

operations will include, among other things, day-ahead and real-time energy markets, and a financial transmission rights (FTR) market for transmission capacity. The energy markets are scheduled to open on April 1, 2005.²

2. Throughout the course of evaluating the Midwest ISO's TEMT proposal, the Commission has emphasized the importance of resolving seams between the Midwest ISO and neighboring entities, including the Mid-Continent Area Power Pool (MAPP).³ Following extensive negotiations, the Midwest ISO and MAPP jointly have proposed a Seams Operating Agreement (SOA) that they state will establish technical prerequisites for the coordinated administration of the Midwest ISO energy markets and the non-market operations of MAPP members that are not also Midwest ISO members. They also urge the Commission to grant rehearing of a September 10, 2004 order that rejected proposed amendments to Schedule F of MAPP's open access transmission tariff (Schedule F).⁴

3. We will approve the proposed SOA, require the parties to file certain clarifying changes, and grant MAPP's outstanding request for rehearing of the September 10 Order. Our order benefits customers because it enables the Midwest ISO and MAPP to implement procedures to address the market-to-non-market seam on the western side of the Midwest ISO, and thereby to improve operational reliability in that area.

I. Background

A. The Midwest ISO/MAPP Seam

4. The western side of the Midwest ISO's footprint overlaps the eastern side of MAPP's footprint, and a number of public utilities are members of both organizations. The Midwest ISO also acts as the North American Electric Reliability Council (NERC)

² See *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169 (2005) (accepting the Midwest ISO's motion to change the energy market implementation date from March 1, 2005 to April 1, 2005).

³ See *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191, at P 98 (2004) (Procedural Order), *reh'g pending*; TEMT II Order, 108 FERC ¶ 61,163 at P 619-21, 639-41; TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 539, 544.

⁴ *Mid-Continent Area Power Pool*, 108 FERC ¶ 61,228 (2004) (September 10 Order).

Reliability Coordinator for the members of MAPP that have not joined the Midwest ISO. It also provides some transmission-related services, including security coordination services, and administers MAPP's Schedule F.

5. When the Midwest ISO's energy markets open, this configuration will cause a market-to-non-market seam in the upper Midwest that will directly affect members of the Midwest ISO and MAPP. Commenters have expressed concerns about this seam since the Midwest ISO first filed the TEMT proposal, although they have disagreed about the best way to resolve it and whether a seams agreement must be in place prior to energy market start-up.⁵

6. The TEMT II Order recognized that seams issues within the Midwest ISO footprint, particularly those involving Otter Tail Power Company and MAPP, "should be resolved sooner rather than later."⁶ The Commission did not require the Midwest ISO to file a seams agreement with MAPP prior to energy market start-up, but it states that "the markets cannot start without the Midwest ISO having at least a specific, transparent plan for how it will handle the interface of multiple transmission tariffs and market-to-non-market seams."⁷ The Commission urged the Midwest ISO to use the Joint Operating Agreement between itself and PJM Interconnection, L.L.C. (Midwest ISO-PJM JOA) as a model for seams agreements, particularly with respect to MAPP.⁸

B. Seams Operating Agreement Negotiations

7. In a compliance filing dated October 5, 2004, the Midwest ISO updated the Commission on its progress toward seams agreements with neighboring entities. It stated

⁵ See Procedural Order, 107 FERC ¶ 61,191 at P 92 ("A number of parties ... argue that the market should not start until the seam issue between jurisdictional and non-jurisdictional members of MAPP is resolved with a comprehensive agreement."); TEMT II Order, 108 FERC ¶ 61,163 at P 632-33 ("All the commenters support the Midwest ISO's efforts to develop agreements to resolve seams issues . . . [however], they disagree as to when those agreements must be in place."); TEMT II Rehearing Order, 109 FERC ¶ 61,157 at P 530-37.

⁶ TEMT II Order, 108 FERC ¶ 61,163 at P 639.

⁷ *Id.*

⁸ *Id.*

that the non-Midwest ISO members of MAPP had met with the Midwest ISO several times to develop an SOA, and that the parties had reached agreement in principle on the most important seams issues to facilitate the administration of MAPP's Schedule F after the Midwest ISO energy market start-up. The Midwest ISO indicated that the agreement in principle was subject to resolution of: (1) a method to make unused allocations available; (2) new designated network resources that come on-line after the "freeze" date;⁹ and (3) recognition of generator-to-load counterflows. The parties expected to be able to file a written agreement by January 15, 2005. In response, the Commission stated that it was "encouraged by the progress the parties have made toward filing an SOA," that it was satisfied with the procedures the Midwest ISO proposed to use until seams agreements could be filed, and that the Midwest ISO must file an additional status report if it could not file the SOA by January 15, 2005.¹⁰

8. The Midwest ISO filed its second status report, on an informational basis, on December 1, 2004. It stated that since October 5, 2004, the parties had continued to discuss the outstanding issues, and had made progress toward resolving the issue of new network resources after the freeze date. The Midwest ISO also indicated that the issue of netting generation-to-load impacts was not fully resolved, but that it was not essential to concluding a final seams agreement between itself and MAPP. Discussions regarding how to share unused flowgate allocations also remained under way,¹¹ but the Midwest ISO believed that further discussions might provide MAPP with enough assurance to achieve a mutual agreement on this and other unresolved issues. The Midwest ISO stated that it was studying a MAPP proposal regarding the appropriate sequence for issuing Transmission Line-Loading Relief (TLR) procedures on certain flowgates. Finally, the

⁹ The parties allocate flow entitlements on reciprocal coordinated flowgates by referring back to the historic control area structure. They quantify the firm flows that would have occurred if all control areas maintained their historical configuration and continued to serve their native load using designated network resources, and import and export energy at historic levels. These firm flow figures are determined using network resource designations and firm point-to-point reservations as of an historical, i.e., "freeze" date – April 1, 2004. *See* SOA § 6.

