UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05-1138-000
Quest Energy, L.L.C. v. Midwest Independent Transmission System Operator, Inc.	Docket No. EL05-128-000

ORDER REJECTING TARIFF AMENDMENT
AND DENYING COMPLAINT

(Issued August 22, 2005)

1. In this order, the Commission rejects proposed revisions to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) credit policy, Attachment L of the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT or Tariff).[1] This order also denies a complaint filed by Quest Energy, L.L.C. (Quest), pursuant to section 206 of the Federal Power Act (FPA),[2] against the Midwest ISO alleging that the Midwest ISO violated the terms of its TEMT by: (1) requiring customers to post security to cover the newly imposed Seams Elimination Charge/Cost Adjustment/Assignment (SECA) charge; and (2) requiring a payment into escrow of the SECA charges if the charge is disputed pursuant to the billing dispute provisions of the Midwest ISO TEMT.

[1] Midwest ISO Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

[2] 16 U.S.C. § 824e (2000).

I. Background

A. SECA

2. On November 18, 2004, the Commission adopted a new long-term transmission pricing structure, effective December 1, 2004, to eliminate rate pancaking for transmission service across the Midwest ISO and PJM Interconnection, L.L.C. (PJM) regions.[3] In the November 18 Order, the Commission adopted license plate rates to replace rate pancaking and also adopted a transitional rate mechanism, the SECA, to mitigate cost shifts due to the change in rate design for a 16-month transition period ending March 31, 2006. The SECA for the first four months of the transition period, December 1, 2004 through March 31, 2005 (Rate Period 1), is to be based on 2002 test year data.[4] The SECA for the remainder of the transition period, April 1, 2005 through March 31, 2006 (Rate Period 2), is to be based on 2003 test year data. In the November 18 Order, the Commission directed the Midwest ISO, PJM, and their transmission owners to make compliance filings implementing the SECA methodology on or before November 24, 2004.

3. The resulting proposed schedule 21 sets forth SECA obligations due to the Midwest ISO transmission owners from PJM entities and proposed schedule 22 outlines how SECA obligations due to the PJM transmission owners are to be recovered from entities within the Midwest ISO. On February 10, 2005, the Commission conditionally accepted these filings, effective December 1, 2004, subject to refund, and established hearing procedures to determine whether the proposed SECA charges are just and reasonable.[5]

4. Subsequent to the issuance of the February 10 Order, the Midwest ISO and PJM delayed billing of SECA charges while they developed systems necessary for SECA billing and settlement. On May 5, 2005, the Midwest ISO and PJM notified the Commission that they were ready to commence billing SECA charges in June for service in May and earlier. To lessen the impact of the delay in billing the SECA to their customers, the Midwest ISO and PJM proposed a phased approach to billing the SECA charges that were delayed. On June 16, 2005, the Commission accepted this phased

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[3] *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (November 18 Order), *reh'g pending*.

[4] November 18 Order at P 61, 66.

[5] *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,107 (2005) (February 10 Order).

approach, as well as other proposed revisions to the SECA compliance rates, with certain modifications, and established hearing procedures.[6]

B. Midwest ISO Credit Policy

5. In an order dated August 6, 2004, the Commission, among other things, initially approved the Midwest ISO's credit policy as part of the proposed TEMT.[7] Since that date, the Commission has accepted a number of compliance filings and tariff proposals further improving and refining the credit policy.[8]

6. The Midwest ISO's credit policy, Attachment L of the TEMT, establishes the methodology that the Midwest ISO uses to calculate the Total Credit Limit (TCL) for each market participant and to monitor such market participant's financial activity relative to its TCL. Under the credit policy, the Midwest ISO calculates potential exposure to non-payment separately for each category of markets and services for each market participant, with its Total Potential Exposure (TPE) determined as the sum of the charges and credits for seven separate categories of markets and services.[9] As relevant here, one of these categories of markets and services, "transmission service," includes transmission service charges payable by market participants.[10] The formula for

[6] *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,409 (2005) (June 16 Order).

[7] *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2004) (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043 (2005).

[8] *See Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,053 at P 156-79 (2005); *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 (2005); *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER05-944-000 (June 10, 2005) (unpublished letter order) (June 10 Letter Order).

[9] Midwest ISO Tariff, Second Substitute Original Sheet No. 1231. The calculation of potential exposure to non-payment within each of these seven service categories is based on the following three exposure components: (1) invoiced but not paid; (2) measured but not invoiced; or (3) estimated.

