: (1) explain if and on what basis it will treat MHEX as a Reciprocal Coordinated Flowgate for Seams Service customers (e.g., how does the cancellation of the Midwest ISO-MAPP SOA affect the Midwest ISO-Manitoba Hydro SOA);<sup>12</sup> (2) confirm whether or not it will include MHEX in the stakeholder process it must conduct to explore a longer-term solution for NDEX; and (3) to the extent it intends to treat MHEX as a Reciprocal Coordinated Flowgate and not to include MHEX in the stakeholder process, Midwest ISO must justify its different treatment of NDEX and MHEX and demonstrate that NDEX and MHEX are not similarly-situated flowgates.<sup>13</sup>

**c. Midwest ISO Compliance Filing**

10. Midwest ISO argues that NDEX and MHEX are not similarly situated and, therefore, MHEX should not be treated the same as NDEX. Midwest ISO states that MHEX is currently treated as a Reciprocal Coordinated Flowgate<sup>14</sup> under the Midwest ISO-Manitoba Hydro SOA and has never been treated the same as NDEX.<sup>15</sup> Midwest ISO also argues that cancellation of the Midwest ISO-MAPP SOA does not materially affect the Midwest ISO-Manitoba Hydro SOA or Midwest ISO's ability to manage

---

<sup>12</sup> The Midwest ISO-MAPP SOA is scheduled to expire on March 31, 2009. The Commission noted that it is not clear whether MHEX will be considered a Reciprocal Coordinated Flowgate going forward since that treatment is controlled by a provision in the Midwest ISO-Manitoba Hydro SOA that relies on parties' interpretation of the to-be-cancelled Midwest ISO-MAPP SOA. October 16 Rehearing Order, 125 FERC ¶ 61,038 at P 23.

<sup>13</sup> *Id.* P 19-24.

<sup>14</sup> Midwest ISO explains that the term Reciprocal Coordinated Flowgate generally means that there is a seams operating agreement in effect with respect to the flowgate and that parties to that agreement commit to manage congestion on the flowgate on a coordinated basis. This congestion management includes respecting the other parties' determination of ATC/AFC and curtailment priorities for real-time operations, agreeing to allocate capacity on the flowgate based on a party's network and native flows across flowgates, and passing various technical tests, as described in the seams operating agreement.

<sup>15</sup> Midwest ISO notified MAPP on January 10, 2008 that it was preparing to implement the Midwest ISO-Manitoba Hydro SOA and that MHEX has been identified as a Reciprocal Coordinated Flowgate.

congestion and associated transfers across MHEX with other flowgates in Midwest ISO. Accordingly, Midwest ISO states that it does not intend to include MHEX in the Commission-ordered multi-party stakeholder process for NDEX.

11. Midwest ISO maintains that, contrary to the Commission's impression, the treatment of MHEX as a Reciprocal Coordinated Flowgate in the Midwest ISO-Manitoba Hydro SOA is not linked to the Midwest ISO-MAPP SOA.<sup>16</sup> Midwest ISO explains that the purpose of the language in section 6.6.3 of the Midwest ISO-Manitoba Hydro SOA regarding the requirement for a party to share allocations was only to establish a reciprocity requirement, putting Minnkota on notice that if it refused to share allocations on NDEX pursuant to the Midwest ISO-MAPP SOA, it should not expect Manitoba Hydro to share allocations under the Midwest ISO-Manitoba Hydro SOA.<sup>17</sup> According to Midwest ISO, the only impact of the cancellation of the Midwest ISO-MAPP SOA is that certain language in the Midwest ISO-Manitoba Hydro SOA will no longer be needed. Midwest ISO states that if Minnkota elects to take Seams Service, its continued refusal to share allocations on NDEX will be pursuant to the NDEX exception in the tariff, not the cancelled Midwest ISO-MAPP SOA, rendering the additional language in section 6.6.3 of the Midwest ISO-Manitoba Hydro SOA unnecessary.

12. Midwest ISO also states that there are several technical distinctions between MHEX and NDEX. Midwest ISO explains that whereas most flowgates are located at or near the actual location of a constraint, NDEX is not. Midwest ISO maintains that NDEX was created by its asset owners in order to control the usage of transfer rights of their own generation because of multiple owners of transmission lines that traversed the North Dakota borders. According to Midwest ISO, over time, the NDEX asset owners

---

<sup>16</sup> Midwest ISO Compliance Filing at 9, citing October 16 Rehearing Order, 125 FERC ¶ 61,038 at P 23 (“It is not clear, however, whether MHEX will be considered [a Reciprocal Coordinated Flowgate] going forward since that treatment is controlled by a provision in the Midwest ISO-Manitoba Hydro SOA that relies on parties’ interpretation of the to-be-cancelled Midwest ISO-MAPP SOA.”).

