126 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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| Midwest Independent Transmission System Operator, Inc. and Transmission Owners of the Midwest Independent Transmission System Operator, Inc. | Docket Nos. ER08-637-000<br>ER08-637-001<br>ER08-637-004<br>ER08-637-005 |

ORDER ON MARKET SERVICE PROPOSAL

(Issued February 19, 2009)

1. In this order, we reject Market Coordination Service (Market Service) as proposed by Midwest Independent Transmission System Operator (Midwest ISO) and certain Midwest ISO Transmission Owners[1] (collectively, Applicants) in the underlying proceedings, following the technical conference held in this matter on November 12, 2008. We find that Market Service, as proposed, is unjust and unreasonable due to the potential adverse impact it may have on both Midwest ISO's ability to perform regional transmission operations and the corresponding benefits that accrue to consumers.

[1] 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 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.

# I. Background

2. On March 4, 2008, as amended on March 24, 2008, Applicants submitted a proposed new Module F to Midwest ISO's Open 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 Service. The third service, Market Service, 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. Notices of intervention, motions to intervene, answers and replies were filed by the entities identified in Appendix A of this order, and the party abbreviations listed in Appendix A will be used throughout this order.[2]

3. In an order issued on June 13, 2008, the Commission conditionally accepted Midwest ISO's proposed Reliability and Seams Services, subject to compliance.[3] However, the Commission found that the Market Service proposal was incomplete and required Midwest ISO to address, in a compliance filing, deficiencies identified by the Commission.[4] The Commission also requested public comments on several broad policy issues.[5] The Commission noted that once Midwest ISO cured the deficiencies in the Market Service proposal, the Commission anticipated holding a technical conference to further consider the implications of the proposal.

4. Midwest ISO submitted a compliance filing on August 12, 2008 that contains detailed answers to the Commission's deficiency questions. On August 15, 2008, MidAmerican filed responses to the deficiency questions as well as draft Open Access Transmission Tariff (OATT) sheets illustrating how it plans to implement the Market

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[2] The comments submitted in response to Midwest ISO's March 4 and March 24 filings are also summarized in the Commission's order in *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265 (2008) (June 13 Order).

[3] *Id.*

[4] The specific questions the Commission required Midwest ISO to address in its 60-day compliance filing (deficiency questions) can be found in Appendix B of the June 13 Order, 123 FERC ¶ 61,265.

[5] *Id*. P 155.

Service proposal under its OATT. In its filing, MidAmerican indicates that it anticipated taking Market Service if approved, and provides the draft sheets in order to receive Commission guidance. Comments on Midwest ISO's and MidAmerican's compliance filings were filed by MidAmerican, WAPA, Midwest TDUs, Exelon, and Ameren.[6]

5. Comments on the Commission's broad policy questions were filed by Alliant, Ameren, Midwest ISO, Midwest TDUs, IPL, Great River, Midwest ISO TOs, Iberdrola, MidAmerican, and Exelon. On October 7, 2008, Basin Electric filed an answer to the comments of Midwest TDUs.

6. In an order issued on October 10, 2008, the Commission conditionally accepted, and suspended for five months, tariff sheets that effectuated Midwest ISO's Market Service proposal, subject to a further order after a technical conference.[7] The Commission found that the Market Service proposal, as supplemented by the responses submitted to the Commission's deficiency questions, was sufficiently complete to allow the Commission to proceed in evaluating whether the proposal was just and reasonable and not unduly discriminatory. However, the Commission also found that the policy and technical issues raised by the Market Service proposal would benefit from further discussion before the Commission ruled on the merits of the proposal, and ordered a technical conference to discuss these issues.[8]

7. The Commission held a technical conference on November 12, 2008 to discuss the Market Service proposal. Notices of the conference were published in the *Federal Register*, 73 Fed. Reg. 65,601 (2008); 73 Fed. Reg. 53,421 (2008). Panelists discussed the broad policy issues raised by the Commission in the June 13 Order, along with technical aspects of the proposed Market Service. Post-technical conference comments were filed by Midwest ISO, Midwest ISO TOs, Basin Electric, WAPA, Ameren, and MidAmerican.

8. On January 12, 2009, Alliant and Midwest TDUs filed joint post-technical-conference comments and an offer of settlement.[9] Notice of the offer of settlement was

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[6] The comments filed in response to the broad policy questions from the Commission and Midwest ISO's and MidAmerican's deficiencies responses are also summarized in the Commission's order in *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,029 (2008) (October 10 Order).

[7] *Id.*

[8] *Id*. P 44-47.

[9] Alliant and Midwest TDUs also note that they are authorized to represent that Exelon does not oppose their offer of settlement.

published in the *Federal Register*, 74 Fed. Reg. 4,178 (2009). Initial comments on the offer of settlement were due by January 27, 2009, with reply comments due February 3, 2009. Initial comments were filed by Midwest ISO, Iberdrola, MidAmerican, Basin Electric, Midwest ISO TOs, WAPA, Dairyland, Ameren, and Otter Tail. Reply comments were filed by Midwest ISO, MidAmerican, and Alliant and Midwest TDUs.

## II. Market Service Proposal

9. As proposed by Midwest ISO, Market Service would extend Midwest ISO's energy and ancillary services markets to the footprints of those customers taking Market Service. Under the proposal, a Market Service customer would retain functional control over its transmission system and maintain its OATT. As such, a generator or load in a Market Service customer's footprint could be dispatched or buy power as part of Midwest ISO's markets by arranging for access to the Market Service customer's transmission system and applying to Midwest ISO to be a market participant. A generator would then submit offers to Midwest ISO and be dispatched like any other generator within Midwest ISO.

10. Midwest ISO states that the Market Service customer and customers under its tariff would be eligible to receive Financial Transmission Rights (FTRs), Long Term Transmission Rights (LTTRs), and Auction Revenue Rights (ARRs) on the same basis as existing Midwest ISO market participants, but only if the Market Service customer plans its transmission system to maintain simultaneous feasibility of LTTRs. The Market Service customer is not obligated to build to maintain such feasibility, as is a signatory to the Midwest ISO Transmission Owners Agreement, but instead may opt to do so in order to become eligible to receive FTRs, LTTRs, and ARRs.[10]

11. Market Service as proposed by Midwest ISO would differ from full participation in Midwest ISO under the Transmission Owners Agreement in several ways. First, a Market Service customer would not turn over functional control of its transmission facilities, would continue to administer its own tariff and its own transmission planning, and would continue to charge a pancaked rate for transmission service through or out of its system. Market Service would have a shorter initial term of three years (with a one-year evergreen renewal), rather than a five-year initial term under the Transmission Owners Agreement. Also, the exit fee for a Market Service customer that subsequently stops participating in the market via Market Service would be predicated on unamortized

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[10] Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1 (Midwest ISO Transmission Owners Agreement).

capital and deferred costs incurred by Midwest ISO after December 31, 2007, instead of on all unamortized capital and deferred costs as would apply to a signatory to the Transmission Owners Agreement that left Midwest ISO.

12. Midwest ISO explains that any entity that owns transmission facilities and is contiguous to Midwest ISO, to a Market Service customer, or to a qualifying Seams Service customer could take Market Service. Under the proposal, an existing signatory to the Transmission Owners Agreement could terminate its participation in that agreement, pay its exit fees, and then begin taking service under the Market Service proposal.

13. As part of the Market Service proposal, Midwest ISO includes a Market Integration Transmission Service (MITS) to provide the firm transmission service over its transmission system necessary to support its market-based generation dispatch. MITS would be provided on an "as available" basis, as determined by Midwest ISO's dispatch. Midwest ISO states that it has designed the MITS charge as a monthly network "access fee" (i.e., demand charge) based on prior years' usage, rather than a transactional fee, with the aim of not distorting bidding behavior. Midwest ISO would assess a single monthly access fee to the Market Service customer. The Market Service customer would propose a methodology under section 205 to recover this MITS charge from customers under its individual tariff.

14. Under the proposal, each Market Service customer would make available, under its OATT, a new transmission service that is comparable to MITS over its transmission system to support Midwest ISO's market dispatch. Charges for this MITS-comparable service would allow the Market Service customer to recover revenue for through-and-out service in a similar manner to Midwest ISO's MITS. Charges for the Market Service customer's MITS-comparable service would be assessed to customers under its tariff (i.e., all costs associated with MITS or MITS-comparable service, whether over Midwest ISO's system for import into the Market Service customer's system, or over the Market Service customer's system for export to Midwest ISO's system, would be recovered from customers under the Market Service customer's tariff).

