

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Ameren Services Company, First Energy Corp.,	Docket Nos. ER02-2233-002
Northern Indiana Public Service Company	ER02-2233-003
National Grid USA, and Midwest Independent Transmission System Operator, Inc.	EC03-14-001

ORDER DENYING REHEARING, CONDITIONALLY ACCEPTING
COMPLIANCE FILING, GRANTING CLARIFICATION
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 15, 2003)

I. Introduction

1. In this order we progress towards the integration of GridAmerica¹ as an independent transmission company (ITC) into Midwest ISO by our acceptance, as modified below, of the operating protocols and contracts proposed by the GridAmerica

¹GridAmerica will be formed by the GridAmerica Companies as a regulated, for-profit transmission company operating within and integrated into Midwest Independent Transmission System Operator, Inc., (Midwest ISO). GridAmerica will be managed by National Grid USA (National Grid). The GridAmerica Companies are: Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a AmerenCIPS (Ameren), American Transmission Systems, Incorporated (ATSI), a subsidiary of FirstEnergy Corp. (FirstEnergy), and Northern Indiana Public Service Company (NIPSCO).

Participants² and Midwest ISO (collectively, Applicants) as required in our December 19 Order.³ This order also denies requests for rehearing, clarifies certain issues, and establishes hearing and settlement judge procedures to determine whether certain charges are just and reasonable.

II. Background

2. In Ameren Services Company, et al.,⁴ the Commission conditionally accepted initial agreements providing for the formation of GridAmerica as an ITC within the Midwest ISO and noted that many aspects of the filings, such as cost-related concerns, would be more closely examined in the compliance filing being directed therein.

3. The Commission, in the December 19 Order, conditionally accepted the compliance filing directed in the July 31 Order, including four agreements and related documents intended to facilitate the formation and operation of GridAmerica, and required a further compliance filing.⁵ In that order, we found that National Grid was independent and could serve as the managing member of GridAmerica. We approved on an interim basis, the proposals of GridAmerica to provide (1) consulting services, (2) certain Regional Transmission Organization (RTO) functions under contract to Midwest ISO, and (3) certain delegated RTO functions. We required an itemization of the amounts included in the bundled negotiated payment to be made by Midwest ISO to GridAmerica for these services. We accepted a payment by Midwest ISO for Alliance RTO start-up costs and we required a breakdown of these costs. Furthermore, we required the filing of protocols for GridAmerica services and revisions to terms of the ITC contracts.

²The GridAmerica Participants include the GridAmerica Companies, GridAmerica LLC (GridAmerica), GridAmerica Holdings, Inc., and National Grid.

³Ameren Services Company, et al., 101 FERC ¶ 61,320 (2002) (December 19 Order).

⁴100 FERC ¶ 61,135 (2002) (July 31 Order).

⁵The four agreements included: (1) Appendix I ITC Agreement between GridAmerica Participants and Midwest ISO (collectively, Applicants); (2) Master Agreement by and among GridAmerica Holdings LLC, the GridAmerica Companies, and National Grid USA (Master Agreement); (3) Limited Liability Company Agreement of GridAmerica LLC (LLC Agreement); and (4) Operation Agreement by and among the GridAmerica Companies and GridAmerica (Operation Agreement) (collectively, Four Agreements).

4. In addition, we approved the delegation of certain functions to GridAmerica consistent with our ruling in TRANSLink.⁶ We determined that it is acceptable for some functions with predominantly local characteristics to be delegated to an ITC so long as the RTO has oversight in the event that local actions have a regional impact. We noted that the ITC Agreement between GridAmerica Participants and Midwest ISO provides for the reassessment of delegated functions and associated costs once SMD is implemented or in response to Commission changes in its policy regarding TRANSLink.

III. Compliance Filing - Docket No. ER02-2233-003

5. The Applicants submitted a filing on February 19, 2003 (February 19 Compliance Filing), designed to comply with the December 19 Order. That compliance filing consists of: (1) revisions to each of the Four Agreements addressed in the December 19 Order; (2) detailed protocols describing the functions to be performed by GridAmerica, Midwest ISO and the GridAmerica Companies; (3) a start-up transition plan for GridAmerica, Midwest ISO, and the GridAmerica Companies; (4) a breakdown of the amount that Midwest ISO will pay GridAmerica for its performance of ITC functions, for GridAmerica acting as a contractor to Midwest ISO, and for consulting services GridAmerica will provide Midwest ISO; and (5) cost support for Midwest ISO's payment of RTO development costs. Applicants expect the Transmission Service Date to be October 1, 2003.⁷

IV. Notice of Filing and Responsive Pleadings

6. Notice of the compliance filing was published in the Federal Register,⁸ with comments, interventions and protests due on or before March 12, 2003. The parties shown in the appendix filed timely interventions, protests, or comments. Applicants filed an answer to the intervenors' comments. We will discuss these pleadings below.

⁶TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 (2002), order on reh'g, 101 FERC ¶ 61,140 (2002) (TRANSLink).

⁷Applicants' Response at 2.

⁸68 Fed. Reg. 10,221 (2003).

V. Rehearing Requests - Docket Nos. ER02-2233-002 and EC03-14-001

7. The Midwest ISO Transmission Owners (TOs) filed a request for rehearing of the December 19 Order. MJMEUC⁹ filed a request for clarification and alternative request for rehearing of the December 19 Order. We will discuss these pleadings below.

VI. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make the intervenors parties to this proceeding. Further, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁰ prohibits answers to protests unless otherwise permitted by the decisional authority; however, we find good cause exists to allow Applicants' answer, as it aids us in the decision-making process.

B. \$36.2 Million and \$12 Million Payments To GridAmerica

1. The December 19 Order

9. In the December 19 order the Commission, among other things, approved Applicants' proposal that GridAmerica pay the fully bundled Schedule 10 administrative cost adder set forth in the Midwest ISO OATT and receive payments from Midwest ISO. The payments included: (1) a bundled payment of \$12 million for GridAmerica to perform three services, including, delegated RTO services, RTO services performed by GridAmerica under contract with Midwest ISO and consulting services; and, (2) a one-time payment of up to \$36.2 million to reimburse the GridAmerica Participants for actual start-up costs incurred in obtaining the necessary services and assets to carry out GridAmerica's obligations as an ITC (to which Midwest ISO would have unrestricted access to these assets) and for the GridAmerica Participants' Alliance RTO development costs. The Commission approved Applicants' proposal to collect these payments through the Schedule 10 cost adder, subject to the condition regarding certain fees discussed below and subject to the condition that the Schedule 10 cost adder will not increase as a result of the inclusion of any of the proposed costs. The Commission stated that this was appropriate because the additions of the GridAmerica facilities will bring regional benefits to all

⁹Parties names are defined in the Appendix of this order.

¹⁰18 C.F.R. § 385.213(a)(2) (2002).

transmission owners and ITCs in Midwest ISO, and will not increase the costs to the Midwest ISO market participants.

10. However, with regard to the recovery of legal fees associated with the Illinois Power settlement¹¹ through the Schedule 10 cost adder, the Commission deferred ruling on this issue until after the Applicants submit the required compliance filing providing a detailed breakdown of the proposed legal costs and justification for including these legal costs in the Schedule 10 cost adder. The Commission was concerned that because these costs were incurred for certain Alliance Companies to leave Midwest ISO, these costs may not be appropriately allocated to all Midwest ISO load.

11. The December 19 Order also required Applicants to provide additional support for these payments made by Midwest ISO to GridAmerica. With respect to the \$12 million payment, Midwest ISO was directed to specify the unbundled amounts for each of these three services. The Commission held that the fee for the consulting services was market-based and could be negotiated, but the remaining two categories were for cost-based services subject to the Commission's review and approval. The Commission further required Midwest ISO to show, after the first year, that the fees paid to GridAmerica for the contracted and delegated functions are less than the cost of Midwest ISO performing those functions. Thus, the Commission approved the \$12 million fee for the first year of service,¹² subject to review of the cost-based portion of the fee at a later date.¹³

12. The proposed \$36.2 million payment was accepted subject to Midwest ISO filing a breakdown of the costs with cost support sufficient for the Commission to determine

¹¹ The Illinois Power settlement provided for: (1) the withdrawal of Illinois Power, ComEd and Ameren from Midwest ISO, in exchange for an exit fee, (2) the elimination of rate pancaking between Alliance and Midwest ISO, and (3) the negotiation of a joint rate between Midwest ISO, Alliance and PJM. See Illinois Power Company, et al., 95 FERC ¶ 61,183, order on reh'g 96 FERC ¶ 61,206 (2001) (Illinois Power).

