

Exhibit No.:

Issue(s):

Witness/Type of Exhibit:

Sponsoring Party:

Case No.:

Aquila's Application
to Join MISO

Kind/Surrebuttal

Public Counsel

EO-2008-0046

SURREBUTTAL TESTIMONY

OF

RYAN KIND

Submitted on Behalf of
the Office of the Public Counsel

**AQUILA, INC. D/B/A AQUILA NETWORKS-MPS
AND AQUILA NETWORKS-L&P**

Case No. EO-2008-0046

February 27, 2008

In the Matter of Aquila, Inc., d/b/a
Aquila Networks - MPS and Aquila
Networks - L&P for Authority to
Transfer Operational Control of Certain
Transmission Assets to the Midwest
Independent Transmission System
Operator, Inc.

[illegible]


Ryan Kind

A circular notary seal for the State of Missouri. The outer ring contains the text "NOTARY PUBLIC" at the top and "STATE OF MISSOURI" at the bottom, separated by two stars. The center of the seal contains the words "NOTARY" and "SEAL" stacked vertically, with a small horizontal line between them.


Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

Surrebuttal Testimony of
Ryan Kind

1 Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

2 A. Yes, prior to this case I submitted written testimony in numerous electric, gas, and water
3 rate cases as well as other miscellaneous gas, electric, and telephone cases. I have filed
4 testimony in all of the cases where the Commission has considered applications by
5 Missouri electric utilities to join Independent System Operators (ISOs) or Regional
6 Transmission Organizations (RTOs). These cases have included AmerenUE's
7 application in Case No. EO-2003-0271 to participate in the Midwest ISO (MISO) and the
8 applications of Empire District Electric and Kansas City Power & Light (KCPL) to
9 participate in the Southwest Power Pool (SPP) RTO in Case Nos. EO-2006-0141 and
10 EO-2006-0142.

11 Q. WHAT EXPERIENCE HAVE YOU HAD WORKING ON ISO AND RTO ISSUES OUTSIDE OF
12 THE COMMISSION CASES THAT WERE REFERENCED IN YOUR PRECEDING ANSWER?

13 A. My experience working on MISO and SPP issues has included representing consumer
14 interests on several committees at MISO and SPP including serving as the first public
15 consumer organization representative on the MISO Advisory Committee. I have also
16 participated in the Regional State Committees for both MISO and SPP. My work as a
17 member of the North American Electric Reliability Council (NERC) Operating
18 Committee and Standards Authorization Committee also provided experience with issues
19 concerning RTOs and bulk power system operations.

20 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

21 The purpose of this testimony is to respond to the rebuttal testimony filed by Missouri
22 PSC Staff (Staff) witness Dr. Proctor and Dogwood Energy witness Robert Janssen

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Ryan Kind

1 Q. WHAT ARE YOUR COMMENTS REGARDING THE REBUTTAL TESTIMONY OF DR.
2 PROCTOR?

3 A. Dr. Proctor's rebuttal testimony provides a good overview of the issues that the
4 Commission should consider as it makes a decision regarding the application of Aquila,
5 Inc. (Aquila or the Company) to become a full member of MISO and transfer operational
6 control of its transmission system to MISO.

7 Q. DR. PROCTOR RECOMMENDS THAT THE COMMISSION DENY AQUILA'S APPLICATION IN
8 THIS CASE. WHAT IS PUBLIC COUNSEL'S RESPONSE TO THIS RECOMMENDATION?

9 A. Public Counsel agrees with the Staff recommendation to deny Aquila's application to
10 become a full member of MISO.

11 Q. WHY DOES OPC BELIEVE THAT THIS APPLICATION SHOULD BE DENIED?

12 A. The primary reason why this application should be denied is because participating in the
13 MISO is not the lowest cost option available to Aquila for providing electric service to its
14 customers. The Commission's IRP rule (4 CSR 240-22) gives Missouri electric utilities
15 guidance that they should develop and implement long-term plans that will allow the
16 utility to minimize its long-run costs of serving customers subject to risk considerations.
17 Subsection (2)(B) in 4 CSR 240-22.010 states that the utility shall "use minimization of
18 the present worth of long-run utility costs as the primary selection criterion in choosing
19 the preferred resource plan."

20 The cost benefit study that CRA International (CRA) performed for Aquila in this case
21 indicates that the long run (10 year) benefits of participating in SPP are expected to be
22 \$86.9 million while the long run benefits of participating in MISO are expected to be
23 only \$21.1 million. Considering the much larger number and size of transmission

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interconnections that Aquila has with SPP compared to MISO, this result is not particularly surprising.

Q. ARE THERE OTHER REASONS WHY PUBLIC COUNSEL BELIEVES THAT THIS APPLICATION SHOULD NOT BE APPROVED AT THIS TIME?

A. Yes. There are several uncertainties raised in the rebuttal testimonies of Dr Proctor and Dogwood Energy witness Robert Janssen that could adversely impact the level of benefits that Aquila might obtain from participating in MISO relative to its other RTO options. As Dr. Proctor notes on pages 44 and 45 of his rebuttal testimony, there is uncertainty as to whether Aquila will be acquired by KCPL's parent company, Great Plains Energy (GPE) and whether if this acquisition does occur, the generating units of KCPL and Aquila will be jointly dispatched to serve the combined native loads of KCPL and Aquila. As Dr. Proctor notes on pages 39 and 40 of his rebuttal testimony, there is also uncertainty about the development of more favorable terms under which former Mid-Continent Area Power Pool (MAPP) members may be allowed to participate in MISO markets and whether these terms would be made available to Aquila as a new member.

Q. PLEASE DESCRIBE AND PROVIDE OPC'S RESPONSE TO ISSUES RAISED IN THE REBUTTAL TESTIMONY OF DOGWOOD ENERGY WITNESS ROBERT JANSSEN RELATED TO THE UNCERTAINTY SURROUNDING AMERENUE'S CONTINUED PARTICIPATION IN THE MISO.

A. Beginning at line 20 on page 14 of his rebuttal testimony, Mr. Janssen discusses the circumstances that are creating uncertainty about AmerenUE's continued participation in the MISO. The testimony of Mr. Janssen observes that (1) AmerenUE has filed an application in Case No. EO-2008-0134 to extend its current Commission authorization to

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1 participate in MISO which is set to expire on April 30, 2009 and (2) AmerenUE's
2 application notes on page 8 that AmerenUE could elect to seek permission to withdraw
3 from MISO prior to April 12, 2012.

4 Q. HAVE ADDITIONAL DEVELOPMENTS OCCURRED IN CASE NO. EO-2008-0134 AFTER
5 MR. JANSSEN FILED HIS REBUTTAL TESTIMONY IN CASE NO. EO-2008-0046 ON
6 NOVEMBER 30, 2007 THAT HAVE INCREASED THE UNCERTAINTY REGARDING UE'S
7 FUTURE PARTICIPATION IN MISO?

8 A. Yes. A number of very important developments have occurred. AmerenUE identified at
9 least two significant developments in a pleading (NOTICE OF MATERIAL FILING AT
10 THE FEDERAL ENERGY REGULATORY COMMISSION AND REQUEST TO
11 SUSPEND FURTHER PROCEEDINGS IN THIS CASE) that it filed on December 17,
12 2007 in Case No. EO-2008-0134. These developments include:

- 13 • A section 205 filing was made on December 3, 2007 in Federal Energy
14 Regulatory Commission (FERC) Docket No. ER08-296 that proposed a revision
15 to section 37.3 of the MISO's Open Access Transmission Tariff (TEMT) that
16 AmerenUE believes could lead to the loss of approximately \$60 million annually
17 in incremental revenues for AmerenUE. Those revenues were included in the
18 AmerenUE RTO cost benefit study filed in Case No. EO-2008-0134 based upon
19 the assumption that they would continue to flow to AmerenUE in the future.
- 20 • AmerenUE has decided to re-evaluate the recommendation that it made in its
21 Application in Case No. EO-2008-0134 for the Commission to extend
22 AmerenUE's permission and authority to participate in MISO beyond April 30,
23 2009 because of the section 205 filing in FERC Docket No. ER08-296.

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Another key development occurred on December 28, 2007, when AmerenUE filed another pleading (RECOMMENDATION RESPECTING PROCEDURAL SCHEDULE) in Case No. EO-2008-0134 which stated that it had provided the MISO with timely notice of AmerenUE's intention to withdraw from the MISO (See Attachment A which contains a copy of AmerenUE's letter providing this notice to MISO) on or after December 31, 2008. The last major development that occurred prior to the filing of this surrebuttal testimony was the FERC's February 1, 2008 decision in FERC Docket No. ER08-296 (See Attachment B) to order the conditional acceptance of the December 3, 2007 section 205 filing that proposed a revision to section 37.3 of the MISO's TEMT. This FERC decision has greatly increased the likelihood that AmerenUE will not receive the \$60 million in annual incremental revenues that were reflected in the AmerenUE RTO cost benefit study filed in Case No. EO-2008-0134.