## III. Procedural Matters

15. As the Commission stated in the June 13 Order, pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[11] the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. 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

[11] 18 C.F.R. § 385.214 (2008).

ordered by the decisional authority. We will accept Basin Electric's October 7 answer because it has provided information that assisted us in our decision-making process.

## IV. Discussion

### A. Comments

#### 1. Potential Benefits of Market Service Proposal

16. Midwest ISO claims that Market Service would provide four types of benefits to current Midwest ISO customers and potential Market Service customers. First, Midwest ISO asserts that there would be reliability benefits because adding to the amount of generation available for security constrained dispatch would ensure that "there is a set of generators on line at the appropriate times to be able to manage the power system within safe parameters."[12] Second, Market Service would allow Transmission Loading Relief (TLR) -based congestion management to be replaced with market-based congestion management. Third, Midwest ISO states that "the addition of new sources of low-cost power should reduce energy costs for both existing and new market participants, as the most efficient mix of resources available for both energy production and ancillary services is committed and dispatched within the Energy and Operating Reserve Markets."[13] Finally, Midwest ISO claims that participation in Market Service could reduce Schedule 16 and 17 charges for current Midwest ISO customers.[14] In its post-technical conference comments, Midwest ISO notes that only one intervenor opposed the proposal in principle.

17. Ameren and MidAmerican agree. Ameren contends that Market Service would benefit current Midwest ISO customers because additional supply sources should reduce the costs of congestion management; additional generation offered into the markets should cause market prices to decline; and the addition of Market Services customers would improve efficiency and decrease transmission costs by reducing transaction costs, such as the costs of scheduling and reserving service, to the benefit of all participants.[15] Ameren also notes that there would be a potential for unexpected costs and consequences

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[12] Midwest ISO August 12, 2008 Comments at 28 (citing Moeller Test. Docket No. ER08-637-000).

[13] *Id.* at 28-29 (citing Moeller in Docket No. ER08-637-000).

[14] Midwest ISO August 12, 2008 Comments at 29.

[15] Ameren August 12, 2008 Comments at 8.

and therefore, independent analysis should be performed and reported to the Commission on a yearly basis.[16]

18. Great River believes that Market Service would provide potential benefits to its customers through economic generation dispatch across a larger market footprint. However, Great River also states that the potential incremental benefits of the Market Service proposal have to be weighed against the uncertainty created by the proposal considering among other things that not all of the MAPP members are going to become Market Service customers, the fact that reliability and efficiency benefits are also achieved through Reliability and Seams Services, and the lack of details regarding how Midwest ISO would re-integrate a Midwest ISO Transmission Owner that withdraws in order to become a Market Service customer.[17]

19. Other parties express some support for the proposal but nevertheless find fault with various aspects of the proposal.[18]

20. Midwest ISO TOs challenge Midwest ISO's calculation of the Market Service proposal's benefits because the underlying assumption that most of the entities in MAPP would become Market Service customers is belied by the fact that some MAPP entities have indicated their intentions to join Southwest Power Pool.[19] Midwest TDUs contend that Market Service as currently structured would be unlikely to provide any net benefits to customers, stating that the proposal would weaken the existing regional transmission operator (RTO) more than it would expand the footprint, inappropriately "marry Day Two markets to Day Zero transmission control," and cause harm with balkanized planning, cost allocation, congestion-related incentives, and rate-pancaking within the Midwest ISO market area.[20]

### 2. <u>Impact on RTO Operations</u>

21. Several parties raise concerns about the Market Service proposal as it relates to Order No. 2000. Midwest TDUs argue that the Market Service proposal would adversely

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[16] *Id.* at 9.

[17] Great River August 12, 2008 Comments at 7- 8 (referring to the Nebraska Public Power District, Lincoln Electric System, and Omaha Public Power District).

[18] *See, e.g.* Basin Electric, Corn Belt, Duke, Dairyland, Indiana URC, Integrys, Manitoba, MidAmerican, OMS, WAPA, and Xcel.

[19] Midwest ISO TOs August 12, 2008 Comments at 6.

[20] Midwest TDU August 12, 2008 Comments at 58.

impact Midwest ISO's adherence to the characteristics that define an RTO. Specifically, Midwest TDUs claim that Midwest ISO's independence would be compromised because it would not have full control over all of the transmission facilities that support its markets.[21] Additionally, Midwest TDUs challenge the assertion that the Market Service proposal does not violate regulations, as found in Order No. 2000, dealing with the scope and configuration of the RTO, operational control of transmission facilities; and tariff administration. Finally, Midwest TDUs object to the premise that there would be more than one OASIS, and more than one planning regime for the transmission facilities supporting Midwest ISO's markets.[22]

22. Midwest TDUs also argue that the Market Service proposal would effectively take the "T" out of RTO by allowing Market Service customers to keep their transmission systems out of Midwest ISO's control, while simultaneously benefiting from Midwest ISO's markets.[23] Midwest TDUs claim that transmission owners that previously declined to join Midwest ISO would be rewarded for not integrating at the expense of current Midwest ISO customers.[24]

23. Alliant identifies five potential issues. First, Alliant states that transactions with Market Service participants could result in pancaked transmission rates that would not be applicable to other transactions within the Midwest ISO markets and, therefore, could be considered discriminatory relative to other transactions.[25] Second, market participants in the Midwest ISO energy and ancillary services markets would be subject to the administration of more than one transmission tariff.[26] Third, because Market Service customers retain control of their transmission systems, Alliant expects that those Market Service customers would be responsible for the administration of an OASIS separate from the Midwest ISO OASIS in direct conflict with the requirements of Order No.

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[21] Midwest TDU August 12, 2008 Comments at 19.

[22] *Id.* at 21-22.

[23] *Id.* at 18. Midwest TDUs argue that the Market Service proposal would mean that for the Market Service transmission owner areas, Midwest ISO would not operate the grid, design and administer the tariff, or plan and direct transmission development and therefore would not be the transmission provider for the full area participating in its regional energy markets.

[24] Midwest TDU August 12, 2008 Comments at 18.

[25] Alliant August 12, 2008 Comments at 5-6.

[26] *Id.* at 7.

2000.[27] Fourth, Alliant argues that it is unclear whether the Midwest ISO Independent Market Monitor would have the same authority, responsibility, and access to information with respect to Market Service participants as it does for Transmission Owners.[28] Finally, Alliant avers that while Midwest ISO may consider what Market Service participants are planning and the Market Service customers have access to Midwest ISO's transmission expansion plans, this arrangement exists on a voluntary basis and, therefore, would be inconsistent with Order No. 2000.[29]

24. IPL states that it does not have concerns regarding the performance of RTO functions at this time. However, IPL continues, the Market Service proposal would lead to two classes of Midwest ISO membership.[30] Specifically, IPL states that the Commission should not allow Midwest ISO to give a better deal to companies on its Western edge than it does to other Midwest ISO members.[31]

25. Ameren contends that if the Market Service proposal is implemented properly the addition of Market Service customers should improve the Midwest ISO's ability to perform its RTO functions. Ameren also states that if these benefits are realized, other RTOs and ISOs may be encouraged to develop new and innovative ways to improve their own operations.[32]

26. Midwest ISO states that it does not believe that the Market Service proposal would have any adverse effects on its ability to perform its RTO functions. Midwest ISO notes that the Commission has allowed RTOs to evolve in ways that improve their efficiency and allow for flexibility in organizational and market design, geographic scope, ownership arrangements, and methods of operational control.[33]

27. With respect to the characteristics that define a RTO, Midwest ISO states that the Market Service proposal would do nothing to undermine its independence as it would not

[27] *Id.* at 8.

[28] *Id.* at 8-9.

[29] *Id.* at 9.

[30] IPL August 12, 2008 Comments at 7.

[31] *Id.* at 8.

[32] Ameren August 12, 2008 Comments at 7.