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,285 (2004) (Compliance Order I), *reh'g pending*.

¹¹ Flowgates, in this context, are facilities or groups of facilities that may act as significant constraint points on the regional transmission system, and are locations where overloading can be easily monitored.

Midwest ISO indicated that even if the discussions did not produce the hoped-for results, the energy markets would be able to operate efficiently. It promised to continue to work with the non-Midwest ISO members of MAPP to resolve the remaining issues.

9. On December 16, 2004, MAPP filed comments on the seams agreement negotiations. MAPP stated that, while the parties had made a great deal of progress toward developing a seams agreement, a handful of issues remained outstanding. Those issues were: (1) developing a process for making available unused allocations on reciprocal coordinated flowgates; (2) recognizing certain network resources in the congestion management process; (3) developing an appropriate TLR avoidance mechanism; and (4) using netting to assess generation-to-load impacts.

10. On December 17, 2004, WPS Resources Corporation (WPS Resources) filed a protest to the December 1 status report. WPS Resources asked the Commission to require the Midwest ISO and MAPP to complete and file a seams agreement in enough time prior to the FTR allocation and energy market start-up for the Commission to review the filing and issue an order. WPS Resources alleged that the status report did not address most of the requirements of the TEMT II Order. WPS Resources also stated that the issues the Midwest ISO identified as unresolved have significant financial and operational implications. For example, WPS Resources stated that, because the SOA was incomplete, it would be impossible to accurately model loop flows, and this would adversely affect the FTR allocation. It also argued that the Midwest ISO's assertion that there was an agreement in principle was misleading.

11. The Midwest ISO filed its third status report on January 21, 2005. It stated that the parties had continued to meet, and had agreed on the outstanding issues itemized in the December 1 status update. Final drafts of the agreement documents – the SOA, Protocol A (regarding Available Flowgate Capability (AFC) calculations), and Protocol B (regarding congestion management) – had been distributed. The Midwest ISO indicated that the appropriate MAPP committees would formally vote on the agreements within two weeks, and, if the documents were approved, the Midwest ISO anticipated filing them by February 2, 2005.

II. Seams Operating Agreement and Responsive Pleadings

12. On February 1, 2005, the Midwest ISO and MAPP jointly submitted the SOA, to become effective on the date of Commission approval. The parties state that the SOA,

which is an agreement between the Midwest ISO and MAPPCOR,¹² is patterned after the Midwest ISO-PJM JOA. They argue that it: (1) enhances reliability of the parties' operations and (2) establishes the technical prerequisites to the coordinated administration of the Midwest ISO energy markets and the non-market operations of MAPP members that are not also Midwest ISO members. They also state that the SOA resolves significant seams issues between the Midwest ISO and MAPP; that it will provide the Midwest ISO with a broad view of daily operations in both regions; that it will provide for effective communications between the organizations; and, in many cases, that it will establish redispatch protocols in lieu of TLR procedures.

13. The Midwest ISO and MAPP state that the SOA is an extension of the agreement between the Midwest ISO and MAPPCOR for the Midwest ISO to perform transmission-related services for MAPP. One such service is that the Midwest ISO administers transactions under MAPP's Schedule F. In order to address a timing difference between Schedule F service and the Midwest ISO's monthly service, MAPP must amend Schedule F to modify timing requirements for Schedule F service. The parties state that MAPP previously sought to modify Schedule F to address the same timing issues, but that the Commission rejected the proposed amendments. The Midwest ISO and MAPP therefore ask the Commission to grant MAPP's outstanding request for rehearing in Docket No. ER04-960-002 and to accept MAPP's proposed amendments to Schedule F of its tariff.

14. Article I of the SOA contains recitals that specify the relationship between the Midwest ISO, MAPP, and MAPPCOR, and indicates that the parties (defined as the Midwest ISO and MAPP) have formed an agreement. Article II specifies the meaning of various acronyms and abbreviations, provides definitions, and states the rules of construction for the document.

15. Article III provides a detailed description of how the parties will coordinate their operations. Section 3.1 specifies that the Midwest ISO, as Reliability Coordinator, shall perform its functions in accordance with the SOA, Good Utility Practice, the Congestion Management Process Protocol, the TTC/ATC/AFC Protocol,¹³ and the business practices developed and modified by the parties. MAPP operating entities that are affected by the

¹² MAPPCOR is a contractor to MAPP. It administers the MAPP Restated Agreement, which is the contract that governs the MAPP organization. *See* About MAPPCOR, *available at* http://www.mapp.org/content/about_mappcor.shtml.