Q. WHY IS THE CONTINUED MISO PARTICIPATION OF AMERENUE RELEVANT TO AQUILA'S APPLICATION TO PARTICIPATE IN MISO?

A. This is relevant because the only direct transmission interconnections that Aquila has with utilities within the MISO footprint are the transmission ties that Aquila has with AmerenUE. Furthermore, the cost benefit study filed in this case by Aquila includes the assumption that AmerenUE will continue to be a MISO member throughout the entire time period covered by the Aquila RTO cost benefit study. As I noted previously, this study indicated that Aquila would benefit from participating in MISO but that these benefits would be much smaller than the benefits that Aquila would obtain by participating in the SPP RTO.

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1 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE UNCERTAINTIES SURROUNDING
2 AMERENUE'S CONTINUING PARTICIPATION IN MISO IDENTIFIED IN THE REBUTTAL
3 TESTIMONIES OF DR. PROCTOR AND MR. JANSSEN AND THE SUBSEQUENT RELATED
4 DEVELOPMENTS IN FERC DOCKET NO. ER08-296 DESCRIBED EARLIER IN THIS
5 TESTIMONY PROVIDE ADDITIONAL REASONS FOR THE COMMISSION NOT TO APPROVE
6 AQUILA'S APPLICATION TO PARTICIPATE IN MISO?

7 A. Yes. While OPC believes that the higher level of predicted benefits from joining SPP is a
8 sufficient reason for the Commission to deny this application, the Commission should, at
9 the very least, defer making a final decision to approve this application until these other
10 uncertainties are resolved.

11 Q. ON PAGES 36 THROUGH 44 OF HIS REBUTTAL TESTIMONY, DR. PROCTOR
12 RECOMMENDS A NUMBER OF CONDITIONS THAT SHOULD BE IMPOSED ON ANY
13 APPROVAL OF THIS APPLICATION. THESE CONDITIONS ARE SUMMARIZED IN A LIST
14 THAT BEGINS ON PAGE 37 OF DR. PROCTOR'S TESTIMONY. DOES PUBLIC COUNSEL
15 SUPPORT THE CONDITIONS THAT HAVE BEEN RECOMMENDED BY DR. PROCTOR?

16 A. Yes. Public Counsel strongly supports these conditions. These conditions are consistent
17 with the terms that were agreed upon by the parties in the Stipulation and Agreements
18 that were approved by the Commission in Case Nos. EO-2006-0141 and EO-2006-0142.

19 Q. ONE OF THE APPROVAL CONDITIONS RECOMMENDED BY DR. PROCTOR IS AN INTERIM
20 APPROVAL PERIOD OF SEVEN YEARS. IS THIS A REASONABLE PERIOD OF TIME FOR AN
21 INTERIM APPROVAL TO BE IN PLACE?

22 A. Yes. As noted by Dr. Proctor, carbon regulation policies at the federal level may have a
23 major impact on the amount of benefits that are available from participating in a

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1 particular RTO. For example, the greater availability of low cost wind generation
2 resources in close proximity to Aquila might make SPP an even more attractive option as
3 the costs of carbon emissions associated with fossil fuel generation are included in the
4 cost of utility operations.

5 Other issues that will impact the relative benefits of participating in MISO vs. SPP are (1)
6 the possible development of day two and ancillary services markets at SPP and (2) the
7 extent to which seams issues between MISO and Associated Electric Cooperative, Inc.
8 (AECI) are addressed. As new developments occur in these areas over the next five
9 years, the impacts of these developments can be assessed and incorporated into a cost
10 benefit study that would be performed prior to the end of the seven year interim period.

11 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

12 A. Yes. Public Counsel recommends that the Commission deny Aquila's application
13 because the Company's RTO cost benefit study shows that the customer benefits from its
14 participation in an RTO are expected to be much greater if the Aquila joins SPP rather
15 than MISO. Also, any potential benefits to Missouri customers that might result from
16 Aquila's participation in MISO are highly uncertain because of:

- 17 1) AmerenUE's re-evaluation of whether it wishes to continue to participate in MISO;
- 18 2) The continuing uncertainty about whether Aquila will be acquired by KCPL's parent
19 company, Great Plains Energy (GPE) and whether if this acquisition does occur, the
20 generating units of KCPL and Aquila will be jointly dispatched to serve the
21 combined native loads of KCPL and Aquila; and
- 22 3) The possibility that MISO will develop and offer more favorable terms under which
23 former MAPP members may be allowed to participate in MISO markets and

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1 uncertainty about whether these same terms would be made available to Aquila as a
2 new member.

3 Lastly, if despite OPC's recommendation to the contrary, the Commission decides to
4 approve this application, then that approval should be contingent upon all seven of the
5 conditions that are summarized in the list that begins on page 37 of Dr. Proctor's rebuttal
6 testimony.

7 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

8 A. Yes.

AmerenUE

Thomas R. Voss, P.E.

President & Chief Executive Officer

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314.554.2549
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December 21, 2007

Sent by UPS Overnight Delivery

Mr. John Bear
President and Chief Operating Officer
Midwest Independent Transmission System Operator, Inc.
701 City Center Drive
Carmel, IN 46032



Dear Mr. Bear:

Reference is hereby made to the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), a Delaware Non-Stock Corporation (the "TOA") accepted by the Federal Energy Regulatory Commission ("FERC" or "Commission") in an Order dated September 16, 1998, and as amended.

Pursuant to and in accordance with Section I of Article Five and Section J of Article Nine of the TOA, AmerenUE hereby tenders to you in your capacity as President of the Midwest ISO notice of intent to effectuate withdrawal of AmerenUE's facilities from the Transmission System (as defined in (L) of Section I of Article One of the TOA). AmerenUE presently has pending before the Missouri Public Service Commission ("Missouri PSC") a proceeding in which AmerenUE's continued participation as a Midwest ISO Transmission Owner will be considered. The cost-benefit study filed in the Missouri PSC case relies upon certain projections with regard to the costs and benefits to AmerenUE's Midwest ISO participation, including the expected Transmission Owner revenue distribution. If these costs and benefits develop in a manner other than what AmerenUE has projected, the benefits of continued AmerenUE participation in the Midwest ISO could be substantially reduced or eliminated, which could affect the Missouri PSC's decision on whether AmerenUE should continue to participate in the Midwest ISO.

AmerenUE is submitting this notice in order to preserve its rights under the TOA. AmerenUE notes that Section I of Article Five of the TOA provides that, based on the delivery date of this notice, AmerenUE's withdrawal will not become effective at any time prior to December 31, 2008. Further, AmerenUE notes that, under certain FERC orders issued in various merger and rate proceedings involving AmerenUE, FERC approval is required prior to AmerenUE's withdrawal as a

Attachment A

Midwest ISO Transmission Owner. Approval of the Missouri PSC would also be required in accordance with the above referenced proceeding that is pending before it. Such withdrawal, when effective, would terminate AmerenUE's status as a Transmission Owner pursuant to the TOA.

AmerenUE appreciates your cooperation to coordinate any transition issues that may arise and looks forward to continued coordination with Midwest ISO to ensure reliable and efficient system operation.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas R. Voss". The signature is fluid and cursive, with the first name "Thomas" and last name "Voss" clearly distinguishable.

Thomas R. Voss, P.E.
President & CEO
AmerenUE

Cc: Graham Edwards

122 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Docket No. ER08-296-000
Inc. and the Transmission Owners of the Midwest
Independent Transmission System Operator, Inc.

ORDER CONDITIONALLY ACCEPTING FILING

(Issued February 1, 2008)

1. On December 3, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners (Midwest ISO TOs)¹ filed with the Commission, pursuant to section 205 of the Federal Power Act (FPA),²

¹ For purposes of this filing, the Midwest ISO TOs include: American Transmission Company LLC (ATCLLC); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp. (ATSI); Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Indianapolis Power & Light Company; International Transmission Company d/b/a *ITCTransmission* (International Transmission); Manitoba Hydro; Michigan Electric Transmission Company, LLC (METC); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

² 16 U.S.C. § 824d (2000 & Supp. V 2005).

proposed revisions to section 37.3(a) of the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT),³ which addresses terms of the transmission service that the Midwest ISO TOs must take under the TEMT to meet their obligations to serve their bundled retail load. As discussed below, we conditionally accept the proposed tariff revisions.

I. Background

A. Provisions for Bundled Retail Load, Grandfathered Agreements, and Revenue Distribution Set Forth in the Midwest ISO Transmission Owners Agreement

2. The Midwest ISO Transmission Owners Agreement (TO Agreement)⁴ sets forth the rules governing the relationship between the Midwest ISO and the Midwest ISO TOs. Appendix C of the TO Agreement (Pricing and Revenue Distribution, Return of Start-Up Costs, and Renegotiation Procedures for Grandfathered Agreements) addresses certain transmission pricing and revenue distribution matters. It provides that, during the six-year transition period ending January 31, 2008, each of the Midwest ISO TOs shall take Point-to-Point Transmission Service (PTP Service) or Network Integration Transmission Service (NITS) under the TEMT to serve its bundled retail load or meet its obligations under Grandfathered Agreements (GFAs), but the Midwest ISO TO shall not pay the license-plate zonal transmission charges in Schedule 9 (Network Integration Transmission Service) of the TEMT for NITS taken to serve its bundled retail load or the charges in Schedule 7 (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service), Schedule 8 (Non-Firm Point-To-Point Transmission Service), or Schedule 9 of the TEMT for service taken to meet its GFA obligations.⁵ Moreover,

³ Midwest ISO, FERC Electric Tariff, Third Revised Volume No. 1.

