

I. Introduction

2. MidAmerican is the largest utility in Iowa and provides electric and natural gas service to retail customers located in the States of Iowa, Illinois, South Dakota and Nebraska. MidAmerican is the principal subsidiary of MHC Inc. MHC Inc. is the direct wholly owned subsidiary of MidAmerican Funding LLC, with MidAmerican Energy Holdings Company (MEHC) as its sole member. MEHC is a consolidated subsidiary of Berkshire Hathaway Inc.

3. MidAmerican has announced its intent to join Midwest ISO as a Transmission Owner and plans to integrate its facilities into Midwest ISO on September 1, 2009. In connection with its planned membership, Midwest ISO and MidAmerican jointly or individually have made several filings with the Commission that are necessary to integrate MidAmerican with Midwest ISO. First, on May 15, 2009, MidAmerican submitted a filing, in Docket No. ER96-719-025, proposing revisions to its market-based rate tariffs to remove restrictions on sales within the MidAmerican balancing authority area and permit market-based sales of capacity, energy and ancillary services throughout the Midwest ISO region upon MidAmerican's integration into Midwest ISO.¹ Then, on June 1, 2009, MidAmerican and Midwest ISO, jointly or individually made five simultaneous filings proposing revisions to Midwest ISO's ASM Tariff and MidAmerican's Open Access Transmission Tariff (OATT).

4. In Docket No. ER09-1252-000, Midwest ISO and MidAmerican made a joint filing with respect to Attachment O (Rate Formula) and Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service), Schedule 8 (Non-Firm Point-to-Point Transmission Service), Schedule 9 (Network Integration Transmission Service), and Schedule 26 (Network Upgrade Charge From Transmission Expansion Plan) to the ASM Tariff, in order to include MidAmerican in the ASM Tariff as a pricing zone in connection with its proposed integration with Midwest ISO. In Docket No. ER09-1260-000, MidAmerican made a filing proposing several revisions to MidAmerican's OATT to terminate duplicative or irrelevant provisions. The filings in Docket Nos. ER09-1252-000 and ER09-1260-000 will be addressed in orders being issued concurrently with this order.²

¹ MidAmerican made its filing in conjunction with filings made by its affiliates in Docket Nos. ER97-2801-026 (PacifiCorp) and ER99-2156-018 (Cordova Energy Company LLC). These filings are being addressed separately in a concurrently-issued order. *See MidAmerican Energy Co., et al.*, 128 FERC ¶ 61,048 (2009).

² *See Midwest Independent Transmission System Operator, Inc. and MidAmerican Energy Company*, 128 FERC ¶ 61,047 (2009); *see also MidAmerican Energy Company*, Docket No. ER09-1260-000 (July 16, 2009) (unpublished letter order).

5. In Docket No. ER09-1246-000, Midwest ISO made a filing to amend the ASM Tariff to address the allocation of Partial-Year FTRs in connection with the integration of new transmission-owning members. In Docket No. ER09-1248-000, Midwest ISO and MidAmerican made a joint filing to amend the ASM Tariff to include MidAmerican's local transmission planning process as Attachment FF-MidAmerican. In Docket No. ER09-1253-000, Midwest ISO and MidAmerican made a joint filing to amend the ASM Tariff to address the treatment of various GFAs. Each of these filings is addressed further below.

II. Notice of Filings and Responsive Pleadings

6. Notice of the June 1, 2009 filing in Docket No. ER09-1246-000 was published in the *Federal Register*, 74 Fed. Reg. 31,020 (2009), with interventions or protests due on or before June 22, 2009. Timely motions to intervene were filed by: American Municipal Power – Ohio, Inc. (AMP-Ohio); Exelon Corporation (Exelon); MidAmerican; Alliant Energy Corporate Services, Inc. (Alliant); Resale Power Group of Iowa (RPGI); and Midwest ISO Transmission Owners³ (Midwest ISO TOs). A motion to intervene out-of-time was filed by Consumers Energy Company (Consumers). A timely motion to intervene and protest was filed by Midwest Municipal Transmission Group (MMTG)⁴

³ For the purpose of this filing, the Midwest ISO Transmission Owners include: Ameren Services Company, for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC, Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁴ MMTG includes the Iowa Association of Municipal Utilities, Central Minnesota Municipal Power Agency, Minnesota Municipal Utilities Association and its member cities.

and Municipal Energy Agency of Nebraska (MEAN)⁵ (collectively, Midwest Municipals). MidAmerican and Midwest ISO filed answers in response to Midwest Municipals' protest. Midwest Municipals filed an answer in response to MidAmerican's answer and Midwest ISO's answer.

7. Notice of the June 1, 2009 filing in Docket No. ER09-1248-000 was published in the *Federal Register*, 74 Fed. Reg. 31,020 (2009), with interventions or protests due on or before June 22, 2009. Timely motions to intervene were filed by: AMP-Ohio, Consumers; Exelon; Alliant; Midwest ISO TOs; RPGI; and LS Power Transmission, LLC. A notice of intervention was filed by the Illinois Commerce Commission. A timely motion to intervene and protest was filed by Midwest Municipals. MidAmerican and Midwest ISO filed answers in response to Midwest Municipals' protest. Midwest Municipals filed an answer in response to MidAmerican's answer and Midwest ISO's answer.

8. Notice of the June 1, 2009 filing in Docket No. ER09-1253-000 was published in the *Federal Register*, 74 Fed. Reg. 31,021 (2009), with interventions or protests due on or before June 22, 2009. Timely motions to intervene were filed by: AMP-Ohio, Central Iowa Power Cooperative, Corn Belt Power Cooperative, Exelon, Alliant, RPGI, and Midwest ISO TOs. Midwest Municipals filed a timely motion to intervene and comments. A motion to intervene out-of-time was filed by Consumers. Timely motions to intervene and protests were filed by Basin Electric Power Cooperative (Basin Electric) and Associated Electric Cooperative, Inc. (Associated Electric). MidAmerican submitted comments correcting certain errors in the original filing. MidAmerican also submitted an answer responding to Associated Electric's protest. Associated Electric submitted an answer in response to MidAmerican's answer. Midwest ISO filed an answer to Midwest Municipals' comments.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant Consumers' late-filed motion

⁵ MEAN is a municipal power supply agency headquartered in Lincoln, Nebraska, and serves cities both within and outside of Iowa.

to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MidAmerican's answer and Associated Electric's answer filed in Docket No. ER09-1253-000, because they have provided information that assisted us in our decision-making process. We are not persuaded to accept MidAmerican's answer filed in Docket Nos. ER09-1246 and ER09-1248, Midwest ISO's answer, nor Midwest Municipals' answer and will, therefore, reject them.