[10] The other six categories of service include: (1) real-time energy market; (2) day-ahead energy market; (3) virtual transactions; (4) financial transmission rights (FTR) auction activity; (5) FTR portfolio; and (6) and congestion and losses.

calculating transmission service potential exposure[11] is the sum of the calculation of the Transmission Invoiced Exposure (TIE)[12] and Transmission Measured Exposure (TME).[13]

7. An increase in a market participant's transmission service potential exposure could lead to an increase in its TPE. If a market participant's TPE exceeds its TCL, a TPE violation occurs.[14] In that case, the affected market participant is required to: (i) make payments of invoiced but unpaid amounts to reduce its TPE; and/or (ii) provide additional financial security to increase its TCL.[15] If the TPE violation is not cured within the required cure period, the market participant would be in default under the TEMT.

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[11] Midwest ISO Tariff, First Revised Sheet No. 1232E.

[12] Attachment L of Midwest ISO Tariff, First Revised Sheet No. 1232F, defines the TIE as:

> all transmission service charges associated with confirmed Transmission Service reservations from the number of days in the previous month which have been calculated or invoiced but not yet paid.

[13] Attachment L of Midwest ISO Tariff, First Revised Sheet No. 1232F, defines the TME as:

> all transmission service charges associated with confirmed Transmission Service reservations for:
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> A. The number of days of the current month which when added to the number of days in the previous month equals 50 Calendar Days if the TIE has not been paid.
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> OR
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> B. The number of days in the current month plus the required number of days in the subsequent month to equal 50 Calendar Days if the TIE has been paid.

[14] Midwest ISO Tariff, First Revised Sheet No. 1234.

[15] *Id*.

8. In addition, the billing and payment procedures are set forth in section 7 of the TEMT: sections 7.1, 7.2, 7.4, and 7.5 apply to all transmission customers; sections 7.6 through 7.10 apply to all market participants;[16] and sections 7.3 and 7.11 through 7.18 apply to all tariff customers. Section 7.13 defines various categories of default. Section 7.13(a) applies to failure to pay section 7.1 (Billing Procedure for Transmission Customers for services furnished under Module B of the TEMT) amounts and section 7.2 (Billing Procedure for Schedule 10-B) amounts, or failure to provide financial security under section 7.11. Section 7.13(b) applies to failure to pay section 7.6 (Billing Procedure for Market Participants for services and goods furnished under Module C of the TEMT) amounts. Section 7.13(c) applies to failure to perform other obligations under the TEMT. Further, section 7.14 sets forth the remedies available to the Midwest ISO in the event a default under section 7.13 occurs. If a customer disputes an invoice involving payments required by sections 7.1, 7.2, or 7.6 of the TEMT, the customer must pay the entire amount of the invoice for these services into escrow.[17] Failure to make payments when due constitutes a default under the TEMT, which allows the Midwest ISO to draw on the security posted.

II. Instant Filings

9. As is discussed more fully below, on June 22, 2005, Quest filed a complaint against the Midwest ISO alleging that the Midwest ISO violated the terms of its TEMT by requiring customers to post security to cover the SECA charges and requiring a payment into escrow of the SECA charges if the charges are disputed pursuant to the billing dispute provisions of the Midwest ISO Tariff.

10. Notice of Quest’s complaint was published in the *Federal Register*, 70 Fed. Reg. 44,615 (2005), with answers to the complaint and comments, interventions, and protests due on or before July 7, 2005. American Electric Power Service Corporation (AEP) and Exelon Corporation (Exelon) (collectively, AEP/Exelon) and Strategic Energy, LLC (Strategic Energy) filed timely motions to intervene and comments. On July 7, 2005, the Midwest ISO filed an answer to Quest’s complaint. On July 22, 2005, Quest filed an answer to the Midwest ISO’s answer.

11. As is discussed more fully below, on June 23, 2005, the Midwest ISO filed, under section 205 of the FPA,[18] a proposal to modify the transmission service potential

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[16] We note that, under the TEMT, a transmission customer must become a market participant or be represented by one.

[17] *Id*., First Revised Sheet Nos. 165 and 173.

[18] 16 U.S.C. § 824d (2000).

exposure formula by explicitly including the SECA charges under schedule 22 of the TEMT in the definition and development of the TIE value (June 23 Filing).

12. Notice of the Midwest ISO's June 23 Filing was published in the *Federal Register*, 70 Fed. Reg. 38,907 (2005), with protests and interventions due on or before July 14, 2005. Timely motions to intervene were filed by Consumers Energy Company and BP Energy Company. A timely motion to intervene and limited comments were filed by the Midwest Stand-Alone Transmission Companies (MSATs).[19] Timely motions to intervene and protest were filed by Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS Companies) and Quest, WPS Energy Services, Inc., and Strategic Energy (collectively, Retail LSEs). On July 27, 2005, the Midwest ISO filed an answer to the protests filed against it.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by Quest in Docket No. EL05-128-000 and the Midwest ISO in Docket No. ER05-1138-000, and will, therefore, reject them.