⁴ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1.

⁵ TO Agreement, App. C at §§ II.A.2.a, II.A.3.a. As originally accepted by the Commission in 1998, the Midwest ISO TOs would have continued to provide themselves PTP Service or NITS over their own facilities to serve their bundled retail load and meet their GFA obligations. However, in 2001, in Opinion No. 453, the Commission required the Midwest ISO TOs to take transmission service under the TEMT for all use of the Midwest ISO transmission system to serve their bundled retail load and GFA customers, in order for the Midwest ISO to satisfy Order No. 2000's requirement that a regional transmission organization (RTO) be the sole provider of transmission service over the facilities under its control. *See Midwest Indep. Transmission Sys. Operator, Inc.*,

(continued)

during that six-year transition period, revenues collected for NITS or PTP Service under the TEMT for load within the Midwest ISO shall be fully distributed to the Midwest ISO TO whose facilities comprise the license-plate pricing zone where the network load is located.⁶ Appendix C further provides that, after the transition period ends on February 1, 2008, the TEMT “shall be applicable to all transmission service arranged over Midwest ISO facilities,” including bundled retail load and load served under GFAs. In addition, “[e]ach [Midwest ISO TO] shall receive revenues, on a monthly basis, based on its revenue requirement calculated in accordance with a formula filed with the FERC,” and any shortfall or excess in the revenues available for distribution in any year shall be “apportioned on a proportionate basis of revenue requirements. . . .”⁷

B. Provisions for Bundled Retail Load, Grandfathered Agreements, and Revenue Distribution Set Forth in the TEMT

3. Currently, section 37 of the TEMT reflects the provisions in Appendix C of the TO Agreement regarding treatment of the Midwest ISO TOs’ bundled retail load and GFAs during the six-year transition period.⁸ Under section 37.1 of the TEMT, the Midwest ISO TOs must take service under the TEMT for deliveries to their bundled retail load and to meet their GFA obligations. However, section 37.3(a) exempts the Midwest ISO TOs from paying the license-plate zonal transmission charges in Schedule 9 for the NITS they take to serve their bundled retail load. Similarly, sections 37.3(b) and 37.3(c) of the TEMT exempt the Midwest ISO TOs from paying the license-plate zonal and regional through and out charges in Schedules 7 through 9 for the PTP Service and NITS that they take under the TEMT to meet their obligations under their GFAs. Accordingly, no revenues are actually collected or distributed by the Midwest ISO for the majority of the NITS and some of the PTP Service provided under the TEMT. Rather, the Midwest ISO TOs collect revenues for such TEMT transmission service directly from their bundled retail and GFA customers.

Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh’g*, Opinion No. 453-A, 98 FERC ¶ 61,141 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192, *order on reh’g*, 104 FERC ¶ 61,012 (2003), *aff’d sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

⁶ TO Agreement, App. C at § III.A.4.

⁷ *Id.* §§ II.B.2, III.B.

⁸ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,113 (2002) (order on Midwest ISO’s Opinion No. 453 compliance filing).

C. Service Agreement for Union Electric Company's Bundled Retail Load

4. In 2004, the Commission accepted a service agreement between Union Electric Company (Union Electric) and the Midwest ISO establishing the terms and conditions under which Union Electric would take NITS under the TEMT to serve its bundled retail load (Service Agreement).⁹ The Service Agreement was negotiated as part of a settlement among the Midwest ISO, Union Electric and the staff of the Missouri Public Service Commission (Missouri Commission) in the Missouri Commission proceeding in which Union Electric sought authorization to participate in the Midwest ISO (Settlement Agreement). In order to ensure that the Missouri Commission would continue regulating Union Electric's bundled retail rates during the agreement's term, the Service Agreement provides that Union Electric shall not pay the rate set forth in Schedule 9 of the TEMT for the NITS it takes to serve its bundled retail load. Rather, the parties proposed to adopt the transmission component of Union Electric's bundled retail rate as the rate for the NITS that the Midwest ISO provides to Union Electric to serve Union Electric's bundled retail load. The Settlement Agreement provides that if this Commission were to order any changes to the Service Agreement, the parties must also get the Missouri Commission's approval for such changes, and, if the Missouri Commission does not approve those changes, its approval of Union Electric's participation in the Midwest ISO would be revoked.¹⁰ Subject to this early termination provision, the initial term of the Service Agreement is five and a half years, ending October 31, 2009.

5. In the application seeking Commission acceptance of the Service Agreement, the parties acknowledged that, in allowing adoption of the transmission component of bundled retail rates for transmission service provided by an RTO, the Commission had previously required that the RTO and transmission owner explicitly state the transmission component of the bundled retail rate in the tariff or service agreement. However, they stated that it would be impractical to specify the transmission component of Union Electric's bundled retail rate because Union Electric's bundled retail rate was approved by the Missouri Commission as a "black box" rate without specifying the transmission component. In accepting the Service Agreement, the Commission acknowledged the impracticality of specifying the transmission component of Union Electric's bundled retail rate and accepted the Service Agreement without requiring that the transmission component of the bundled retail rate be specified in the agreement. However, the

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,293, *clarified*, 107 FERC ¶ 61,167 (2004).

¹⁰ See Midwest ISO and Union Electric February 19, 2004 Filing, Docket No. ER04-571-000, Transmittal Letter at 4.

Commission stated that “to eliminate any concern about undue discrimination and to satisfy the filing requirements of the FPA, we will *impute* the existing [TEMT] rate to that service.”¹¹

II. Filing

6. In their filing, the Midwest ISO and the Midwest ISO TOs propose revisions to section 37.3(a) of the TEMT. They maintain that if the Midwest ISO continues to exempt bundled retail load from NITS charges after the transition period ends on January 31, 2008, the revenues collected by the Midwest ISO will be insufficient to cover the combined revenue requirement of the Midwest ISO TOs. They also argue that, absent the proposed changes to the TEMT, the change in revenue distribution under the TO Agreement beginning February 1, 2008 will create unfair and unacceptable cross-subsidies among the Midwest ISO TOs because the proportion of zonal load representing bundled retail load varies among the Midwest ISO TOs.

7. Because such cross subsidies arise due to the interaction of the methodology for distributing revenues under Appendix C of the TO Agreement and the exemption from paying the license-plate zonal transmission charges for the Midwest ISO TOs’ bundled retail load in section 37.3(a) of the TEMT, the Midwest ISO and the Midwest ISO TOs maintain that the problem could be resolved by modification of either the TO Agreement or the TEMT. Accordingly, at a meeting of the signatories to the TO Agreement on November 13, 2007, a motion was presented to modify Appendix C of the TO Agreement to continue the direct assignment of NITS revenue to the Midwest ISO TO whose facilities comprise the license-plate pricing zone where the network load is located after the transition period ends. Although a majority of the Midwest ISO TOs voted for the motion to amend the TO Agreement,¹² it failed because the revenue distribution provisions of the TO Agreement require a unanimous vote for modification.¹³ At the

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,293 at P 22 (emphasis added).

¹² The Midwest ISO TOs voted in favor of the motion by a vote of 19 to two, with one abstention. Ameren Services Company, as agent for its transmission-owning public utility affiliates (including Union Electric), and the City of Columbia Water and Light Department (Columbia, Missouri) voted against the motion.

¹³ The TO Agreement provides that “[t]he distribution of transmission service revenues collected by the Midwest ISO and the methodology for determining such distribution, as set forth in Appendix C to this Agreement, and the return of start-up costs, provided for in Appendix C to this Agreement, also shall not be changed except by unanimous vote of the Owners.” TO Agreement, Art. II at § IX.C.6 (Revenue distribution and methodology and return of start-up costs).

same meeting, a second motion was presented to submit a filing under FPA section 205 to modify section 37.3(a) of the TEMT to require the Midwest ISO to take account of any revenues that it would have received but for the section 37.3(a) exemption in its distribution of transmission revenues to the Midwest ISO TOs after the conclusion of the transition period. A majority of the Midwest ISO TOs voted for this second motion, and it passed.¹⁴ The instant filing is the result of the approval of this second motion.