B. Substantive Matters

1. Request for Conference or Hearing

12. Because Midwest Municipals believe that the Commission should consider all of the filings related to the integration of MidAmerican with Midwest ISO together, Midwest Municipals list in the protests they filed in both Docket No. ER09-1246-000 (the Partial-Year FTR filing) and in Docket No. ER09-1248-000 (the Local Transmission Planning filing) all the major issues they had raised in all of the pleadings in the integration-related proceedings (even if those issues are not related to the application they are actually protesting). Midwest Municipals state that if all of the issues are not resolved, the Commission should hold a conference or, if necessary, a hearing to address the issues. Midwest Municipals list five major concerns they have raised in the various integration-related proceedings.

13. Midwest Municipals express a concern related to the inclusion of municipally-owned facilities in Midwest ISO and compensation for these facilities without a gap in payment, and a concern related to the process for arranging to include their facilities in a Midwest ISO transmission owner's zonal transmission rates, including Midwest ISO's approval of the facilities and costs, by September 1. Midwest Municipals raise these two concerns in their protest in Docket No. ER09-1252-000 and the Commission addresses these issues in the concurrently issued order in that proceeding.⁶

14. Midwest Municipals also express a concern related to two pre-existing Joint Investment and Ownership Agreements and a concern related to transmission planning rights under a 2005 Agreement and Memorandum of Understanding (2005 Agreement and Memorandum) between MMTG and MidAmerican. Midwest Municipals raise these

⁶ See *Midwest Indep. Transmission Sys. Operator, Inc. and MidAmerican Energy Co.*, 128 FERC ¶ 61,047 (2009).

two concerns in their protest in Docket No. ER09-1248-000 and we address them below in the section on Local Transmission Planning.

15. Finally, Midwest Municipals express a concern related to the possibility that there may not be sufficient FTRs and/or Auction Revenue Rights (ARRs) to offset congestion costs. Midwest Municipals raise that concern in their protest in Docket No. ER09-1246-000 and we address it below in the section on partial-year FTRs.

16. As we discuss further below with regard to the partial-year FTR filing and Local Transmission Planning filing, and in the concurrently-issued order in Docket No. ER09-1252-000, we deny Midwest Municipals' request for a conference or hearing as unnecessary.

2. Partial-Year Financial Transmission Rights (Docket No. ER09-1246-000)

17. On June 1, 2009, Midwest ISO filed proposed revisions to the ASM Tariff to establish the procedure for the partial-year allocation of FTRs⁷ in connection with the integration of MidAmerican into Midwest ISO as a Transmission Owner. Midwest ISO proposed an effective date of June 2, 2009, the day after filing, in order to provide sufficient time to take the preparatory registration steps necessary to implement the Partial-Year FTR Allocation in connection with the integration of MidAmerican into Midwest ISO.

a. Background

18. Under the ASM Tariff, when the integration of a new Transmission Owner into Midwest ISO occurs after the start of an Annual ARR Allocation year, customers in the newly integrated ARR Zone(s) shall be eligible to participate in a partial-year allocation of FTRs for the remainder of such allocation year. However, the tariff provides that "no partial-year FTRs will be allocated to Transmission Customers in the new ARR Zone(s) unless and until the Transmission Provider submits a section 205 filing that details the process in which FTRs will be allocated during the partial year."⁸ Under the ASM Tariff, an Annual ARR Allocation year consists of the period beginning on June 1 of a given calendar year and extending to May 31 of the following calendar year. When the new Transmission Owner's integration happens at mid-cycle during the allocation year, the customers in the new ARR Zone(s) are not yet able to participate fully in an Annual ARR

⁷ Unless otherwise defined herein, all capitalized terms have the definitions attributed to them in the ASM Tariff.

⁸ See section 42 (ASM Tariff Sheet No. 1188).

Allocation for that cycle. Accordingly, the ASM Tariff authorizes Midwest ISO to develop the procedure for a Partial-Year FTR Allocation that would give those customers a means to hedge congestion until the next Annual ARR Allocation year.

19. In its order accepting these provisions in the ASM Tariff, the Commission stated that in providing the details for a partial-year FTR allocation process, Midwest ISO must address whether more than one stage of allocation will be used to prioritize existing uses for the allocation of financial rights, how the allocation will occur in each stage, and how the FTRs will be allocated in different months of the remaining partial year.⁹ In addition, the Commission stated that a partial-year FTR allocation should be based upon a simultaneous feasibility study reflecting the actual date of the Transmission Owner's integration with Midwest ISO, once that date is known.¹⁰

20. In March and April 2009, Midwest ISO conducted the Annual ARR Allocation for the upcoming ARR allocation year (i.e., June 1, 2009 to May 31, 2010). In addition, the annual FTR Auction for that same period was concluded in May 2009. Since MidAmerican proposes to integrate with Midwest ISO on September 1, 2009, it will be joining Midwest ISO at mid-cycle, too late for MidAmerican and its customers to participate in the Annual ARR Allocation year and the annual FTR Auction. Consequently, partial-year FTRs need to be made available to MidAmerican and its customers until they can participate fully in the next Annual ARR Allocation (March-April 2010) for the next ARR allocation year (June 1, 2010-May 31, 2011).

b. Filing

21. Midwest ISO proposes revisions to the ASM Tariff, to be effective June 2, 2009, in order to provide the procedure for a Partial-Year FTR Allocation associated with the mid-cycle integration of MidAmerican with Midwest ISO, as well as for any future mid-cycle integration of other new Transmission Owners.

22. Under Midwest ISO's proposal, the Partial-Year FTR Allocation will be based on transmission rights arising from network, point-to-point and GFA transmission services in the new Transmission Owner's service area. These transmission rights will need to be registered with Midwest ISO in four ways. First, the entities claiming the transmission rights should register their assets with Midwest ISO in time for inclusion in the Network Model and Commercial Model updates immediately preceding the integration date. In MidAmerican's case, the June 1, 2009 updates to the Network and Commercial Models

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,003, at P 13 (2009).

¹⁰ *Id.*

immediately precede MidAmerican's proposed September 1, 2009 integration. Second, the entities claiming the transmission rights should register as Market Participants in a timely manner. In the case of MidAmerican, Market Participants need to be registered by June 15, 2009. Third, network, point-to-point, and GFA services should be incorporated into Midwest ISO's Open Access Same-Time Information System (OASIS). In MidAmerican's case, such OASIS registration should occur by June 30, 2009.

23. Fourth, pursuant to the requirements of sections 42 and 43 of the ASM Tariff, and the definition of ARR Entitlements therein, the transmission rights must be recorded with Midwest ISO during a mid-cycle ARR registration that will be held before the integration date. In MidAmerican's case, the mid-cycle ARR registration will involve Midwest ISO's preliminary gathering of data from June 15-30, 2009 (i.e., information relating to the definition of the ARR Zone, the identification of Reserved Source Points, and transmission capacity); and Market Participants' review of the transmission and ARR Entitlements defined by Midwest ISO. The FTRs that can be requested in the Partial-Year FTR Allocation will be derived from ARR Entitlements determined through this mid-cycle ARR registration process, which must be completed by all Market Participants with qualifying transmission services on the MidAmerican system by July 2009.