<sup>17</sup> Midwest ISO-Manitoba Hydro SOA, Appendix B at section 6.6.3 states in relevant part:

Nothing in [the Midwest ISO-Manitoba Hydro SOA] requires, permits or precludes the transfer or sharing, under the [Midwest ISO-MAPP] SOA Appendix B procedures, of unused capacity on the multi-party flowgate facilities of those MAPP members who assert that they are not obligated to transfer or share their allocations on such facilities pursuant to section 5.1.10 of the [Midwest ISO-MAPP] SOA.

developed procedures to allocate the use of the North Dakota transmission system between transmission owners that had generation on the same side of the flowgate—that is, to determine which owners were able to move their generation under their transmission tariffs out of North Dakota. Midwest ISO argues that the preservation of these arrangements among the owners allows them to internalize and manage congestion within North Dakota.

13. Midwest ISO contends that the MHEX situation is distinguishable. Midwest ISO explains that Manitoba Hydro owns all of the facilities on the Canadian side of the border, and multiple asset owners own distinct line sections on the American side of the border. Midwest ISO states that it is worth noting that U.S. asset ownership of the 230 kV facilities interconnecting with Manitoba Hydro is of distinct line sections, rather than entire transmission lines. Unlike the case with NDEX, Midwest ISO continues, there was never a need to make special generation usage arrangements for the MHEX facilities, as none of the U.S. asset owners owned generation in Canada. Hence, Midwest ISO states that congestion over MHEX is managed using standard open access transmission practices (i.e., Transmission Loading Relief (TLR)), whereas congestion on NDEX is managed through the predefined process of curtailment of generation based on which party owns the transmission facility causing the congestion.

14. Midwest ISO states that while Minnkota has argued that MHEX is similarly situated to NDEX because MHEX is stability limited and there are multiple owners to the transmission lines that compose MHEX, in actuality, MHEX is not normally stability limited, but thermally limited. Midwest ISO agrees that MHEX has multiple owners of transmission facilities, but argues that is not a sufficient reason to consider MHEX similarly situated to NDEX. In fact, Midwest ISO maintains that numerous flowgates within the Midwest ISO region have multiple owners while being subject to standard Reciprocal Coordinated Flowgate treatment. Midwest ISO asserts that NDEX is distinguishable because of multiple ownership of both generation and transmission of the NDEX participants under multiple open access transmission tariffs on both sides of the flowgate.

15. Midwest ISO argues that to include MHEX in the NDEX stakeholder process risks an outcome that could remove MHEX from Reciprocal Coordinated Flowgate treatment and undercuts an important purpose of the Midwest ISO-Manitoba Hydro SOA. Midwest ISO states that it and Manitoba Hydro have agreed to manage congestion on this flowgate using the now regionally-implemented Congestion Management Process. If MHEX is not considered to be a Reciprocal Coordinated Flowgate, Midwest ISO contends that there would be no value to continuing the Midwest ISO-Manitoba Hydro SOA. According to Midwest ISO, the allocations on Reciprocal Coordinated Flowgates are a critical component of the agreement because they recognize network and native load flows that exist and need to be considered for transmission service evaluation in order to avoid continual TLRs and/or redispatch. Accordingly, Midwest ISO believes that the

stakeholder process regarding NDEX should be confined to the resolution of that flowgate's unique treatment and not be conflated with a debate regarding MHEX, which is driven by one participant's desire to avoid allocation sharing on all of its facilities.<sup>18</sup>

**d. Protests**

16. Minnkota argues that NDEX and MHEX are similarly situated in material respects; accordingly, under well-recognized principles of comparability and non-discrimination, the two flowgates should receive similar treatment. Minnkota also argues that NDEX and MHEX are currently treated in the same way under the Midwest ISO-MAPP SOA. Minnkota states that section 5.1.10 of the Midwest ISO-MAPP SOA indicates that NDEX is just one flowgate that is excluded from the congestion management procedures because such exclusion applies to certain flowgates "such as but not limited to [NDEX]."<sup>19</sup> If NDEX were the *only* such excluded flowgate, Minnkota continues, then the "such as but not limited to" language would be rendered mere surplus verbiage, contrary to the Commission's normal practice in interpreting contract and tariff language (which is to give effect to all words in the contract or tariff). Minnkota states that to the best of its knowledge, no other party has identified any other flowgate to which the "such as but not limited to" language in section 5.1.10 would apply, and it follows then that the exclusion extends to MHEX. As further evidence that MHEX has been receiving the same special treatment as NDEX, Minnkota notes that it has not engaged in any allocation sharing on MHEX.

---

<sup>18</sup> Midwest ISO states that the only reason it agreed to continue the special treatment for NDEX is because Midwest ISO had initially agreed to continue the existing congestion procedures on NDEX in the Midwest ISO-MAPP SOA. However, Midwest ISO states that there is nothing about NDEX, electrically or otherwise, that prevents it from being treated the same as any other Reciprocal Coordinated Flowgate.