8. The Midwest ISO and the Midwest ISO TOs propose to modify section 37.3(a) of the TEMT to specify how the Midwest ISO is to treat revenues that it would have received for NITS provided to the Midwest ISO TOs for service to their bundled retail load, but for the exemption that such service receives from TEMT charges. The modification directs the Midwest ISO to include the revenues that it would have received but for the exemption, which it defines as “imputed revenues,” in the total transmission revenues available for distribution to the Midwest ISO TOs. It further directs the Midwest ISO to deduct the imputed revenues attributed to any Midwest ISO TO from the transmission revenues that would otherwise be attributed to that Midwest ISO TO. The Midwest ISO and the Midwest ISO TOs argue that the revenues available for distribution include those revenues the Midwest ISO would have received from the Midwest ISO TOs, but for the section 37.3(a) exemption. The Midwest ISO and the Midwest ISO TOs submit that this proposed modification ensures that transmission revenues received by the Midwest ISO on behalf of the Midwest ISO TOs will continue to be distributed in a manner that is just, reasonable and not unduly discriminatory or preferential following the end of the transition period, despite the continued application of section 37.3(a) exempting the Midwest ISO TOs from paying the license-plate zonal transmission charges in Schedule 9 for the NITS they take to serve their bundled retail load.

III. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 71,134 (2007), with comments, interventions and protests due on or before December 24, 2007. The Missouri Commission filed a notice of intervention. Notices of intervention and substantive comments were filed by: the Michigan Public Service Commission (Michigan Commission) and the Public Service Commission of Wisconsin (Wisconsin Commission). Motions to intervene were filed by: Aquila, Inc.; Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.; The Empire District Electric Company; Kansas City Power & Light Company; the Missouri Industrial Energy

¹⁴ The Midwest ISO TOs voted in favor of the second motion by a vote of 15 to three of those Midwest ISO TOs with section 205 filing rights. The three votes against the second motion were by Ameren Services Company as agent for Union Electric and its other transmission-owning public utility affiliates.

Consumers;¹⁵ the Missouri Office of the Public Counsel; and PSEG Energy Resources & Trade LLC. Motions to intervene and substantive comments were filed by: Consumers Energy Company (Consumers); The Detroit Edison Company (Detroit Edison); Integrys Energy Group, Inc. and its subsidiaries Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc. (collectively, Integrys); the Midwest TDUs;¹⁶ Union Electric; and Wisconsin Electric Power Company (Wisconsin Electric).

10. On January 10, 2008, the Public Utilities Commission of Ohio (Ohio Commission) submitted a late-filed motion to intervene and comments. Also on January 10, 2008, Detroit Edison, the Midwest ISO and the Midwest ISO TOs filed answers to Union Electric's comments, and Union Electric filed an answer to the comments of the other commenters. On January 18, 2008, Union Electric filed an answer to the answers of Detroit Edison and the Midwest ISO TOs.

IV. Responsive Pleadings

11. The majority of commenters, including Consumers, Detroit Edison, Integrys, the Michigan Commission, the Midwest TDUs, the Ohio Commission, the Wisconsin Commission and Wisconsin Electric, filed comments in support of the filing. They argue that the proposed tariff revisions are just and reasonable and set forth a non-discriminatory revenue distribution to the Midwest ISO TOs. These parties maintain that, absent the proposed changes, the existing tariff provisions would result in inappropriate cost shifts after the expiration of the transition period – the Midwest ISO TOs that cannot take advantage of the existing section 37.3(a) exemption, and their customers, would be required to subsidize the transmission revenue requirements of those TOs that can take advantage of the existing section 37.3(a) exemption.

12. In contrast, Union Electric protests the filing, arguing that the proposed tariff revisions violate the TO Agreement and the Service Agreement, are not just and reasonable, and would result in unduly discriminatory treatment. First, Union Electric argues that the Midwest ISO TOs are trying to effect a change in methodology for distributing transmission revenues without the unanimous consent of all the Midwest ISO

¹⁵ For purposes of their filing, the Missouri Industrial Energy Consumers include: Anheuser-Busch, Boeing, Chrysler, Doe Run, Enbridge, Explorer Pipeline, General Motors, GKN, Ford, Hussmann, JW Aluminum, Monsanto, Pfizer, Procter & Gamble, Nestlé Purina, Solutia and U.S. Silica.

¹⁶ For purposes of their filing, the Midwest TDUs include: Indiana Municipal Power Agency, Madison Gas & Electric Company, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.

TOs, as is required by the TO Agreement. Union Electric argues that rather than simply distributing revenues based on the Midwest ISO TOs' revenue requirements as required by the TO Agreement, the proposed offset for imputed revenues is a completely different methodology for distributing revenues. Union Electric also argues that, by continuing to exempt all of the Midwest ISO TOs from paying license-plate zonal transmission charges for NITS taken to serve their bundled retail load after the transition period ends, the proposal violates the requirement in Appendix C of the TO Agreement that the Midwest ISO TOs take service under the TEMT to serve their bundled retail load after the transition period ends.

13. Union Electric further argues that the proposal results in phantom charges for Union Electric's bundled retail load, in violation of the Service Agreement's provision that Union Electric would not pay the license-plate zonal charges for service to its bundled retail load. Moreover, Union Electric argues that, instead of such a conflicting proposal, the Midwest ISO and the Midwest ISO TOs should have filed to modify section 37.3 of the TEMT to require all TOs to *pay* the license-plate zonal transmission rates for NITS taken to serve their bundled retail load except to the extent that the TO, at the time it joined Midwest ISO "was expressly prohibited from paying such charges by order of a state regulatory authority. . . ." ¹⁷

14. Detroit Edison and the Midwest ISO TOs filed answers to Union Electric's comments. In addition to its answer to the comments supporting the filing, Union Electric filed an answer to Detroit Edison and the Midwest ISO TOs' answers. Union Electric's comments and the related answers are discussed in greater detail below.

15. In addition, the Midwest ISO filed an answer to clarify its position on the filing. First, the Midwest ISO states that it joined the filing in its capacity as the administrator of the TEMT and takes no position with respect to the merits of the proposed tariff revisions or Union Electric's objections. Second, the Midwest ISO states that, if the Commission decides to institute settlement judge procedures, the Midwest ISO would participate only as a neutral facilitator and will not take a position on the substance of the contested issues.

V. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹⁷ Union Electric Protest at 15.

17. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R § 385.214(d) (2007), the Commission will grant the Ohio Commission's late-filed motion to intervene given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of Detroit Edison, the Midwest ISO, the Midwest ISO TOs and Union Electric because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

19. As discussed below, we will accept the Midwest ISO and the Midwest ISO TOs' proposed tariff revisions, as modified, to be effective February 3, 2008, as requested. We also direct the Midwest ISO and the Midwest ISO TOs to file, within 30 days of the date of this order, a further compliance filing, as discussed below.

1. Whether the Proposed Tariff Revisions are Consistent with the TO Agreement and the Service Agreement

a. Union Electric's Protest

20. Union Electric argues that the proposed tariff revisions would create inconsistencies between the TO Agreement and the TEMT. First, Union Electric argues that section II.B.2 of Appendix C of the TO Agreement provides that bundled load "will pay" the rate under the TEMT, but the proposed tariff revisions would "exempt Bundled Load from paying" the TEMT rate, and "instead would simply impute, then deduct, hypothetical revenues for such service."¹⁸ Union Electric argues that, by continuing to exempt all the Midwest ISO TOs from paying license-plate zonal transmission charges for NITS taken to serve their bundled retail load after the transition period ends, the proposal violates the requirement in Appendix C of the TO Agreement that the Midwest ISO TOs take service under the TEMT to serve their bundled retail load after the transition period ends.

21. Second, Union Electric argues that the proposed tariff revisions are inconsistent with the revenue distribution provisions of Appendix C. Union Electric argues that, rather than simply distributing revenues based on the Midwest ISO TOs' revenue requirements, as required by section III.B of Appendix C, the proposed tariff revisions would require revenue distribution based on a formula where the Midwest ISO deducts

¹⁸ *Id.* at 12.

the imputed revenue attributed to each formerly exempted TO from the total Schedule 9 revenues that are due to that TO. It argues that the proposal is inconsistent with Appendix C because section III.B.2 of Appendix C provides that revenue shortfalls or excesses are to be distributed among the TOs “on a proportionate basis of revenue requirements,” and this language does not contemplate imputed revenues or a hypothetical allocation prior to distribution.

22. Third, Union Electric argues that the Midwest ISO TOs cannot rely on the provisions of section III.B.1 of Appendix C, that each of the Midwest ISO TOs “shall receive revenues, on a monthly basis, based on its revenue requirement calculated in accordance with a formula filed with the FERC” for the post-transition period, to support their proposal. Union Electric asserts that the proposed tariff revisions would change how revenues are both collected and distributed, but section III.B.1 of Appendix C relates only to revenue distribution. Union Electric further maintains that the “formula” referred to in section III.B.1 is the revenue requirements formula in Attachment O of the TEMT.