24. Midwest ISO states that, to ensure the simultaneous feasibility of the FTRs, the updated Network and Commercial Models will reflect the total base load represented by all FTRs existing at the time of the update, as well as the transmission usage associated with GFAs, which will also be registered for purposes of the update. The ARR registration will use as its Reference Year the four full seasons prior to the integration date. In the case of MidAmerican, the Reference Year will be Summer and Fall of 2008, and Winter and Spring of 2009 (June 1, 2008-May 31, 2009). Midwest ISO further states that, where the requirements for qualifying Generation Resources as Reserved Source Points result in insufficient megawatts for the new Transmission Owner's Baseload Usage in its Peak Reserved Source Set, the required duration of ownership or contractual rights may be reduced from five years to one year in accordance with section 43.2.1.a.ii of the ASM Tariff.

25. Midwest ISO proposes that the Partial-Year FTR Allocation will consist of a single round of nomination and allocation of FTRs, covering the peak and off-peak periods of each of the remaining seasons of the current Annual ARR Allocation period. Customers under Network and GFA Option A service may nominate partial year FTRs up to their Forecasted Peak Load (less the portion of their Load served by Carved-Out and Option C GFAs).¹¹ Point-to-point customers may nominate partial year FTRs up to

¹¹ Option A, Option C, and Carved-Out refer to different treatments of GFAs under the ASM Tariff. Those treatments are outlined in section 38.8 of the ASM Tariff (ASM Tariff Sheet Nos. 656-674).

the eligible megawatt amount of their Transmission Service. In addition, for the purposes of the Partial-Year FTR Allocation, Midwest ISO will create seasonal allocation models based on data from the updated Network and Commercial Models, the ARR Registration, and updates to the loopflow assumptions and Firm Flow Entitlements for the new ARR Zone, in order to account for the increase in transmission capability arising from the transfer of the new Transmission Owner's share of Reciprocally Coordinated Flowgates into Midwest ISO's share. Transmission capacity freed up by the updates to the loopflow assumptions and Firm Flow Entitlements calculations will also be included in the Partial-Year FTR Allocation. In the case of MidAmerican, Midwest ISO states that nominations for partial-year FTRs are scheduled for August 3-7, 2009, and the Partial-Year Allocation of FTRs is scheduled for August 10-14, 2009.¹² The new Transmission Owner and its Transmission Customers may participate in the monthly FTR Auctions of residual transmission capacity each month of the partial year, starting with the monthly FTR Auction two weeks before the scheduled integration date. Therefore, Midwest ISO states, MidAmerican and its Transmission Customers may begin participating in the August 14-28, 2009 process for the September 2009 monthly FTR auction.¹³

26. Midwest ISO further proposes that ARR Entitlements defined during the mid-cycle ARR Registration process for the MidAmerican Zone will be based on historical transmission usage during the Reference Year. Therefore, the paths of the FTRs allocated for the balance of the current allocation period may not coincide with Market Participant usage. Market Participants have the option of participating in the monthly FTR Auctions in order to reconfigure their FTR portfolio by selling and/or acquiring FTRs for each month. In the case of MidAmerican, Midwest ISO states that all Market Participants properly registered in the Midwest ISO September 2009 Network and Commercial Model that meet the credit requirements will be able to participate in monthly FTR Auctions.¹⁴ FTRs allocated in the Partial-Year FTR Allocation or awarded in the monthly FTR Auctions may also be transferred between Market Participants through the FTR secondary market.

27. For the new Transmission Owner and its Transmission Customers in the new ARR Zone, Year 1 of the allocation process will be the first full Annual ARR Allocation period that begins upon the end of the partial year. In the case of MidAmerican, its partial year consists of the period from September 1, 2009 to May 31, 2010. Therefore, Year 1 for MidAmerican and its Transmission Customers is the period from June 1, 2010 to May 31, 2011. The nomination and allocation of ARRs in subsequent ARR allocation

¹² Transmittal Letter (Docket No. ER09-1246-000) at 5.

¹³ *Id.*

¹⁴ *Id.*

periods will be governed by the procedures in section 43.2.4 of the ASM Tariff for the regular allocation of ARR.

28. Midwest ISO also requests waiver of the Commission's prior notice requirements to permit an effective date of the day after filing. According to Midwest ISO, this will enable Midwest ISO and MidAmerican to take the preparatory registration and other steps necessary to implement the Partial-Year FTR Allocation in connection with the integration of MidAmerican with Midwest ISO, which is expected to occur on September 1, 2009.

c. Protests

29. Midwest Municipals protest Midwest ISO's proposed revisions to the ASM Tariff to establish the procedure for the Partial-Year FTR Allocation in connection with the integration of MidAmerican with Midwest ISO.

30. Midwest Municipals request, as a precaution, that the Commission order that the protections that are afforded to MidAmerican will also be made available to Midwest Municipals and others.¹⁵ Midwest Municipals state that, based on discussions with MidAmerican and Midwest ISO, they "do not believe that anything different is contemplated."¹⁶ Midwest Municipals assert that they have received information that indicates that fewer FTR/ARRs may be available for distribution than are needed and that it will be harmed if there are fewer FTR/ARRs available than needed to serve its loads.

31. In addition, Midwest Municipals assert that, unlike large utilities, such as MidAmerican, whose generation and loads are spread over larger geographic areas, municipals are located in specific places, and if they are in a load pocket, they may be subject to very high congestion costs. It is for this reason, Midwest Municipals state, that MidAmerican and Midwest Municipals members agreed in the 2005 Agreement and Memorandum between MMTG and MidAmerican to discuss and attempt to reach a resolution of the problems created by the high congestion costs in a Locational Marginal Price (LMP) market should MidAmerican join Midwest ISO.¹⁷ Midwest Municipals

¹⁵ Midwest Municipals Protest (Docket No. ER09-1246-000) at 7.

¹⁶ *Id.* at 8.