<sup>19</sup> Minnkota Protest at 11, citing Midwest ISO-MAPP SOA, Article V at section 5.1.10, which reads as follows:

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



17. Minnkota also states that, consistent with its belief that MHEX was already exempt from allocation sharing, it protested the filing of the Midwest ISO-Manitoba Hydro SOA and argued that section 5.1.10 of the Midwest ISO-MAPP SOA was a basis to also exempt MHEX from allocation sharing under the Midwest ISO-Manitoba Hydro SOA. Minnkota maintains that the parties in the Midwest ISO-Manitoba Hydro SOA proceeding were able to negotiate a settlement to include language stating that “[n]othing in [the Midwest ISO-Manitoba Hydro SOA] requires, permits or precludes the transfer or sharing, under the [Midwest ISO-MAPP] SOA Appendix B procedures, of unused capacity on the multi-party flowgate facilities of those MAPP members who assert that they are not obligated to transfer or share their allocations on such facilities pursuant to [s]ection 5.1.10 of the [Midwest ISO-MAPP] SOA.”<sup>20</sup> Minnkota asserts that the Midwest ISO-Manitoba Hydro SOA thus reinforces the idea that allocation sharing is not required on MHEX, at least where one party asserts that section 5.1.10 of the Midwest ISO-MAPP SOA does not require such allocation sharing. Minnkota argues that the settlement agreement on the Midwest ISO-Manitoba Hydro SOA, and the revised section 6.6.3 of Appendix B of the Midwest ISO-Manitoba Hydro SOA, does not dictate how MHEX should be treated; rather, it preserves the parties’ rights to argue that interpretation in subsequent proceedings – such as here.<sup>21</sup>

18. On the question of whether NDEX and MHEX are similarly-situated flowgates, Minnkota states that NDEX and MHEX are both multi-party-owned, multiple-element flowgates. Minnkota explains that it was the complexity in ownership and configuration of these flowgates that led the owners of such flowgates and other stakeholders in the region to recognize the need for special treatment of the allocation of capacity on the flowgates, including exempting such capacity allocations from the otherwise applicable provisions in SOAs, such as in section 5.1.10 of the MISO-MAPP SOA. Minnkota also

---

<sup>20</sup> Minnkota Protest at 12-13, citing Midwest ISO-Manitoba Hydro SOA, Appendix B at section 6.6.3.

<sup>21</sup> Minnkota Protest at 13, citing “Explanatory Statement in Support of Settlement Agreement” filed on Feb. 23, 2007 in Docket No. ER05-560-001 (“...the heart of the bargain in the Settlement Agreement is the preservation of the parties' rights to argue their respective interpretations of [s]ection 5.1.10 of the [Midwest ISO-MAPP] SOA in future proceedings while allowing the [Midwest ISO-Manitoba Hydro] SOA to go into effect without delay. This preservation of rights is accomplished through the revisions to [s]ection 6.6.3...”).

alleges that in quoting Xcel's description of the relationship between NDEX and MHEX in the comment summaries of the June 13 Order, the Commission has acknowledged that the two flowgates are similarly situated.<sup>22</sup>

19. In their protest, Basin Electric and WAPA do not raise any issue with regard to MHEX but object to Midwest ISO's assertion that there is nothing about NDEX, electrically or otherwise, that prevents NDEX from being treated the same as any other Reciprocal Coordinated Flowgate. They argue that this assertion is a premature attempt to influence the outcome of the Commission-mandated stakeholder process and negotiations concerning the future treatment of NDEX. Basin Electric and WAPA ask the Commission to not reach premature conclusions concerning whether the differences between NDEX and other flowgates justify different treatment of NDEX after the interim period expires.

**e. Comments in Support**

20. Manitoba Hydro fully supports Midwest ISO's compliance filing related to the treatment of MHEX for Seams Service. Manitoba Hydro agrees with Midwest ISO that MHEX is already a Reciprocal Coordinated Flowgate under the Midwest ISO-Manitoba Hydro SOA and that MHEX and NDEX have been treated substantially differently for over a decade. When it adopted open access transmission service in 1997, Manitoba Hydro explains that MHEX became subject to the standard provisions of open access transmission service. With the opening of Midwest ISO's organized electricity markets, Manitoba Hydro continues, congestion management of the Manitoba-Midwest ISO market to non-market seam, including MHEX, then became subject to the standard Congestion Management Process for Reciprocal Coordinated Flowgates in accordance with the Midwest ISO-Manitoba Hydro SOA.

21. In its answer, Manitoba Hydro explains that Minnkota has not had to share any allocation on MHEX because there have not been any requests to share unused

---

<sup>22</sup> Minnkota Protest at 17, citing June 13 Order, 123 FERC ¶ 61,265 at P 94, which states:

Xcel argues that Midwest ISO's proposed treatment of NDEX, as provided in section 90.2.2, is unclear since the Tariff makes specific references to the NDEX limit even though the NDEX limit 'has a nomographic or 'trade-off' relationship with the Manitoba-Hydro Export Flowgate [(MHEX)] limit; that is, a strict carve-out of NDEX may come at the expense of existing Midwest ISO market participants and their share of rights on the MHEX interface.'