B. The Midwest ISO's Credit Policy Amendment Filing

15. The Midwest ISO's June 23 Filing proposes to modify the transmission service potential exposure formula by explicitly including the SECA charges under schedule 22 of the TEMT in the definition of the TIE value. Under this proposal, the Midwest ISO states that it will be able to consider a market participant's SECA payment obligation as part of the TPE analysis and take measures under the credit policy to address TPE violations based on a calculation of the TPE that includes charges under the TEMT.

16. The Midwest ISO explains that it recently informed its market participants that the SECA charges payable under schedule 22 would be included with all other transmission service charges when computing the TPE. Subsequently, certain market participants

[19] For purposes of this filing, the MSATs include American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

claimed that the definition of transmission service potential exposure under section IV.A(7) of Attachment L of the TEMT did not permit the Midwest ISO to include the SECA charges. Thus, the Midwest ISO states that the purpose of its instant filing is to request that the Commission confirm that SECA charges should be included in developing a market participant's transmission service potential exposure under the credit policy, by accepting its proposed revisions to the TEMT, effective August 22, 2005. While the Midwest ISO believes that the currently effective tariff language allows it to take this step without obtaining additional authority from the Commission, it states that it will refrain from doing so until the Commission approves its instant filing.

17. The Midwest ISO also explains that these charges are part of the accepted TEMT and create exposure to non-payment until such time as the invoiced amount for schedule 22 is paid. It states that failure to include the SECA charges payable under schedule 22 of the TEMT in the TPE calculation creates a situation whereby a market participant is extended unsecured credit beyond that warranted by its creditworthiness. The Midwest ISO explains that, in the event of non-payment of invoices associated with transmission service provided pursuant to Module A of the TEMT, the amount of financial assurance obtained from a market participant would be insufficient to fully pay the transmission owning members of both the Midwest ISO and PJM.[20] As a result, the Midwest ISO states that any payment deficiency would need to be allocated among the transmission owners owed funds for the billing cycle in question.

18. Thus, the Midwest ISO states, failure to include SECA charges payable under schedule 22 of the TEMT in the calculation of TPE understates a market participant's TPE value and therefore unduly exposes transmission owners to insufficient revenue distribution due to non-payment of charges authorized under the TEMT. The Midwest ISO further states that the proposed modifications to the credit policy moot arguments that SECA charges payable under schedule 22 of the TEMT cannot properly be included in the calculation of TPE.

1. <u>Comments and Protests</u>

19. The MSATs support the Midwest ISO's ongoing efforts to improve its credit policy. They state that they support the Midwest ISO's proposed revision to Attachment L of the TEMT because it will more accurately reflect an entity's financial obligations in the credit evaluation process by considering obligations incurred under schedule 22 of the TEMT.

20. WPS Companies protest the Midwest ISO's proposed addition of the SECA charge to the credit requirements. They request that the Commission reject the Midwest

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[20] Midwest ISO June 23 Filing at 4.

ISO's filing, without prejudice, and direct the Midwest ISO to engage in stakeholder discussions through the Credit Policy Working Group, and, accordingly, re-file its proposed changes to Attachment L to reflect those discussions.

21. Specifically, WPS Companies note that the issue of whether SECA charges should be adopted has been pending before the Commission for over two years, during which time the Midwest ISO developed its creditworthiness criteria in consultation with stakeholders. They also note that the Commission required the Midwest ISO to continue its use of the stakeholder process as it considered further changes to Attachment L.[21] Notwithstanding, WPS Companies argue, the Midwest ISO did not bring the instant issue before stakeholders through the Credit Policy Working Group, even though it has known for several months that the SECA charges were going to be imposed. Thus, they argue that the Midwest ISO circumvented the stakeholder process by making this filing unilaterally, violating the Commission's requirements.

22. WPS Companies also argue that the Midwest ISO overlooks the fact that the billed SECA charges bear little to no relationship to the customer's use of the transmission system during the test years (2002 and 2003) or during the transition period (December 1, 2004 through April 30, 2006). According to WPS Companies, the Midwest ISO's June 23 Filing can cause serious financial consequences for companies already under financial duress. They assert that increasing the credit requirements and requiring customers to pay SECA charges is unfair, when those charges may be substantially in excess of the customer's past or likely future use of the transmission system.

23. According to the Retail LSEs, the Midwest ISO's filing should be rejected for two reasons. First, they argue that the Midwest ISO did not properly engage in stakeholder discussions prior to filing this revision to its credit policy. Second, they argue that the SECA charge is not associated with transmission services provided by the Midwest ISO, and, therefore, should not be part of the credit requirements considered by the Midwest ISO in the TPE calculation.