¹³ TTC stands for Total Transfer Capability, and ATC for Available Transfer Capability.

SOA must follow the Midwest ISO's instructions, unless those actions would violate safety, equipment, regulatory, or statutory requirements. Under section 3.2, the parties agree to periodically review and revise the requirements of the SOA that relate to data transfer in order to respond to technology changes. Sections 3.3 and 3.4 define and describe the two phases of the SOA. During Phase 1, which reflects the existing relationship between the Midwest ISO and MAPPCOR, the parties will: (1) transfer data and information between themselves; (2) calculate ATC and AFC; (3) coordinate outages; and (4) coordinate regional expansion planning. In Phase 2, which will begin when the Midwest ISO's energy markets are initiated, the parties will add reciprocal coordination of flowgates to their Phase 1 functions. Lastly, section 3.5 of the SOA states that the parties intend the collection, use, and transfer of data under the SOA to be a cooperative process subject to the SOA's confidentiality requirements. The requirement to transfer data means that MAPPCOR shall provide (or cause to be provided) data in the form and for the purposes specified in the SOA, and that MAPPCOR authorizes the Midwest ISO to use that data in the form and for the purposes specified.

16. In Article IV, the parties further describe requirements relating to data transfer. Section 4.1 states that, during Phase 1, the parties will continue to exchange four types of data, which are further described in sections 4.1.1 through 4.1.4 of the SOA, with respect to all transmission owners for which a party administers service and control areas for which a party acts as reliability coordinator: (1) real-time and projected operating data; (2) supervisory control and data acquisition (SCADA) data;¹⁴ (3) energy management systems models; and (4) operations planning data.¹⁵ The parties will also provide data as requested by the Midwest ISO's market monitor in accordance with the Midwest ISO's market monitoring plan. Each party will designate a primary and an alternate contact to be available to respond at any time to inquiries about critical operating data. They also agree to transfer data in a timely manner consistent with existing defined formats or other, agreed-upon formats. Under section 4.2 of the SOA, prior to Phase 2 the parties

¹⁴ SCADA data is also defined as "electric system security data that is used to monitor the electrical state of facilities, as specified in NERC Policy 4." SOA § 2.2.26.

¹⁵ Parties must provide the operations planning data specified in sections 4.1.4.1 through 4.1.4.11 upon another party's request. If the requesting party seeks information described in sections 4.1.4.6 through 4.1.4.8 of the SOA (regarding jointly owned units, intermittent generation and control area net interchange from reservations and tags), it must explain why providing this information is necessary to achieve the goals of the SOA.

will evaluate whether it is necessary to transfer more information than described in section 4.1. Section 4.3 specifies that parties will bear their own costs of providing information; however, MAPPCOR and MAPP members that are not also Midwest ISO members have no obligation for costs incurred solely for Midwest ISO energy market operations.

17. Article V of the SOA describes how the Midwest ISO and MAPPCOR will calculate ATC and AFC.¹⁶ As of the effective date, the parties will use the NERC SDX system to transfer the status of generations, outages of interconnections and other critical transmission facilities, and peak load forecasts in Phase 1 and Phase 2 markets.¹⁷ The system can house daily data for the next seven days, weekly data for the next month, and monthly data for the next year. The parties will provide the following data at specified intervals: (1) projected status of generation availability over the next twelve months, updated at least once a day for the full posting horizon; (2) a typical generation merit order or the generation participation factors of all units on an affected control area basis, updated as required and at least prior to the each peak load season; (3) projected transmission outage schedules for at least the next twelve months, updated at least once daily for the full posting horizon; (4) interchange schedules, as required to permit accurate calculation of TTC, ATC, and AFC values;¹⁸ (5) all transmission service request information available for integration into each party's ATC and AFC calculation process, as well as transmission service requests that the parties do not include in their own ATC and AFC determination processes;¹⁹ (6) procedures developed and implemented to model intra-party requests under MAPP's Schedule F and the MAPP members' tariffs; (7) load data for each period (daily, weekly, and monthly), including hourly load forecasts or daily peak load forecasts with a load profile for the next two-day horizon; (8) firm and

¹⁶ The criteria for satisfying the requirements of Article V is in the TTC/ATC/AFC Protocol.

¹⁷ As discussed *infra*, the term SDX is not defined in the SOA.

¹⁸ The parties will post this data to an FTP site for download or ask NERC to modify its Interchange Distribution Calculator to permit selected interrogation by the parties.

¹⁹ The Midwest ISO will provide transmission service request information from its Open Access Same-Time Information System (OASIS) node, and MAPPCOR from MAPP's OASIS node.

non-firm AFC for all coordinated flowgates; (9) seasonal, normal, and emergency flowgate ratings, as well as limiting conditions, updated as required by changes on the transmission system; (10) response factor cut-offs for flowgates with a response factor equal to or greater than the distribution factor cut-off; (11) rights to flowgate capacity comprised of multiple elements owned by multiple parties; (12) information regarding major changes that should be included in the TTC/ATC/AFC models, no less often than prior to each peak load systems; and (13) TTC/ATC/AFC calculation models of their transmission systems, as soon as mechanisms can be established to facilitate this transfer.