allocations on MHEX since the execution of the Midwest ISO-Manitoba Hydro SOA. However, Manitoba Hydro contends that it cannot be logically concluded from this fact that MHEX is currently being managed in a manner that is comparable to NDEX, as is suggested by Minnkota. Although Minnkota wants MHEX to be treated comparably to NDEX, Manitoba Hydro argues that an exemption from unused allocation sharing governing Reciprocal Coordinated Flowgates is only one small aspect of the way in which congestion is managed over NDEX. It states that NDEX is not subject to any of the standardized congestion management procedures governing Reciprocal Coordinated Flowgates that were developed to recognize parallel flows, such as the calculation of allocations based on historic flows and the corresponding commitment by owners to limit flows over their systems (caused by the transmission owner and all other transmission users) to their assigned allocations. In place of these standardized features, Manitoba Hydro continues, NDEX is governed by generation back-down procedures, which require the transmission owners to bear all of the costs of congestion management. According to Manitoba Hydro, this is not the way in which congestion is currently managed over MHEX. It says that standard congestion management procedures as detailed in the Midwest ISO-Manitoba Hydro SOA are employed, rather than generation back-down procedures.

22. Manitoba Hydro agrees with Midwest ISO that if MHEX were treated in the same manner as NDEX, the Manitoba Hydro-Midwest ISO SOA would become valueless to Manitoba Hydro. Manitoba Hydro states that MHEX is the only Reciprocal Coordinated Flowgate between Manitoba Hydro and Midwest ISO. Moreover, Manitoba Hydro explains that its facilities are substantially impacted by parallel flows from the Dakotas and Minnesota. Manitoba Hydro sees no value in a congestion management arrangement, like that used for NDEX, which does not recognize the impact of parallel flows and imposes all of the costs of congestion management on the transmission owner (through reducing generation), rather than equitably allocating the costs of congestion to all transmission customers through TLR procedures in accordance with standard tariff priorities.

23. Allete, Otter Tail, and Xcel in their comments also support Midwest ISO's proposal to treat MHEX as a standard Reciprocal Coordinated Flowgate and agree with Midwest ISO's explanation of the reasons why such treatment is appropriate.

**f. Minnkota's Answer**

24. Minnkota in its answer reiterates its belief that it should not have to share its allocation on MHEX because language in the Midwest ISO-MAPP SOA already provided this special treatment to MHEX. It argues that if it is not provided with such an exception, Manitoba Hydro will be able to use 240 MW of Minnkota's allocation on MHEX without providing any compensation to Minnkota. In addition, Minnkota

disputes claims that providing special treatment to MHEX will devalue the Midwest ISO-Manitoba Hydro SOA, since Manitoba Hydro's portion of MHEX would still be subject to the Congestion Management Process in the Midwest ISO-Manitoba Hydro SOA.

**g. Commission Determination**

25. We accept Midwest ISO's proposal to include only NDEX in the stakeholder process that the Commission ordered in the June 13 Order.<sup>23</sup> Midwest ISO has demonstrated that NDEX and MHEX are not similarly situated. Therefore, Midwest ISO need not provide special treatment to MHEX and should treat MHEX in the same manner that it treats other Reciprocal Coordinated Flowgates under Seams Service.

26. The only similarity between the two flowgates that Minnkota cites is that they are both multi-party owned, multiple-element flowgates.<sup>24</sup> However, we agree with Midwest ISO that having multiple owners of facilities is not a sufficient reason to consider MHEX to be similarly situated to NDEX. Midwest ISO notes that there are numerous flowgates within the Midwest ISO region that have multiple owners while being subject to standard Reciprocal Coordinated Flowgate treatment. As such, this one similarity is not sufficient for Minnkota to claim that MHEX and NDEX are similarly-situated flowgates.<sup>25</sup>

27. In addition, Minnkota does not claim that the unusual circumstances that led Midwest ISO to provide special treatment to NDEX are present in the case of MHEX. As Midwest ISO explains, and as summarized above, the owners of the facilities that

---

<sup>23</sup> See June 13 Order, 123 FERC ¶ 61,265 at P 106-107.

<sup>24</sup> Minnkota Protest at 16. We note that Minnkota previously alleged that another similarity was that NDEX and MHEX are both stability-limited flowgates (Minnkota July 14, 2008 Request for Rehearing, Docket No. ER08-637-002, at 10). However, Midwest ISO disputes this claim in its compliance filing and states that MHEX is not normally stability limited but rather is thermally limited (Midwest ISO Compliance Filing at 11). Minnkota does not again claim in its protest to the current filing that MHEX is a stability-limited flowgate.