[33] Midwest ISO August 12, 2008 Comments at 11-12.

subject Midwest ISO's decision making process to any market participant's control.[34] It holds it is already in compliance with the scope and configuration requirement, and says its witnesses testified that the adoption of the Market Service proposal would improve reliability coordination in the region and further expand its non-discriminatory power markets. Midwest ISO says that the market-to-non-market seam currently existing between Midwest ISO's system and the transmission systems operated by potential Market Service customers would disappear, thereby allowing the combined region to function in a single market regime. Midwest ISO also states that in Order No. 2000, the Commission provided guidance to utilities wanting to form an RTO and that the scope and configuration discussion in Order No. 2000 was clearly geared towards the formation stage of an RTO's development.[35]

28. In addition, Midwest ISO states that it will become the reliability coordinator for Market Service customer's transmission facilities and the balancing authority responsible for balancing load and resources within the Market Service customer's footprint while internal point to point transactions are likely to become obsolete within the expanded market area. It argues that as a practical matter, many critical indices of functional control will, in fact, reside with the Midwest ISO under Market Service despite the lack of a formal transfer under the Transmission Owners Agreement. Midwest ISO argues that Market Service will not reduce its operational authority over facilities under its operational control, and that the Commission has made it clear that there is no requirement for all facilities under the footprint to be under the RTO's functional control.[36]

29. Midwest ISO states Market Service customers would be required to provide transmission service over their facilities subject to their own tariff. To the extent that transmission service is provided over facilities under its control, Midwest ISO continues, Midwest ISO will be the sole provider of that service under the terms and conditions of its tariff.[37] Additionally, Midwest ISO states that adopting the Market Service proposal would allow it to better manage congestion by using market solutions to replace TLRs and by eliminating the seams between Midwest ISO and Market Service customers.

30. Midwest ISO acknowledges that, under the Market Service proposal, Midwest ISO and Market Service customers would maintain separate OASIS sites pursuant to

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[34] *Id.* at 12.

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

[36] *Id.* at 16.

[37] *Id.* at 17-18.

Commission regulations. However, the Market Service proposal requires each Market Service customer to coordinate the calculation of available transfer capability (ATC)/available flowgate capability (AFC)/total transfer capability (TTC)[38] pursuant to a mutually agreed methodology and to post the calculation on Midwest ISO's OASIS. Finally, Midwest ISO states that all Market Service customer facilities would be included in Midwest ISO's Commercial and Network Models.[39]

31. With respect to transmission expansion planning, Midwest ISO states that the Market Service proposal provides that Midwest ISO would facilitate coordination of transmission planning between itself and Market Service customers.[40] Likewise, the Market Service proposal requires Midwest ISO and Market Service customers to coordinate their system impact studies, facilities studies and generator interconnection studies.[41]

### 3. Potential for Withdrawal, Primarily in Avoidance of Regional Cost Sharing, and Impact on Scope

32. As proposed, Market Service customers' transmission system would not be subject to Midwest ISO's regional expansion planning process, and costs under Regional Expansion Criteria and Benefits (RECB) would not be directly allocated to the Market Service customers for recovery under their tariffs; nor would the costs of a Market Service customer's expansions be included in Midwest ISO's regional cost allocations.[42]

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[38] Available Transfer Capability and Total Transfer Capability are defined in sections 1.16 and 1.313a of Midwest ISO's tariff, respectively. Available Flowgate Capability is described in Attachment C to the Tariff, "Methodology to Assess Available Transfer Capability."

[39] *Id.* at 20-21.

[40] *Id.* at 22.

[41] *Id.*

[42] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on technical conference, reh'g and compliance*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007), *aff'd sub nom. Pub. Serv. Comm'n of Wisc.v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008), for Commission orders and a court decision pertaining to cost sharing allocations for expansions related to baseline reliability, generator interconnection and transmission requests; *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, *order on reh'g and compliance*, 120 FERC ¶ 61,080 (2007), *order on reh'g and compliance,* 122 FERC ¶ 61,127 (2008), for Commission

(continued…)

Rather, the proposal provides for Market Service customers, and customers under their tariffs, to pay for RECB costs when reserving transmission service with Midwest ISO or paying the MITS charges by paying an “out” charge that includes a system-wide average rate which includes RECB costs. Midwest ISO would allocate the cost of cross-border facilities (facilities built in Midwest ISO that provide benefits to one of the customers under Module F and vice versa) on a case-by-case basis, to the extent not already addressed by existing transmission pricing provisions of the Tariff (e.g., through charges for point-to-point transmission service reservations under the Tariff for delivery to the Market Service customer’s system).

33. Several parties are concerned that Market Service customers would not be required to pay the same cost allocations made under regional cost sharing provisions that Midwest ISO Transmission Owners are allocated. As such, existing Midwest ISO Transmission Owners could be more likely to depart the RTO and become Market Service customers in order to avoid such cost allocations while continuing to be dispatched in the markets. Consumers Energy asserts that existing Transmission Owners may choose to exit Midwest ISO and rejoin as Market Service customers in order to avoid the regional cost sharing, and that any costs so avoided should not be reallocated to remaining Midwest ISO members.[43] Parties further argue that exempting Market Service customers from regional cost sharing provisions would create a disincentive for the remaining members of the RTO to invest in high voltage transmission projects or would otherwise create market uncertainty. Another concern is that while existing Midwest ISO Transmission Owners may not depart, those who threaten to leave will be able to exert additional influence within the RTO.

34. Midwest ISO TOs caution that any proposal that treats Market Service customers preferentially would serve as a disincentive for existing Midwest ISO Transmission Owners to maintain their current membership status. Thus, Midwest ISO TOs state that if the Commission does approve Market Service it should require that Market Service be revised such that equitable treatment is accorded to existing Midwest ISO Transmission Owners.[44] They support two conditions as appropriate measures to ensure equitable treatment. First, they argue that Market Service customers should be subject to the same tariff requirements as a Midwest ISO Transmission Owner to pay for regional expansion

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orders pertaining to cost sharing for economic upgrades also called Regionally Beneficial Projects.

[43] Consumers Energy March 31, 2008 Comments at 4.

[44] Midwest ISO TOs August 12, 2008 Comments at 3-4.

facilities. Second, they want the Commission to require Market Service customers to integrate their transmission planning process within the Midwest ISO's Order No. 890 regional planning process.

35. Midwest TDUs argue that Market Service would do more to encourage withdrawal from the Transmission Owners Agreement than it would do to encourage continued participation. Among its criticisms, Midwest TDUs argue that without significant change, Market Service will encourage Midwest ISO Transmission Owners to withdraw from the Transmission Owners Agreement in order to avoid cost allocations made under regional cost sharing provisions because they will still be able to participate in Midwest ISO energy markets whether they are Midwest ISO Transmission Owners or Market Service customers. Midwest TDUs state that "the Commission should either reject Market Service or condition any acceptance or approval by ruling now that Market Service status is closed to existing [Midwest ISO Transmission Owners]…" to prevent withdrawal from the Transmission Owners Agreement.[45]

36. Great River likewise states that the Market Service proposal would discourage full membership into Midwest ISO and postulates that Market Service would most likely lead to existing Transmission Owners withdrawing from the Midwest ISO in order to rejoin as Market Service customers.[46] Great River acknowledges that there is precedent for a Midwest ISO Transmission Owner to withdraw from the Midwest ISO independent of the Market Service proposal; however, Great River counters that "there is no reason to create artificial incentives to withdraw by providing two classes of transmission owners within [Midwest ISO]."[47]

37. Regarding the ability of a Midwest ISO Transmission Owner to withdraw in order to become a Market Service customer, Ameren states that the Market Service proposal makes no change to the rules governing Transmission Owner withdrawal and neither adds to nor detracts from the Transmission Owner's withdrawal rights under the Transmission Owners Agreement. Ameren asserts that the conditions on withdrawal from Midwest ISO membership are beyond the scope of this proceeding.[48]

38. Alliant believes that Market Service would neither encourage Transmission Owners to remain nor encourage them to withdraw. Alliant's understanding is that exit

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[45] Midwest TDUs August 12, 2008 Comments at 11.

[46] Great River August 12, 2008 Comments at 3-5.