24. Regarding stakeholder discussions, the Retail LSEs state that the Midwest ISO notified members of the Credit Policy Working Group that it would hold a meeting on June 14, 2005 to discuss the SECA charge. At this meeting, they assert, the Midwest ISO stated that on the advice of counsel it considered the SECA charges to be properly included in the TPE as a financial exposure and promised follow-up discussions with stakeholders. However, according to the Retail LSEs, the Midwest ISO did not submit

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[21] WPS Companies Protest at 5-6 (*citing Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 at P 432, where the Commission stated that it was "encouraged that the Midwest ISO has engaged stakeholders to develop its credit policy, and we require it to continue to do so.").

the SECA charge-related credit changes to stakeholders or give them notice prior to the instant filing, reneging on its commitment to circulate its proposal among the Credit Policy Working Group members and interested parties and receive feedback on this issue prior to filing, even though adoption of SECA charges under the TEMT has been contemplated, at a minimum, since November 2004.

25. The Retail LSEs explain that, previously, the credit policy embodied in Attachment L, was developed through a stakeholder process.[22] They state that the instant SECA charge-related filing is the only exception. They argue that the Midwest ISO should not be allowed to ignore the stakeholder process. Therefore, the Retail LSEs assert that the Commission should reject the Midwest ISO's filing and order that the proposal first be vetted through the stakeholder process.

26. The Retail LSEs also argue that the SECA charge cannot be properly included in the creditworthiness assessment of a market participant. First, the Retail LSEs argue that Attachment L was based upon the Commission's *Policy Statement on Electric Creditworthiness*,[23] which, in turn, only discusses service-related matters, not surcharges, such as the SECA. Second, the Retail LSEs argue that the SECA is not for transmission service because it is not associated with transmission service reservations or with use of the Midwest ISO transmission system for ongoing transactions. The Retail LSEs argue that the SECA is owed no matter what a customer's current use of the transmission system is. Therefore, the Retail LSEs conclude that Commission policy and the public interest support rejecting the Midwest ISO's filing on substantive grounds.

2. **<u>Commission Determination</u>**

27. The Midwest ISO's June 23 Filing seeks to confirm that SECA payment obligations under schedule 22 may be considered when calculating a customer's TPE pursuant to the credit policy enumerated in Attachment L of the TEMT.[24] The requested tariff revision specifically revises the definition of the TIE, which is a component of transmission service potential exposure, to include "all charges under schedule 22 (SECA Charges to Midwest ISO Zones, Sub-Zones and Customers) which have been invoiced but not yet paid."[25] As discussed more fully below, we find that the SECA charge in

[22] *See Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,250 (2005). *See also* June 10 Letter Order.

[23] 109 FERC ¶ 61,186 (2004) (Policy Statement).

[24] The Midwest ISO's June 23 Filing relates to the issues raised by Quest's complaint, which is addressed below.

[25] *See* June 23 Filing at Tab A, Second Revised Tariff Sheet No. 1232F.

schedule 22 is already properly includible in the calculation of transmission service potential exposure without the modifications proposed in the Midwest ISO's June 23 Filing and, therefore, we reject the filing.

28. Attachment L addresses the credit policy procedures of the TEMT where, prior to an entity taking service under the TEMT, an entity must demonstrate that it has met certain creditworthiness requirements. The customer's potential credit exposure is calculated for each service category under the TEMT and the results are summed to determine the amount of financial exposure incurred relative to the unsecured credit limit. As applicable here, one component of financial exposure is the formula for calculating transmission service potential exposure, which is based on all transmission service charges associated with confirmed transmission service reservations under Module B of the TEMT. Module B of the TEMT provides for point-to-point and network transmission service for, among other things, delivery to load within the Midwest ISO.

29. In the November 18 Order, the Commission adopted a replacement rate design in the combined Midwest ISO and PJM region that eliminates transactional-based charges for service through and out of each the Midwest ISO and PJM regions to serve load in the other region. In place of those charges, the Commission adopted license plate rates and the transitional SECA, which is a surcharge to the zonal license plate rates for a transitional period ending March 31, 2006 for transmission service taken for delivery to load in each regional organization in order to compensate transmission owners in the other regional organization for revenues that would be lost due to the elimination of transactional-based charges for through and out service. Customers taking transmission service to serve load in each regional organization pay the zonal license plate rates applicable to the load being served and the SECA charges, and get access to the entire combined Midwest ISO and PJM transmission system without incurring additional access charges.

30. Customers taking transmission service under the Midwest ISO TEMT for delivery to load in the Midwest ISO do so pursuant to confirmed transmission service reservations under Module B of the TEMT and receive, in association with that transmission service, access to the PJM transmission system to source power to serve that load without incurring additional transmission access charges. The SECA charge associated with transmission service reservations to serve load in the Midwest ISO is inseparable from other charges for that service under Module B of the TEMT, which service now, as a result of the elimination of rate pancaking, provides seamless access to the combined Midwest ISO and PJM transmission system, not just service over the Midwest ISO transmission system.