18. Under Article VI, the parties specify procedures for the reciprocal coordination of flowgates. In section 6.1 of the SOA, they agree: (1) to respect each other's determinations of AFC, ATC, and curtailment priorities applicable to each party's coordinated flowgates, as well as the allocations defined by the reciprocal allocation process in Attachment B; (2) that the process and timing for exchanging ATC/AFC calculations and firm flow calculations with respect to all reciprocal coordinated flowgates are set forth in the Protocols; and (3) that the parties' capabilities and real-time actions shall be in accordance with the Protocols' coordination process for reciprocal coordinated flowgates. Section 6.2 specifies that the Midwest ISO will use its unit dispatch system and security-constrained unit commitment to manage the portion of the flows on a reciprocal coordinated flowgate allocated to the Midwest ISO, while MAPPCOR will use the NERC TLR procedures. In section 6.3, they agree to amend the SOA, subject to Commission approval, if the Midwest ISO enters into an agreement with any third party regarding the allocation process for reciprocal flowgates, and the new agreement contains any provision more favorable to the third party than what is contained in the SOA.

19. Article VII memorializes the parties' understanding that revision of the SOA and the Protocols may be necessary going forward, and states that the parties agree to cooperate to amend the SOA as necessary. Section 7.3 indicates that the parties will develop a methodology for compensating generation and transmission owners for mandatory redispatch due to an emergency condition. Sections 7.4 through 7.7 specify that four types of procedures have been set forth in the Midwest ISO/MAPP business practices: (1) voltage and reactive power coordination procedures; (2) regional transmission and generation outage coordination; (3) a transmission planning coordination process; and (4) emergency operating principles. Under section 7.8, the parties agree to make transmission capacity available for generation reserve sharing. If MAPP generation reserve sharing pool participants that are not members of the Midwest ISO seek emergency reserve deployment from units in the Midwest ISO energy markets to the Midwest ISO-MAPP seam, the pool participants shall be subject to charges associated with Schedules 1, 2, 7, 8, and 10 of the Midwest ISO tariff. The Midwest ISO

members of MAPP shall be subject to the charges under MAPP's Schedule F, Schedules 1 and 5, and applicable member tariffs' Schedules 1 and 2.

20. Article VIII establishes that the effective date of the SOA shall be the date the Commission specifies. Under Article IX, the parties agree that if a dispute arises under the SOA, the parties shall meet and confer in good faith to try to resolve the dispute. If the effort fails, each party retains its rights to pursue all remedies, except as expressly limited in the SOA. Arbitration may be conducted by a single arbitrator – or, if the parties cannot agree on one, by a panel of three arbitrators – in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties also agree to keep records and calculations relating to performance of their obligations under the SOA, and maintain the date for the purpose of ascertaining that its performance and related calculations conform to the standards of the SOA and the Protocols. They will each maintain these records for one year from the end of the fiscal year in which the obligations were performed. In Article X, the parties agree to cooperate in good faith to develop further Midwest ISO/MAPP business practices that may be required to facilitate each party's efforts to administer its respective markets.

21. Article XI provides procedures by which MAPPCOR shall bill the Midwest ISO for, and the Midwest ISO shall make, reimbursements to MAPPCOR. It also grants each party access to the other's books and records for purposes of auditing and verifying the accuracy of charges under the SOA. Article XII states that the SOA creates a contractual relationship only, and that it implies no duties or obligations between the parties except as specified. The obligations of the SOA are to be performed in a way that complies with each party's internal requirements, but this requirement does not limit payment or indemnity obligations. Under section 12.2, the parties agree to cooperate to make any filings under section 205 of the Federal Power Act²⁰ that may be required to implement the SOA.

22. Article XIII lays out provisions for data confidentiality. Section 13.1 presents a definition of Confidential Information. Section 13.2 imposes on the parties an obligation to keep one another's Confidential Information confidential, and also creates exceptions to the requirement. Under section 13.3, the parties agree that there will be no change to ownership of intellectual property, and that no party shall use, convey, or disclose the other's intellectual property without express written consent.

23. Section 13.3 describes liability and indemnification obligations. Sections 13.3.1 and 13.3.2 state that the Midwest ISO and MAPPCOR will hold one another harmless

²⁰ 16 U.S.C. § 824d (2000).

from all actual losses, damages, liabilities, claims, expenses, causes of action, and judgments brought or obtained by third parties against the Midwest ISO and MAPPCOR, respectively. There are exceptions to the extent that those losses arise directly from: (1) MAPPCOR's or the Midwest ISO's (respectively), or their agents' or employees' gross negligence or willful misconduct in the performance of the SOA (with exceptions); (2) any claim that MAPPCOR or the Midwest ISO (respectively) violated any copyright, patent, trademark, license, or other intellectual property right of a third party in the performance of the SOA; (3) any claim arising from the transfer of intellectual property in violation of section 13.2; and (4) any claim that MAPPCOR or the Midwest ISO (respectively) caused physical personal injury due to gross negligence, recklessness, or willful conduct of its agents while on the premises of the other party. The parties agree, under section 13.3.3.1, that neither shall be liable to the other for damages or losses of any kind sustained due to failure to perform under the SOA, unless the failure was malicious or reckless. And under section 13.3.3.2, the liability of the parties to one another is limited to direct damages.