<sup>25</sup> The Commission did not, as Minnkota asserts, acknowledge that MHEX and NDEX are similarly situated by including in the comments section of the June 13 Order language that Minnkota believes supports its position. As Minnkota states, the Commission was only "summarizing the parties' comments on protests on the NDEX-related issues" (Minnkota Protest at 17). In addition, the Commission on rehearing stated explicitly that it did not have enough information in the record in this proceeding to make a determination on whether NDEX and MHEX are similarly situated (October 16 Rehearing Order, 125 FERC ¶ 61,038 at P 23).

make up NDEX established over time a congestion management process unique to NDEX, based on existing agreements and past practices. Congestion on NDEX has been managed through a process of curtailing generation within North Dakota based on which party owns the transmission facility causing the congestion. By contrast, there are no similar existing agreements or past practices that apply to MHEX and congestion over MHEX has for many years been managed using standard open access transmission practices. In addition, both Midwest ISO and Manitoba Hydro point out that, unlike NDEX, MHEX is already a Reciprocal Coordinated Flowgate under the Midwest ISO-Manitoba Hydro SOA and has never received special treatment under that agreement.<sup>26</sup>

28. Because Midwest ISO has demonstrated that MHEX is not similarly situated to NDEX, we find that MHEX need not be included in the stakeholder process that the Commission required Midwest ISO to conduct on the future treatment of NDEX. In response to Basin Electric's and WAPA's request that the Commission not reach premature conclusions regarding the future treatment of NDEX, we confirm that we are not making any findings here about how NDEX should be treated after the Commission's interim three-year approval expires. The issue we address here is only whether MHEX should be treated the same as NDEX. Whether NDEX should continue to receive special treatment is a different issue that the Commission will address when Midwest ISO makes the required compliance filing, which is due at least 60 days prior to June 1, 2011.<sup>27</sup>

2. **TTC/ATC/AFC and Transmission Service Request Evaluation Protocols**

a. **October 16 Compliance Order**

29. In the October 16 Compliance Order, the Commission stated that, while Midwest ISO previously indicated that the Seams Service provisions are based in large part on the Midwest ISO-MAPP SOA,<sup>28</sup> Module F does not appear to reflect the TTC/ATC/AFC and Transmission Service Request Evaluation Protocol in the Midwest ISO-MAPP SOA.

---

<sup>26</sup> Minnkota does not dispute that MHEX is currently a Reciprocal Coordinated Flowgate. Minnkota argues only that it has not and should not have to share any of its unused allocation on MHEX under the Reciprocal Coordinated Flowgate process. We note that although Minnkota may not have had to share a portion of its unused allocation in the past, Manitoba Hydro states that this is only because no party has requested to use such allocation.

<sup>27</sup> June 13 Order, 123 FERC ¶ 61,265 at P 107.

<sup>28</sup> October 16 Compliance Order, 125 FERC ¶ 61,037 at P 25, citing Midwest ISO March 4, 2008 Filing at 12.

Section 81 of the tariff instead indicates that Midwest ISO will negotiate these types of protocols with individual Seams Service customers and that it will include those protocols in the customer's service agreement. The Commission expressed concern that Midwest ISO does not explain whether all MAPP members that take Seams Service will have the same protocols (as they do today under the Midwest ISO-MAPP SOA) or whether the protocols may vary for different MAPP members. Therefore, the Commission required Midwest ISO, in a further compliance filing, to clarify its use of the Midwest ISO-MAPP SOA protocols for MAPP members that take Seams Service and to submit, as appropriate, any tariff revisions needed to reflect the incorporation of such protocols into the service agreements with Seams Service customers.<sup>29</sup> The Commission also stated that it expects Midwest ISO to allow continued use of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol in the Midwest ISO-MAPP SOA for those MAPP members taking Seams Service after December 31, 2008, to the extent necessary to provide a smooth transition from the Midwest ISO-MAPP SOA to Seams Service.<sup>30</sup>

**b. Midwest ISO Compliance Filing**

30. In its compliance filing, Midwest ISO confirms that TTC/ATC/AFC protocols may be negotiated by individual Seams Service customers or by a group of Seams Service customers that prefer to use a common set of protocols, such as the MAPP entities. If the MAPP entities prefer that Midwest ISO continue to use the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol from the Midwest ISO-MAPP SOA, Midwest ISO states that it will make reasonable efforts to comply. However, Midwest ISO clarifies that it will require some changes to the existing protocol to reflect current industry practices under the other SOAs to which Midwest ISO is a party. According to Midwest ISO, its goal is to negotiate protocols that reflect TTC/ATC/AFC calculation standardization. While it is not opposed to including additional coordination or retaining unique protocols from the Midwest ISO-MAPP SOA, Midwest ISO contends that such protocols must have "broad industry support...indicated by inclusion in the [North American Electric Reliability Corporation (NERC)/North

---

<sup>29</sup> October 16 Compliance Order, 125 FERC ¶ 61,037 at P 25.