31. While the SECA charges are derived based on historic test-period data, the charges are for transmission service currently taken under the Midwest ISO TEMT and the seamless access to the PJM transmission system effective December 1, 2004 pursuant

to the November 18 Order. Accordingly, the SECA, as a charge associated with current transmission service reservations under Module B of the TEMT, is properly included in the determination of transmission service potential exposure under Attachment L without the modifications proposed in the Midwest ISO's June 23 Filing. Thus, we agree with the Midwest ISO that the currently effective tariff language already allows it to take SECA payment obligations into consideration when calculating TPE for market participants under Attachment L.[26] We also find that the proposed modification, by expressly specifying just one charge associated with transmission service reservations, but not others, could lead to confusion as to which specific charges are included in the calculation of transmission service potential exposure. Accordingly, will reject the proposed tariff revisions.

32. An effective credit policy must consider all charges owed by the customers to which it applies because such charges directly impact exposure to non-payment. In this regard, we recognize that the Midwest ISO's credit policy is collective, such that a default by a market participant without sufficient financial security backing it affects all market participants. Thus, a default has the potential to reverberate throughout the entire market. Further, an effective credit policy must achieve balance among customer classes. Although inclusion of the SECA charges in the determination of transmission service potential exposure may increase the credit requirements for transmission customers, to reduce negative repercussions from a default, the Midwest ISO must judiciously dispense unsecured credit, putting itself and the entire market at financial risk. Therefore, the credit policy must accurately reflect each market participant's exposure so that the unsecured credit granted may be adjusted accordingly. Because the SECA charge is a Commission-authorized charge associated with transmission service, reflecting the charge in the calculation of transmission service potential exposure is just and reasonable because it ensures that each market participant maintains sufficient financial security.

33. Regarding the Retail LSEs' argument that inclusion of the SECA in the calculation of transmission service potential exposure violates the Commission's *Policy Statement on Electric Creditworthiness*, we disagree. As recognized by the Retail LSEs' in their protest, the operative section of the Policy Statement is the mutualized default risk section.[27] However, the Retail LSEs misconstrue the Commission's intent in this section. Footnote 18 of the Policy Statement noted "some" of the credit risks faced by an ISO/RTO, but this was not intended as an exclusive list or to relate solely to services purchased from and provided to customers by the ISO/Regional Transmission

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[26] *See* June 23 Filing at 1.

[27] Policy Statement at P 17-18.

Organization (RTO).[28] Furthermore, potential market participants may be unwilling to participate in ISO/RTO markets that do not adequately mitigate default risks.[29] By including all charges under the TEMT in the calculation of TPE, the credit policy in Attachment L adequately mitigates exposure risk because, ultimately, those credit risks do not impact the Midwest ISO, but its collective market participants that extend credit.

34. We also note that the Midwest ISO expedited filing the instant revision and, therefore, did not use the normal stakeholder process. We understand the Midwest ISO's request that the Commission act on an expedited basis because financial exposures caused by unsecured credit can build very rapidly in the Midwest ISO's energy markets.[30] We also recognize that, since market start-up, the credit requirements for SECA charges may not have been clear to some Midwest ISO customers, and that the Midwest ISO only recently became aware of this.[31] However, because we reject the Midwest ISO's June 23 Filing, protester's arguments that the Midwest ISO violated its stakeholder process are rejected as moot.

35. In sum, find that the Midwest ISO's proposed Tariff amendment has not been shown to be just and reasonable and, thus, we will reject it for the reasons explained above. We also confirm that the Midwest ISO may account for SECA charges in its computation of TPE, under Attachment L.

C. <u>Quest's Complaint</u>

36. In its complaint, Quest explains that, on June 1, 2005, after learning that the Midwest ISO intended to include the SECA charges in the calculation of the TPE, it sent a letter to the Chief Financial Officer of the Midwest ISO, stating that the Midwest ISO would be in violation of its Tariff if it proceeded to do so. Notwithstanding, on June 2, 2005, the Midwest ISO sent Quest an invoice that reflected SECA charges and, over the next week, Quest received numerous notices that additional security would be required if

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[28] *Id*. at P 17 n.18.

[29] *See id*. at P 18.

[30] *See* Holstein Affidavit, Docket No. ER05-944-000 at 3 (May 9, 2005), stating that "[t]he amount of unsecured credit extended to these 62 non-public power market participants based on the proposed values in Table 1 is $2.1 billion."

[31] Midwest ISO June 23 Filing at 4.

it did not reduce its TPE.[32] On June 15, 2005, Quest sent the Midwest ISO a dispute notice, pursuant to section 12 of the TEMT, for the SECA portion of the invoice.

37. On June 17, 2005, after attempts to discuss its position with the Midwest ISO, Quest states that it contacted the Commission's Hotline to raise its concerns.[33] Later that day, Quest received a response from the Midwest ISO, which stated that the SECA is includible in the TPE and that failure to pay invoiced SECA amounts in full would result in a default under the TEMT.