23. Fourth, Union Electric argues that the proposed tariff revisions violate the plain terms of the TO Agreement because the Midwest ISO TOs failed to meet the requirement that any adjustment to revenue distribution be made by a unanimous vote of the Midwest ISO TOs. Union Electric argues that, rather than simply distributing revenues based on the Midwest ISO TOs’ revenue requirements as required by the TO Agreement, the proposed offset for imputed revenues is a completely different methodology for distributing revenues. Union Electric argues that the proposal does not simply concern the Midwest ISO TOs’ rates (which can be revised through a section 205 filing without unanimous consent), but will alter revenue distribution and therefore, requires unanimous consent under Article II of the TO Agreement. Union Electric argues that the filing is an “end run” around the unanimity requirement of the TO Agreement and “an inappropriate attempt to use the [s]ection 205 filing process to achieve indirectly an altered distribution of revenues which the Applicants are not authorized to propose directly.”¹⁹ Union Electric argues that the Midwest ISO and the Midwest ISO TOs do not provide a justification for disregarding the unanimity provisions of the TO Agreement. Union Electric argues that changes to the TO Agreement are subject to the *Mobile-Sierra*

¹⁹ *Id.* at 11.

“public interest” standard of review²⁰ and the filing, based only on the just and reasonable standard, cannot provide such a demonstration.²¹

24. Union Electric also argues that the proposed tariff revisions violate the Service Agreement. Union Electric argues that the proposal results in phantom charges for Union Electric’s bundled retail load, in violation of the Service Agreement’s provision that Union Electric would not pay the license-plate zonal charges for service to its bundled retail load. To the extent the proposal seeks such *de facto* modification of the Service Agreement, Union Electric argues, the Midwest ISO and the Midwest ISO TOs have failed to make the necessary showing of harm to the public interest, as required by *Mobile-Sierra*. Union Electric further argues that modification of the Service Agreement is further prohibited because alteration of any material terms of the Service Agreement requires prior approval by the Missouri Commission.

25. Based on the inconsistencies between the proposed tariff revisions and the TO Agreement and the Service Agreement, Union Electric argues that the Midwest ISO and the Midwest ISO TOs should have filed to modify section 37.3(a) of the TEMT to require all the Midwest ISO TOs to *pay* the license-plate zonal transmission rates for NITS taken to serve their bundled retail load except to the extent that the Midwest ISO TO, at the time it joined the Midwest ISO, “was expressly prohibited from paying such charges by order of a state regulatory authority. . . .”²²

26. Finally, Union Electric argues that to the extent the Commission concludes that the issues around the filing should be set for settlement and hearing procedures, the Commission should look at the “end result” of the proposal.²³ Union Electric argues that the Midwest ISO and the Midwest ISO TOs “present[] the Commission with an

²⁰ The doctrine derives its name from the companion cases, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

²¹ Union Electric Protest at 2 (citing *ExxonMobil v. FERC*, 430 F.3d 1166, 1171 (D.C. Cir. 2005)).

²² *Id.* at 15.

²³ *Id.* at 20-24 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope*); *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1177-78 (D.C. Cir. 1987); *Washington Gas Light Co., Baker*, 188 F.2d 11, 19 (D.C. Cir. 1950)).

artificially narrow view of transmission revenue collection and distribution that is akin to ‘cherry-picking’ or ‘single-issue ratemaking.’”²⁴

27. In this regard, Union Electric notes that, on November 1, 2007, it filed an application with the Missouri Commission seeking approval for its continued participation in the Midwest ISO. That application contained a cost-benefit analysis assessing Union Electric’s continued participation as a Midwest ISO TO. In the application, Union Electric noted several uncertainties that could change its recommendation for continued membership in the Midwest ISO. Union Electric’s analysis of the Midwest ISO and the Midwest ISO TOs’ proposal in this proceeding indicates a potential reduction in transmission revenues for Union Electric of \$60 million/year; in comparison, the cost-benefit analysis showed the cumulative net benefit of Midwest ISO membership to be \$153 million over the next three years. Union Electric also argues that the proposed tariff revision is particularly harmful to it in light of several recent changes to the TEMT that have disproportionately adverse effects on the interests of Union Electric’s customers and shareholders (e.g., the Regional Expansion Criteria Benefits transmission expansion cost allocation and the current allocation of revenue sufficiency guarantee charges). Union Electric states that, in light of the significant financial impact of the instant proposal on Union Electric, it is no longer certain whether it will be able to support its continued membership in the Midwest ISO. Accordingly, to preserve its options should the Missouri Commission dictate termination of Union Electric’s membership in the Midwest ISO, Union Electric has provided the Midwest ISO with notice of intent to withdraw as a Midwest ISO TO.

b. Answers to Union Electric’s Protest

28. The Midwest ISO TOs disagree that the proposed tariff revisions conflict with section II.B.2 of Appendix C of the TO Agreement. First, the Midwest ISO TOs argue that section II.B.2, contrary to Union Electric’s assertion, does not require the Midwest ISO TOs with bundled retail load to “pay” the TEMT rate for service to that load after the end of the transition period, arguing that it only states that the TEMT “shall be applicable to all transmission service arranged over Midwest ISO transmission facilities,” including for bundled retail load. The Midwest ISO TOs assert that the statement in section II.B.2 that the TEMT is “applicable” to transmission service for bundled retail load encompasses all applicable provisions of the TEMT, including section 37.3.

29. Second, the Midwest ISO TOs disagree with Union Electric that the proposed tariff revisions modify the revenue distribution methodology in Appendix C of the TO Agreement. They argue that,

²⁴ *Id.* at 3.

[t]o the contrary, the amendment establishes a reasonable method of *implementing* that methodology in light of the circumstances that will prevail after the end of the Transition Period. Appendix C to the [TO Agreement] gives each Transmission Owner the right to “receive revenues . . . based on its revenue requirement” and requires that any shortfall or excess in annual revenues be “apportioned on a proportionate basis of revenue requirements.” . . . But Appendix C does not define which “revenues” are to be apportioned on this basis. It is entirely consistent with this revenue distribution methodology to define the revenues to be apportioned in the TEMT.^[25]

30. Detroit Edison and the Midwest ISO TOs disagree that the filing violates the unanimity requirement of the TO Agreement and maintain that the filing is properly made under section 205. The Midwest ISO TOs argue that the potential for the disproportionate and unreasonable allocation of revenues for transmission service arises from the interaction of the post-transition period provisions of Appendix C of the TO Agreement and the subsequent addition of section 37.3 of the TEMT and, accordingly, it can be addressed by modifications to the provisions of either document.

31. Detroit Edison and the Midwest ISO TOs further argue that the TO Agreement makes a clear distinction between amendments to the TO Agreement’s revenue distribution methodology and amendments to the transmission-related provisions of the TEMT. The Midwest ISO TOs note that Appendix K of the TO Agreement specifically permits any group of at least three Midwest ISO TOs (meeting a combined gross transmission plant investment of at least \$2.5 billion) to file under FPA section 205 to amend any “tariff provision affecting transmission revenues.”²⁶ Detroit Edison and the Midwest ISO TOs also state that a Midwest ISO TO (or group of Midwest ISO TOs) can file under FPA section 205 to adjust their respective revenue requirements²⁷ and rates²⁸ and, in addition authorizes both the Midwest ISO and a group of Midwest ISO TOs to file to amend “any *other* transmission provision affecting transmission revenues.”²⁹ They

²⁵ Midwest ISO TOs Answer at 16 (internal citation omitted).

²⁶ *Id.* at 12-13 (citing TO Agreement, App. K at §§ II.K, III.A).

²⁷ *Id.* at 13 (citing TO Agreement, App. K at §§ II.A, II.G).

²⁸ *Id.* (citing TO Agreement, App. K at §§ II.B to II.E).

²⁹ *Id.* (citing TO Agreement, App. K at § II.K).

argue that this latter provision refers to changes other than those establishing an individual TOs' rates or revenue requirements, and which affect transmission revenues of all of the Midwest ISO TOs. Detroit Edison and the Midwest ISO TOs argue that the proposed revisions to section 37.3(a) of the TEMT meet these standards. The Midwest ISO TOs argue that Union Electric's restrictive interpretation of Appendix K – which would require unanimity for any filing that would have any effect on the distribution of revenues – would be inconsistent with the compromise regarding filing rights embodied in the TO Agreement.

32. Furthermore, Detroit Edison and the Midwest ISO TOs argue that neither the Service Agreement nor the related Settlement Agreement precludes acceptance of the proposed tariff revisions filed under FPA section 205. They argue that the proposed tariff revisions are consistent with the Service Agreement because they do not require Union Electric to “pay the rate set forth in Schedule 9 of the [TEMT] for service to its Bundled Retail Load . . .” and do not affect the Missouri Commission's exclusive exercise of jurisdiction over the transmission component of Union Electric's rates to serve its bundled retail load. Detroit Edison argues that the proposed tariff revisions include “transmission revenues that the [Midwest ISO] *would have* received (but did not receive) from [Union Electric] (and others) in the total transmission revenues available for distribution to the [Midwest ISO TOs]. . . .”³⁰

33. In addition, the Midwest ISO TOs argue that nothing in the Service Agreement “addresses whether and how the revenues that the [Midwest ISO] would have received for the network transmission service taken for the Bundled Load of [Union Electric] or any other Transmission Owner would be treated for purposes of allocating revenues among the Transmission Owners.”³¹ Further, the Midwest ISO TOs assert that no provision in the Service Agreement or Settlement Agreement entitles Union Electric “to a revenue windfall after the end of the Transition Period, or suggests that the Missouri [Commission] was concerned about the revenue distribution methodology during the Transition Period, which provides for no such ‘benefit.’”³²

34. In addition, Detroit Edison and the Midwest ISO TOs disagree that review of the proposed tariff revisions is subject to the “public interest” standard of review. They argue that, for the reasons stated above, the filing amends the TEMT, not the TO Agreement or the Service Agreement. Accordingly, the filing is properly made under section 205 and is subject to a just and reasonable standard of review.