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

[48] Ameren April 7, 2008 Comments at 7.

fees under the Transmission Owners Agreement are expected to decline over time as initial costs of establishing the Midwest ISO are amortized. Alliant states that another potential factor discouraging Transmission Owners from withdrawing is that the Transmission Owner would once again be legally and financially responsible for the operation of the transmission system; including additional staffing to operate and maintain the system and coordinating the legal, regulatory and reliability efforts that otherwise reside with Midwest ISO.[49]

39. In its post-technical conference comments, Midwest ISO asserts that the troubling outcomes that the Commission is concerned with have nothing to do with Market Service, and everything to do with the voluntary nature of RTO membership. According to Midwest ISO, Transmission Owners have contractual withdrawal rights with or without Module F, and there is no evidence to suggest that they would base their RTO withdrawal decisions on the availability or non-availability of Market Service. Midwest ISO states that if it believed that the proposed Market Service would impair its ability to perform its Order No. 2000 functions, or lead to its own demise, it would not have developed and filed this proposal. Midwest ISO further notes that the Commission has plenty of tools in its arsenal to ensure that the Market Service proposal remains truly withdrawal-neutral, but without losing its functionality. To the extent the Commission has concerns, argues Midwest ISO, it should use these tools rather than discard, out of an abundance of caution, an alternative designed to advance several key principles of Order No. 2000 in an environment that has become less hospitable to RTOs.[50]

40. Midwest ISO notes that although RTO membership is voluntary, the Commission made it clear that it retains authority under the Federal Power Act to impose conditions on withdrawing Transmission Owners to prevent an unjust or unreasonable rate, term or condition of service to be provided by that transmission owner under its tariff. Thus, according to Midwest ISO, existing Commission precedent already adequately protects customers of withdrawing Transmission Owners against rate pancaking, should the Transmission Owners subsequently apply for Market Service. The Commission could use this precedent to fashion appropriate remedies in individual withdrawal proceedings, should the need for such remedies arise.[51] Midwest ISO also notes that the Commission may impose conditions if it is concerned about the possibility that members of neighboring RTOS may withdraw to take Market Service.[52]

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[49] Alliant August 12, 2008 Comments at 2-3.

[50] Midwest ISO December 9, 2008 Comments at 3.

[51] *Id.* at 3-4.

[52] Midwest ISO August 12, 2008 Comments at 23.

41. Mr. Steven Naumann, representing Exelon, suggested at the technical conference that the Commission consider a "stay-out" provision that would require current Midwest ISO members to be subject to a waiting period before they could take Market Service under Module F.[53] Mr. Naumann argued that such a provision would prevent Transmission Owners from withdrawing from and re-entering the RTO repeatedly, timed to avoid RECB costs. Mr. Ray Wahle, representing the Midwest TDUs, stated that while the Midwest TDUs do not support the implementation of Module F, they support a stay-out provision if Module F is implemented.[54]

42. Midwest ISO also asserts that if a Transmission Owner has determined that its financial interests are not being served by RTO participation, then it will leave with or without the availability of Market Service, as Louisville Gas and Elec. Co. and Kentucky Utilities Co. did in 2006. With respect to technical conference participants' suggestion of a multi-year stay-out period, during which existing Midwest ISO Transmission Owners would be ineligible for Market Service, Midwest ISO is concerned that while such a stay-out period would prevent a withdrawing Transmission Owner from continuing to enjoy the benefits of security constrained economic dispatch in the energy markets, without being obligated to plan and expand the transmission system or being subject to cost sharing under the Midwest ISO tariff, a stay-out period would also prevent Midwest ISO's remaining customers from obtaining the benefits that could be gained by allowing some form of participation—a reduction in Midwest ISO's per-unit administrative costs, and improved reliability through the use of centralized dispatch to manage regional congestion. Midwest ISO also notes that there have been concerns that the stay-out period may not pass the "undue discrimination" test with the courts. Midwest ISO further notes that a stay-out period may be too blunt an instrument.[55]

43. Due to the potential problems with a stay-out provision, Midwest ISO also suggests that if a transmission owner sees financial and reliability benefits from integrating with the market, but objects, for example, to the allocation of planning costs, then a better solution is to address that specific issue in the language of proposed Module F (at least until the RTO has had an opportunity to resolve it through its stakeholder process) rather than to prevent entirely participation in the market dispatch by a withdrawing Transmission Owner. In such a case, Midwest ISO proposes that an alternative to the stay-out could be to condition eligibility of a current transmission owning member (of any RTO) for Market Service upon participation in the Midwest ISO's regional planning and cost sharing process, as if that applicant were a transmission

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[53] November 12, 2008 Tech. Conf. Tr. at 44-45.

[54] *Id*. at 96.

[55] Midwest ISO December 9, 2008 Comments at 5.

owning member, unless that transmission owner has adopted planning protocols in its own tariff that the Commission finds to be consistent with or superior to the requirements of Attachment FF (Transmission Expansion Planning Protocol) of the Midwest ISO Tariff. Midwest ISO asserts that this approach would both address the RTO stability concerns expressed by the Commission and advance its planning coordination goals.[56]

### 4. Reduces Incentive to Invest in Transmission

44. ITC & METC state that Market Service customers would receive many of the same benefits as existing Midwest ISO members, including reliability and congestion management, and, accordingly, that Market Service customers should have to participate in regional cost sharing under the RECB methodology, which is designed to allocate the costs of new transmission projects in a manner reflecting the distribution of benefits among market participants. ITC & METC further argue that exempting Market Service customers from RECB would create a disincentive for remaining Midwest ISO Transmission Owners to invest in certain extra high voltage transmission projects, which ITC & METC believe violates the Commission's principle adopted in Order No. 890 that transmission cost allocation should provide "adequate incentives to construct new transmission."[57]

45. Alliant similarly states that if the primary answer to the question of why an entity is unwilling to join Midwest ISO relates to cost allocation for expansions, Market Service could hinder efforts to improve regional transmission expansion by not bringing Market Service participants into formal and binding participation in regional transmission planning efforts.[58]

46. Great River questions whether Market Service, if implemented, would portend the return to the days when each transmission owner plans exclusively for its own needs.[59]

### 5. Wind Development

47. Iberdrola contends that the Market Service proposal may help to foster the development of wind energy. It argues that Market Service would improve market access for wind generation by allowing them to directly sell power to Midwest ISO and to

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[56] *Id.*

[57] ITC & METC April 7, 2008 Comments at 7 (citing Order No. 890 at P 559).

[58] Alliant August 12, 2008 Comments at 11-12.

[59] Great River August 21, 2008 Comments at 7.

benefit from transparent pricing. According to Iberdrola, greater access to the Midwest ISO markets by wind generators would enable load-serving utilities to access renewable energy and renewable energy credits and, thus, to comply with renewable portfolio standard requirements. It concludes that the Market Service proposal is the best approach to encourage wind development by expanding market access to regional utilities that are unable or unwilling to join Midwest ISO.[60]

48. Similarly, MidAmerican argues that wind energy would benefit from the Market Service proposal. MidAmerican contends that wind generation would enjoy greater certainty and lower rates by paying the proposed MITS charges based on transmission service that they've actually used instead of the current method of paying for point-to-point reservations regardless of whether the reservations actually cover tagged transactions.[61]

49. In contrast, Midwest TDUs contend that the Market Service proposal would impede the development of wind resources. In order to create a wind delivery path across the Midwest, Midwest TDUs say that collaboration across a wide geographic area is needed to develop a common plan for new transmission investments. Midwest TDUs argue that regional planning and cost-allocation under the Midwest ISO Transmission Owners Agreement ensures long-distance transmission investments better than the sum of transmission plans by numerous individual organizations under the Market Service proposal.[62] Midwest TDUs also contend that Market Service could decrease the willingness to finance wind projects because of the possibility that wind resources could face pancaked transmission charges if Transmission Owners withdraw to take Market Service. Midwest TDUs state that areas with access to Midwest ISO markets without

[60] PPM Energy, Inc. (now renamed Iberdrola) March 31, 2008 Comments at 3; Iberdrola August 12, 2008 Comments at 2-3; November 12, 2008 Tech. Conf. Tr. at 52-53 (Furman).

[61] MidAmerican August 15, 2008 Comments at 8; November 12, 2008 Tech. Conf. Tr. at 142-144 (Gunst).

[62] Midwest TDUs August 12, 2008 Comments at 9 (citing U.S. Dept. of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply* at 98-99 (May 2008)).

rate pancaking have greater wind development than non-Midwest ISO areas with more substantial wind potential, closer proximity to loads, and less transmission energy losses.[63]

### 6. Market Service as a Transition to Full RTO Membership

50. Midwest ISO believes that in the near future it is unlikely that any MAPP member would be willing or able to sign the Transmission Owners Agreement and become a Midwest ISO Transmission Owner.[64] However, Midwest ISO contends that there is no basis to suggest that Market Service would discourage transmission owners from joining the Midwest ISO as Transmission Owners. Rather, Midwest ISO argues that the more a Market Service customer participates in the Midwest ISO markets, the more likely it is that the customer will eventually integrate with Midwest ISO.[65] Midwest ISO asserts that currently Transmission Owners have valuable rights that Market Service customers would not have, including but not limited to, tariff administration and centralized regional planning services; and coverage of overhead cost associated with North American Electric Reliability Corporation (NERC) reliability compliance.[66]

51. Notwithstanding the above, other parties assert that Market Service either constitutes a neutral factor in the decision to join Midwest ISO as a full member (e.g., the availability of Market Service is only one of several factors to be considered) [67] or that Market Service customers will not join Midwest ISO.