¹⁷ Midwest Municipals Protest (Docket No. ER09-1246-000) Attachment A. The 2005 Agreement and Memorandum is intended as a means to coordinate MMTG's participation in certain aspects of MidAmerican's regional and local transmission planning and to enhance MMTG's opportunities to invest in mutually agreeable transmission system projects, consistent with MidAmerican's OATT and applicable regulation and regional reliability organization requirements. In addition, the 2005

state that MidAmerican has been considering a concept of a “Load Aggregation Service” to address congestion cost concerns, but this contemplated service may have to be modified to comply with Midwest ISO business practices requirements.¹⁸

32. Further, Midwest Municipals state that it has been difficult to gain access to necessary information to determine transmission congestion even though this information is available to Midwest ISO and major Transmission Owners. Midwest Municipals argue that this inability to get basic information adversely impacts them competitively, creates a classic unlevel playing field, and denies information that is necessary to their members’ planning decisions. Midwest Municipals further state that, during the initial startup of the Midwest ISO market, Midwest ISO provided an analysis of LMP impacts for all generation nodes, but Midwest ISO has declined to provide the same type of information for potential or actual new entrants that are impacted by MidAmerican’s integration with Midwest ISO, such as the Midwest Municipals. Under these circumstances, Midwest Municipals argue that Midwest ISO or MidAmerican should be required to produce available studies of anticipated congestion by nodes to allow prediction of the level of (1) ARR pro-rations that might be anticipated and (2) LMP costs. MidAmerican’s and Midwest ISO’s failure to provide this information, Midwest Municipals maintain, gives MidAmerican an advantage resulting from its control of the transmission system and places Midwest Municipals at a severe disadvantage.¹⁹ Midwest Municipals note that when a utility merges or otherwise threatens to exercise market power, a requirement that the company share transmission capacity information may be a crucial way to equalize parties.²⁰ Similarly, Midwest Municipals state that the type of LMP data that they request should be made available, especially when Midwest ISO and MidAmerican are seeking to implement a new market structure by September 1, 2009.²¹

Agreement and Memorandum provides for the parties to meet in order to discuss and share information related to issues of mutual interest in the event that MidAmerican becomes a member of a Regional Transmission Organization. *Id.* section 6.

¹⁸ Midwest Municipals Protest (Docket No. ER09-1246-000) at 9.

¹⁹ *Id.* at 10-11, citing *Gulf States Utils. Co. v. FPC*, 411 U.S. 747 (1973). (Commission has broad conditioning authority; must act to avoid anticompetitive effects in all aspects of its regulation).

²⁰ See *Wabash Valley Power Ass’n, Inc. v. FERC*, 268 F.3d 1105, 1108 (D.C. Cir. 2001) (citing *Am. Elec. Power Co.*, 90 FERC ¶ 61,242 (2000)).

²¹ Midwest Municipals Protest (Docket No. ER09-1246-000) at 11.

33. Midwest Municipals hope to be able to work issues out through negotiations, but, if this becomes impossible, they request the Commission to hold a conference or a hearing to resolve issues that result from MidAmerican's integration with Midwest ISO. In addition, Midwest Municipals request that the Commission leave this docket open to later consider these problems and that any orders approving MidAmerican's integration with Midwest ISO provide for procedures that allow for future resolution of issues.²²

d. Commission Determination

34. We will accept Midwest ISO's proposed revisions to the ASM Tariff with respect to the Partial-Year FTR Allocation, to be effective June 2, 2009, as requested.

35. The ASM Tariff provides that when a new ARR Zone is added in Midwest ISO, no partial-year FTRs will be allocated to Transmission Customers in the new ARR Zone(s) unless and until the Transmission Provider submits a section 205 filing that details the process in which FTRs will be allocated during the partial year. In the Commission order accepting the provisions for new ARR Zones, the Commission stated that in providing the details for the process, Midwest ISO is to "address whether more than one stage of allocation will be used to prioritize existing uses for the allocation of financial rights, how the allocation will occur in each stage, and how the FTRs will be allocated in different months of the remaining partial year. In addition, such a partial-year FTR allocation should be based upon a simultaneous feasibility study reflecting the actual date of the transmission owner's integration into the Midwest ISO, when that date is known."²³

36. We find that Midwest ISO's proposed revisions to the ASM Tariff provide the details needed about the number of nomination and allocation stages by stating that Midwest ISO will have a single-round nomination and allocation of the partial-year FTRs. Midwest ISO also provides revised tariff language to detail how the Partial-Year FTRs will be allocated and nominated in each stage.²⁴ In addition, we find that Midwest ISO's proposed revisions adequately address how the FTRs will be allocated in different months of the remaining partial year in stating that the Partial-Year FTRs will cover the

²² *Id.* at 9-10.

²³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,003, at P 13 (2009).

²⁴ *See* section 42.6 (ASM Tariff Sheet No. 1191B).

peak and off-peak periods for each of the remaining seasons of the partial year.²⁵ In addition, Midwest ISO's proposed tariff language provides that for the Partial-Year FTR Allocation, FTR allocations will be based on a Simultaneous Feasibility Test similar to the way Midwest ISO performs the Annual ARR Allocation, using the quarterly Network and Commercial model update that immediately precedes the integration date, therefore reasonably reflecting the actual date of integration.

37. Finally, we disagree with the arguments raised by Midwest Municipals related to (1) their request for new studies on transmission congestion; (2) their request for protections in obtaining FTRs and ARRs; and (3) their request for protection from congestion cost risks in an LMP market. As a general matter, we find that Midwest Municipals will have the same access to protection from congestion costs that will be available to MidAmerican and every other Market Participant in the Midwest ISO. Midwest Municipals will further have access to the same data as MidAmerican and other Market Participants in order to perform analyses to assist them in managing their congestion risk. Therefore, although Midwest Municipals state that there *may* be fewer FTRs and ARRs available than they need to completely protect them from congestion costs, they have not shown that the provisions of sections 42 and 43 of the ASM Tariff are unduly discriminatory against Midwest Municipals or any other parties in the allocation of FTRs or ARRs. We will deny Midwest Municipals' request that the Commission establish a conference or hearing to address these matters.

38. We recognize that the Commission order permitting Midwest ISO's market start-up directed Midwest ISO to create transitional safeguards in the FTR allocation methodology, including studies and special congestion protections, for entities located in Narrow Constrained Areas (NCA).²⁶ We note, however, that Midwest ISO has not provided such studies and special congestion protections in connection with the potential or actual integration of any new entrants into its footprint, including MidAmerican, after the market start-up period; therefore, Midwest Municipals are at no disadvantage. Moreover, we find Midwest ISO's market operations have matured since market start-up and that the type of studies performed in order to evaluate the need for special congestion protections during a transitional period are not warranted here. We also note that the special congestion protections established at the time of Midwest ISO's market start-up

²⁵ *Id.* The four (4) seasons are (i) Winter – December, January, February; (ii) Spring – March, April, May; (iii) Summer – June, July, August; and (iv) Fall - September, October, November. *See* section 1.596 of the ASM Tariff (Tariff Sheet No. 293).

²⁶ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 91-94 (2004).

for entities in NCAs were transitional in nature and will expire within six months of MidAmerican's integration into Midwest ISO.

39. Furthermore, we note that Midwest Municipals state that they hope to be able to work these issues out through negotiations. As Midwest Municipals recognize, the 2005 Agreement and Memorandum between MMTG and MidAmerican provides a means for parties to address potential issues in the event MidAmerican becomes a member of a Regional Transmission Organization. In particular, the 2005 Agreement and Memorandum provides for the parties to meet in order to discuss and share information related to issues of mutual interest, including, but not limited to "strategies to address participation in a locational marginal price based energy market" and "sharing or pooling of congestion costs and short-term and long-term revenues associated with financial transmission rights, identification of grandfathered power supply or transmission agreements and issues therefore due to MidAmerican's participation in [a Regional Transmission Organization]." As stated by Midwest Municipals, MidAmerican has already met with Midwest Municipals and has committed to continue working with Midwest Municipals and Midwest ISO on possible ways to address Midwest Municipals' concerns. We encourage MidAmerican and Midwest ISO to continue negotiations with Midwest Municipals.