¹²The Commission approved the consultancy service for a one-year period and required a Request for Proposal (RFP) to be issued should Midwest ISO wish to hire a consultant after the one-year period. The Commission approved the contracting service of certain RTO functions for a transitional period to end when Midwest ISO implements its Day 2 markets or when Standard Market Design (SMD) is implemented.

¹³See December 19 Order, 101 FERC ¶ 61,320 at P 80-82.

whether all costs being collected are actual costs that were prudently incurred.¹⁴ Midwest ISO was also directed to itemize the legal costs associated with the Illinois Power settlement.

2. The February 19 Compliance Filing

13. To comply with the December 19 Order's requirement that Midwest ISO specify the unbundled amounts for each of these three services included in the \$12 million payment, in the February 19 Compliance Filing, the Applicants revised Article 13.1 of the ITC Agreement to specify that \$9.5 million represented payment for delegated RTO services, \$1.0 million represented payment for contracted RTO services and \$1.5 million represented payment for consultancy services for Midwest ISO.

14. With regard to the Commission's requirement to provide the actual costs and itemize the costs included in the \$36.2 million payment, including an itemization of the legal costs associated with the Illinois Power settlement, the Applicants provided an itemization of costs in Attachment G to the compliance filing. The attachment identified approximately \$28.2 million in actual costs associated with the Alliance RTO development costs, including \$107,583 related to legal fees associated with the Illinois Power settlement. In addition, the attachment included an estimate of \$9.7 million of estimated costs to date for GridAmerica's start-up costs. GridAmerica did not include a justification for including the legal fees in the Schedule 10 cost adder.

3. Commission Determination

15. Several requests for rehearing of the Commission's December 19 Order were filed and several protests were received with regard to the February 19 Compliance Filing. There were three primary issues raised in these protests and rehearing requests: (1) cost allocation issues where parties oppose the Commission's determination that all the payments be included in the Schedule 10 adder and allocated to all Midwest ISO load; (2) comparability issues raised by the Midwest ISO TOs and Multiple TDUs stating they are not being treated in the same manner as GridAmerica with regard to the fact they do not receive payments for the services they provide Midwest ISO, nor are they being compensated for the RTO development costs which they incurred; and (3) several parties raise issues that the Commission did not allow for adequate review under the just and reasonable standard for supporting the payments on a cost basis. Each of these issues is discussed in turn below.

a. Cost Allocation

¹⁴See December 19 Order, 101 FERC ¶ 61,320 at P 143.

i. Protests

16. The Midwest ISO TOs repeat previously raised arguments that assigning the \$12 million payment to all Midwest ISO customers violates cost causation principles since the majority of services that GridAmerica will provide relate to service within the GridAmerica zone.

17. The Midwest ISO TOs and the Multiple TDUs challenge the decision to spread costs related to the Illinois Power settlement throughout Midwest ISO, which they state may not have been separately identified in full. They argue that these settlement costs should be borne by the party that incurred them because these costs were not incurred to benefit transmission customers, and other participants in these settlement proceedings bore their own costs and none were placed on notice that they would have to pay the negotiation costs of their counterparts as well. These parties also object to having to pay for these costs particularly since some of those costs were generated as the result of the GridAmerica Companies taking positions that were inconsistent with the wishes of Midwest ISO and its members. The Midwest ISO TOs and the Multiple TDUs also challenge the spreading of Alliance RTO costs to all Midwest ISO customers.

18. In addition, the Multiple TDUs object to the flowthrough, via Midwest ISO's Schedule 10 cost adder, of any RTO development costs incurred after the Commission's order issued on December 20, 2001, which found that Alliance would not qualify as an RTO.¹⁵ The Multiple TDUs argue that any post-2001 claims should relate to the development of an ITC within Midwest ISO, not to region-wide RTO development, and therefore should not be allocated beyond GridAmerica.

ii. Requests For Rehearing

19. The Midwest ISO TOs seek rehearing of the Commission's decision to permit the RTO development costs (\$36.2 million) and the annual payment (\$12 million) to be recovered through the Schedule 10 cost adder. They argue that recovery of these monies through the Schedule 10 cost adder means that all Midwest ISO customers, not just GridAmerica loads, pay the costs even though a number of the services provided do not benefit entities outside the GridAmerica zone. They assert that there should be a hearing to determine whether the benefits to particular zones are commensurate with the costs.

¹⁵See Alliance Companies, et al., 97 FERC ¶ 61,327 (2001). The Multiple TDUs argue that any efforts to resuscitate Alliance as an RTO after 2001 should be found to have been imprudent or undertaken on behalf of the interests of the Alliance Companies' shareholders and/or generation sales function.

iii. Commission Determination

20. We find that it is reasonable for GridAmerica to recover the costs of performing delegated functions (\$12 million) through the Schedule 10 cost adder. We reiterate our finding that the addition of the GridAmerica Companies' facilities will provide regional benefits and it is reasonable to include the costs incurred by these companies in the Schedule 10 cost adder given that the GridAmerica Companies will also pay the cost adder and given our condition that the cost adder cannot increase as a result of adding these costs. Moreover, we have repeatedly recognized the system-wide benefits of RTO services and that it is reasonable that costs associated with such benefits should be shared by the entities that benefit.¹⁶ Here, GridAmerica will provide services that benefit the Midwest ISO system and, as all of Midwest ISO's customers benefit from these services, so should they all pay for these services.¹⁷ Additionally, we recognize that GridAmerica will provide delegated RTO services at the direction of Midwest ISO in furtherance of its management of the entire system. We also find that the costs associated with the contracting services and the consultancy services provide benefits to all Midwest ISO customers. For these reasons, we believe the allocation of these costs to all RTO customers through the Schedule 10 cost adder is appropriate and we will deny rehearing.

21. Our decision to allocate GridAmerica's RTO development costs (\$36.2 million) through the Schedule 10 cost adder was done in recognition that these costs were caused by both the Alliance RTO formation and the formation of the GridAmerica ITC. The Commission encouraged Alliance to continue its development as a separate RTO in several orders, and then ordered Alliance to disband and join the larger Midwest ISO.¹⁸ The Commission recognized the benefits the former Alliance RTO could bring to all RTO customers in the Midwest by forming one RTO in that region. Consequently, the costs incurred to form the Alliance RTO, such as systems analysis, market analysis and transmission pricing, provided benefits to all Midwest RTO customers when Alliance was

¹⁶Midwest Independent Transmission System Operator, Inc. 84 FERC ¶ 61,231, (September 16 Order), order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC ¶ 61,372 (1998), Opinion No. 453, 97 FERC ¶ 61,033 (Opinion No. 453), order denying reh'g in part and clarifying prior order, 98 FERC ¶ 61,141 (Opinion No. 453-A) (2001), order on remand 102 FERC ¶ 61,192, reh'g pending (2003).

¹⁷As noted in the formation order for TRANSLink, ITCs share responsibility with Midwest ISO for providing RTO functions prescribed in Order No. 2000.

¹⁸Alliance Companies, et al., 89 FERC ¶ 61,298 (1999), order denying reh'g, 95 FERC ¶ 61,182, order on rehearing, 97 FERC ¶ 61,327 (2001).

made part of Midwest ISO.¹⁹ As part of the transition to this market, the Commission required Midwest ISO to integrate the Alliance systems so that the data sets and calculations would assist Midwest ISO in providing reliable service for the entire system and that the end result would be one set of systems for managing Midwest ISO. The subsequent costs to form the GridAmerica ITC were caused by GridAmerica configuring itself to provide delegated RTO functions in the management and operation of the entire system. For these reasons, we find that all of Midwest ISO's customers benefit from GridAmerica's development costs and that these costs should be allocated to the full Midwest ISO customer base in the Schedule 10 cost adder. Accordingly, we deny the Midwest ISO TOs' request for rehearing.