³⁰ Detroit Edison Answer at 4.

³¹ Midwest ISO TOs Answer at 22 (internal citation omitted).

³² *Id.*

35. The Midwest ISO TOs further challenge Union Electric's alternative tariff revision. First, the Midwest ISO TOs reiterate that their proposed tariff revisions create no conflict that requires a remedy. Second, they argue that Union Electric's proposal would end the section 37.3(a) exemption for all other TOs, while preserving the exemption for Union Electric, and that is discriminatory and preferential. Third, the Midwest ISO TOs argue that Union Electric's attempt to present a tariff revision in a protest is procedurally defective and inconsistent with the filing burdens under FPA sections 205 and 206.

36. Finally, Detroit Edison and the Midwest ISO TOs argue that consideration of the "end result" of the proposed tariff revisions compels acceptance of the filing. Detroit Edison notes that, absent the proposed tariff revisions, Union Electric would be afforded twice its transmission revenue requirement and other entities in Midwest ISO (including Detroit Edison) would have to pay twice for the same transmission service. Detroit Edison recognizes that the terms of the TO Agreement and the Service Agreement and related Settlement Agreement with the Missouri Commission clearly conflict. However, Detroit Edison believes that the intent of each agreement can be reconciled by the filing. In particular, Detroit Edison states that the filing will both implement the transmission revenue distribution approach envisioned in the TO Agreement and ensure that transmission revenues continue to be distributed among the Midwest ISO TOs in a just and reasonable manner, and will preserve the purpose of Union Electric's Service Agreement and related settlement agreement, which is to retain state commission jurisdiction over bundled retail rates.

37. Similarly, the Midwest ISO TOs argue that the proposed tariff revisions satisfy the *Hope* test because

[i]t ensures that all revenues received for network service provided under the TEMT are taken into account when revenues are distributed to Transmission Owners based on their revenue requirements; it avoids a situation in which Transmission Owners with little or no Bundled Load would be required to subsidize the revenue requirement of Transmission Owners with substantial Bundled Load, including, but not limited to [Union Electric]. It prevents a Transmission Owner who is compensated for the portion of its revenue requirement attributable to its Bundled Load in the retail rates it charges to those customers from also

receiving duplicative revenues from the [Midwest ISO], at the expense of other Transmission Owners.³³

38. Moreover, the Midwest ISO TOs argue that the “end result” test does not require “the Commission to assess the reasonableness of the instant filing by weighing the combined impact of acceptance of this filing and other ruling on [Union Electric] or any other affected party.”³⁴ The Midwest ISO TOs maintain that Union Electric’s speculation about whether or not it will recommend its continued participation in the Midwest ISO is not a valid objection to the proposed tariff revisions. Finally, the Midwest ISO TOs argue that Union Electric has failed to support its request for suspension and settlement and hearing procedures.

c. Union Electric’s Answer to Answers

39. In its answer to Detroit Edison and the Midwest ISO TOs’ answers, Union Electric reiterates its position that continuing to exempt Union Electric’s bundled retail load from payment of Midwest ISO transmission rates is just and reasonable. Union Electric asserts that “[t]he relevant contractual provisions have been on file with the Commission for several years,” and the Midwest ISO TOs’ argument that they may have only recently realized the effect of Union Electric’s exemption “is nothing more than a transparent collateral attack on the Commission’s prior orders”³⁵ accepting the existing TO Agreement and TEMT provisions.

40. Union Electric also reiterates its concern that the proposed tariff revisions are not simply a way of “implementing” a revenue distribution methodology, but create a whole new methodology to distribute revenues. Union Electric argues this is prohibited by the TO Agreement without the unanimous support of the Midwest ISO TOs. Union Electric maintains that the Midwest ISO TOs’ argument that the problem of potential disproportionate revenues could be addressed by either modifying the TO Agreement or the TEMT is flawed; Union Electric states that this interpretation eviscerates all meaning from the explicit unanimity provision for changes to the revenue distribution methodology. Union Electric also maintains that it does not dispute the right of certain Midwest ISO TOs to make filings under section 205, as established in Appendix K of the TO Agreement. It argues, however, that the specific exclusion for revenue distribution takes precedent over the otherwise applicable requirements of Appendix K.

³³ Midwest ISO TOs Answer at 28-29.

³⁴ *Id.* at 28.

³⁵ Union Electric January 18 Answer at 4-5.

41. Union Electric further argues that the Midwest ISO TOs err in arguing that because section II.B.2 does not state that bundled load “shall pay,” the TO Agreement does not require that bundled load pay the tariff rate in the post-transition period. Union Electric argues that this reading is “overly technical . . . without giving proper weight to the surrounding provisions.”³⁶ Union Electric argues that there is no exclusion that would excuse bundled load from paying for transmission service in the post-transition period.

42. In addition, Union Electric argues that Detroit Edison errs in its references to the “intent” of the TO Agreement and Service Agreement. Union Electric states that if the Commission is to determine the intent and credibility of the parties to the agreements, this presents a factual dispute that requires a hearing.³⁷

43. Finally, in support of its request for hearing procedures, Union Electric argues that, “although a [FPA s]ection 205 proceeding generally focuses merely on the propriety of the specific tariff changes proposed by the party commencing the proceedings, the Commission retains the discretion to reconsider the propriety of previously-approved tariff components in light of those components’ ‘interaction with’ the newly proposed amendments.”³⁸

d. Commission Determination

44. For the reasons discussed below, we find that the proposed tariff revisions, as modified below, are just and reasonable. The TEMT currently implements the transmission pricing and revenue distribution provisions in Appendix C of the TO Agreement as applicable to the transition period for use of license-plate rates, which ends February 1, 2008. The license-plate zonal transmission charges reflect the costs of each of the Midwest ISO TO’s facilities allocated to deliveries to load within its pricing zone. The TEMT exempts the Midwest ISO TOs from paying the license-plate zonal transmission charges for transmission service for their bundled retail load and GFAs. Instead, the Midwest ISO TOs recover the portion of their transmission revenue requirement allocable to such transmission service directly from their bundled retail and GFA customers, and recover the balance of their revenue requirement through revenues collected from other TEMT customers by the Midwest ISO and distributed to the

³⁶ *Id.* at 7.

³⁷ *Id.* at 8-9 (citing *El Paso Elec. Co. v. Tucson Elec. Power Co.*, 117 FERC ¶ 61,017, at P 12 (2006); *Columbia Gas Transmission Co. v. Tenn. Gas Pipeline Co.*, 109 FERC ¶ 61,055, at P 15 (2004)).

³⁸ *Id.* at 12.

Midwest ISO TOs. Because the revenues collected by the Midwest ISO for transmission service for delivery within each pricing zone are fully distributed to the Midwest ISO TO whose facilities comprise the license-plate pricing zone, the TEMT rates and revenue distribution are designed to provide all the Midwest ISO TOs an opportunity to receive revenues, either directly from bundled retail and GFA customers, or indirectly from other TEMT customers through the Midwest ISO, on a comparable basis to fully recover their revenue requirements.

45. Under Appendix C of the TO Agreement, the revenue distribution methodology changes effective February 1, 2008. Instead of assigning revenues collected by the Midwest ISO for transmission service for delivery within each pricing zone fully to the Midwest ISO TO whose facilities comprise the license-plate pricing zone, each Midwest ISO TO will receive revenues based on its revenue requirement, with any over- or under-recovery shared on the same basis. As modified herein, the proposed changes to require the Midwest ISO to recognize in its revenue distribution the revenues that the TOs receive directly from their bundled retail and GFA customers, in addition to the revenues that the Midwest ISO receives from other TEMT customers are necessary to accommodate the change in the revenue distribution methodology to ensure that each Midwest ISO TO receives revenues for TEMT service on a comparable basis, i.e., based on its revenue requirement.