40. To the extent that Midwest Municipals are requesting access to congestion studies that may already have been performed, MidAmerican has committed to cooperate fully with Midwest Municipals toward a smooth transition.²⁷ Therefore, we expect that MidAmerican would share such information if available through the meetings to discuss issues arising from MidAmerican's participation in a Regional Transmission Organization required by the 2005 Agreement and Memorandum.²⁸

41. In addition, Midwest Municipals can access historical pricing information that Midwest ISO has made public for Midwest ISO interfaces and any MidAmerican nodes that are modeled in the Midwest ISO system to aid in their planning decisions.

3. Local Transmission Planning (Docket No. ER09-1248-000)

42. On June 1, 2009, as part of MidAmerican's integration with Midwest ISO, MidAmerican and Midwest ISO (collectively, Applicants) jointly submitted to the Commission a proposed Attachment FF-MidAmerican to the ASM Tariff in order to

²⁷ MidAmerican Response (Docket No. ER96-719-025) at 4.

²⁸ Midwest Municipals Protest (Docket No. ER09-1246-000) Attachment A at section 6.

incorporate MidAmerican's Order No. 890²⁹ local transmission planning process into Midwest ISO's regional transmission planning process under Attachment FF (Transmission Expansion Planning Protocol).³⁰ Applicants proposed an effective date of September 1, 2009, the proposed integration date.

a. Background

43. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed each transmission provider to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to its OATT (Attachment K).

44. The nine planning principles each transmission provider was directed by Order No. 890 to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability;³¹ (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission

²⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

³⁰ As proposed, on September 1, 2009, MidAmerican will become a transmission-owning member of Midwest ISO and Midwest ISO will become the transmission provider for service over MidAmerican's facilities under the ASM Tariff. Midwest ISO joined the filing as administrator of the ASM Tariff, but takes no position on the substance of the filing. Therefore, in this order, we refer to MidAmerican as the party proposing Attachment FF-MidAmerican.

³¹ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and that all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,³² must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

45. On December 7, 2007, in order to comply with the transmission planning requirements of Order No. 890, MidAmerican submitted a new Attachment M (Transmission Planning Process) to its OATT detailing the Mid-Continent Area Power Pool (MAPP) regional planning process in which MidAmerican, as a MAPP member, participates (section 1-12 of Attachment M) as well as MidAmerican's own local transmission planning processes (section 13 of Attachment M). On May 15, 2008, the Commission accepted MidAmerican's Attachment M, subject to a further compliance filing in order to satisfy the requirements under the principles of regional participation, cost allocation, and comparability.³³

46. On August 12, 2008, MidAmerican submitted a revised Attachment M to its OATT, as required by the Commission in the First MidAmerican Planning Order. On May 21, 2009, the Commission accepted MidAmerican's filing in compliance with the First MidAmerican Planning Order, subject to a further compliance filing in order to satisfy the requirement under the comparability principle.³⁴

b. Filing

47. On June 1, 2009, as part of MidAmerican's integration with Midwest ISO, MidAmerican submitted to the Commission a proposed Attachment FF-MidAmerican to the ASM Tariff. MidAmerican states that the purpose of the filing is to transfer its Commission-approved and Order No. 890-compliant local transmission planning process to the ASM Tariff. Specifically, MidAmerican proposes to replace its current local transmission planning process found at Attachment M of its OATT with new Attachment FF-MidAmerican to the ASM Tariff. MidAmerican states that new Attachment FF-MidAmerican, to the extent practicable, retains the MidAmerican local transmission

³² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-1655.

³³ *MidAmerican Energy Co.*, 123 FERC ¶ 61,160 (2008) (First MidAmerican Planning Order).

³⁴ *MidAmerican Energy Co.*, 127 FERC ¶ 61,168 (2009) (Second MidAmerican Planning Order).

planning process that the Commission approved in the First and Second MidAmerican Planning Orders. MidAmerican states that it made some modifications to its local transmission planning process to adapt it to Midwest ISO's regional planning process and to reflect experience gained during the first year of MidAmerican's local transmission planning process under Order No. 890. However, because Attachment FF-MidAmerican consists of new tariff sheets, MidAmerican seeks waiver of the obligation to submit a redline version comparing the new Attachment FF-MidAmerican to the Attachment M the Commission previously approved.

48. MidAmerican states that Attachment FF-MidAmerican does not include the revisions that the Commission ordered MidAmerican to make to Attachment M in the Second MidAmerican Planning Order by July 20, 2009. MidAmerican commits to submit in a subsequent compliance filing the changes necessary for Attachment FF-MidAmerican to comply with the outstanding Commission directives required for Attachment M to comply with the comparability principle of Order No. 890. However, MidAmerican requests that the Commission waive the compliance requirements in the Second MidAmerican Planning Order so that it does not have to also make the same changes to Attachment M. MidAmerican argues that, given the short period of time that the required changes to Attachment M would be in effect (approximately July 20 through August 31, 2009), such a waiver would conserve resources of MidAmerican, the Commission and stakeholders, allowing such entities to focus on MidAmerican's transition to a transmission-owning member of Midwest ISO.

c. Comments/Protests

49. Midwest Municipals state that they strongly support MidAmerican's retention of its local planning process in the proposed Attachment FF-MidAmerican. Midwest Municipals state that the MidAmerican local planning process described in Attachment M to its OATT was the product of a collaborative effort among MidAmerican and its stakeholders. Midwest Municipals argue, however, that a comparison of Attachment FF-MidAmerican and the local planning provisions of Attachment M reveals that MidAmerican omitted a number of provisions without any explanation. Midwest Municipals state that exacerbating this concern is the fact that MidAmerican does not identify or explain these changes and instead requests a waiver of the requirement to submit redlined tariff sheets. Midwest Municipals state, for instance, that several stakeholder participation provisions contained in Attachment M have been omitted in Attachment FF-MidAmerican and that Attachment FF-MidAmerican also fails to adequately address the cost allocation planning principle.