22. With regard to the legal costs associated with the Illinois Power settlement, we recognize the equity of the Multiple TDUs' and Midwest ISO TOs' arguments. Multiple TDUs and Midwest ISO TOs argue that they should not have to pay GridAmerica's costs to negotiate the Illinois Power settlement, as well as paying their own costs. We note that the amount in dispute, \$107,583, is relatively insignificant.²⁰ In the interest of resolving this issue expeditiously, we will require these payments to be directly allocated to the GridAmerica zone should total prudently incurred payments fall within the cap of \$36.2 million. If, after the hearing, the total payments remain above \$36.2 million, we will require that these costs be treated as above the cap, and therefore cannot be allocated to any customer of Midwest ISO.

¹⁹The June 20, 2002 filing of GridAmerica of its compliance report in EL02-65-007 detailing the integration of the Alliance RTO computer systems and Midwest ISO systems (Attachment F) explains how these systems are a benefit to the entire system and therefore do not represent a stranded cost.

²⁰We also note that the Alliance and GridAmerica costs calculated to date exceed the cost cap, and therefore these legal expenses may not be recoverable.

b. Comparable Treatment For Transmission Owners

23. In the December 19 Order, with regard to the Midwest ISO TOs' allegations that they also deserve compensation for performing comparable services, we clarified that GridAmerica is not being paid to provide the same services as the Midwest ISO TOs. GridAmerica is compensated only for performing those functions that have been delegated to it by Midwest ISO. The transmission owners, on the other hand, have not been determined to be independent and, as such, have not been authorized to perform delegated functions.

i. Protests

24. The Midwest ISO TOs reiterate their argument that they provide many of the same services that GridAmerica is getting paid to provide so they also are entitled to compensation -- to rule otherwise, they assert, is granting GridAmerica undue preference.

25. With regard to the \$36.2 million payment, the Midwest ISO TOs claim they have borne most of their RTO development costs associated with establishing Midwest ISO and should not have to bear GridAmerica's RTO development costs as well. The Midwest ISO TOs also assert that, unless they are allowed to recover their own RTO development costs, the GridAmerica Companies will be receiving preferential treatment.

ii. Requests For Rehearing

26. The Midwest ISO TOs argue that the Commission erred in finding that GridAmerica performs functions for Midwest ISO that they do not. They assert that GridAmerica's independence is an insufficient distinction between it and the Midwest TOs with regard to whether it is entitled to the disputed payments. The Midwest ISO TOs assert that they perform certain comparable services and the fact that they are not independent is irrelevant. The Midwest ISO TOs further assert that the Commission's ruling fails to take into account that a number of Midwest ISO's zones already or soon will have independent transmission owners. The Midwest ISO TOs request that the Commission reconsider its decision and either disallow those portions of the \$12 million and \$36.2 million payments that involve similar or identical services to those provided by the existing TOs or ensure that the existing TOs are also compensated for such services.

27. The Midwest ISO TOs also assert that GridAmerica is receiving preferential treatment because the Midwest ISO TOs provide the same benefits cited for the ITC, such as reducing costs, and yet they are not allowed to recover costs through the Schedule 10 cost adder.

iii. Commission Determination

28. We disagree with the Midwest ISO TOs' arguments that they provide the same services as GridAmerica and therefore should be allowed to allocate their costs to customers across Midwest ISO. As we stated in the December 19 Order, the \$12 million payment here is only for performing delegated RTO functions that are not provided by transmission owners, such as prescreening, AFC/ATC calculations, reliability analysis, controlling outages and planning. The Midwest ISO TOs are correct that they perform some of the same services that GridAmerica will perform, however, the costs that GridAmerica incurs for these services are not included in the payment for delegated functions.²¹ GridAmerica must recover these costs from its customers in the same way transmission owners must recover their costs. Therefore, there is no undue preference or discrimination. Accordingly, we will deny the request for rehearing.

29. The Midwest ISO TOs argue that they also incurred RTO development costs and therefore should be accorded the opportunity to recover these costs from all RTO customers, lest the Commission preferentially discriminate in favor of the GridAmerica ITC. We disagree. These transmission operators have been RTO members for a number of years and should have already recovered their costs from their customers. To the extent that transmission operators can demonstrate, however, they have unrecovered costs associated with development of the RTO, we stand ready to consider any petitions filed requesting that just and reasonable unrecovered RTO development costs be included in the Schedule 10 cost adder.

c. Cost Recovery Level

i. Protests

30. The Midwest ISO TOs, the Multiple TDUs, and Detroit Edison claim that the cost support provided for the \$12 million and \$36.2 million payments is insufficient to determine that the costs are just and reasonable and/or prudently incurred. The Midwest ISO TOs assert that without a detailed explanation of the costs underlying the cost-based portion of the \$12 million, it cannot ascertain the rate of return used, the overhead and administrative and general costs included, the depreciation lives of equipment, labor costs, or how taxes are reflected, or determine whether Midwest ISO's members are paying for duplicative systems. Also, the Midwest ISO TOs assert that the proposed Attachment G to the compliance filing does not resolve the issue of whether their members are paying for duplicative systems. The Multiple TDUs further state that the filing is not supported by an

²¹Schedule 5a of the GridAmerica filing provides a breakdown of functions it will provide and differentiates between ITC, RTO and transmission owner functions.

affidavit attesting to its accuracy and truthfulness²² and find it surprising that the GridAmerica Companies claim considerably larger annual Alliance development costs, particularly labor costs, as compared to data supplied in Docket No. ER03-574-000 by Consumers, one of the founding Alliance Companies.²³ The Midwest ISO TOs request that the Commission clarify that the \$12 million charge is subject to refund and to future proceedings, and should state what those proceedings are.

ii. Requests For Rehearing

31. The Midwest ISO TOs request rehearing of the Commission's decision to permit the \$12 million payment to be in effect the first year of service. They assert that the Commission should have rejected the proposed payment because Midwest ISO had submitted no cost support for that payment. Alternatively, the Midwest ISO TOs request that the Commission clarify that the payment should be subject to refund and to detail when and how it will evaluate the proposed \$12 million fee to determine if the fee is just and reasonable.

iii. Commission Determination

32. We respond to the rehearing request by the Midwest ISO TOs and protests of the Midwest ISO TOs and Multiple TDUs for reviews of the \$12 million payments pursuant to Section 205 of the Federal Power Act (FPA).²⁴ We note that the bulk of the payment, \$9.5 million, represents a payment for delegated RTO services. We recognize that these costs have not been incurred yet, and the payment reflects an estimate agreed upon in the negotiations to bring GridAmerica into the Midwest RTO. Because there is no historical data or actual cost available at this juncture, we believe that setting projected and negotiated costs for hearing to determine their justness and reasonableness would not prove useful at this stage. The benefits of moving forward with establishing a viable ITC within the Midwest ISO footprint far outweigh the insight that could be received, at this point, from a hearing. Accordingly, we will approve the payment during this initial start-up period and deny rehearing.

²² 18 C.F.R. § 35.13(d)(6) (2002).

²³ Midwest ISO filed for authorization to reimburse Consumers approximately \$8.3 million for costs incurred in establishing the Alliance RTO. Costs would be recovered through the Schedule 10 cost adder.

²⁴ 16 U.S.C. § 824(e) (2000).