<sup>30</sup> *Id.*

American Energy Standards Board (NAESB)] standards and business practices, or by the agreement of all parties participating in the Congestion Management Process Council<sup>31</sup> to include such protocols in all SOAs.”<sup>32</sup>

**c. Protests**

31. MAPP contends that section 1.3.2(d) of the existing TTC/ATC/AFC protocols<sup>33</sup> is an important provision that establishes enhanced coordination between MAPP, its members, and Midwest ISO to help ensure that AFC components on Reciprocal Coordinated Flowgates reflect all transmission service requests that may impact service availability.<sup>34</sup> MAPP states that Midwest ISO agreed to this provision to continue their practice of including appropriate near-term study-status reservations in their respective AFC calculations, to reflect that transmission service on one entity’s system causes substantial loop flows on the other entity’s system, and to address concerns that incorrectly high AFC postings could result where appropriate study-status reservations were not considered by both parties, thereby overselling the system and leading to potential reliability issues. Without the provision, MAPP argues that there are no assurances that all requests for service impacting Reciprocal Coordinated Flowgates for which system impact studies are being performed will be reflected in these calculations. MAPP requests that the Commission clarify that Midwest ISO must include a provision comparable to section 1.3.2(d) of the TTC/ATC/AFC protocol in the Seams Service agreement.

---

<sup>31</sup> Midwest ISO states that the Congestion Management Council is “composed of seams agreement signatories subscribing to the Congestion Management Process.” Midwest ISO Compliance Filing at n.10.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> Section 1.3.2(d) of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Coordination Protocol provides that:

All [Reciprocal Coordinated Flowgates] between MAPP and [Midwest ISO] shall include the effects of each other’s respective study-status reservation on such flowgates in a commonly agreed upon and consistent manner. Based on certain rules, this would include the decrementing and holding of AFC on [Reciprocal Coordinated Flowgates] regardless of the tariff by which the request was made.

<sup>34</sup> MAPP Protest at 4-5.

32. Furthermore, MAPP contends that in ongoing negotiations, Midwest ISO has not cited any reason to discontinue the existing provision except to state that they do not have identical requirements with other entities. According to MAPP, Midwest ISO should be required to show a compelling reliability or tariff reason to discontinue the current treatment. MAPP maintains that the continuing applicability of section 1.3.2(d) should not be conditioned on approval by the Congestion Management Process Council or NERC/NAESB because those bodies would reflect Midwest ISO's position that the terms and conditions for Seams Service must reflect the same terms and conditions as Midwest ISO's seams agreements with other entities.<sup>35</sup> MAPP argues that Seams Service should not be required to have terms and conditions similar to Midwest ISO's other seams agreements because there are significant differences between Seams Service and the other services provided by Midwest ISO under those agreements and between the MAPP members who would take Seams Service and the parties to Midwest ISO's other agreements (e.g., PJM Interconnection, LLC (PJM) and Southwest Power Pool, Inc. (SPP)).<sup>36</sup> MAPP adds that it is highly unlikely that it could indicate the broad industry support needed to satisfy Midwest ISO under the short transition schedule accepted by the Commission in the October 16 Compliance Order. In the absence of a compelling reason to discontinue the existing treatment, MAPP argues that the provision should be retained "while industry groups flesh-out the issue" to ensure consistency with the Commission's directive that the use of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol continue.<sup>37</sup>

33. Basin Electric and WAPA support MAPP's protest and argue that the interregional coordination in the calculation of AFC for Reciprocal Coordinated Flowgates under section 1.3.2(d) is extremely important to MAPP members because without it there are no assurances that all requests for service impacting such flowgates would be reflected in AFC calculations. They argue that maintaining these provisions are "crucial to maintaining reliability and a smooth transition to Seams Service" and, at minimum, Midwest ISO should negotiate with MAPP entities regarding the issues addressed by section 1.3.2(d).<sup>38</sup> According to Basin Electric and WAPA, Midwest ISO has not

---

<sup>35</sup> MAPP states that Midwest ISO has existing seams agreements with PJM and SPP, and those entities are members of the Congestion Management Process Council. *Id.* at 6.

<sup>36</sup> MAPP says that, in contrast to its system, PJM does not include study-status reservations under its tariff when calculating flowgate AFCs, and SPP's seam with Midwest ISO does not currently result in significant loop flows requiring special treatment. *Id.* at 6-7.

<sup>37</sup> *Id.* at 7.

<sup>38</sup> Basin Electric and WAPA Protest at 5.



explained why tariff provisions or reliability considerations prohibit continuation of the currently-effective provisions. They add that it would be virtually impossible to obtain the industry-wide support that Midwest ISO claims is necessary within the transition period to Seams Service. Therefore, they request that the Commission clarify that NERC/NAESB or Congestion Management Process Council approval of the TTC/ATC/AFC protocols is not a necessary predicate to the negotiations concerning the continued applicability of the ATC/AFC protocols.

**d. Answers**

34. Midwest ISO urges the Commission to reject MAPP's proposal. Midwest ISO argues that the Midwest ISO-MAPP seam is the only seam where Midwest ISO must decrement AFC on a Reciprocal Coordinated Flowgate for a transmission service request that is only at the study stage between MAPP and another transmission provider (e.g., PJM or SPP). Midwest ISO maintains that this practice results in inconsistent application of what were supposed to be standard procedures in the Congestion Management Process. It argues that the Commission has consistently embraced standardization as its guiding principle,<sup>39</sup> including standardization in the calculation of ATC by transmission providers,<sup>40</sup> to prevent undue discrimination resulting from disparate coordination protocols. Midwest ISO states that, in this proceeding, the Commission recognized that having standardized Seams Service would "help prevent undue discrimination, since all similarly situated customers will coordinate with Midwest ISO under the same terms and conditions" and would allow Midwest ISO to propose changes "by making one filing that applies generally to all Seams Service customers instead of having to propose individual changes to meet the particular terms and conditions of several agreements."<sup>41</sup> According to Midwest ISO, MAPP's proposal to preemptively grandfather this particular practice, regardless of whether it is endorsed by NERC and NAESB, runs contrary to the Commission's standardization effort.