52. At the technical conference, Commission staff raised the possibility of Market Service being used as a transition to full membership in Midwest ISO.[68] Mr. John Feit,

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[63] *Id.* at 43-45 (citing *To Capture the Wind: The Status and Future of Wind Energy Technology*, 5 IEEE Power & Energy Magazine 34, 37, (Dec. 2007)); November 12, 2008 Tech. Conf. Tr. at 37-38, 68-70, 86-88, 96-97 (Wahle).

[64] Midwest ISO August 12, 2008 Comments at 9 (citing Mr. Clair Moeller's testimony in Docket No. ER08-637-000, where he testified that there are many reasons why a MAPP member is unlikely to become a Midwest ISO Transmission Owner. Some of these reasons are jurisdictional, while others are financial such as a loss of revenue from "out" rates and concerns regarding cost shifting).

[65] *Id.* at 10.

[66] *Id.* at 4, 5.

[67] Alliant August 12, 2008 Comments at 3, 4; and Iberdrola August 12, 2008 Comments at 3.

[68] Tech. Conf. Tr. at 188-89.

representing OMS, expressed concern with this approach because it poses an "ultimatum" for entities taking Market Service, noting that the Commission cannot force an entity to join Midwest ISO at the end of a transition period. Mr. Clair Moeller, representing Midwest ISO, predicted that such an approach would not be feasible unless there were some affirmative way to deal with cost shifts at the end of the transition period. Mr. Darrel Gunst, representing MidAmerican, argued against the Commission setting any artificial timelines.

### 7. Implementation Issues

53. Commenters raise a variety of issues related to the implementation of Market Service. Among other things, parties submitted numerous concerns related to MITS[69] and MITS-comparable service.[70] Several commenters also question the proposed

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[69] PPM March 31, 2008 Comments at 3-4; Ameren April 7, 2008 Comments at 9-10, 20; Xcel April 7, 2008 Comments at 12; Basin Electric April 7, 2008 Comments at 33-39, 41-46, 49, 59-60; Midwest TDUs April 7, 2008 Comments at 9, 22-25, 28, 29-30, 33, 59, 61-63, 68, 75-76; ITC & METC April 7, 2008 Comments at 32; ATC April 7, 2008 Comments at 3; Omaha Public Power April 7, 2008 Comments at 4-6; Basin Electric April 22, 2008 Comments at 13-14, 19-23, 31, 36; Midwest ISO TOs April 22, 2008 Comments at 2-4, 6; MidAmerican April 22, 2008 Comments at 4, 6-7; Midwest ISO April 25, 2008 Answer at 14, 50-52; Basin Electric May 2, 2008 Comments at 2-3; Midwest TDUs May 7, 2008 Comments at 2-3, 18; Manitoba Hydro July 11, 2008 Comments at 3; Ameren August 12, 2008 Comments at 4-6; Midwest TDUs August 12, 2008 Comments at 45, 53-56, 58-60, 69; Midwest ISO TOs August 12, 2008 Comments at 2, 5; Midwest ISO August 12, 2008 Comments to Policy Questions at 2-13; Midwest ISO August 12, 2008 Comments at 17, 26; Indianapolis P&L August 12, 2008 Comments at 2; MidAmerican September 3, 2008 Comments at 2-3; Ameren September 5, 2008 Comments at 2-5; Midwest TDUs September 5, 2008 Comments at 6, 9-13; November 12, 2008 Tech. Conf. Tr. at 14 (Edwards), 31 (Risan), 51, 60 (Collins), 62, 120, 122-24, 126, 128, 132-35, 162-63, 173, 175, 180-82, 200 (Moeller), 63 (Fehrman), 149, 164, 179 (Gunst), 151 (Kramer), 171-72, 174-75 (Volpe), 200 (Pomper); Midwest ISO November 13, 2008 Comments at 9-32, 34-35; MidAmerican November 25, 2008 Comments at 7; Midwest ISO December 9, 2008 Comments at 7; Alliant January 12, 2009 Comments at 2, 8-9.

[70] Manitoba Hydro July 11, 2008 Comments at 3; Midwest ISO August 12, 2008 Comments at 2-4, 12; Ameren August 12, 2008 Comments at 4; Indianapolis P&L August 12, 2008 Comments at 2; Midwest ISO TOs August 12, 2008 Comments at 2; Ameren September 5, 2008 Comments at 3-5; Midwest TDUs September 5, 2008 Comments at 10-12; November 12, 2008 Tech. Conf. Tr. at 124 (Moeller), 142-45, 179 (Gunst), 151-58, 160, 179 (Volpe), 151 (Kramer); Midwest ISO November 12, 2008

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treatment of grandfathered agreements,[71] the composition, formation, and functions of the proposed Joint Coordinating Committee, and participation by Market Service customers in the coordination customer segment of the Midwest ISO Advisory Committee.[72] WAPA and Mid-West ECA also request modifications of the capacity determinations, interagency coordination, and modeling for hydroelectric plants.[73]

54. Parties also raise concerns with respect to coordination of transmission planning under Market Service and coordination of ATC, AFC, and TTC calculations.[74] Midwest ISO notes that it will work with Market Service customers on coordinating the calculation of ATC, AFC and TTC.[75] MidAmerican states that Midwest ISO would perform ATC, AFC, TTC, and Total Flowgate Capability (TFC) calculations for MidAmerican's facilities, and that MidAmerican would provide facility ratings to

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Comments at 10, 21-22, 32, 35; Midwest ISO TOs November 13, 2008 Comments at 10, 21, 22, 32, 35; Alliant January 12, 2008 Comments at 2, 8-9.

[71] Corn Belt April 7, 2008 Comments at 3; Xcel April 7, 2008 Comments at 2, 11; Basin Electric April 7, 2008 Comments at 2, 11-16; Midwest TDUs April 7, 2008 Comments at 45, 69, 72; Minnkota April 7, 2008 Comments at 3; Minnkota April 23, 2008 Answer at 2; Midwest ISO April 25, 2008 Answer at 42; Basin Electric May 2, 2008 Answer at 3-4; Basin Electric July 14, 2008 Comments at 50-52; Minnkota July 14, 2008 Comments at 2; Midwest TDUs August 12, 2008 Comments at 63, 66; MidAmerican August 15, 2008 Comments at 3, 79, 98; November 12, 2008 Tech. Conf. Tr. at 117 (Moeller); Midwest ISO November 13, 2008 Statements and Presentations at 19, 29.

[72] Constellation March 25, 2008 Comments at 11; Ameren April 7, 2008 Comments at 18-19; Midwest ISO TOs April 7, 2008 Comments at 18; Xcel April 7, 2008 Comments at 11-12; Midwest TDUs April 7, 2008 Comments at 47-48; MidAmerican April 22, 2008 Answer at 17-18, 19; Midwest ISO April 25, 2008 Answer at 62-64; Midwest TDUs May 7, 2008 Answer at 3; Midwest ISO August 12, 2008 Compliance Filing at 17-18; November 12, 2008 Tech. Conf. Tr. at 212-213, 214-216 (Moeller), 213 (Kramer).

[73] WAPA April 7, 2008 Comments at 9-12; Mid-West ECA April 7, 2008 Comments at 2-3; Midwest ISO April 25, 2008 Answer at 49-50; WAPA. Tr. at 25-26 (Linke).

[74] OMS April 7, 2008 Comments at 5-6; Midwest ISO TOs April 7, 2008 Comments at 9-10; and Midwest TDUs April 7, 2008 Comments at 36-40.

[75] Midwest ISO August 12, 2008 Response to Deficiency Questions at 14.