33. After this initial period, however, we will require complete cost reviews. Accordingly, we will require that Midwest ISO file, pursuant to Section 205, its actual and projected annual operating budget, inclusive of GridAmerica costs of performing delegated RTO services, on an annual basis for Commission review. This Section 205 filing will be informed by the information we will require GridAmerica to provide. In this regard, we will require GridAmerica to submit its actual and projected annual operating budget for services performed to the Midwest ISO.²⁵ We believe that it is appropriate that delegated RTO functions be subject to the same filing process as other RTO-wide services and it is logical that these costs be reviewed when Midwest ISO's costs are reviewed. Therefore, we will require that Midwest ISO submit this Section 205 cost review filing to the Commission after one year of operation with GridAmerica incorporated into Midwest ISO operations.²⁶ GridAmerica must make its submittal to the Midwest ISO 60 days prior to this date, in order to provide adequate time for Midwest ISO to incorporate this information in its Section 205 filing. We will also direct Midwest ISO to consult with stakeholders before making its Section 205 filing with the Commission.²⁷

34. As for the \$1.5 million consulting payment and \$1.0 million contracting services payment, we note that these payments represent one-time fees for interim services that will end after the transition period.²⁸ In the December 19 Order, we conditionally accepted the payments for a transition period because the Midwest ISO cost adder will not increase. Furthermore, we find, as we did for the initial costs for delegated functions, that further

²⁵The Commission has outlined the purpose of these filings of providing advance notice of cost issues in a recent order. See, e.g., Midwest Independent System Operator, Inc., 103 FERC ¶ 61,035 (2003).

²⁶See e.g., ISO New England, 101 FERC ¶ 61,305 (2002)(Commission reviewed ISO's operating budget filed pursuant to Section 205). Furthermore, the Commission has held that Midwest ISO's customers should have notice of potential cost issues prior to the expenditures being made, given the nature of Midwest ISO's business structure. See Midwest Independent System Operator, Inc., 103 FERC ¶ 61,035 (2003).

²⁷We remind Midwest ISO that in addition to obtaining adequate cost support for any proposed costs for delegated or contracted RTO services that includes data provided by GridAmerica, it must also demonstrate that the proposed payments to any entity performing these services are less than the cost of Midwest ISO performing those functions.

²⁸The December 19 Order specified this transition period may not extend beyond implementation of SMD or Midwest ISO's Day Two congestion management system, whichever is earlier for the contracting services and one-year for the consulting services.

review of these projected and negotiated payments pursuant to Section 205 would serve no useful purpose; therefore we will deny the rehearing request.

35. With respect to whether the RTO development costs are prudent, we find that GridAmerica has met the December 19 Order requirement that it detail these costs. GridAmerica breaks the costs down by category for the Alliance RTO formation (\$28.2 million of which \$107,583 represent Illinois Power settlement costs) and provides an estimate through April 30, 2003, by cost category,²⁹ for GridAmerica (approximately \$9.7 million). The parties' protests of cost categories or specific costs included Illinois Power settlement costs, addressed above, and a concern regarding duplicative systems, an issue addressed in a previous order.³⁰ Protests also included questions by the Multiple TDUs regarding labor costs associated with RTO development being more than labor costs in the filing of Consumers Energy, another former Alliance member, and the potential for double-counting of labor and project management costs. We share the concerns of the Multiple TDUs with respect to labor costs. Therefore, to address these issues and to address our concern that these costs do not represent costs already allocated by the GridAmerica entities to other services, we order an investigation and hearing to determine if these costs are just and reasonable and eligible for cost recovery as proposed. While we expect formation and development to include costs for such items as outside consulting services, we are concerned that some cost categories, such as the costs of loaned employees from member companies, as listed in the BridgeCo development costs detailed in Attachment G and the direct labor and labor additive costs of Ameren, NIPSCO and FirstEnergy, may be inappropriately allocated to the extent that the costs of these employees have already been allocated to these utilities' rates and charges. To ensure timely resolution of the review, we will hold the hearing in abeyance pending settlement discussions ordered below.

C. Services/Protocols

36. The Commission directed the Applicants to submit detailed protocols describing: (1) the functions to be performed by GridAmerica, Midwest ISO and the GridAmerica Companies, and (2) the contract and consulting services GridAmerica will provide to Midwest ISO.³¹ The proposed protocols are included in the Compliance Filing's Attachment E. Attachment E contains four types of protocols: (1) contract services

²⁹Categories provided include project management, AFC development, IT systems, staffing, office build out, office rent, travel, legal and preparation.

³⁰We approved the recovery of prudently incurred costs for the Alliance systems, following the filing of a report by Midwest ISO. See Alliance Companies, et al., 99 FERC ¶ 61,105 (2002).

³¹See December 19 Order, 101 FERC ¶ 61,320 at P 75-77, 79.

GridAmerica will provide Midwest ISO in each responsibility area identified on Schedule 5 of the Appendix I Agreement and Schedule 5A of the Operation Agreement; (2) process protocols for each responsibility on Schedules 5 and 5A that describe how Midwest ISO, GridAmerica as an ITC and as a contractor to Midwest ISO will provide these functions; (3) operational protocols that provide more detail as to how specific activities will be performed by the parties (*i.e.*, load forecasting, transmission outage planning, and tagging and scheduling); and (4) a description of the consulting service.³²

1. National Grid's Independence

a. Protests

37. Detroit Edison requests that the Commission reject the proposed protocols because they are too vague and do not provide a detailed description "in every functional area," nor regarding GridAmerica's role as consultant to Midwest ISO as required by the December 19 Order. PSEG Companies argue that the Protocols: (1) do not sufficiently explain how GridAmerica's contractor activities will be properly supervised by Midwest ISO, (2) do not fully describe the contract work, and (3) do not delineate the duties to be performed by the GridAmerica personnel located in the Midwest ISO facilities, as required by the December 19 Order. Detroit Edison also argues that the protocols do not address or mitigate in any meaningful way the Commission's concern that National Grid/GridAmerica may not be objective when giving its advice to Midwest ISO. According to Detroit Edison, the protocols lack of specificity provide GridAmerica with an unacceptable amount of discretion in the performance of key functions which could ultimately have a significant impact on regional energy markets. Detroit Edison argues that the protocols provide GridAmerica the opportunity to discover commercially sensitive information and provide advice regarding the entire Midwest ISO region that could competitively advantage its member systems and competitively disadvantage other Midwest ISO participants.³³

b. Response

³²Midwest ISO states that the protocols were made available to its stakeholders for review and comment prior to filing with the Commission.

³³According to Detroit Edison, providing advice to Midwest ISO on loop flows presents GridAmerica with the opportunity to affect capacity on all flowgates in Midwest ISO's footprint. Detroit Edison argues that GridAmerica could bias any advice provided in a manner that favors its own members' systems over the long-term. Detroit Edison also asserts that GridAmerica could utilize this information to game loop flows on other systems.

38. In response to claims that the information provided by Applicants regarding the assistance that GridAmerica will provide Midwest ISO is too vague, Applicants state that the topics upon which it will assist Midwest ISO are in fact fully specified in the protocols. Applicants further state that to the extent that these descriptions are not exhaustive, such omission reflects the fact that Midwest ISO cannot predict the full range of operational advice it may need, and what advice it may have the expertise to provide, in advance of actual coordination operations.

c. Commission Determination

39. We disagree with Detroit Edison's argument that GridAmerica's protocols lack specific details and are vague with respect to how it will assist Midwest ISO. We find the level of detail provided in the protocols is consistent with the level provided by TRANSLink and approved by the Commission. With respect to the objectivity of advice from National Grid/GridAmerica, the GridAmerica submittal makes clear in its proposed protocols that all analysis and advice will be provided at the direction of Midwest ISO and any actions taken reflect the direction of Midwest ISO. Therefore, we do not see any basis for actions that could provide an unfair competitive advantage for the GridAmerica ITC during the transition period during which we approved these services. We note that the consultancy services provided by GridAmerica are for one year from the service commencement date³⁴ and the contracting services are limited to a transition period not to extend beyond implementation of SMD or Midwest ISO's Day Two congestion management system, whichever is earlier.³⁵

2. Tariff Administration Protocols

a. Protests

40. Detroit Edison objects to the protocols proposed by the Applicants that address tariff administration.³⁶ According to Detroit Edison, these protocols do not limit GridAmerica's prescreening authority of transmission requests not handled by Midwest ISO Open Access Same-Time Information System (OASIS) Automation/OASIS applications to those within GridAmerica's footprint. Detroit Edison also questions what form of jurisdictional transmission service may not be handled on Midwest ISO's OASIS site.

³⁴See December 19 Order, 101 FERC ¶ 61,320 at P 72.

³⁵Id. at P 75.