38. On June 22, 2005, Quest filed the instant complaint. Quest alleges that the Midwest ISO violated the terms of its TEMT by requiring customers to post security to cover the SECA charges, and by requiring a payment into escrow of the SECA charges if the charges are disputed.

39. First, Quest argues that the Midwest ISO Tariff does not allow the Midwest ISO to require security for the SECA surcharge. It states that a contract, like the Midwest ISO Tariff, must be interpreted in accordance with its plain meaning and that a plain reading of the Tariff shows that the SECA is not includable in the TPE.[34] Further, Quest asserts that section 205 of the FPA requires a utility to follow the rates, terms, and conditions of the tariff on file and accepted by the Commission, and that, if the Midwest ISO wants to include the SECA in the TPE calculation, it must seek a tariff change to do so.

40. Quest explains that the SECA is a surcharge to recover lost revenues that is collected by the Midwest ISO and remitted to the PJM transmission owners and that it does not relate to service taken from or provided to the Midwest ISO. Thus, it states, the SECA does not plainly fit within the category of transmission service described in the credit policy of the Tariff for calculating the TPE. Quest explains that the formula for calculating transmission service potential exposure is limited to "transmission service charges associated with confirmed Transmission Service reservations" over various time periods.[35] However, it states that SECA has nothing to do with "confirmed Transmission

[32] Quest states that its total SECA liability is approximately $17.5 million, which is comprised of monthly payments of approximately $800,000 for Rate Period 1 and approximately $1,200,000 for Rate Period 2.

[33] Quest states that the Hotline contacted the Midwest ISO staff in an effort to facilitate discussion on these issues, but that proved unsuccessful.

[34] Quest Complaint at 8.

[35] *Id*. at 10 (*citing* Midwest ISO Tariff, First Revised Sheet No. 1232F).

Service reservations" on the Midwest ISO transmission system, let alone reservations for the time periods specified in the Tariff.[36]

41. Second, Quest argues that it is not required under the Tariff to place disputed SECA amounts into escrow pending resolution of the dispute. Quest states that the Tariff specifies that customers with billing disputes under sections 7.1, 7.2, and 7.6 must place the disputed amounts into escrow pending resolution, but that the SECA does not fit within the charges addressed in these sections for purposes of requiring that amounts in dispute be paid pending resolution of a dispute.

42. Third, Quest argues that even if the SECA is disputed and not paid, Quest would not be in default under the Tariff. It explains that failure to make payment required by sections 7.1, 7.2, and 7.6 constitutes default under section 7.13 of the Tariff. In addition, the failure to post security in accordance with section 7.11[37] and the failure to make any payment under the Tariff when due constitutes default. However, Quest states that because the SECA does not fit within sections 7.1, 7.2 or 7.6 of the Tariff, it need not pay the SECA pending a billing dispute and, thus, failure to pay the SECA in that circumstance would not constitute default.

43. Similarly, Quest states that, if the SECA is disputed and not paid, the Midwest ISO may not draw on Quest's financial security. It explains that the Tariff allows the Midwest ISO to draw on security in two circumstances. The first circumstance, if a customer has a "past due amount," which is defined as any amount invoiced by the transmission provider pursuant to sections 7.1 and 7.2, does not apply because the SECA is not a charge pursuant to the services provided in sections 7.1 and 7.2. Thus, Quest states that if it does not pay the SECA during a billing dispute initiated under the Tariff, the amount in dispute cannot be a "past due amount." Second, it states that security may also be drawn if the customer is in default, but that, if the invoiced SECA amount is disputed and not paid, the transmission customer is not in default and the Midwest ISO may not draw on the customer's security to pay the disputed charges.

44. Thus, Quest requests that the Commission order the Midwest ISO to not declare Quest in default, not draw on Quest's security if it disputes the SECA charges, and not require Quest to pay the disputed amounts into escrow.

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[36] *Id*.

[37] Quest states that section 7.11 of the Midwest ISO Tariff covers two circumstances under which financial security is required from a Tariff customer for failure to pay invoices when due: (1) failure to pay a transmission service invoice in the required payment and cure period; and (2) history of late payment. *See id*. at 14.