Midwest ISO for use in Midwest ISO's determination of the TFC for MidAmerican's Energy's flowgates, with such facility ratings being subject to NERC reliability standards.[76]

55. Some parties take issue with the granting of ARRs under the Market Service proposal. Midwest TDUs, for instance, assert that while planning for congestion relief and for simultaneous feasibility of long-term rights would be mandatory within the existing footprint, planning is optional for a Market Service customer that chooses not to receive Stage 1 ARRs. Thus, they argue, since the proposal would not support simultaneous feasibility or the delivery of long-term resource commitments, it should be rejected.[77] Xcel also found fault with this aspect of the proposal.[78] Basin Electric, on the other hand, asserts that Midwest ISO should clarify that the Market Service customer is not obligated to expand its system for the benefit of network loads on Midwest ISO's system and clarify whether it intends to require the Market Service customer to expand its system to a greater extent than is required under its OATT.[79] Midwest ISO responds that it would use the coordinated planning section of Attachment FF to identify upgrades needed on a Market Service customer's system. Midwest ISO says it would use a mutually agreed-upon common model and dispatch for such coordinated planning. To the extent that such upgrades are developed in accordance with the dates required in the planning analysis, and updated on an annual basis, long-term ARR entitlements will be available for any year for which the appropriate upgrades are placed into service. Pursuant to the illustrative section II of Attachment FF provided by Midwest ISO, infeasible ARRs would not be granted if the Market Service customer fails to make required upgrades by the time that they are needed.[80]

### 8. Offer of Settlement

56. On January 12, 2009, Alliant and Midwest TDUs jointly filed post-technical-conference comments and a unilateral offer of settlement. Under the offer of settlement, Market Service would not be available to signatories to the Transmission Owners Agreement. After five years of taking Market Service, transmission owners would be

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[76] MidAmerican August 15, 2008 Response to Deficiency Questions at 12.

[77] Midwest TDUs April 7, 2008 Comment at 34-35.

[78] Xcel April 7, 2008 Comments at 7-10.

[79] Basin Electric April 7, 2008 Comments at 52-54.

[80] Midwest ISO August 12, 2008 response to deficiency questions at 15, Att. B, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 3439.

required to either sign the Transmission Owners Agreement or to leave the Midwest ISO market footprint (having declared their intention after four years of taking Market Service). During the trial membership period, participating transmission owners would be subject to Midwest ISO transmission planning and RECB cost allocation, except that the net transmission facility cost that could be shifted either to or away from the Market Service transmission owner via RECB cost allocation would be limited. Specifically, the aggregate net payments in either direction over the five year period would be capped at the average annual zonal transmission revenue requirement of the Market Service customer over that period. The offer of settlement would provide for a transition to eliminate rate pancaking over a three year period. Year 1 pancaked charges (MITS and MITS-comparable charges) would be as Midwest ISO proposed; in Year 2, charges would be two thirds of that proposed; and in Year 3 the charges would be one third of that proposed. Beyond the three year point, the pancaked charges would be eliminated. If the Market Service customer decides not to sign the Transmission Owners Agreement at the end of the five year transitional period, rate de-pancaking would continue for reservations committed to during that period.

57. All commenters that responded to the offer of settlement argued against the Commission accepting it.[81] Parties cited a variety of reasons including the incompleteness of the proposal and lack of tariff sheets,[82] the lack of consultation with stakeholders,[83] and disagreement with various provisions of the proposal.[84] Midwest ISO

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[81] Midwest ISO TOs supported the general policy associated with the offer of settlement, but identified a number of questions and concerns about the offer that they believe would need to be addressed before they could consider it as a platform for a compromise solution. Iberdrola notes that if the Commission were to deny the Market Service proposal, the offer of settlement should be considered in a Commission-ordered settlement conference. Alliant and Midwest TDUs note that they are authorized to represent that Exelon does not oppose their offer of settlement.

[82] MidAmerican January 27, 2009 Comments at 4-6; Ameren January 27, 2009 Comments at 5. Midwest ISO TOs January 27, 2009 Comments at 2. While supporting the general policy advocated by the proposal, Midwest ISO TOs say the offer of settlement is ambiguous in many respects and it is difficult to discern precisely its terms and how they differ from Midwest ISO's proposed Market Service.

[83] Ameren January 27, 2009 Comments at 5; Midwest ISO January 27, 2009 Comments at 3-4.

[84] For example, Ameren argues the proposal would be unduly discriminatory toward existing Transmission Owners. In contrast, Midwest ISO argues that Market Service customer are not Transmission Owners and thus it would be unjust and

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and MidAmerican argue that the Commission's determination on the Market Service proposal itself should not be delayed by the offer of settlement.[85]

58. In their reply comments, Alliant and Midwest TDUs argue that the comments on their offer of settlement indicate the viability of Market Service as a trial membership to Midwest ISO. They state that the objections from commenters can be the basis for further negotiation, and do not provide a reason to reject the offer. Both Midwest ISO and MidAmerican argue in their reply comments that widespread rejection of the proposal by commenters is justification for the Commission to reject the offer of settlement.

### B. Commission Determination

59. We recognize that Midwest ISO's proposal is an innovative and noteworthy attempt to integrate additional geographic areas into its markets and dispatch and to meet the needs of its western neighbors via the introduction of Market Service. We understand that the proposal has the potential to provide certain reliability and economic benefits as compared to the status quo. However, while expanding markets could bring benefits, it is important that the overall impact on consumers be considered. In light of the concerns discussed below, we reject Midwest ISO's Market Service proposal.

60. In determining whether a proposed RTO service is just and reasonable, the Commission must consider the effect(s) of the proposal on, among other things, the ability of the RTO to satisfy its obligations under Order No. 2000. As the Commission stated in Order No. 2000, an appropriate regional transmission institution can provide a variety of benefits to customers including improved efficiency, reduced discrimination, improved reliability and market performance, and reduced regulation.[86] RTOs provide increased efficiency to wholesale markets by eliminating pancaked rates, internalizing parallel flow, managing congestion efficiently, and operating markets for energy,

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unreasonable to subject Market Service customers to provisions that by their very nature should only relate to Transmission Owners.

[85] MidAmerican January 27, 2009 Comments at 9; Midwest ISO January 27, 2009 Comments at 2.

[86] *Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 30,993 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

capacity and ancillary services.[87] These features provide benefits to the existing members of the RTO and to the grid as a whole, such as increased reliability. Since the issuance of Order No. 2000, the Commission has acted on several occasions to revise and reinforce the structure of organized markets to ensure that these benefits continue to accrue.[88]

61. Order No. 2000 establishes that there are minimum scope and configuration requirements for an RTO. It provides that the principal consideration in evaluating the appropriate scope of an RTO is that the scope must permit the RTO to perform its functions effectively, and notes that many of the characteristics and functions for an RTO suggest that the regional configuration of a proposed RTO should be large in scope. Included among the factors to be considered in determining the appropriate scope is that competitive benefits result from eliminating pancaked transmission rates within the broadest possible energy trading area. The Commission concluded that sufficient scope is important for an RTO to effectively perform its required functions and to support efficient and nondiscriminatory power markets. Order No. 2000 provides that the competitive, efficiency, reliability, and other benefits of RTOs can be best achieved if there is one transmission operator in the region. It states that to be most effective, the operator should have control over all transmission facilities within a large geographic area, and this consideration could preclude a noncontiguous region, or a region with "holes," while noting that it would not automatically deny RTO status where the RTO is not able to obtain full participation in its region.[89] Order No. 2000 notes that adequate scope is not necessarily determined by the geographic distance alone; that other factors include the number of buyers and sellers covered by the RTO, the amount of load served, and the number of transmission lines under the RTO's operational control.

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[87] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 20 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 73 Fed. Reg. 39,092 (July 9, 2008), 123 FERC ¶ 61,299 (2008).

[88] *See, e.g., Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g* 111 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

[89] Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,079.

62. A number of parties have raised concerns about whether Market Service would comply with the RTO requirements in Order No. 2000, including non-pancaked rates, and having operational authority and tariff administration reside with the RTO. Midwest ISO argues that Order No. 2000 review is unnecessary because its filing is not an RTO start-up proposal. As support, Midwest ISO cites the decision in *Louisville Gas and Electric Company*, where the Commission stated that the standards of Order No. 2000 did not apply because the applicants in that case were not seeking to establish or operate as an RTO.[90] That case is inapposite. In *LG&E*, the Commission was evaluating a transmission owner's application to withdraw from Midwest ISO and found that the transmission owner's replacement arrangements did not have to meet the standards of Order No. 2000. In contrast, here we must consider a proposal by the RTO that concerns a service provided by the RTO. If, as we find below, the proposal has the potential to adversely impact Midwest ISO's ability to satisfy Midwest ISO's obligations as an RTO under Order No. 2000, we cannot ignore that potential simply because Midwest ISO has already achieved RTO status. Even though Midwest ISO has achieved RTO status, it is possible to impair its ability to perform RTO functions and its ability to continue to meet the minimum characteristics and functions of an RTO. Thus, we reject Midwest ISO's argument that the requirements of Order No. 2000 should only be considered as part of an RTO's initial formation.[91]

63. Midwest ISO also argues that Order No. 2000 is not relevant because Midwest ISO is not seeking to redesign its RTO structure, but rather proposes only to expand certain services that it already performs by offering them to non-RTO members. We acknowledge that the Commission has permitted RTOs to provide service to non-RTO members.[92] In those instances the services at issue included tariff administration and

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[90] *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 30 (2006) (*LG&E*).