³⁶See Process Protocol Tariff Administration (PP-01) and Contract Services Protocol Tariff Administration (CS-01).

Citing Alliance Companies, et al.,³⁷ Detroit Edison asserts that GridAmerica's ability to prescreen transactions should be limited to those that source and sink in its footprint. Detroit Edison requests that the Commission direct GridAmerica to describe in detail any instances in which customers may request transmission service without using Midwest ISO's OASIS.

41. WEPCO believes that the GridAmerica Participants and Midwest ISO must provide clarification for several issues. First, WEPCO is concerned that the Contract Services Protocol CS-06 which provides that GridAmerica will prescreen all schedules that source or sink in GridAmerica may slow down or impede the approval process for shorter term transactions, primarily hourly transactions. Next, WEPCO notes that in the December 19 Order, the Commission required that the contracted services that GridAmerica provides to Midwest ISO must be limited to a specified transition period.³⁸ WEPCO argues that "and" has been inadvertently inserted into Section 4.1.2 of the ITC Agreement which now reads "...also, for a transition period not to extend beyond the earlier to occur of the implementation of standard market design **and** Midwest ISO's Day Two congestion management systems,...." WEPCO requests that the Commission require that the ITC Agreement be revised as directed in the December 19 Order.

42. Finally, WEPCO is concerned that there is no provision in the filing governing the conversion of existing, confirmed, long-term firm point-to-point transmission agreements used to transmit energy from designated network resources outside of the current borders of Midwest ISO to Midwest ISO's network integrated transmission service (NITS) upon integration of GridAmerica into Midwest ISO. WEPCO argues that this should be provided where a current customer of one of the GridAmerica participants that will enter Midwest ISO, is also a Midwest ISO NITS customer and the energy is delivered into Midwest ISO and transmitted within Midwest ISO using NITS service. WEPCO claims that the parties should be required to clarify that upon joining Midwest ISO, all such long-term firm point-to-point transmission service agreements with customers transmitting energy within Midwest ISO using Midwest ISO NITS service shall be converted to Midwest ISO NITS service and explain the procedures for accomplishing the conversion.

b. Response

³⁷99 FERC ¶ 61,105 at 61,435 (2002) (Commission rejected proposals to control transactions that require transmission driven into or out of an ITC footprint, stating that because "a source or sink in these transactions resides outside the [ITC] area, these transactions are properly controlled by the Midwest ISO").

³⁸See December 19 Order, 101 FERC ¶ 61,320 at P 75 where the Commission stated that "This transition period may not extend beyond implementation of SMD or Midwest ISO's Day Two congestion management system, whichever is earlier."

43. In response to WEPCO's concern regarding the conversion provision for existing, confirmed, long-term firm point-to-point transmission agreements, GridAmerica states that these procedures are in place under Section 29 (Initiating Service) of the Midwest ISO Open Access Transmission Tariff. Moreover, the Applicants state that in those cases in which the Network transmission service used to serve load within Midwest ISO and the point-to-point transmission service used to deliver energy from a designated network resource outside of Midwest ISO to the Midwest ISO border are owned by the same entity, the service will be converted to Midwest ISO NITS agreements unless the entity objects to said conversion. In those instances in which the network transmission service used to serve load within Midwest ISO and the point-to-point transmission service used to deliver energy from a designated network resource outside of Midwest ISO to the Midwest ISO border are owned by different entities, the Applicants state that both parties owning the transmission service associated with the transaction must agree to the conversion of the two transmission services consistent with the Commission's ruling in Docket No. EL03-40-000.³⁹

44. With regard to WEPCO's concern that GridAmerica's prescreening of all schedules that source or sink in GridAmerica may slow down or impede the approval process for shorter term transactions, primarily hourly, the Applicants state that GridAmerica will prescreen only those transactions that are "not handled by the Midwest ISO OASIS Automation/OASIS applications to provide the Midwest ISO with advice on the impact of any such requests." Applicants state that the "Midwest ISO OASIS Automation/OASIS applications" are computer programs that analyze all hourly, daily and weekly requests for service.⁴⁰ Applicants maintain that these computer programs do not analyze any request for monthly or yearly requests for service. Thus, GridAmerica will only analyze requests that are not automatically analyzed by Midwest ISO.

c. Commission Determination

45. We disagree with Detroit Edison's concerns that the protocols do not limit GridAmerica's prescreening authority and WEPCO's assumption that GridAmerica prescreening of all schedules that source or sink in GridAmerica may slow down or impede the approval process for hourly transactions. We find that the Applicants' response, that it will not prescreen transactions that Midwest ISO handles automatically and therefore, will not delay the processing for short-term transactions, to be responsive to Detroit Edison's

³⁹Wisconsin Public Service Corporation v. Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,255 (2003).

⁴⁰Because GridAmerica will not prescreen transactions that Midwest ISO handles automatically, the prescreening will not delay the processing for short-term transactions.

and WEPCO's concern. However, we agree with WEPCO that the term "and" in the ITC Agreement must be replaced with "or" in order to comply with the December 19 Order regarding the date that contracting services will end. Finally, we find the Applicants' response sufficiently addresses WEPCO's remaining concern regarding conversion of existing, confirmed, long-term firm point-to-point transmission agreements.

3. Reservation Approval Protocols

a. Protests

46. Consumers states that it takes no position on the Applicants' compliance filing. However, Consumers requests clarification of two issues. First, Consumers claims that the Applicants describe the functions to be performed by GridAmerica, but do not specify that GridAmerica will handle reservation and etag approval for transactions that source and sink in GridAmerica in a timely fashion consistent with Midwest ISO's performance of those functions. Second, Consumers state that the protocols list GridAmerica as assuming functional responsibilities during redispatch under Lake Erie Emergency Redispatch but do not indicate that GridAmerica will assume the role of facilitating emergency energy transactions under pre-existing contracts of the GridAmerica Companies. Consumers states that it assumes that these omissions are merely oversights of relatively minor technical matters that will be resolved over time and during operations of GridAmerica.

b. Commission Determination

47. We agree with Consumers on both points here. Therefore, we will require that Applicants clarify in the protocols how they will timely approve reservations and the role of GridAmerica in facilitating emergency energy transactions under pre-existing contracts.

4. Centralization of Control Areas

a. Protests

48. PSEG states that the Applicants' proposal does not appear to advance the Commission's goal of eliminating Midwest ISO's internal seams resulting from the existence of 40 control areas. PSEG contends that the proposal should be clarified to fully detail the GridAmerica's responsibility for reliability, security, and coordination as permitted under TRANSLink. PSEG claims that at a minimum this proposal should be revised to conform with the Commission's stated intent to begin to centralize the operations of a multi-Control Area environment under a single dispatch operated by Midwest ISO.

b. Commission Determination

49. In Docket No. EL03-35-000, we stated our initial reaction is to think that fewer control areas would improve the efficiency and independence issues created by the continuation of the 40 Control Area structure; however we recognized this comes at a cost. In this regard, we directed Midwest ISO to file an analysis of merging control area functions as well as recommendations and a time frame for such operational integration should the analysis support such an outcome.⁴¹ We did not come to any final conclusions regarding how many control areas would be appropriate. Similarly, we note that in the December 19 Order we required that the Applicants provide a summary detailing how the control areas will be consolidated operationally under the GridAmerica ITC.⁴² The Applicants state that they are not proposing to consolidate control area functions under GridAmerica at this time. If, in the future, the decision is made to consolidate some of the control area functions, that consolidation must meet the North American Electric Reliability Council's standards and requirements. Therefore, we find that the Applicants have complied with the December 19 Order by providing an explanation of their current proposal.

5. Available Flowgate Capacity Protocols

a. Protest

50. Detroit Edison objects to the protocols that permit GridAmerica to develop an Available Flowgate Capability (AFC) Engine.⁴³ Detroit Edison claims that GridAmerica's development of an AFC Engine raises several questions. First, Detroit argues that it is unclear why GridAmerica needs to develop an AFC Engine, since Midwest ISO already has one in place. Next, Detroit Edison is concerned that the AFC Engine used for the GridAmerica footprint may not be consistent with the calculation of AFC for the broader Midwest ISO footprint. Finally, Detroit Edison states that to the extent that GridAmerica is permitted to implement its proposed AFC Engine, the Commission should clarify that GridAmerica's calculation of AFC (and available transmission capacity (ATC)) is only for an interim period that must expire by no later than December 2003 (the projected time frame for GridAmerica's full integration into Midwest ISO).

b. Response

⁴¹See Midwest Independent Transmission System Operation, Inc., 102 FERC ¶ 61,196 at P 42 (2003).