50. Midwest Municipals state that, as a whole, the changes MidAmerican has made to the local transmission planning process in Attachment FF-MidAmerican reduce stakeholder participation and MidAmerican does not attempt to demonstrate that the revised provisions are compliant with the transmission planning principles of Order No. 890. In particular, Midwest Municipals state that it is not clear whether Attachment

FF-MidAmerican complies with the coordination principle now that stakeholder participation has been reduced. Midwest Municipals add that the coordination provisions that the Commission approved in section 13.4 of Attachment M include much more detail and provide for much greater participation between MidAmerican and its stakeholders than the coordination provisions MidAmerican proposes in section V of Attachment FF-MidAmerican. For instance, Midwest Municipals point out that in section V of Attachment FF-MidAmerican, MidAmerican retains the Attachment M statement that it will hold “at least two face-to-face stakeholder meetings per year to discuss local transmission planning, including local transmission issues,” but removes the provision in Attachment M that MidAmerican will hold at least two additional stakeholder meetings “within 60 days after the receipt of a written request from registered stakeholders from ten or more different” stakeholder organizations.³⁵ Midwest Municipals argue that the ability of a group of stakeholders to institute additional meetings ensures stakeholder issues will be fully examined and discussed at the local level in the event that regular semi-annual meetings do not provide enough time for a full discussion or significant issues arise that need to be addressed between semi-annual meetings.

51. Furthermore, Midwest Municipals assert that Attachment FF-MidAmerican fails to include many Attachment M provisions related to semi-annual stakeholder meetings. For example, Midwest Municipals state that MidAmerican did not include in Attachment FF-MidAmerican the provision from Attachment M that provides advance notice of stakeholder meetings and requires MidAmerican to distribute a draft meeting agenda at least 30 days prior to local planning meetings. In addition, Midwest Municipals state that Attachment FF-MidAmerican does not include the provision in Attachment M that MidAmerican would provide information such as “identified system constraints, significant and recurring congestion, and proposed solutions or new projects” in connection with the draft meeting agenda.³⁶ Midwest Municipals also argue that Attachment FF-MidAmerican reduces stakeholder participation by eliminating Attachment M’s ad hoc study group process and several provisions related to the stakeholder working group.³⁷ Midwest Municipals argue, for instance, that although MidAmerican retains the stakeholder working group to receive information and provide comment on planning issues that arise between MidAmerican stakeholder meetings, Attachment FF-MidAmerican removes the provision that provided stakeholders with an opportunity to provide feedback on the initial assumptions MidAmerican uses to develop

³⁵ Midwest Municipals Protest (Docket No. ER09-1248-000) at 10 (citing section 13.4 (b) of MidAmerican’s OATT at Attachment M).

³⁶ Midwest Municipals Protest (Docket No. ER09-1248-000) at 11 (citing section 13.4 (e) of MidAmerican’s OATT at Attachment M).

³⁷ *Id.* at 12 (citing section 13.5 (b) of MidAmerican’s OATT at Attachment M).

its local transmission assessment and eliminates provisions specifying that non-working group members may comment on the draft report of working group studies. Moreover, Midwest Municipals state that MidAmerican did not include provisions in Attachment FF-MidAmerican providing the working group with the ability to comment on draft transmission plans prior to distribution to all stakeholders. Midwest Municipals assert that MidAmerican has, without explanation, reduced interactive aspects of the working group process.

52. With respect to cost allocation, Midwest Municipals argue that Attachment FF-MidAmerican does not fully address cost allocation, as required by Order No. 890. In addition, Midwest Municipals argue that Attachment FF-MidAmerican forfeits the valuable, collaboratively-developed joint ownership provisions of Attachment M for economic network upgrades that are associated with the 2005 Agreement and Memorandum between MMTG and MidAmerican.³⁸ Midwest Municipals state that section 12 of Attachment M describes cost responsibility for the various types of projects included in the MAPP regional plan and, as encouraged by Order No. 890, includes a joint ownership open season process for economic network upgrades.³⁹ Midwest Municipals state that they are disappointed that MidAmerican does not attempt to retain any type of opportunities for joint ownership in Attachment FF-MidAmerican and, in fact, fails to fulfill Order No. 890's cost allocation planning principle. Midwest Municipals assert that Order No. 890 requires that planning procedures address "projects that do not fit under the existing structure, such as regional projects involving several transmission owners or economic projects that are identified through the [economic planning] study process[.]"⁴⁰ Midwest Municipals maintain that Attachment FF-MidAmerican does not explain how costs of projects not governed by Midwest ISO's cost allocation procedures will be allocated, despite the fact that MidAmerican states that they will develop plans for projects that will not be included in Midwest ISO's Transmission Expansion Plan.

53. Midwest Municipals also cite two existing joint ownership agreements that they entered into as a result of the joint ownership provisions of Attachment M that

³⁸ Midwest Municipals' 2005 Agreement and Memorandum provides for "coordinat[ion of] Midwest Municipals' participation in certain aspects of MidAmerican's regional and local transmission planning and to enhance Midwest Municipals' opportunities to invest in mutually agreeable transmission system projects[.]" Midwest Municipals Protest (Docket No. ER09-1248-000) at n. 38.

³⁹ Midwest Municipals Protest (Docket No. ER09-1248-000) at 14-15.

⁴⁰ *Id.* at 15 (citing Second MidAmerican Planning Order, 127 FERC ¶ 61,168 at P 39).

MidAmerican is proposing to delete.⁴¹ Midwest Municipals argue that the integration of MidAmerican with Midwest ISO cannot legally terminate or change any existing contract to which they are parties.

54. The Midwest ISO TOs state that they do not object to the proposed Attachment FF-MidAmerican local transmission planning process, but seek clarification from MidAmerican and Midwest ISO as to: (1) when MidAmerican planned or proposed transmission projects will be subject to Midwest ISO's Attachment FF planning process; and (2) which MidAmerican planned or proposed transmission projects will be subject to cost allocation pursuant to section III of Midwest ISO's Attachment FF. The Midwest ISO TOs state their understanding is that existing planned or proposed MidAmerican projects will not be subject to Midwest ISO's Attachment FF planning process until the 2010 planning cycle. Furthermore, the Midwest ISO TOs state their understanding is that the only MidAmerican projects that will be subject to cost allocation pursuant to section III of the Midwest ISO Attachment FF will be those projects that have been developed pursuant to Midwest ISO's Attachment FF and MidAmerican's local planning process under Attachment FF-MidAmerican.

d. Commission Determination

55. We will conditionally accept Applicants' proposed Attachment FF-MidAmerican, to be effective September 1, 2009, as requested, subject to a compliance filing as directed below. We will also deny as unnecessary Midwest Municipals' request for a conference or hearing.

56. The Commission previously found it appropriate for a transmission-owning member of Midwest ISO to have its own local planning process that is coordinated with Midwest ISO's regional planning process.⁴² In addition, Attachment FF-MidAmerican is based on MidAmerican's local transmission planning process at Attachment M to its OATT, which the Commission found complied with Order No. 890, subject to further revision related to the comparability principle of Order No. 890.⁴³ Attachment FF-MidAmerican largely incorporates the language that the Commission previously accepted

⁴¹ Midwest Municipals cite the 2009 Joint Investment and Ownership Agreement for Grimes-Granger 161 kV Projects between MidAmerican and Iowa Public Power Agency and the 2006 Joint Investment and Ownership Agreement for Quad City West Upgrades. Midwest Municipals Protest (Docket No. ER09-1248-000) at 18-19.

⁴² See *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,165 (2008).