[91] As discussed further below, in particular we find that Order No. 2000's emphasis on scope and configuration requirements continues to be relevant beyond RTO formation. *See, e.g., Commonwealth Edison Co.*, 106 FERC ¶ 61,250 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (finding that a proposal by former Alliance Companies to join PJM would violate the minimum scope and configuration requirements).

[92] *See, e.g., Entergy Services, Inc.*, 115 FERC ¶ 61,095, *order on reh'g*, 116 FERC ¶ 61,275 (2006), *further order on reh'g*, 119 FERC ¶ 61,013 (2007) (conditionally approving Southwest Power Pool (SPP) as Entergy's Independent Coordinator of Transmission); *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, *order on reh'g*, 116 FERC ¶ 61,020 (2006) (conditionally approving SPP as Louisville Gas and Electric Company's Independent Transmission Organization); and *Duke Power*, 113 FERC ¶ 61,288 (2005) (approving Midwest ISO as Duke Power's Independent Entity).

enhanced transmission planning, among other things. In the instant proposal, Midwest ISO proposes to enable non-RTO members taking Market Service to participate in the market and associated market dispatch, which could produce certain reliability and economic benefits (e.g. increased generation choices). However, aspects of the Market Services proposal create new incentives for existing signatories to the Midwest ISO Transmission Owners Agreement to terminate their participation in that agreement and thereby could harm both Midwest ISO's ability to perform regional transmission operations and the corresponding benefits that accrue to consumers. We therefore find that the presence of such new incentives creates unacceptable consequences to the existing RTO. As the Chairman of the Iowa Utilities Board stated at the technical conference, "it's critical that no harm be done to current participants."[93] We agree.

64. The Market Service proposal, when combined with concerns about regional cost sharing, could result in current Transmission Owners leaving the Midwest ISO Transmission Owners Agreement to take Market Service. Such departures would adversely affect Midwest ISO's scope and configuration under Order No. 2000, and its ability to perform regional transmission operations. Further, there is concern that the proposal would create a disincentive for remaining Midwest ISO Transmission Owners to invest in certain extra high voltage transmission projects if those Transmission Owners believe that such costs are not being properly assigned to beneficiaries.[94] While Midwest ISO has asked repeatedly that Market Service be evaluated in this proceeding independently of the RECB issues, we find that this is not possible. The ability for existing signatories to the Transmission Owners Agreement and potential new members to avoid RECB costs while maintaining or gaining full access to Midwest ISO's security constrained economic dispatch by taking Market Service could create a new incentive for current members to withdraw or for non-members to forego joining the Midwest ISO.

65. By creating a new incentive for current members to leave Midwest ISO, we are concerned that the Market Service proposal could threaten Midwest ISO's compliance with the scope and configuration requirements of Order No. 2000 by causing potentially large "holes" within the current footprint, reintroducing rate pancaking and removing Midwest ISO operational control from some areas.[95] If Midwest ISO is no longer of

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[93] Tech. Conf. Tr. at 36.

[94] ITC & METC April 7, 2008 Comments at 7.

[95] The concern over potential withdrawal by current Midwest ISO members was echoed by several parties in this proceeding. *See, e.g.* Great River August 12, 2008 Comments at 3-5; Midwest TDUs August 12, 2008 Comments at 3 (proposal "does far more to encourage withdrawal… than it does to encourage continued participation"); OMS April 7, 2008 Comments at fn. 6 ("… approval of [Market Service] could result in an unintended incentive for Transmission Owners to depart as members under the terms

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sufficient scope and configuration due to the members exiting the Transmission Owners Agreement to take Market Service, it would mean a loss of the benefits that come with an RTO. For example, if signatories to the Transmission Owners Agreement exit Midwest ISO and instead take Market Service, there would be increased levels of rate pancaking, reduced independent regional planning, reduced independent tariff administration, and an increase in the number of OASIS sites. Accordingly, the proposal could cause adverse impacts on the efficiency of whole markets and on Midwest ISO's ability to address operational and reliability issues and to eliminate any residual discrimination in transmission services. Midwest ISO is operating as an RTO, and the service in question has potential new negative effects on that RTO and on its ability to comply with Order No. 2000, and thus its ability to deliver the benefits discussed previously.

66. Midwest ISO further argues that Order No. 2000 did not require full participation for RTO status, and that the Market Service proposal is a part of a process that should be monitored over time. We find, however, that we cannot ignore new negative incentives for RTO participation that would come with the Market Service proposal. To the contrary, in approving a new RTO service, the Commission must consider whether the proposal could undermine the ability of the RTO to continue to satisfy its obligations under Order No. 2000. As Great River argues, there is no reason to create artificial incentives for a Midwest ISO Transmission Owner to withdraw by providing for two classes of transmission owners within Midwest ISO or to provide disincentives for potential new signatories ever signing the Transmission Owner Agreement.

67. Midwest ISO also argues that it would be premature to evaluate, in this proceeding, any possible future withdrawals of Transmission Owners in order to take Market Service.[96] We agree with Midwest ISO that membership in the RTO is already

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of the Transmission Owners Agreement in order to become [Market Service] participants."); Tech. Conf. Tr. At 46 (Mr. Collins, ITC Holdings: "There is also potential that this service option could encourage existing transmission owners to pull their transmission facilities out of the Midwest ISO tariff and become market coordination service customers.").

[96] Midwest ISO states that the Commission has found that prospective withdrawals should not be addressed generically, but instead resolved based on their specific factual content. Midwest ISO April 25, 2008 Answer at 20 (*citing Louisiana Pub. Serv. Comm'n v. Entergy Corp.*, 119 FERC ¶ 61,224, at P 50 (2007) ("A more sound approach to addressing [withdrawal] issues would be to address them at the time that Entergy makes a section 205 filing to reflect Entergy Arkansas' withdrawal from the Entergy System Agreement") and *Duquesne Light Co.*, 122 FERC ¶ 61,039, at PP 29 and 127 (2008) (Commission did not assess replacement arrangements not yet submitted with

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voluntary, and that is unaffected by this proceeding. We also agree with Midwest ISO that the proposal does not change the rules associated with withdrawal and it neither adds to nor detracts from the Transmission Owner's withdrawal rights under the Transmission Owner Agreement. However, the proposal does create a new incentive for withdrawal and therefore could have an adverse impact on the Midwest ISO's existing regional transmission operations. Market Service could threaten Midwest ISO's scope and configuration by providing members that currently enjoy the benefits of RTO membership an opportunity to leave Midwest ISO and keep a significant portion of those benefits (associated with being dispatched as part of Midwest ISO's energy markets) while escaping a significant portion of the costs associated with those benefits (e.g., RECB costs). We are not addressing or making a finding relating to the possible future withdrawal of a particular current member or members of Midwest ISO.

68. We are also not convinced that Market Service would serve as a transitional step to full membership under the Transmission Owners Agreement and thus increase membership in the RTO. Midwest ISO has not provided persuasive evidence that existing factors non-members currently cite as preventing them from joining Midwest ISO would be resolved such that those non-members would be significantly more likely to join after taking Market Service.

69. In addition, we reject Midwest ISO's argument that we should accept Market Service because it improves on the status quo. The flaw in Midwest ISO's status quo argument is that it assumes that the current membership remains the same and that the only outcome of the Market Service proposal is that non-members decide to take Market Service. This is an unfounded assumption, since Market Service could create a new incentive for current members to withdraw. We are not reassured by Midwest ISO's assertion that existing Transmission Owners would not leave the Transmission Owners Agreement in order to take Market Service. It is true that current members receive benefits from Midwest ISO that Market Service members would not, such as tariff administration, management of the interconnection queue, centralized regional planning, and having to pay less for compliance with various NERC standards by virtue of those costs being spread across the entire RTO. However, Midwest ISO has not provided persuasive evidence that these existing benefits mitigate any new incentive for withdrawal. We are mindful that existing Transmission Owners have stated that they want the option of Market Service to be available to them and would not support restrictions on their being able to withdraw to take Market Service.[97] As we have noted,

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Duquesne's application to withdraw from PJM, and withdrawal itself was not deemed final until replacement arrangements are submitted and approved later)).