⁴²See December 19 Order, 101 FERC ¶ 61,320 at P 79.

⁴³See Process Protocol ATC/ITC Interim (PP-03); Contract Service Protocol ATC/ITC Interim (CS-03); Operational Protocol AFC & ATC Determination (OP-06).

51. In response, the Applicants state that the Commission has twice endorsed this proposal⁴⁴ and Midwest ISO has agreed to the use of GridAmerica's AFC engine in the short term until Midwest ISO is confident in the calculations of AFC values for GridAmerica. Moreover, multiple safeguards embedded in AFC protocols also protect against an inconsistency between GridAmerica's calculation of AFC values and Midwest ISO's calculation of AFC values for the rest of the Midwest ISO region.⁴⁵

c. Commission Determination

52. We disagree with Detroit Edison. We note that AFC services provided by GridAmerica within its footprint are delegated services. However, GridAmerica's calculation of AFC values in Midwest ISO's footprint are contracted services and are done under the supervision and at the direction of Midwest ISO. Moreover, our December 19 Order has already established a transition period for all contracted services.⁴⁶ We also find that GridAmerica's answers regarding consistency between the GridAmerica and Midwest ISO's AFC calculations sufficiently address Detroit Edison's remaining concerns.

6. Reliability, Security and Coordination Protocols

⁴⁴See December 19 Order, 101 FERC ¶ 61,320 at P 117 (the Commission approved of GridAmerica's calculation of AFC values on an interim basis); See also Alliance Companies, et al., 99 FERC ¶ 61,105 at 61,435 and 61,441.

⁴⁵First, Applicants contend that the protocols require GridAmerica's AFC engine to meet the AFC calculation criteria and process protocols of Midwest ISO. Second, the protocols require Midwest ISO to review and approve the methodology of the GridAmerica AFC engine during the development process to ensure compliance with the criteria and protocols. PP-03, CS-03 and OP-06. Third, the protocols require GridAmerica's AFC engine to use reservation data obtained from the Midwest ISO OASIS and also to use demand forecast data, transmission and generation outage data provided by the GridAmerica Companies that is identical to that provided to Midwest ISO. Fourth, the protocols require Midwest ISO to validate the AFC values calculated by GridAmerica's AFC engine prior to their posting on Midwest ISO. PP-03, CS-03 and OP-06. Finally, the protocols require Midwest ISO to determine alternative AFC values if it disagrees with GridAmerica AFC values. PP-03

⁴⁶See December 19 Order, 101 FERC ¶ 61,320 at P 75, fn 31, where we state:

[T]his transition period may not extend beyond implementation of SMD or Midwest ISO's Day Two congestion management system, whichever is earlier.

a. Protests

53. Detroit Edison argues that the protocols regarding reliability, security, and coordination do not comply with the December 19 Order. Detroit Edison points out that the proposed protocols state that GridAmerica will provide Midwest ISO with advice and operating plans regarding the reliability, security and coordination of the Midwest ISO transmission system and "such advice may not be limited to actions within the GridAmerica Transmission System."⁴⁷ Detroit Edison argues that the December 19 Order only allowed GridAmerica to monitor reliability and take corrective actions in the GridAmerica footprint - not the entire Midwest ISO region. Detroit Edison supports this limitation because, as a for-profit transmission operator, GridAmerica has every incentive to provide advice on such matters that favors the competitiveness and security of its own members' systems. Consequently, if GridAmerica were allowed to provide advice concerning the entire Midwest ISO region, the independence and reliability of the Midwest markets could be jeopardized.

b. Response

54. The Applicants state that the contract services protocol for reliability, security, and coordination, CS-07, does not allow GridAmerica to provide Midwest ISO with advice about reliability and security matters outside of its footprint. Rather, the protocol provides that GridAmerica "shall determine methods by which critical transmission facilities in the GridAmerica Transmission System can be operated in the most economic manner to avoid transmission curtailment under fault conditions and recommend corrective action to ensure compliance with NERC policy." See CS-07 (emphasis added).⁴⁸

c. Commission Determination

⁴⁷See Process Protocol Reliability Security and Coordination (PP-07); Contract Service Protocol Reliability and Security Coordination (CS-07).

⁴⁸The protocol goes on to explain that GridAmerica will provide Midwest ISO with advice and operating plans that allow the system to be operated in a secure manner and that the advice "may include transmission switching post fault actions, enhanced ratings on facilities, generator redispatch, etc., that allows pre-fault flows to be maximized, and such advice may not be limited to actions within the GridAmerica Transmission System." This simply means that to maintain the security of the GridAmerica transmission system, GridAmerica may suggest that Midwest ISO take action outside of the GridAmerica footprint.

55. We find that the Applicants' protocol for reliability, security, and coordination is in compliance with the December 19 Order and we also find that the Applicants' response addresses Detroit Edison's concerns.

7. Parallel Flow Protocols

a. Protests

56. Detroit Edison asserts that the parallel path flow protocols are too vague because they allow GridAmerica to provide Midwest ISO with advice "that allows non-critical transmission facilities to be operated and modeled so as to recognize the impact and coordinate the management of parallel path flows."⁴⁹ Without more detailed parameters, Detroit Edison argues that GridAmerica has every incentive to bias such advice in favor of its members' transmission systems over competing transmission systems in Midwest ISO.⁵⁰

b. Response

57. The Applicants respond by stating that the protocol simply permits GridAmerica to provide advice to enable Midwest ISO to recognize and coordinate parallel path flows on GridAmerica's non-critical facilities.⁵¹ Applicants maintain that this is a necessary consequence of GridAmerica monitoring non-critical transmission facilities in GridAmerica for parallel path flow, a function that Schedule 5 of the Appendix I ITC Agreement and Schedule 5A of the Operation Agreement authorizes GridAmerica to perform as an ITC.

c. Commission Determination

58. We recognize that GridAmerica is simply providing advice to Midwest ISO regarding parallel path flows for non-critical transmission facilities. We also recognize that if corrective action is implemented by GridAmerica for non-critical transmission facilities within the GridAmerica footprint, those actions will be subject to the supervision

⁴⁹See Process Protocol Parallel Path Flows (PP-08); Contract Services Protocol Parallel Path Flows (CS-08).

⁵⁰For example, Detroit Edison points out that GridAmerica would have the ability and incentive to influence how Midwest ISO models loop flows, which could negatively affect transmission-dependent companies, such as Detroit Edison.

⁵¹The protocols define critical transmission facilities as "those facilities within the GridAmerica Transmission System whose outage could have a significant adverse impact on non-GridAmerica facilities in the Midwest ISO area." Non-critical facilities are those that would not have such an effect.

and operating protocols of Midwest ISO.⁵² Thus, we find that the proposed parallel path flow protocols comply with the December 19 Order.

8. Contract Terms Applicable To Protocol Services And Start-Up Cost

a. Protests

59. The Midwest ISO TOs object to Article 4.1.4 of the ITC Agreement which allows GridAmerica, without conferring with Midwest ISO, to enter into contracts for less than \$500,000 that are required for GridAmerica to serve as an ITC and to perform its delegated functions. For contracts of \$500,000 or more, GridAmerica must confer with Midwest ISO prior to entering into a contract for which GridAmerica will seek reimbursement, but no Midwest ISO approvals are necessary. They argue that these costs will be paid for by Midwest ISO's customers pursuant to Schedule 10, therefore it is unreasonable to permit GridAmerica to incur these costs without Midwest ISO approval or stakeholder input.

60. The Midwest TOs request that Article 3.2 of the ITC Agreement be modified to state that Midwest ISO will not discriminate in favor of GridAmerica against the Midwest ISO TOs. Without this parallel provision, they argue that the article remains unduly discriminatory and preferential.