46. In contrast, without the proposed changes, those Midwest ISO TOs with bundled retail load or significant GFA load would receive aggregate transmission revenues, those received directly from their bundled retail and GFA customers, and those received indirectly from other TEMT customers through the Midwest ISO, that are proportionately greater than their revenue requirements. This windfall would be at the expense of other Midwest ISO TOs without bundled retail load or significant GFA load, who would receive aggregate revenues that are proportionately less than their revenue requirements. According to the Midwest ISO TOs' estimates, without the proposed revisions, the stand-alone transmission companies with no bundled retail load would, as a group, see an annual decrease in revenues of approximately \$420 million,³⁹ beginning February 1, 2008, while the remaining Midwest ISO TOs would, as a group, see a corresponding increase.⁴⁰

³⁹ The stand-alone transmission companies who would experience under-recovery of their transmission revenue requirements absent the proposed TEMT revisions are: ATCLLC, ATSI, International Transmission, and METC.

⁴⁰ See Filing at 5 and Att. F.

47. We find that the proposed tariff revisions, as modified below, are consistent with the TO Agreement and the Service Agreement.⁴¹ These tariff revisions are necessary to ensure that each Midwest ISO TO receives revenues consistent with the post-transition revenue distribution methodology in Appendix C of the TO Agreement, i.e., based on its revenue requirement. Moreover, the proposed revisions do not require Union Electric to pay the license-plate zonal transmission rates for NITS taken to serve its bundled retail load, consistent with the Service Agreement. Further, Union Electric does not raise any issues of material fact that would warrant settlement and hearing procedures.⁴² Accordingly, we accept the proposed revisions, as modified below.

⁴¹ We agree with Union Electric that the TO Agreement and Service Agreement impose a *Mobile-Sierra* standard of review. Accordingly, the Commission may modify those agreements only if it “adversely affect[s] the public interest.” *Sierra*, 350 U.S. at 355. That standard is a demanding one, satisfied only in extraordinary “circumstances of unequivocal public necessity.” *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968). However, as discussed below, we find that the proposed tariff revisions are consistent with the TO Agreement and Service Agreement. Accordingly, there is no need to address changes to those documents.

⁴² For the reasons discussed below, we find there are no material facts in dispute that would warrant a trial-type hearing. We also do not believe that extrinsic evidence is necessary to interpret the terms of the TO Agreement on this issue. *See Ohio Power Co. v. FERC*, 744 F.2d 162, 168 (2004) (“Extrinsic evidence regarding the interpretation of a contract is considered when the meaning of the contract cannot be determined from its text and structure or from the application of canons of contract interpretation.”). Accordingly, we deny Union Electric’s request for settlement and hearing procedures. Moreover, the decision whether to conduct a trial-type hearing is in the Commission’s discretion, and it is not an abuse of that discretion to deny a request for hearing when there are no material facts in dispute. *Woolen Mill Associates v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (*Woolen v. FERC*); *Penn. Pub. Utility Comm’n v. FERC*, 881 F.2d 1123, 1226 (D.C. Cir. 1989) (*PPUC v. FERC*); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982) (*Cerro v. FERC*). Further, mere allegations of disputed fact are insufficient to mandate a hearing; a petitioner must make an adequate proffer of evidence to support them. *Woolen v. FERC*, 917 F.2d at 592; *PPUC v. FERC*, 881 F.2d at 1126; *Cerro v. FERC*, 677 F.2d at 129. Accordingly, there is no need to discuss the *Hope* “end result” test.

**i. Whether the Proposed Tariff Revisions
are Consistent with the TO Agreement**

48. We conclude that the TO Agreement is ambiguous on the question of whether a non-unanimous group of Midwest ISO TOs can exercise their section 205 filing rights to revise the TEMT as proposed here.⁴³ Appendix C to the TO Agreement does not define specific rates, terms and conditions of service applicable to NITS used to serve the Midwest ISO TOs' bundled retail load, nor does it define the revenue requirements or revenues to be used for distributing revenues to the Midwest ISO TOs, or the manner in which the Midwest ISO TOs receive or collect revenues for TEMT service. Rather, the rates, terms and conditions of transmission service, as well as the revenue requirements used to derive the rates, the resulting revenues, and the manner in which revenues are received or collected by the Midwest ISO TOs, are defined by the TEMT, and as the Midwest ISO TOs and Detroit Edison point out, Appendix K to the TO Agreement specifically preserves the rights of a subset of the Midwest ISO TOs to make a section 205 filing with regard to rates or other tariff provisions affecting more than one Midwest ISO TO.⁴⁴ After careful consideration of the whole of the TO Agreement,⁴⁵ and

⁴³ The test for determining whether the language in a contract is ambiguous is whether the language at issue is "reasonably susceptible of different constructions or interpretations." *Papago Tribal Util. Auth. v. FERC*, 723 F.2d 950, 955 (D.C. Cir. 1983) (internal citation omitted); see also *El Paso Elec. Co. v. Tucson Elec. Power Co.*, 115 FERC ¶ 61,101, at P 32 (2006), *order on reh'g*, 117 FERC ¶ 61,017 (2006), *order on further reh'g*, 118 FERC ¶ 61,247 (2007) (citing, *inter alia*, *Ameren Serv. Co. v. FERC*, 330 F.3d 494, 499 (D.C. Cir. 2003), *Duke Power Co. v. FERC*, 864 F.2d 823, 828-29 (D.C. Cir. 1989)).

⁴⁴ TO Agreement, App. K at §§ II.D (Rates Affecting More Than One Zone and Through and Out Rates), II.K (Other Provisions Affecting Transmission Revenues).

⁴⁵ "A fundamental tenet of contract interpretation is that a contract provision should be interpreted, where possible, as consistent with the contract as a whole and that contract must be interpreted as a whole." *Sw. Power Pool, Inc.*, 109 FERC ¶ 61,010, at P 25 (2004) (*SPP*), *pet. for review dismissed sub nom. N.M. Att'y General v. FERC*, 466 F.3d 120 (D.C. Cir. 2006) (citing *Clyburn v. 1411 K St. Ltd. Partnership*, 628 A.2d 1015, 1018 (D.C. 1993); *BWX Elecs., Inc. v. Control Data Corp.*, 929 F.2d 707, 711 (D.C. Cir. 1991). In *SPP*, the Commission stated:

Our ruling conforms to the generally accepted canons of contract interpretation; which require that: (1) a contract should be interpreted as an integrated whole; (2) provisions of a contract should normally not be interpreted as being in

(continued)

the way in which the TO Agreement operates with the TEMT we find that the proposed tariff revisions, as modified below, are consistent with the TO Agreement's provisions for treating bundled retail load under the TEMT and for distributing transmission revenues.

49. We agree with Union Electric that the language in the TO Agreement describes the methodology for distributing revenues after the transition period ends on February 1, 2008. Section II.B.2 of Appendix C of the TO Agreement provides that, after the transition period ends, the TEMT "shall be applicable to all transmission service arranged over Midwest ISO facilities," including bundled retail load and load served under GFAs. Section III.B.1 of Appendix C provides that, after the transition period ends, "[e]ach owner shall receive revenues, on a monthly basis, based on its revenue requirement calculated in accordance with a formula filed with the FERC." In addition, section III.B.2 provides that "[i]f Midwest ISO revenues are insufficient to satisfy revenue requirements in any year for any reason, then the shortfall shall be apportioned on a proportionate basis of revenue requirements (e.g., an Owner whose revenue requirements are ten percent (10%) of the total Midwest ISO revenue requirements shall bear \$1 million of a total \$10 million shortfall)," and "[i]f Midwest ISO revenues exceed revenue requirements in any year, then any additional revenues shall be distributed on the same basis used for apportioning shortfalls."

50. However, we do not believe this language precludes the proposed revisions to the TEMT. First, the license-plate zonal transmission charges in Schedule 9 of the TEMT reflect the costs of each Midwest ISO TO's facilities allocated to deliveries to load within its pricing zone. Because the Midwest ISO TOs already recover such costs directly from bundled retail load through their retail rates, no additional charges are necessary, and therefore, the Commission exempted the Midwest ISO TOs from such charges for service for their bundled retail load during the initial six-year transition period for license-plate

conflict; and (3) a more particular and specific clause of contract should prevail over a more general clause.

Id. (citing Restatement (Second) of Contracts § 203(a), cmt. b (1979) (contract should be interpreted as a whole, with no part assumed to be superfluous); *Brinderson-Newberg Joint Venture v. Pacific Erectors, Inc.*, 971 F.2d 272, 278-79 (9th Cir. 1992) (contract should be interpreted to give meaning to each of its provisions); *Hawthorne Land Company v. U.S.*, 309 F.3d 888 (2002); *Cruden v. Bank of New York*, 957 F.2d 961, 976 (2d Cir. 1992) ("The entire contract must be considered, and all parts of it reconciled, if possible, in order to avoid an inconsistency.")).

rates.⁴⁶ Because the Commission has accepted the continuation of the license-plate rate design under Schedule 9 beyond the initial six-year transition period,⁴⁷ it remains unnecessary for the TOs to pay the Schedule 9 rate for service for their bundled retail load.