---

<sup>39</sup> Midwest ISO Answer at 6, citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 639 (2004) ("We encourage Market Participants to use the PJM-Midwest ISO [joint operating agreement] as a model or starting point for seams agreements, particularly with respect to the seams with the various utilities in the MAPP region.").

<sup>40</sup> Midwest ISO notes that in Order No. 890, the Commission directed the industry, in conjunction with the NERC and NAESB processes, to develop uniform determinations of ATC. Midwest ISO Answer at 5, citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 121 (2007).

<sup>41</sup> Midwest ISO Answer at 4, citing June 13 Order, 123 FERC 61,265 at P 49.

35. Midwest ISO also contends that decrementing AFC for a transmission service request that is only at the study stage is a non-standard practice that may lead to market manipulation. Midwest ISO maintains that third party reservations in Midwest ISO between MAPP and another transmission provider may permit such manipulation by allowing the submission of large or multiple requests as a strategy to block other transmission service requests and then the withdrawal of some or all of the requests before a reservation becomes confirmed, without financial obligation. Midwest ISO states that a related strategy is to submit a partial path request “without confirmation from the second transmission provider that a reservation has been made.”<sup>42</sup> According to Midwest ISO, this practice results in preferential service for MAPP transmission customers who can effectively lock up AFC on Midwest ISO flowgates, while other transmission customers cannot do so under their seams agreements.

36. Finally, Midwest ISO contends that the argument that the ATC/AFC calculations are, and should remain, unique is a disguised collateral attack on the June 13 Order that the Commission should reject. Midwest ISO argues that the Seams Service provisions make it clear that the ATC/AFC protocols are subject to the NERC and NAESB efforts to develop standard methodologies and will be conformed to those standards or discarded once they are developed.<sup>43</sup>

37. In response to Midwest ISO’s answer, MAPP argues that, while many sections of Seams Service were left open for further negotiation between Midwest ISO and Seams Service customers, Midwest ISO had not previously indicated that certain terms of the Midwest ISO-MAPP SOA could not be the basis for these negotiations or that Seams Service customers would need to demonstrate “broad industry support” during the negotiations. If they had been aware of Midwest ISO’s conditions for the negotiations, MAPP states that it or its members may have raised more specific objections to the proposed transition timeline to Seams Service.<sup>44</sup> MAPP maintains that it is unfair to condition the ongoing negotiation of certain Seams Service provisions on broad industry

---

<sup>42</sup> Midwest ISO Answer at n.15.

<sup>43</sup> *Id.* at 6-7, n.22, citing Midwest ISO, FERC Electric Tariff, section 81.1.11, Original Sheet No. 850Z.14 (“Following standardization of TTC/ATC/AFC calculations pursuant to Commission order and action by NERC and NAESB, [Midwest ISO] and the [Seams Service] [c]ustomer shall confer to determine whether the protocols continue to be necessary, and if so, what revisions to the protocols or this Part may be required to comply with the current standards and practices.”).

<sup>44</sup> MAPP states that prior to the Commission’s acceptance of Seams Service, Midwest ISO represented Seams Service as being based upon the terms and conditions of the Midwest ISO-MAPP SOA.

support or the approval of NAESB/NERC or the Congestion Management Process Council when such support was neither considered nor received during the initial development of Seams Service.

38. MAPP contends that, while the Commission has a long-standing standardization policy, it does not require that all seams agreements must be identical in all of their provisions. MAPP notes that the Commission previously stated its expectation that “Midwest ISO will allow continued use of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol in the [SOA] for those MAPP members taking Seams Service...”<sup>45</sup> MAPP argues that standardization of Seams Service terms and conditions among customers taking Seams Service is the issue in this proceeding, not standardization with the terms and conditions of other joint operating agreements. MAPP reiterates its arguments differentiating Seams Service from the terms, conditions, and parties to other joint operating agreements. In particular, MAPP states that Midwest ISO and parties to Midwest ISO’s other joint operating agreements generally have market-based flows on Reciprocal Coordinated Flowgates. In contrast, MAPP contends that its flows are usually created as a result of existing native load service obligations and through standard open access transmission tariff provisions for granting transmission service requests, including placing requests in study-status. Thus, removing the ability to preserve flowgate capacity for study-status requests under section 1.3.2(d) will impact MAPP members much more significantly than it would Midwest ISO.