24. Section 13.4 indicates that the Agreement shall take effect upon the Commission's approval, and shall continue until February 1, 2008. The SOA shall renew automatically thereafter for three-year terms unless one party notifies the other of its intent to terminate the SOA at least twelve months prior to the termination date. The SOA shall also terminate upon the parties' mutual agreement or by Commission order. However, under section 13.5 the applicable provisions will remain in effect to provide for final billings and adjustments, dispute resolution, confidentiality and the determination and enforcement of liability, and indemnification. There are no third-party beneficiaries of the SOA, according to section 13.6, and it may not be assigned except as specified in section 13.7. Section 13.8 identifies *force majeure* events and releases the parties from all obligations to perform, except the obligation to pay, upon the occurrence of a *force majeure* event in which performance becomes impracticable. Section 13.9 states that the governing law shall be that of Minnesota. Sections 13.10 and 13.11 provide service addresses and procedures for the execution of the SOA.

25. Under section 13.12, the parties may not amend the SOA unless the amendment is signed by parties, and filed and approved by the Commission. Neither party may petition the Commission under sections 205 or 206 of the FPA to amend the SOA. Absent the parties' agreement, the standard of review for amendments proposed by a non-party or by the Commission acting *sua sponte* is the *Mobile-Sierra* "public interest" standard.²¹

²¹ See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Section 13.13 states that if any provision of the SOA, or its application to any person, entity or circumstance, is found by a court or regulatory authority to be invalid, void and unenforceable, or if a regulatory agency modifies or conditions the SOA, the parties shall endeavor in good faith to negotiate an amendment or amendments to the SOA to restore the benefits and obligations of the parties. If either party finds the holding, modification, or condition unacceptable, it may terminate the SOA with thirty days' notice to the other. Finally, in section 13.14, the parties represent that they have the necessary authority, right and power to enter into, and perform under, the SOA.

26. Attachment A to the SOA contains detailed protocols for collection of data related to, and calculation of, TTC, ATC, and AFC, as well as for coordinating transmission service request evaluation practices. Attachment B describes a Midwest ISO/MAPP congestion management process.

27. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 7,252 (2005), with interventions and protests due on or before February 22, 2005. Dairyland Power Cooperative filed a timely motion to intervene. Nebraska Public Power District and Detroit Edison Company (Detroit Edison) filed timely motions to intervene and comments. PJM filed a motion to intervene out-of-time and comments. Wisconsin Public Service Corporation and Upper Peninsula Power Company (Wisconsin Parties) and Manitoba Hydro filed timely motions to intervene and protests. The Midwest ISO filed a motion to answer and answer on March 10, 2005.

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Due to the early stage of the proceeding, its interests, and the lack of undue prejudice or delay, we will grant PJM's motion to intervene out of time.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

30. WPS Resources' protest to the Midwest ISO and MAPP's December 1, 2004 status report indicated concern that the Midwest ISO and MAPPCOR had failed to file a seams agreement and therefore had not done enough to address the requirements of the TEMT II Order. The parties have since resolved issues that were outstanding in early

December and filed the SOA. We therefore find that WPS Resources' December 17, 2004 protest has been overtaken by events and has become moot.

B. Comments and Protests Responsive to the SOA

1. Wisconsin Parties

31. The Wisconsin Parties argue that the SOA needs reformation in four areas, but state that they do not believe that the Commission should delay the opening of the Midwest ISO Day 2 energy markets pending clarification of these items. They request that the Commission institute a process to correct these deficiencies as soon as possible after the Day 2 energy markets open.

32. First, the Wisconsin Parties state that the SOA does not explain how the Midwest ISO and MAPP COR will decide when to redispatch generation and when to invoke a TLR, and how redispatch and TLR procedures will be coordinated. They argue that since the decision to redispatch or to use TLR procedures can impose different economic effects on different market participants, the procedures used to make this decision and how the associated costs are recovered is critical to the SOA.

33. Second, the Wisconsin Parties note that the SOA states that the parties have yet to develop a method to compensate generators for providing mandatory redispatch services. Additionally, the SOA requires the parties to address rescheduling of generator and transmission facility maintenance. The Wisconsin Parties argue that the SOA must have a timeline for prompt development of these procedures and an interim proposal to compensate for redispatch services. Third, the Wisconsin Parties argue that there are no business practices for coordination of outages and regional transmission expansion. They state that these practices should be completed as possible after the start of Day 2 operations.

34. Finally, the Wisconsin Parties state that the Midwest ISO and MAPP COR may not begin coordination of reciprocal flowgates until June 1, 2005, but neither the SOA nor the transmittal letter explains what process the Midwest ISO and MAPP COR will use to coordinate congestion management between energy market start-up and June 1, 2005. They ask the Commission to require MAPP COR and the Midwest ISO to have a process in place to deal with congestion management after Phase 2 begins but before reciprocal flowgate coordination is implemented.