[97] Midwest ISO TOs December 5, 2008 Comments at 3.

we remain concerned that the proposal creates a new incentive for existing Transmission Owners to take Market Service, principally to avoid RECB cost allocations.[98]

70. Midwest ISO also claims that the complexity and costs associated with withdrawing from the RTO will act to discourage current members from withdrawing. However, we do not find this to be the case for two reasons. First, Midwest ISO's schedule 10, 16, and 17 exit fees largely reflect deferred/unamortized costs already incurred for the start-up of Day One RTO operations and Day 2 energy and operating reserve markets. These fees would not be much of a barrier if a withdrawing member takes Market Service subsequent to its withdrawal because the exit fees would be defrayed by credits the entity would then receive against Midwest ISO administrative cost charges it incurs as a Market Service customer. Second, the withdrawing Transmission Owner would weigh the withdrawal fee associated with RECB cost allocation, which only commenced in 2006, against the avoidance of future RECB cost allocations which it would encounter if it remained a member.

71. Further, it is not apparent to the Commission that Market Service would provide an effective vehicle for additional wind energy into the market. MidAmerican states that its proposed MITS-comparable rate would, during certain conditions, result in lower transmission rates than are currently paid by generators (including wind) in the MidAmerican service territory under the status quo. However, such generators may want to mitigate the risk of congestion payments by acquiring FTRs, which would require payment of an additional point-to-point charge.[99] Some, such as Iberdrola, further argue that Market Service would increase wind energy's participation in the markets by providing it an imbalance market into which to sell and thus would increase the construction of wind generators. However, others such as Mr. Wahle of Missouri River Energy Services (on behalf of Midwest TDUs) argue that the continued use of pancaked rates would institutionalize a seam in the market that would discourage wind development in the Midwest regions of the Dakotas.[100] As noted above, we agree that

[98] Mr. Moeller, Midwest ISO's representative at the technical conference, stated, "We do have notification from several transmission owners that they'd like to hold their opportunity to leave open, within the terms and conditions of the [Transmission Owners Agreement]. Those notices have all included discomfort with the uncertainty around RECB as a potential reason for them to exit." Tech. Conf. Tr. at 208.

[99] FTRs would help to mitigate an additional rate unpredictability that could result from Market Service, as compared to existing sales of wind energy in the area.

[100] Tech. Conf. Tr. at 38, 68-69, 87.

approval of Market Service could prevent transmission owners from joining as full members and thus that Market Service could institutionalize the seam.[101]

72. Midwest ISO responds to concerns about the potential negative impact on its regional transmission operations caused by current members leaving to take Market Service by proposing to create different terms and conditions for current members that want to take Market Service than those for non-members. However, given the varied interests represented in the proceeding, the Commission believes that any modifications to the proposal should be developed through a stakeholder process. We find it inappropriate to prejudge this process and thus decline to make findings at this time on whether a particular proposal would adequately address the concerns raised by the Market Service proposal.

73. Similarly, we will reject the offer of settlement from Alliant and Midwest TDUs as premature. We agree with commenters that it is missing a number of definitions and implementation details. As noted by Ameren and Otter Tail, the proposal is less complete than Midwest ISO's initial filing, which we found needed additional detail before it could be evaluated.[102] In addition, the offer of settlement did not result from discussions with other stakeholders and appears not to meet some of those stakeholders' needs.[103] Accordingly, we will not address the merits of the offer of settlement. However, we do not wish to preclude the filing of other proposals which would allow an expansion of the Midwest ISO market but that do not threaten critical aspects of the RTO.

74. In light of our concerns, we do not find that the potential benefits from Market Service outweigh the longer term costs associated with potential adverse impacts to Midwest ISO. Accordingly, the Commission finds that Market Service, as proposed, is not just and reasonable. Because we are rejecting the proposal, we will not address parties' comments associated with the implementation of Market Service.

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[101] We note the current efforts of the five-state Upper Midwest Transmission Development Initiative, and believe that this initiative may ultimately yield a better way to provide for the transmission expansion required to support the development of wind in these states. Further, we understand that OMS is leading an effort to review the RECB planning and cost allocation process. Tech. Conf. Tr. at 38-9, 59.

[102] Ameren and Otter Tail January 27, 2009 Comments at 5.

[103] *See, e.g.* MidAmerican, Basin Electric and WAPA January 27, 2009 Comments.

75. As a final matter, while we are rejecting the proposed Market Service here, we note that Midwest ISO's Module F proposal contained tariff language applicable to Reliability, Seams, and Market Services. We are concerned that portions of the tariff applicable to the Commission-accepted Reliability and Seams Services may contain Market Service language that we are rejecting here. To ensure tariff clarity, we require Midwest ISO to submit, in a compliance filing due within 30 days of the date of this order, tariff revisions to remove all Market Service language and references from the tariff.[104]

The Commission orders:

(A) Midwest ISO's Market Service Proposal is hereby rejected, 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.

[104] We note that in its compliance filing Midwest ISO should include revisions under the Third Revised Vol. No. 1 of its Tariff, effective on June 1, 2008, as well as revisions under the Fourth Revised Vol. No. 1 of its Tariff, effective on January 6, 2009.

## Appendix A – Parties and Abbreviations

**Parties that submitted comments or interventions in this proceeding:**

- Alliant Energy Corporate Services, Inc. (Alliant)
- Ameren Services Company (Ameren)
- Aquila, Inc. (Aquila)
- American Transmission Company LLC (ATC)
- Basin Electric Power Cooperative (Basin Electric)
- Coalition of Midwest Transmission Customers (CMTC)
- Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation)
- Consumers Energy Company (Consumers Energy)
- Corn Belt Power Cooperative (Corn Belt)
- Dairyland Power Cooperative (Dairyland)
- DC Energy Midwest, LLC (DC Energy Midwest)
- Detroit Edison Company (Detroit Edison)
- Duke Energy Corporation (Duke)
- EPIC Merchant Energy, LP (Epic)
- Exelon Corporation (Exelon)
- Great River Energy (Great River)
- Heartland Consumers Power District (Heartland)
- Iberdrola Renewables, Inc. (Iberdrola), formerly PPM Energy, Inc.
- Indiana Utility Regulatory Commission and Indiana Office of Utility Consumer Counselor (Indiana URC)
- Integrys Energy Group, Inc. (Integrys)
- Indianapolis Power & Light Company (IPL)
- International Transmission Company, Michigan Electric Transmission Company, and ITC Midwest, LLC (ITC & METC)
- Manitoba Hydro
- MidAmerican Energy Company (MidAmerican)
- Mid-West Electric Consumers Association (Mid-West ECA)
- Midwest Independent Transmission System Operator, Inc. (Midwest ISO)
- Midwest ISO Transmission Owners (Midwest ISO TOs) [105]

[105] Midwest ISO TOs include: American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power

(continued…)

- Midwest Transmission Dependent Utilities (Midwest TDUs)[106]
- Minnkota Power Cooperative, Inc. (Minnkota)
- Muscatine Power and Water (Muscatine)
- Nebraska Public Power District (Nebraska Public Power)
- Omaha Public Power District (Omaha Public Power)
- Organization of Midwest ISO States (OMS)[107]
- Otter Tail Power Company (Otter Tail)
- SESCO Enterprises LLC (SESCO)
- Western Area Power Administration (WAPA)
- Wisconsin Electric Power Company (Wisconsin Electric)
- Xcel Energy Services, Inc. (Xcel)

**Parties that submitted answers and/or replies:**

- Basin Electric (answer and reply)
- MidAmerican (answer)
- Midwest ISO (answer)
- Midwest ISO TOs (answer)
- Midwest TDUs (answer and supplemental comments)
- Minnkota (answer)

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Agency; Michigan Public Power Agency; 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; 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.

[106] Midwest TDUs include: Great Lakes Utilities, Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Midwest Municipal Transmission Group, Missouri River Energy Services, Municipal Energy Agency of Nebraska, and Wisconsin Public Power Inc.

[107] OMS includes: Indiana Utility Regulatory Commission, Iowa Utilities Board, Kentucky Public Service Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, Missouri Public Service Commission, Montana Public Service Commission, North Dakota Public Service Commission, Public Utilities Commission of Ohio, South Dakota Public Utilities Commission, and Wisconsin Public Service Commission.