39. Finally, MAPP contends that Midwest ISO has not provided any evidence that section 1.3.2(d) has ever resulted in market manipulation or gaming of the market since the Midwest ISO-MAPP SOA was implemented in 2005. MAPP submits that Midwest ISO’s gaming scenario is unrealistic because it assumes advance, precise knowledge by the transmission customer of requests submitted in Midwest ISO’s queue. MAPP adds that, if this gaming occurs, it could be addressed through the Commission’s hotline or complaint process.

**e. Commission Determination**

40. We find that Midwest ISO has complied with the Commission’s requirement in the October 16 Compliance Order that Midwest ISO clarify its use of the Midwest ISO-MAPP SOA protocols during negotiations with MAPP members that take Seams Service. Midwest ISO confirms that such protocols may be negotiated by individual Seams Service customers or by a group of Seams Service customers that prefer to use a common set of protocols, such as the MAPP entities. If such MAPP entities prefer that Midwest ISO continue to use the existing TTC/ATC/AFC and Transmission Service Request

---

<sup>45</sup> MAPP Answer at 3-4, citing October 16 Compliance Order, 125 FERC ¶ 61,037 at P 25.

Evaluation Protocol from the Midwest ISO-MAPP SOA, Midwest ISO states that it will make reasonable efforts to comply. However, Midwest ISO also states that adjustments to the existing procedures may be needed to reflect standard industry practices.

41. We will not prejudice any future proceedings regarding the continued use of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol in the Midwest ISO-MAPP SOA. It is important that Midwest ISO and MAPP entities that are prospective Seams Service customers engage in meaningful negotiations. While we recognize the importance of conforming the TTC/ATC/AFC and Transmission Service Request Evaluation Protocol to standard industry practices, the continued use of existing procedures, at least on a transitional basis, may be appropriate to permit a smooth transition to Seams Service and to accommodate any unusual characteristics of the Midwest ISO-MAPP seam. We reiterate our expectation that Midwest ISO “allow continued use of the existing TTC/ATC/AFC and Transmission Service Request Evaluation Protocol in the Midwest ISO-MAPP SOA for those MAPP members taking Seams Service after [March 31, 2009], to the extent necessary to provide a smooth transition from the Midwest ISO-MAPP SOA to Seams Service.”<sup>46</sup>

42. We reject without prejudice Midwest ISO’s clarification that it will make its negotiations with Seams Service customers subject to “broad industry support” demonstrated by the approval of NERC/NAESB or the Congestion Management Process Council. The Commission did not ask Midwest ISO to clarify the criteria it would apply to determine the reasonableness of proposals from the MAPP entities during negotiations. Moreover, this clarification seems to be at odds with existing section 81.1.11 of Midwest ISO’s tariff, which indicates that TTC/ATC/AFC protocols would be established by, first, standardizing the calculations pursuant to action by the Commission and NERC/NAESB and, second, by negotiation between Midwest ISO and Seams Service customers to determine “what revisions to the protocols of this Part may be required to comply with the current standards and practices.”<sup>47</sup> Section 81.1.11 suggests that negotiations would take place *following* any NERC/NAESB action and does not suggest that any negotiated changes would be subject to “broad industry support” or direct approval by NERC/NAESB or other entities. In addition, the requirement that negotiated changes should “comply with current standards and practices” suggests compliance with *both* current industry standards, such as those of NERC/NAESB, and current practices, such as the existing protocols in the Midwest ISO-MAPP SOA. Furthermore, the existing Seams Service transition schedule does not appear to allow sufficient time during any negotiations for parties to gain the explicit approval of industry groups.

---

<sup>46</sup> October 16 Compliance Order, 125 FERC ¶ 61,037 at P 25.

<sup>47</sup> Midwest ISO, FERC Electric Tariff, section 81.1.11, Original Sheet No. 850Z.14.

### 3. Other Issues

43. As a final matter, we note that the tariff sheets in Midwest ISO's compliance filing were correctly filed under the Third Revised Vol. No. 1 of Midwest ISO's tariff. On December 18, 2008, however, the Commission conditionally accepted the Fourth Revised Vol. No. 1 of Midwest ISO's tariff effective on January 6, 2009.<sup>48</sup> In that order, the Commission accepted Midwest ISO's commitment "that, going forward, any tariff provisions pending acceptance before the Commission and/or accepted on compliance will be substituted for corresponding language included in [the Fourth Revised Vol. No. 1] after the Commission has accepted such pending tariff language."<sup>49</sup> Accordingly, we require Midwest ISO to submit, in the compliance filing due within 30 days from the date of this order, tariff sheets under the Fourth Revised Vol. No. 1 of its tariff to reflect the tariff revisions accepted here, effective on January 6, 2009, or, in the alternative, clarification of the location of such tariff sheets in a filing submitted in another proceeding.

The Commission orders:

(A) Midwest ISO's compliance filing is hereby conditionally accepted, as discussed in the body of this order.

(B) Midwest ISO is hereby required to submit a compliance filing due within 30 days from the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>48</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,321 (2008).

<sup>49</sup> *Id.* P 18.