35. We expect that the SOA will need to be amended from time to time, and that the Midwest ISO and MAPP COR can negotiate, expeditiously and in good faith, a resolution to these issues. We therefore disagree with Wisconsin Parties' contention that a formal process is necessary. The Midwest ISO and MAPP COR may elect to request the

assistance of the Commission's Dispute Resolution Service in order to facilitate their discussions. We will require the Midwest ISO and MAPP to make joint informational filings every 45 days from the date of this order to provide updates on the status of their negotiations.

36. Section 6.2 of the SOA states that the Midwest ISO will resolve congestion on a reciprocal coordinated flowgate using redispatch, and MAPPCOR will resolve congestion on the same flowgate using TLR procedures up to their allocated shares. With respect to how the Midwest ISO and MAPPCOR will manage congestion between energy market start-up and June 1, 2005, we note that the SOA's congestion management process depends upon designation of reciprocal coordinated flowgates. The parties state that they will not begin reciprocal coordination of the flowgates in their respective regions until June 1, 2005, or earlier if certain hardware and software upgrades to the MAPP process are completed. Because the parties do not propose an interim process, it appears that they will continue to manage congestion within their own footprints using existing procedures until they are ready to begin reciprocal coordination of flowgates.

37. The Midwest ISO and MAPPCOR have not coordinated outages or transmission expansion plans to date, but we agree with the Wisconsin Parties that they should do so in the future. We note that, as of the effective date of the SOA, each party will make available to the other information regarding generator and transmission outages. This transparency should help both parties better anticipate operating conditions in the interim, before outage coordination procedures are developed and put into place. Transmission expansion plans are long-term by nature, and we have no reason to believe that their absence for a short period of time following energy market start-up will cause harm.

2. Manitoba Hydro

38. Manitoba Hydro states that, historically, transmission service over its facilities was provided pursuant to MAPP's Schedule F for certain transactions and pursuant to an individual member tariff filed with MAPP for all other transmission service. It adds that, since it entered into a coordination agreement with the Midwest ISO for tariff administration and reliability services, all transmission service in Manitoba has been provided under Manitoba Hydro's open access transmission tariff. It states that it is currently a transmission-using member of MAPP and that MAPPCOR no longer provides it with tariff administration or reliability services.

39. Manitoba Hydro alleges that section 2.3.5 of the SOA does not make clear which MAPP members are bound by MAPPCOR's undertakings with respect to the SOA. Manitoba Hydro argues that some sections of the SOA refer to MAPPCOR acting on behalf of MAPP Transmission Owners (who have their facilities under Schedule F), but that other provisions do not, and two provisions of the SOA specifically refer to

Manitoba Hydro facilities. Manitoba Hydro asks the Commission to order MAPPCOR and the Midwest ISO to clarify the scope of the SOA to provide that MAPPCOR is acting only on behalf of MAPP Transmission Owners, as defined in section 2.2.29 of the SOA.

40. The Midwest ISO agrees with Manitoba Hydro that functional control of Manitoba Hydro's system, and the application of congestion management processes to the operation of Manitoba Hydro's facilities, is governed by the Coordination Agreement between the Midwest ISO and Manitoba Hydro. The Midwest ISO adds, however, that Manitoba Hydro remains a member of MAPP, and that Manitoba Hydro may have residual obligations, such as participating in reliability activities and supplying planning and operational data to MAPPCOR, that could be important to the implementation of the SOA. The Midwest ISO therefore clarifies that Manitoba Hydro is not included in the SOA's definition of "Transmission Owner" at this time.

41. Manitoba Hydro states that section 5.1.10 of the SOA appears to operate as an exception, for multi-party flowgates, to the coordination procedures for coordinated flowgates. It states that this provision appears to base the allocation of flowgate capacity for specific flowgates on existing agreements and operating guides rather than historical use, which is the allocation methodology specified in Attachment B to the SOA. Manitoba Hydro states that allocation of flowgate capacity based on operating guides is indefensible because the operating guides were not intended to define rights to use of the system within flowgates, or to bind allocations of the rights to simultaneously dependent operating points with other flowgates. Manitoba Hydro also argues that this treatment of multi-party flowgates departs from the methodology contained in the Midwest ISO-PJM JOA, and that this departure should be eliminated as without justification.

42. If section 5.1.10 is not deleted, then Manitoba Hydro requests that the reference to MHEX, the Manitoba Hydro flowgate that forms part of the Manitoba-United States interface, be deleted because neither the Midwest ISO nor MAPP has authority to contract on behalf of Manitoba Hydro. It also asks that the Commission order the Midwest ISO and MAPP to clarify whether this section means that the allocation of capacity rights contained in contracts existing as of the effective date of the SOA are fixed and cannot be altered for the term of the SOA. Manitoba Hydro states that, if that is the correct interpretation, including such a clause is inappropriate because it takes away the freedom of contract of parties to multi-facility agreements or operating guides.

43. In its answer, the Midwest ISO states that the intent of the SOA was merely to identify flowgates that shared the characteristics that require special consideration due to their unique ownership and configuration in the MAPP region. The Midwest ISO states that it has conferred with MAPPCOR, and that the parties agree to delete the reference to MHEX. They will also consider this flowgate to be a third-party flowgate not subject to reciprocal treatment unless Manitoba Hydro executes a reciprocal coordination

agreement with either the Midwest ISO or MAPPCOR. Until that happens, the Midwest ISO and MAPPCOR will treat MHEX the same as all other third-party flowgates that have passed the criteria to be a coordinated flowgate. It will not be a reciprocal flowgate between the Midwest ISO and MAPPCOR, and it will not have an allocation of transmission capacity between the Midwest ISO and MAPPCOR.