61. The Midwest ISO TOs object to Article 8.4 of the ITC Agreement because Midwest ISO did not submit the issue of GridAmerica providing consulting services to the stakeholder process. They assert that Midwest ISO typically discusses the use of consultants with stakeholders and for major items and often sends out request for proposals (RFP) to control the costs for services.

b. Commission Determination

62. We find that parties will have sufficient opportunity to review the cost of contracts entered into by Midwest ISO that are required for GridAmerica to serve as an ITC as provided in Article 4.1.4 of the ITC Agreement. These amounts are included in the \$36.2

⁵²The PP-08 provides that "[I]n the event of a dispute with regard to Parallel Path Flow Management the Midwest ISO's decision will prevail in accordance with the dispute resolution process."

million dollar payment which we are setting for hearing, as previously discussed in this order.⁵³

63. We disagree with the Midwest ISO TOs that Section 3.2 of the ITC agreement between GridAmerica and Midwest ISO should be modified to provide that Midwest ISO will not discriminate against the Midwest ISO TOs in favor of GridAmerica. We find that such a provision regarding how Midwest ISO will treat TOs in relation to ITC's would be better placed in a revision to the Midwest ISO TO Agreement or in the agreement directed below to be filed with the Commission to ensure that GridAmerica and the GridAmerica Companies stand in essentially the same relationship to Midwest ISO as the Midwest ISO TOs (See Section E.1, Signatories to Agreements).

64. We do not believe it would be beneficial at this time to require stakeholder review regarding whether GridAmerica should provide a consultancy service to Midwest ISO. We believe we have provided adequate explanations for the need for the service during the transition period as well as adequate protections in the December 19 Order. Specifically, in the December 19 Order, we recognized that the consultancy services provided by GridAmerica to Midwest ISO raised a number of concerns.⁵⁴ However, we also recognized that National Grid, as the managing member of GridAmerica, could bring significant benefits as a consultant to Midwest ISO. As we stated in the December 19 Order, we required that protocols be filed concerning these services and reminded the parties that Midwest ISO's final authority in approving transmission facilities in the GridAmerica region that affect non-GridAmerica facilities in other areas of Midwest ISO, cannot be compromised through such best-practices consultancy and Midwest ISO must review potential transmission (wires) and non-wires solutions objectively. We continue to believe that our decision to permit GridAmerica to perform these consulting services for one year from the service commencement date is appropriate. We also required Midwest ISO to issue a RFP and seek competitive bids for this consultancy service at the end of the one year period.

D. Initial Start-up Period

65. Applicants submit, as part of the compliance filing, a "Start-Up and Transition Plan for Operational Planning, Transmission Planning and Interconnections" (Plan) as Attachment F. The Plan sets forth the responsibilities of Midwest ISO, GridAmerica, and the GridAmerica Companies at three different times: (1) when GridAmerica starts up; (2) at an interim period (projected to begin in August 2003); and (3) at full operation

⁵³See Articles 4.1.4 and 4.1.3(d) of the ITC Agreement.

⁵⁴See December 19 Order, 101 FERC ¶ 61,320 at P 71-72.

(projected to begin by the end of 2003). According to Applicants, GridAmerica is expected to begin receiving reservations in April 2003 and to start providing transmission service on May 1, 2003.⁵⁵

1. Protests

66. Detroit Edison objects to the first phase of the Plan. According to Detroit Edison, during the first phase the Plan indicates that GridAmerica and GridAmerica Companies will be performing many functions for Midwest ISO without being bound by the Protocols. Detroit Edison asserts that the Protocols, to the extent that they are not rejected, should also apply during the start-up phase of GridAmerica's operation. Otherwise, Detroit Edison argues, the unrestricted GridAmerica could operate in a "fast and loose" manner during the summer peak season to the detriment of competition in and the reliability of regional energy markets.

2. Commission Determination

67. We agree with Detroit Edison's concerns on the applicability of protocols during start-up. It is not clear whether protocols will be implemented during the start-up for Operational Planning, Transmission Planning and Interconnections. We will therefore require that the protocols be in place at the start-up of the GridAmerica ITC. We approved the contract and consultancy services during the transition period and we expect that the protocols will be applicable and in place at start-up. With the recent filing by Applicants for a Transmission Service Date of October 1, 2003, the potential for summer peak season problems associated with start-up has been eliminated. However, we expect the protocols to apply during any phased-in start-up after October 1.

E. Contractual Issues

1. Signatories to Agreements

a. Protests

68. The Midwest ISO TOs generally object to the ITC Agreement because it grants GridAmerica and GridAmerica Companies' rights under the Midwest ISO TO Agreement without requiring them to sign and take on responsibilities under that agreement. The Midwest ISO TOs assert that the December 19 Order implied that all TOs should execute the Midwest ISO TO Agreement because the Commission found that all TOs should be on

⁵⁵ Applicants have filed to extend the Transmission Service Date to October 1, 2003.

the same footing.⁵⁶ Specifically, the Midwest ISO TOs point to Articles of the ITC Agreement that purport to grant rights to GridAmerica that Midwest ISO has no authority to grant;⁵⁷ or to impose obligations on GridAmerica that are unenforceable;⁵⁸ or fail to impose obligations that are part of the quid pro quo of the negotiated agreement among the Midwest ISO TOs.⁵⁹

b. Commission Determination

⁵⁶The Midwest ISO TOs rely on the December 19 Order directing the Applicants to use the same termination provisions as those found in the Midwest ISO Agreement (December 19 Order, 101 FERC ¶ 61,320 at P 59) and to delete the most favored nations clause so that GridAmerica would be on the same footing as TOs that joined Midwest ISO without a similar provision (December 19 Order, 101 FERC ¶ 61,320 at P 177-78).

⁵⁷For example, the Midwest ISO TOs point to Article 2.3 of the ITC Agreement which provides that if a Non-Divesting Transmission Owner (NDTO) withdraws from GridAmerica, it automatically becomes a Midwest ISO TO with full rights, which they assert Midwest ISO has no authority to grant. The Midwest ISO TOs also cite Article 3.1 of the ITC Agreement which grants GridAmerica the same rights and voting authority as the Midwest ISO TOs under the Midwest ISO Agreement. They point out that unless GridAmerica signs the Midwest ISO Agreement or reaches an agreement with the TOs it does not have the same rights as TOs particularly with regard to Owners' Committee matters and revenue distribution.

⁵⁸The Midwest ISO TOs cite Articles 2.5 and 2.6 of the ITC Agreement. Article 2.5 provides that if GridAmerica withdraws from Midwest ISO, GridAmerica will remain responsible for all financial obligations it incurs under the Midwest ISO Agreement before its withdrawal. The Midwest ISO TOs seek clarification as to how the financial obligations of GridAmerica will be enforced by Midwest ISO if GridAmerica is not a Midwest ISO TO Agreement signatory. Article 2.6 purports to make NDTOs that remain in Midwest ISO after GridAmerica withdraws responsible for costs that GridAmerica would have paid. The Midwest ISO TOs assert that while this obligation is desirable, it is not certain that the obligation is binding based on the wording of the provision.

⁵⁹Midwest ISO TOs cite Article 17 of the ITC Agreement which sets forth the indemnification provisions for GridAmerica and NDTOs. They point out that GridAmerica and GridAmerica Companies have agreed to the Midwest ISO TO Agreement indemnification provisions pertaining to the actions of the Midwest ISO Board but have not agreed to indemnification provisions pertaining to actions of other TOs. Midwest ISO TOs assert that cross indemnification between the Midwest ISO TOs is essential because the greater geographical coverage of an RTO versus a single TO's service area increases the potential class of direct and indirect customers who could sue an owner.