1. **The Midwest ISO's Answer**

45. In its answer, the Midwest ISO states that Quest's complaint is a collateral attack on the Commission's orders in the proceedings in which the SECA was adopted, not a tariff interpretation dispute as Quest claims, and should be rejected. The Midwest ISO explains that, on at least three occasions since January 2005, Quest has sought the same relief that it seeks from the Commission in this proceeding and that the Commission has rejected each such plea. It states that Quest's arguments seeking a deferral of its SECA payments were first rejected by the Commission in the February 10 Order, which conditionally approved and placed into effect the proposed Rate Period 1 SECA charges under schedule 22. Further, it states that, in an order dated May 4, 2005 responding to Quest's motion for a partial stay of the February 10 Order, the Commission was again not persuaded that deferral of SECA billings to Quest was warranted, finding that no irreparable harm had been demonstrated and that the refund procedures, to which the SECA charges are subject, provide "adequate compensatory relief" to Quest.[38] Finally, the Midwest ISO states that the June 16 Order rejected the latest round of Quest challenges and approved the proposed effective dates for Rate Period 2 charges.[39] Thus, it states that the Commission's decisions unambiguously demonstrate that the Commission intended for the Midwest ISO to bill and collect the SECA from Quest and other similarly-situated customers pending the issuance of the final decision in the SECA proceedings.

46. Further, the Midwest ISO argues that the TEMT billing and default provisions are applicable to SECA payments and require no amendments because section 7.1 of the TEMT is applicable to SECA payments. The Midwest ISO explains that, while Quest does not believe the SECA to be a charge billed under section 7.1 for "services furnished under Module B," Module B of the TEMT deals with transmission service and the SECA is a charge that is related to transmission service and thus is properly included in the section 7.1 invoice. It argues that the SECA has been described as "merely another form, in the same magnitude, of the eliminated [through and out charges]" and that through and out charges have always been deemed to be for services furnished under Module B and included in the Midwest ISO's section 7.1 invoices and its predecessor provisions.[40] Thus, it states that because the SECA is properly includible under section 7.1, if Quest

[38] *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,142 at P 21 (2005).

[39] Midwest ISO Answer at 16 (*citing* June 16 Order at P 38 and n.14).

[40] Midwest ISO Answer at 18 (*citing Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 63,049 at P 73 (2003)).

does not pay its invoice within the time prescribed by section 7.1, it will be in default under section 7.13(a) of the TEMT.

47. The Midwest ISO also argues that, even if the Commission determines that section 7.1 is not applicable to SECA charges without further amendment, Quest is obligated to make its SECA payments under schedule 22 in accordance with the Commission's orders in the SECA proceedings. It explains that schedule 22 provides that "[t]he Midwest ISO shall charge and collect [SECA] charges from Customers within its pricing zones, and, if applicable, designated subzones"[41] and the Midwest ISO "shall bill and collect SECA charges on a monthly basis."[42] Thus, it states that Quest has an obligation under the TEMT and the Commission's orders adopting the SECA rate mechanism and approving schedule 22 to pay the Midwest ISO SECA charges. As a result, in the event Quest fails to comply with that obligation, it will be in default under the "catch-all" language of section 7.13(c) of the TEMT, which applies to defaults by tariff customers of their obligations under the Tariff other than those set forth in sections 7.1, 7.2 and 7.6.

48. Finally, the Midwest ISO argues that serious policy considerations preclude the relief requested by Quest. It states that Quest's complaint asks the Commission to find that, despite the specific Commission-approved language of the TEMT and various Commission orders requiring customers to pay their SECA charges in full pending the final decision on the merits, Quest is entitled to ignore the Midwest ISO's SECA bills with no adverse consequences. The Midwest ISO states that the Commission should deny Quest's complaint.

2. <u>Other Responsive Pleadings</u>

49. In their comments, AEP and Exelon, both transmission owning members of PJM, request that the Commission deny Quest's complaint and direct it to pay all SECA charges assessed by the Midwest ISO in accordance with schedule 22 of the Midwest ISO Tariff. They argue that Quest's complaint is a collateral attack on the Commission's orders in Docket No. EL02-111-000, *et al.*, where it conditionally accepted compliance filings, submitted by the Midwest ISO and the Midwest ISO transmission owners, revising the Midwest ISO's Tariff to collect SECA charges from LSEs to compensate PJM transmission owners for lost revenues resulting from the elimination of rate pancaking between PJM and the Midwest ISO.[43] AEP and Exelon argue that Quest is

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[41] Midwest ISO Tariff, Second Revised Sheet No. 1040.

[42] *Id.*, First Revised Sheet No. 1041.

[43] AEP/Exelon Comments at 3.

now seeking the same relief that it has been repeatedly denied in the proceedings in which the SECA was adopted.

50. AEP and Exelon also argue that Quest's argument that SECA charges are not for current transmission service provided to Quest is without merit. They state that for transmission service provided today within the PJM region to serve load within the Midwest ISO, with the exception of existing transactions identified in the Commission's orders, no through and out charge is assessed under the PJM tariff for such service. Instead, the Commission has implemented a change in rate design from transactional-based through and out charges to load-based SECA charges during the transition period. Accordingly, they state that Quest's challenge to the Midwest ISO's authority under the Midwest ISO Tariff to collect security and demand full payment for SECA charges assessed to Quest in accordance with schedule 22 should be denied.