44. Manitoba Hydro questions the meaning of “non-Midwest ISO Transmission Owners” in section 1.3.2.a.i, which discusses jointly-owned flowgates. Manitoba Hydro argues that “non-Midwest ISO Transmission Owners” should include only MAPPCOR Transmission Owners, not all entities that are not Midwest ISO Transmission Owners or Reciprocal Entities. It states that the phrase “non-Midwest Transmission Owners” should be revised to clarify whether this is a reference to MAPPCOR and Reciprocal Entities. If the clarification is not made, Manitoba Hydro protests the provision as being beyond the authority of the parties. For the same reasons, Manitoba Hydro also requests that section 1.3.2.a.ii of Attachment A be clarified to delete a reference to MHEX. It states that if the phrase “non-[Midwest ISO] systems” in that section refers to literally all non-Midwest ISO systems, then it is overly broad.

45. The Midwest ISO objects to Manitoba Hydro’s proposals to change section 1.3.2.a of Attachment A. First, it states that Manitoba Hydro’s facilities are not included in the definition of “Transmission Owner.” Second, the Midwest ISO indicates that even though it has agreed not to allocate capacity on MHEX under section 5.1.10, it must model and calculate the impact that flows on MHEX and flows on NDEX will have on one another.

46. We agree with Manitoba Hydro and the Midwest ISO that Manitoba Hydro is not bound by the SOA, and that it should not be included in the SOA’s definition of “Transmission Owner” because its facilities are not under Schedule F. We also accept the Midwest ISO and MAPPCOR’s offer to delete the reference to MHEX in section 5.1.10 of the SOA, and to treat MHEX as a third-party flowgate; this change should be reflected in a compliance filing. It appears that this revision to the SOA will resolve Manitoba Hydro’s concerns about how MHEX will be treated in the interim period while Manitoba Hydro and the Midwest ISO negotiate a way to coordinate their congestion management procedures.

47. With regard to section 1.3.2.a of Attachment A, we find that Manitoba Hydro’s concern about the meaning of “non-[Midwest ISO] Transmission Owner” is academic because Manitoba Hydro is not a Transmission Owner, as defined in the SOA, at this time. We also find that the reference to MHEX in section 1.3.2.a.ii is harmless, for the reasons the Midwest ISO states. MAPPCOR and the Midwest ISO propose only to model TTC for that flowgate, not to allocate capacity in the absence of an agreement between Manitoba Hydro and the Midwest ISO. As MHEX is adjacent to the Midwest

ISO's transmission system, and flows over it may impact the Midwest ISO and MAPP, the SOA parties' proposal is reasonable.

48. We agree that section 5.1.10 of the SOA appears to base the allocation of flowgate capacity for specific flowgates on existing agreements and operating guides. We are unclear as to what existing agreements are being addressed. We will, therefore, require Midwest ISO to file the contracts upon which flowgate capacity is being based, or to identify those contracts if they are already on file with the Commission, on an informational basis, within 60 days of the date of this order.

3. Detroit Edison

49. In its comments, Detroit Edison states that the Midwest ISO has failed to resolve critical seams issues at the Ontario border prior to the commencement of Day 2 energy markets. It incorporates its protest filed in Docket No. ER04-691-021, *et al.*, in which it alleges that the Midwest ISO's decision to relegate Midwest ISO-Ontario seams issues to the back burner promises to perpetuate the discriminatory curtailment of the power destined for the Midwest ISO loads.

50. As the Commission stated in response to Detroit Edison's earlier protest,²² Detroit Edison's request for a seams agreement between the Midwest ISO and the Ontario Independent Electricity System Operator no later than June 1, 2005, is an issue we will address in other orders where we will have the benefit of a fuller record. However, we encourage the Midwest ISO to continue discussions with the Ontario Independent Electricity System Operator to address the issues raised by Detroit Edison.

4. PJM and Nebraska Public Power District

51. PJM concurs with the Midwest and MAPP that the SOA is patterned after, and functionally consistent with, the PJM-Midwest ISO JOA. PJM notes that it strongly supports the April 1, 2004 freeze date adopted by the SOA's congestion management process because it is consistent with the freeze date that PJM and the Midwest ISO use in their flow entitlement allocation process for the same flowgates. PJM explains that April 1, 2004 is the latest reasonable date to take a "snapshot" of pre-market operations on flowgates affected by PJM and the Midwest ISO, because the PJM market was first extended to the border of the Midwest ISO on May 1, 2004, when the Commonwealth

²² See *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,169, at P 18 (2005).

Edison Company control area was integrated into the PJM region. We agree with PJM that April 1, 2004 is an appropriate freeze date.

52. Nebraska Public Power District states that it was an active participant in the development of the SOA. It urges the Commission to promptly approve the SOA. As discussed below, we will do so subject to conditions.