⁴³ Second MidAmerican Planning Order, 127 FERC ¶ 61,168 at P 12-13.

as part of Attachment M to MidAmerican's OATT. In addition, MidAmerican appropriately includes language in Attachment FF-MidAmerican to conform its local process to the ASM Tariff and to Midwest ISO's Attachment FF transmission planning process. For instance, under the regional participation principle, section XI of Attachment FF-MidAmerican provides that MidAmerican will participate in Midwest ISO's regional transmission planning process as a transmission owning member of Midwest ISO and will participate on the Planning Advisory Committee, the Planning Subcommittee, and in Sub-Regional Planning Meetings. Similarly, Attachment FF-MidAmerican provides that disputes shall be resolved pursuant to Attachment HH of the ASM Tariff and Appendix D of the Transmission Owners Agreement.⁴⁴

57. However, we find that MidAmerican has not supported its proposal to substantively change, or entirely omit, many provisions in Attachment FF-MidAmerican that it had included in Attachment M. Most notably, these provisions relate to coordination (section V), information exchange (section VIII), and economic planning studies (section XII). For instance, as Midwest Municipals note in their protest, MidAmerican omitted from Attachment FF-MidAmerican, without explanation, provisions from Attachment M related to MidAmerican providing advanced notice and draft agendas to stakeholders prior to local planning meetings. MidAmerican also did not include in Attachment FF-MidAmerican the list of milestones that MidAmerican's local planning process would typically include, which was included in Attachment M. In addition, MidAmerican omitted several provisions related to economic planning studies.

58. While it is appropriate for MidAmerican to make changes to, or to delete certain language from, Attachment M in order to integrate its local planning process into the Midwest ISO planning process, a number of changes and deletions appear to go beyond what is necessary. These latter changes and deletions are inconsistent with the stated purpose of the filing, which MidAmerican describes as merely transferring the local planning process the Commission already approved (subject to further compliance) in Attachment M of the MidAmerican OATT to Attachment FF-MidAmerican of the ASM Tariff. In addition, MidAmerican relies on the findings the Commission made in the First and Second MidAmerican Planning Orders related to Attachment M to argue that its local planning process in Attachment FF-MidAmerican complies with the transmission planning principles of Order No. 890. However, MidAmerican has not provided any explanation to demonstrate how provisions in Attachment FF-MidAmerican that are substantively different from those the Commission accepted in Attachment M continue to comply with all of the transmission planning principles of Order No. 890.

⁴⁴ "Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.," FERC Electric Tariff, First Revised Rate Schedule No. 1 (Transmission Owners Agreement).

59. Accordingly, MidAmerican must, in the compliance filing directed below, include in Attachment FF-MidAmerican all the local planning provisions from MidAmerican's local planning process in Attachment M that do not otherwise need to be changed or deleted to incorporate MidAmerican's local process into Midwest ISO's regional transmission planning process. Alternatively, MidAmerican may demonstrate that Attachment FF-MidAmerican fully complies with the Order No. 890 transmission planning principles notwithstanding the changes and deletions MidAmerican made when compared to the Attachment M provisions the Commission addressed in the First and Second MidAmerican Planning Orders. In either case, MidAmerican must also include a redline version of Attachment FF-MidAmerican comparing it to the local planning provisions of Attachment M.

60. Likewise, we agree with Midwest Municipals that MidAmerican must incorporate the joint ownership provisions from Attachment M (which are based on the 2005 Agreement and Memorandum) into Attachment FF-MidAmerican. While the Commission in Order No. 890 stated that it was not mandating open season procedures to allow market participants to participate in joint ownership,⁴⁵ MidAmerican has not provided any explanation for why these provisions were deleted. However, we disagree with Midwest Municipals that Attachment FF-MidAmerican does not comply with the cost allocation principle. It is appropriate for Attachment FF-MidAmerican to refer to the cost allocation provisions in the ASM Tariff.

61. With respect to the Midwest ISO TOs' request that MidAmerican and Midwest ISO clarify when MidAmerican projects will be subject to the Attachment FF planning process and which MidAmerican transmission projects will be subject to cost allocation pursuant to section III of Attachment FF, we will require Midwest ISO and MidAmerican to provide these clarifications in the compliance filing directed below. We also require Midwest ISO and MidAmerican to include in the compliance filing directed below changes to Attachment FF-MidAmerican necessary to comply with all the outstanding compliance directives in the Second MidAmerican Planning Order. Finally, we will grant MidAmerican's request for waiver so that it need not make the changes to Attachment M that are necessary to comply with the Second MidAmerican Planning Order in Docket No. OA08-41-001. Therefore, MidAmerican does not need to make changes to Attachment M and instead must make the necessary changes only to Attachment FF-MidAmerican in the compliance filing directed below.

4. Grandfathered Agreements (Docket No. ER09-1253-000)

62. On June 1, 2009, Midwest ISO and MidAmerican filed proposed revisions to Attachment P (List of Grandfathered Agreements) of the ASM Tariff, listing in

⁴⁵ See Order No. 890, FERC Stats. and Regs. ¶ 31,241 at P 594.

Attachment P the existing transmission and related agreements between MidAmerican and numerous counterparties. Applicants proposed an effective date of September 1, 2009, the proposed integration date.

a. Background

63. As part of its application to implement energy markets under its Open Access Transmission and Energy Markets Tariff (TEMT), Midwest ISO proposed tariff provisions to address transmission service provided under certain existing long-term contracts that were executed before September 16, 1998. These existing agreements are generally classified as GFAs. The Commission issued a set of orders addressing the treatment of GFAs under the TEMT.⁴⁶ Recently, the Commission accepted Midwest ISO's proposal to replace the TEMT with the ASM Tariff,⁴⁷ and the ASM Tariff continues to include the GFA provisions that the Commission previously accepted in the GFA Orders.⁴⁸ The GFAs are listed in Attachment P of the ASM Tariff.

64. Section 38.8.3(A) of the ASM Tariff delineates the treatment of GFAs that are added to Attachment P (such as those related to MidAmerican's proposal to join Midwest ISO). As relevant to Applicants' filing here, parties to GFAs that are silent on the applicable standard of review, or provide for transmission service by an entity that is not a public utility, may choose to have the GFAs carved-out of the Energy and Operating Reserve Markets.⁴⁹ Attachment P also includes agreements categorized as "excluded" if they do not involve the use of, or do not otherwise affect, Midwest ISO transactions using transmission facilities under Midwest ISO's functional control.

⁴⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042, *order on reh'g*, 112 FERC ¶ 61,311 (2005) (collectively, GFA Orders), *aff'd sub nom., Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007). See also *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,166 (2007) (allowing Midwest ISO to continue the same GFA treatment after the initial six-year transition period ended).

⁴⁷ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008).

⁴⁸ The treatment of GFAs is outlined in section 38.8 (ASM Tariff Sheet No. 656-674); see also *supra* note 12.