69. We agree with the Midwest ISO TOs that GridAmerica and the GridAmerica Companies cannot be granted the same rights or incur the same obligations as the Midwest ISO TOs have under the Midwest ISO TO Agreement unless they become signatories to that agreement or a comparable separate agreement with all of the Midwest ISO TOs. We also recognize that because GridAmerica is an ITC, it is in a different position than the Midwest ISO TOs and a comparable separate agreement may be more appropriate in this instance. We believe that the rights and obligations afforded to the Midwest ISO TOs should not be afforded to GridAmerica without an agreement similar to the Midwest ISO Agreement between Midwest ISO, Midwest ISO TOs and GridAmerica. Such an agreement should provide, among other things, details regarding: (1) withdrawal of an NDTO from GridAmerica; (2) GridAmerica's rights as to Owners' Committee matters and revenue distribution; and (3) GridAmerica's financial obligations incurred pursuant to the Midwest ISO Agreement. The agreement should clearly state the rights and obligations imposed on GridAmerica that are part of the quid pro quo of the negotiated agreement, similar to those set forth in the Midwest ISO Agreement. Therefore, we will direct the GridAmerica Companies and GridAmerica to file with the Commission an agreement, entered into with the Midwest ISO TOs and Midwest ISO, that recognizes GridAmerica as an ITC, while ensuring that GridAmerica and the GridAmerica Companies stand in a similar relationship with Midwest ISO as do the Midwest ISO TOs, as set forth in the Midwest ISO TO Agreement.⁶⁰

2. Grandfathered Agreements

a. Protests

70. AECC and AMP-Ohio object to Article 5.3 of the ITC Agreement because it proposes to sunset all grandfathered agreements six years after GridAmerica commences operations unless the Commission orders otherwise. AECC asserts that this provision is contrary to the Commission's decision in the September 16 Order and subsequent related orders where the Commission rejected attempts by transmission owners to preordain the post-transition period treatment of bundled retail load and load served under grandfathered wholesale agreements.

71. AMP-Ohio also argues that customer rights should not be abrogated, where, apparently, they can be satisfied for six years. Alternatively, AMP-Ohio asserts that the burden of seeking the termination of a contract should be on the regulated entity - the transmission owner. Cleveland incorporates by reference the AMP-Ohio protest and

⁶⁰See, e.g., International Transmission Company, 97 FERC ¶ 61,328 at fns 16 and 18 (2001).

further objects to Article 5.3 to the extent that the sunset language would permit the 1975 CEI/CPP Interconnection Agreement or the 1978 FERC Tariff No. 1 to be modified or terminated prior to June 11, 2007.⁶¹

b. Commission Determination

72. We find that the sunset provision in Article 5.3 is consistent with our prior decisions concerning when grandfathered agreements must be served under Midwest ISO's OATT, however we will require a minor modification. Midwest ISO's formation was approved in part because a transition period (six years from the date of operation) was established for the conversion of bundled retail load and grandfathered wholesale contracts to Midwest ISO's Tariff. While the Commission has encouraged parties to negotiate amendments to these agreements, that negotiation is to occur prior to the end of the transition period.⁶² We view the transition period as providing ample time for the parties to renegotiate their contracts, or to make rate filings under Section 205 or Section 206, as appropriate, to make the necessary changes. To the extent the parties do not renegotiate their agreements or make filings which seek to convert to service provided under Midwest ISO's OATT prior to the end of the six-year period, the Commission clarifies that it will institute Section 206 proceedings, as appropriate.⁶³ Accordingly, we will direct Applicants to revise Article 5.3 to clarify that after the transition period of six years expires, the Commission will institute a Section 206 proceeding regarding agreements that have not been converted. Finally, we clarify that AECC and AMP-Ohio are incorrect to interpret our encouragement to negotiate contract amendments as a way to prolong the date by which all load must be served by Midwest ISO's Tariff.⁶⁴

⁶¹According to Cleveland, FirstEnergy agreed not to modify or terminate these agreements prior to June 11, 2007.

⁶²See September 16 Order, 84 FERC ¶ 61,231 at 62,167-70; Opinion No. 453-A, 98 FERC ¶ 61,141 at 61,414.

⁶³We recognize that to the extent that the contracts to be revised have Mobile-Sierra provisions, the Commission will have to meet the "contrary to the public interest" burden. The doctrine derives its name from the companion cases, United Gas Pipe Line

Co. V. Mobile Gas Service Corp.; 350 US 332 (1956) (Mobile) and FPC v. Sierra Pacific Power Co., 350 US 348.

⁶⁴We note further that the sunset clause in Article 5.3 by its terms would not affect the June 11, 2007 termination date of the 1975 CEI/CPP Interconnection Agreement or the

(continued...)

F. MJMEUC's Request for Clarification or Rehearing

73. The December 19 Order directed GridAmerica Participants to make a formal Section 203 filing pursuant to the FPA supporting their request for permission to transfer functional control of certain transmission facilities to GridAmerica.

74. MJMEUC filed a request for clarification and alternative request for rehearing concerning the issues raised by the proposed transfer of functional control of certain transmission facilities. MJMEUC states that the Commission correctly determined that the Applicants' implicit request for Section 203 approval was not sufficient. However, MJMEUC argues that the implicit Section 203 application also failed to address how Ameren, one of the GridAmerica Participants, intended to ensure the contractual right of Citizens⁶⁵ to purchase certain transmission lines from Ameren. MJMEUC requests that the Commission clarify that any approval of the proposed transfer by Ameren will in no way interfere with Citizens' purchase right.

75. MJMEUC also seeks clarification that the proposed transfer will not interfere with wholesale customers' rights to receive compensation for customer-owned transmission facilities. MJMEUC asks that the Commission require Applicants to explain the terms and conditions pursuant to which qualified entities will participate in, and be compensated for participating in GridAmerica.

76. We will not grant rehearing or clarification of the issues raised by MJMEUC. These issues are beyond the scope of this proceeding. If MJMEUC wishes to pursue these issues it should do so in the context of a separate complaint or other proceeding.⁶⁶

The Commission orders:

(A) The proposed agreements and related documents are hereby accepted for filing, as modified herein.

(B) The requests for rehearing are hereby denied to the extent discussed in the body of this order.

⁶⁴(...continued)
1978 FERC Tariff No. 1 which is less than six years away.

⁶⁵Citizens is an advisory member of MJMEUC.

⁶⁶See also, Ameren Services Company et al., 103 FERC ¶ 61,121 (2003).

(C) The request for clarification is hereby granted to the extent discussed in the body of this order.

(D) Midwest ISO is directed to submit a compliance filing, consistent with the discussion herein, within 15 days of the date of issuance of this order.

(E) Midwest ISO is directed to file an actual and projected annual operating budget for Commission review, as discussed in the body of this order.

(F) GridAmerica is hereby directed to provide an actual and projected annual operating budget to the Midwest ISO for services performed, as discussed in the body of this order.

(G) GridAmerica and the GridAmerica Companies are hereby directed to file the supplemental agreement that they reach with Midwest ISO and the Midwest ISO TOs, as discussed in the body of this order within 60 days.

(H) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held on the prudence of RTO development costs. As discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to conduct settlement judge negotiations.

(I) Pursuant to Rule 603 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(J) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions

continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(K) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

Listed parties have filed notices of intervention or motions to intervene, requests for rehearing, and/or comments in Docket Nos. ER02-2233-002, ER02-2233-003, and EC03-14-001. Short-hand references to parties referred to in the order are indicated in the parenthesis after the name.

Company Name

American Municipal Power-Ohio, Inc. (AMP-Ohio)

Arkansas Electric Cooperative Corporation (AECC)

The City of Cleveland, Ohio (Cleveland)

Coalition of Midwest Transmission Customers & Industrial Energy Users-Ohio (Coalition Customers)

Consumers Energy Company (Consumers)

Dairyland Power Cooperative (Dairyland)

Detroit Edison Company (Detroit Edison)

Illinois Municipal Electric Agency (IMEA)

Midwest ISO Transmission Owners (Midwest ISO TOs)

Missouri Joint Municipal Electric Utility Commission (MJMEUC)

Missouri River Energy Services, certain members of the Coalition of Municipal and Cooperative Users of New PJM Companies' Transmission, Madison Gas & Electric Company and Wisconsin Public Power Inc. (collectively, Multiple TDUs)

Public Service Electric and Gas and PSEG Resources & Trade LLC (PSEG)

Public Utilities Commission of Ohio (Ohio Commission)

Wisconsin Electric Power Company (WEPCO)