5. Disposition of Filing

53. We will accept the SOA for filing and permit it to become effective March 1, 2005. As discussed above, the pending negotiations between the Midwest ISO and Manitoba Hydro regarding coordination of congestion management procedures will necessarily impact the SOA. We expect the Midwest ISO and MAPPCOR to negotiate appropriate conforming changes to the SOA and to file them at the same time the Midwest ISO and Manitoba Hydro file the expected coordination agreement.²³

54. We note that section 4.1.4.5 of the SOA, which defines Generator Data (a subcategory of the load forecast data that parties must provide to one another in Phases 1 and 2 of the SOA), includes the undefined terms PMIN, PMAX, QMIN, and QMAX. Other undefined terms include SDX (section 5.1), NDEX and MHEX (section 5.1.10). We direct the parties, in their revisions to the SOA, to either spell out these acronyms in the text of their respective sections or add the meaning of these acronyms to section 2.1.

C. Requests for Rehearing in Docket No. ER04-960-002

55. Schedule F is a limited services tariff providing firm and non-firm point-to-point transmission service over the transmission systems in the MAPP region. In its original filing, MAPP proposed to amend Schedule F to extend the reservation rights for firm transmission service for periods of one month, up to twelve consecutive months, and for non-firm transmission service for periods of one month, up to six consecutive months. MAPP amended its original filing to include a tariff sheet that was inadvertently omitted. MAPP stated that the increase to twelve months in advance of service would resolve a seams issue between MAPP and the Midwest ISO by equalizing competition for monthly firm service at commonly-impacted flowgates.

²³ See SOA § 6.3 (agreeing that if the Midwest ISO enters into an agreement with a third party regarding reciprocal flowgate allocations that is more favorable to that party than a provision of the SOA, the SOA shall be deemed amended to incorporate the superior provision); § 13.12.2 (agreeing to negotiate appropriate changes to the SOA in the event a regulatory authority imposes a condition).

56. In the September 10 Order, the Commission rejected MAPP's amendment. The Commission noted that the Midwest ISO and PJM are parties to the Midwest ISO-PJM JOA, pursuant to which each party respects the AFC limits established by the other party. MAPP, however, is not a party to the Midwest ISO-PJM JOA, and at that time had not executed a JOA or other seams agreement with the Midwest ISO. Because MAPP had no contractual obligation to honor the same AFC limits that the Midwest ISO was obligated to honor, there existed a potential for the Midwest ISO, in administering its own tariff as well as Schedule F, to be bound by inconsistent obligations. For this reason, MAPP's amendment was rejected without prejudice to MAPP refiling after it had completed a non-market to market JOA or other seams agreement with the Midwest ISO that, among other things, addressed flowgate issues and respected the Midwest ISO-PJM JOA.

57. On October 12, 2004, MAPP requested rehearing of the Commission's September 10 Order. MAPP states that the Commission erred by failing to recognize that the proposed amendment to Schedule F does not provide for long-term firm transmission service, but rather provides for the reservation of up to twelve consecutive months of short-term firm service. MAPP also states that the Commission also erred by finding that the proposed amendment to Schedule F would somehow create a possible conflict for Midwest ISO. According to MAPP, the Commission erred as well in requiring a seams agreement with the Midwest ISO prior to accepting amendment to Schedule F.

58. We find that the SOA resolves seams issues that presented potential conflicts for Midwest ISO in administering inconsistent obligations. MAPP and the Midwest ISO now share contractual obligations to honor the AFC limits similar to the obligations between Midwest ISO and PJM in their JOA²⁴ Moreover, PJM states that it generally supports the SOA, and that the SOA's provisions concerning reciprocal coordinated flowgates parallel the Midwest ISO-PJM JOA.²⁵ Accordingly, with respect to the issue of service, we grant rehearing of MAPP's proposed amendment of Schedule F concerning the definition of Short-Term Firm Point-to-Point and Non-Firm Transmission Service reservation. Further, we find that a JOA or other seams agreement was necessary to resolve potential conflicts between Midwest ISO's obligations to PJM and Midwest ISO's obligations to MAPP as administrator of MAPP Schedule F. Accordingly, with respect to the issue of requiring a seams agreement, we deny rehearing.

²⁴ See, e.g., SOA § 6 and Appendix G.

²⁵ PJM Comments at 3, 5.

Docket No. ER04-691-023, *et al.*

20

The Commission orders:

(A) The SOA is hereby accepted for filing, to become effective March 1, 2005.

(B) The Midwest ISO and MAPPCOR are hereby required to make a compliance filing within 60 days of the date of this order, as described in the body of this order.

(C) MAPP's request for rehearing of the Commission's September 10 Order is hereby granted in part and denied in part, as described in the body of this order.

By the Commission. Commissioner Kelly dissenting in part with a
separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission System Operator, Inc.	Docket No.	ER04-691-023
Public Utilities With Grandfathered Agreements in the Midwest ISO Region	Docket No.	EL04-104-022
Mid-Continent Area Power Pool	Docket Nos.	ER04-960-002 ER04-960-003

(Issued March 16, 2005)

KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves an agreement that provides in relevant part that absent the parties’ agreement, the standard of review for amendments proposed by a non-party or by the Commission acting *sua sponte* is the *Mobile-Sierra* “public interest” standard.

Sudeen G. Kelly