51. Strategic Energy, an LSE that has been assessed the SECA surcharge by the Midwest ISO and PJM, supports Quest's complaint. It states that the Midwest ISO is not permitted under the express terms of Attachment L of its Tariff to require financial assurance to cover exposure arising as a result of the SECA surcharge. Specifically, Strategic Energy argues that the SECA has no nexus to confirmed transmission service reservations associated with ongoing transactions within the Midwest ISO and that the SECA is a surcharge assessed on LSEs associated with lost revenues of transmission owners in PJM which were incurred more than two years ago.[44] Strategic Energy also states that it is apparent from the Midwest ISO's own filing in Docket No. ER05-1138-000, submitted by the Midwest ISO one day after Quest filed its complaint, that the Midwest ISO believes that the TEMT does not permit it to consider the SECA in the TPE. It also notes that the Midwest ISO's filing states that it will not include the SECA as part of the TPE until the Commission rules on its filing.

52. Further, Strategic Energy asserts that the Midwest ISO Tariff does not require the deposit into escrow of any disputed SECA amounts. It states that, should the Midwest ISO want to include the SECA as a category of cost that must be paid into escrow, it should work with its Credit Policy Working Group to develop and make a filing under section 205 of the FPA to modify the Tariff.

3. Commission Determination

53. Since Quest filed its complaint, the Midwest ISO, as discussed above, proposed modifications to Attachment L of the TEMT to revise the transmission service potential exposure formula to explicitly include the SECA charges in the definition of the TIE component. As stated above, we find that these proposed modifications to the TEMT are

[44] Strategic Energy Comments at 3.

unnecessary because the SECA is already properly includible under Attachment L. Thus, for the same reasons discussed above, we deny Quest's complaint with respect to its allegation that the Midwest ISO is in violation of its Tariff if it includes the SECA charges in the determination of transmission service potential exposure under Attachment L of the TEMT.

54. We also deny Quest's complaint with respect to its request that the Commission order the Midwest ISO to not declare Quest in default and to not draw on Quest's security, due to Quest's failure to pay disputed SECA charges. With regard to the TEMT default provisions, we disagree with Quest that SECA charges are not billed pursuant to section 7.1 of the TEMT.

55. Section 7.1 of Module A of the TEMT addresses billing procedures for transmission customers for all services furnished under Module B of the TEMT. Quest and Strategic Energy raise the same concerns in this complaint proceeding as those addressed above and, accordingly, we reiterate here that because the SECA is a charge associated with current transmission service reservations under Module B of the TEMT, SECA charges are properly billed under section 7.1 of the TEMT.

56. Further, because the SECA charges are properly billed under section 7.1 of the TEMT, failure to pay those charges can properly result in a customer being in default under section 7.13(a) of the TEMT and subject to the remedies for that situation provided in the TEMT. This includes Quest's security being drawn down to pay past due amounts under section 7.4 of the TEMT, its security requirements increased under section 7.11 of the TEMT, and a filing by the Midwest ISO with the Commission to terminate service to it under the TEMT.

57. Moreover, even if we were to find that the SECA charges are not billed under section 7.1 of the TEMT, the SECA charges represent a market participant's obligations under the TEMT and failure to pay such charges would result in the market participant being in default under section 7.13(c) of the TEMT, "Failure to Perform Other Obligations." Section 7.13(c) states that "[f]ailure by the Tariff Customer to make, when due, any payment or comply with or perform any agreement, obligation or requirement under this Tariff (including, without limitation, the Transmission Provider's Credit Policy)," other than defaults of payments under sections 7.1, 7.2 or 7.6, constitutes a default.[45] Similar remedies are available to the Midwest ISO in the event of a default under section 7.13(c) as are available in the event of default under section 7.13(a).

58. Finally, we clarify that Quest's disputes regarding its SECA charges are not appropriately governed by the dispute resolution provisions of section 12 of the TEMT, which expressly exclude disputes regarding applications for rate changes or other

[45] Midwest ISO Tariff, Second Revised Sheet No. 181.

changes to the Tariff, or any service agreement entered into under the tariff, which disputes are to be presented directly to the Commission. Quest's issues concerning the SECA charges applicable to it are currently being addressed in the ongoing proceedings in which the SECA was adopted, and it would be inconsistent with section 12 of the TEMT for it to pursue the same disputes through the Midwest ISO's internal dispute resolution procedures. The Midwest ISO may include SECA charges in its exposure calculation and bill for those charges accordingly. Therefore, while Quest may dispute a particular amount shown on its invoice, Quest may not dispute the inclusion of the SECA charge itself.

The Commission orders:

(A) The Midwest ISO's proposed amendment to its credit policy, Attachment L of the Midwest ISO TEMT, is hereby rejected, as discussed in the body of this order.

(B) Quest's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.