⁴⁹ Carved-out GFAs are not subject to the ASM Tariff scheduling and settlement requirements and are financially exempt from many energy market charges.

b. Filing

65. Applicants propose to update Attachment P of the ASM Tariff to incorporate GFAs between MidAmerican and various counterparties that were entered into prior to September 16, 1998. Applicants state that all of the MidAmerican agreements they propose to include in Attachment P either qualify as carved-out GFAs or should be listed as being excluded from GFA treatment.

66. Applicants state that the MidAmerican carved-out GFAs listed in Attachment P are agreements under which MidAmerican provides or receives interconnection, interchange or transmission services. Applicants state that all of these agreements were executed prior to September 16, 1998 and are eligible for carved-out treatment under section 38.8.3(A) of the ASM Tariff.

67. Applicants further state that the agreements they propose to include in Attachment P as “excluded” agreements do not involve the use of, or do not otherwise affect, Midwest ISO transactions that use transmission facilities transferred to Midwest ISO’s functional control. With respect to such excluded agreements, the relevant generation and/or load is either physically located outside the Midwest ISO Balancing Authority Area, has already been pseudo-tied out of the Midwest ISO Balancing Authority Area, or is expected to be pseudo-tied out by September 1, 2009.

68. In addition, Applicants propose to delete certain GFAs currently listed in Attachment P because service under those agreements has been converted to Network Integration Transmission Service (NITS) under the ASM Tariff or the agreements have expired. Applicants also explain that MidAmerican has multiple counterparties for a number of the GFAs and that, depending on the service under the GFA related to a particular counterparty, a GFA may be listed with different treatment (i.e., carved-out, conversion to service under the ASM Tariff, or excluded) for different counterparties.

69. Applicants request an effective date of September 1, 2009, the proposed date of MidAmerican’s integration with Midwest ISO.

c. Comments/Protests/Answers

70. Basin Electric filed a protest related to proposed GFA Nos. 463 and 464, which are agreements between MidAmerican and Northwest Iowa Power Cooperative (Northwest Iowa Coop), a member of Basin Electric. Basin Electric protests Applicants’ proposal to list GFA Nos. 463 and 464 in Attachment P as carved-out GFAs. Basin Electric states that GFAs Nos. 463 and 464 should be listed as carved-out GFAs with respect to MidAmerican load and excluded with respect to Northwest Iowa Coop load. Basin Electric states that Midwest ISO agrees with Basin Electric, but that Midwest ISO intends to wait to correct the listing for GFA Nos. 463 and 464 until the Commission issues an order requiring Midwest ISO to do so.

71. Associated Electric filed a protest related to proposed GFA No. 465, which is an agreement between Associated Electric and MidAmerican. Associated Electric protests Applicants' proposal to list GFA No. 465 in Attachment P as "excluded (with Associated [Electric's] load pseudo-tied out or, alternatively, carved-out if such load cannot be pseudo-tied)." Associated Electric states that GFA No. 465 should be listed as an excluded agreement because Associated Electric does not have any load on MidAmerican's system and because MidAmerican's load on Associated Electric's system should be served using NITS under the ASM Tariff. Associated Electric states that Midwest ISO agrees with Associated Electric, but that Midwest ISO intends to wait to correct the listing for GFA No. 465 until the Commission issues an order requiring Midwest ISO to do so.

72. MidAmerican states that it discovered several items in Attachment P that should be corrected and proposes several limited corrections to Attachment P to fix minor, non-substantive errors and inconsistencies. The proposed corrections include the change Basin Electric requested to list GFA Nos. 463 and 464 as carved-out GFAs with respect to MidAmerican and excluded with respect to Northwest Iowa Coop. With respect to GFA No. 465, MidAmerican proposes to change the listing to a carved-out GFA with a notation to state that the agreement is a carved-out GFA with respect to load MidAmerican serves on the Associated Electric system. MidAmerican also proposes changes to the listings for GFA Nos. 21, 22, 23, 127, 128, 235, 236, 454, 461 and 462.

73. In its answer, MidAmerican states that Associated Electric's proposal to list GFA No. 465 as an excluded agreement is not appropriate. MidAmerican states that Associated Electric's suggestion that MidAmerican use NITS to serve load on Associated Electric's system is infeasible because the ASM Tariff does not provide for the use of NITS to serve load outside of Midwest ISO. Therefore, as it suggested in its comments, MidAmerican believes that GFA No. 465 should be listed as carved-out with respect to MidAmerican and as excluded with respect to Associated Electric. In addition, MidAmerican notes that, as it stated in its comments, it agrees with Basin Electric that GFA Nos. 463 and 464 should be listed as carved-out with respect to MidAmerican and as excluded with respect to Northwest Iowa Coop.

74. In response to MidAmerican's answer, Associated Electric filed an answer stating that, upon further review, Associated Electric agrees with MidAmerican's proposed modification of Attachment P with respect to GFA No. 465, and that MidAmerican's load serviced pursuant to GFA No. 465 should be treated as carved-out.

75. In their comments, Midwest Municipals state that they will confer with Midwest ISO about possible errors in the proposed Attachment P, and if there are any unresolved concerns, Midwest Municipals will make a further filing requesting relief.

d. Commission Determination

76. We conditionally accept Applicants' proposed revisions to Attachment P to the ASM Tariff, effective September 1, 2009, as requested, subject to Applicants making a compliance filing to be submitted within thirty (30) days of the date of this order as discussed below. We find that Applicants have followed the process outlined in the ASM Tariff and accepted by the Commission in the GFA Orders for classifying the GFAs being added to Attachment P. We also find that the proposal MidAmerican makes to change the listing for GFA Nos. 463 and 464 to carved-out with respect to MidAmerican and excluded with respect to Northwest Iowa Coop addresses Basin Electric's protest, and we will require Applicants to include that change in the compliance filing we direct below. With respect to GFA No. 465, we find that the proposal MidAmerican makes to list GFA No. 465 as carved-out with respect to MidAmerican and as excluded with respect to Associated Electric is the appropriate way to address Associated Electric's concerns, and we require Applicants to include that change in the compliance filing we direct below. In addition, we direct Applicants to include in the compliance filing we direct below the changes MidAmerican proposes to the listings in Attachment P for GFA Nos. 21, 22, 23, 127, 128, 235, 236, 454, 461 and 462.

The Commission orders:

(A) Midwest ISO's filing in Docket No. ER09-1246-000 is hereby accepted, effective June 2, 2009, as discussed in the body of this order.

(B) Midwest ISO and MidAmerican's joint filing in Docket No. ER09-1248-000 is hereby conditionally accepted, effective September 1, 2009, subject to Midwest ISO and MidAmerican making a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) Midwest ISO and MidAmerican's joint filing in Docket No. ER09-1253-000 is hereby conditionally accepted, effective September 1, 2009, subject to Midwest ISO and MidAmerican making a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(D) We hereby deny Midwest Municipals' request for conference and/or hearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.