51. However, in order to ensure that each of the Midwest ISO TOs “receive[s] revenues . . . based on its revenue requirement” as required by the section III.B.1 of Appendix C of the TO Agreement, it is necessary for the Midwest ISO to take into account the transmission revenues that the TOs receive directly from their bundled retail load and GFA customers when distributing the transmission revenues that the Midwest ISO does collect for transmission service under the TEMT. The Midwest ISO TOs’ proposal to have the Midwest ISO impute revenues for service for the TOs’ bundled retail load, subject to modification as discussed below, serves this purpose. It will ensure that each of the Midwest ISO TOs receives revenues, either directly from its bundled retail load or GFA customers, or from transmission customers under the TEMT indirectly through the Midwest ISO, in proportion to its revenue requirement. In contrast, under Union Electric’s interpretation, because the revenues it receives directly from its bundled retail load would not be taken into account in the Midwest ISO’s revenue distribution, Union Electric would receive revenues for service under the TEMT (directly from its bundled retail load and GFA customers, and indirectly through the Midwest ISO) that are far greater than the proportionate basis of its revenue requirement, contrary to the requirements of the TO Agreement.

⁴⁶ See Opinion 453-A, 97 FERC at 61,413 (“Because the existing agreements already provide for recovery of the costs of serving the bundled retail and grandfathered customers, these transmission-owning members will be exempt, during the transition period, from rates under the Midwest ISO Tariff for services provided pursuant to the existing agreements, except the Cost Adder which, consistent with the discussion above, will reimburse the Midwest ISO for the services it performs that benefit all users of the grid . . .”) (internal citation omitted); see also Midwest ISO, December 31, 2001 Filing, Docket No. ER98-1438-010 at 2 (“[A]s the Commission has previously recognized, with respect to bundled load, Transmission Owners generally will not be required to pay network service charges under Schedule 9 as bundled load already is paying for the costs of these facilities in their bundled rates, and no additional charge is necessary. . . . Eliminating the payment eliminates the need for the Midwest ISO to bill and collect these charges and saves the Transmission Owners the expense of financing these payments until they receive the same monies back.” (internal citation omitted)).

⁴⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081 at (2008).

52. Moreover, we disagree with Union Electric that the proposed revisions to section 37.3(a) of the TEMT conflict with section II.B.2 of Appendix C of the TO Agreement. Union Electric argues that section II.B.2 of Appendix C of the TO Agreement provides that bundled load “will pay” the rate under the TEMT, but the proposed tariff revisions would continue to exempt the Midwest ISO TOs from paying the license-plate zonal transmission charges for NITS taken to serve their bundled retail load. However, section II.B.2 of Appendix C provides that the TEMT “shall be applicable to all transmission service arranged over Midwest ISO facilities.” It does not require that the Midwest ISO TOs *pay* the license-plate zonal transmission charges for NITS taken to serve their bundled retail load. Consistent with section II.B.2 of Appendix C, under the Midwest ISO and the Midwest ISO TOs’ proposal, the Midwest ISO TOs will continue to take transmission service under the TEMT to serve their bundled retail load and will be subject to all applicable provisions of the TEMT for such service, including section 37.3. The fact that section II.A.3 of Appendix C is specific that the Midwest ISO TOs were not to pay the license-plate zonal transmission charges during the transition period does not require a different interpretation of section II.B.2. Because Appendix C of the TO Agreement prescribed a license-plate rate design during the transition period, it was more specific about the rates, terms and conditions of service for bundled retail load during the transition period. In contrast, Appendix C of the TO Agreement does not prescribe the rate design for the post-transition period and, accordingly, is understandably less specific about the rates, terms and conditions of service for bundled retail load after the transition period, in order to accommodate whatever rate design is accepted for the post-transition period in the TEMT.

53. Nor do we agree with Union Electric’s arguments that the proposed revisions conflict with Appendix C’s provisions for treating revenue shortfalls or excesses during the post-transition period. Under the proposal, as modified herein, after accounting for the revenues for all service under the TEMT, both those revenues received directly by the TOs from bundled retail load and GFA customers and those revenues received indirectly through the Midwest ISO from other transmission customers under the TEMT, any shortfalls or excesses will be allocated on a proportionate basis of revenue requirements consistent with section III.B.2 of Appendix C.

54. Union Electric further maintains that the “formula” referred to in section III.B.1 of Appendix C of the TO Agreement is the revenue requirements formula in Attachment O of the TEMT. However, contrary to Union Electric’s suggestion, the revenue requirements used for distributing revenues under the proposal *are* the revenue requirements resulting from the rate formula in Attachment O of the TEMT.

55. Finally, we disagree with Union Electric that the proposed tariff revisions are a collateral attack on the Commission’s prior orders. In its prior orders, the Commission found the existing TEMT provisions to be just and reasonable as a means to implement the methodology for distributing revenue requirements during the transition period.

However, the proposed tariff revisions implement the methodology for distributing revenue requirements *after* the transition period and the Midwest ISO and the Midwest ISO TOs properly filed these proposed tariff revisions under section 205 of the FPA.

**ii. Whether the Proposed Tariff Revisions
are Consistent with the Service Agreement**

56. We also disagree with Union Electric that the proposed revisions violate the Service Agreement. Article III of the Service Agreement provides that “in accordance with [s]ection 37.3 of the [TEMT],” Union Electric “shall not pay charges pursuant to Schedules 1 through 6 and Schedule 9” of the TEMT for its bundled retail load.⁴⁸ Section 37.3, even with the proposed revisions to impute revenues for service for the TOs’ bundled retail load, still provides that Midwest ISO TOs taking service under the TEMT to serve their bundled retail load shall not pay these license-plate zonal charges. As stated by the Midwest ISO and Union Electric when filing the Service Agreement, “[t]he principal purpose of the [Settlement Agreement] is to ensure the [Missouri Commission’s] continuing ability to set the transmission component of [Union Electric’s] rates to serve bundled retail load.”⁴⁹ The Missouri Commission’s regulation of the bundled retail rate would remain intact under the proposed revisions accepted in this order.

57. Moreover, when the Commission originally accepted the Service Agreement, the Commission specifically stated that “to eliminate any concern about undue discrimination and to satisfy the filing requirements of the FPA, we will *impute* the existing OATT rate to that service.”⁵⁰ The Midwest ISO and the Midwest ISO TOs’ proposal to impute revenues for service to bundled retail load at the existing Schedule 9 rate is consistent with this determination.

⁴⁸ See Service Agreement, Art. III (Rate for Transmission Service to Serve Bundled Retail Load) at § 3.1.

⁴⁹ Midwest ISO and Union Electric February 19, 2004 Filing, Docket No. ER04-571-000, Transmittal Letter at 4.

⁵⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,293 at P 22 (emphasis added).

2. Whether the Proposed Tariff Revisions Would Create Inconsistencies With the Treatment of GFAs

a. Union Electric's Protest

58. Union Electric argues that the treatment of bundled load under the proposed tariff revisions is inconsistent with the treatment of load served under carved-out GFAs. Under the TEMT, the carved-out GFA load is exempted from paying the zonal transmission rates set by the Midwest ISO, and instead pays under the terms of its agreements that pre-date creation of or the decision to join the Midwest ISO.⁵¹ Union Electric argues that it is discriminatory to allow the Midwest ISO TOs with GFAs to not contribute revenues for their GFA load, but still receive a distribution of revenues based on a revenue requirement that includes the cost of serving all load, including GFA load, but to not permit the same treatment for Union Electric's bundled load under the Service Agreement.⁵²

b. Answers to Union Electric's Protest

59. Detroit Edison and the Midwest ISO TOs argue that Union Electric's claim of discrimination vis-à-vis GFAs is baseless. Detroit Edison maintains that because the filing does not contradict the Service Agreement or the terms of the Settlement Agreement,⁵³ "the need to honor the 'settled expectations of the parties' . . . – the issue FERC faced when it addressed [GFAs] – is not even before the Commission in this case."⁵⁴

60. The Midwest ISO TOs argue that, contrary to Union Electric's contentions, the revenues from load served under GFAs will be taken into account in the distribution of revenues on the basis of the TOs' revenue requirements after the end of the transition period, because revenues from GFAs are taken into account in *establishing* those revenue

⁵¹ TEMT at § 38.8.4.6; *see also* *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,166 (2007) (accepting continuation of GFA carve-outs in the post-transition period).

⁵² Union Electric Protest at 17-18. Union Electric argues that the carved-out GFA load accounts for an estimated \$140 million in annual revenue not collected or available to be distributed under the TO Agreement, but Union Electric's bundled load represents approximately \$60 million of annual revenue. *Id.* at 18.

⁵³ *See* section IV.B.1, *supra*.

⁵⁴ Detroit Edison Answer at 5 n.3.

requirements. The Midwest ISO TOs argue that, in calculating a Midwest ISO TO's revenue crediting mechanism in Attachment O, Note T to that attachment provides that revenues from GFAs are explicitly taken into account for Midwest ISO TOs providing service under the GFA when revenues are distributed in proportion to the Midwest ISO TOs' revenue requirements.⁵⁵ The Midwest ISO TOs argue that the proposed tariff revisions would produce the same result for revenues associated with bundled load.

c. Union Electric's Answer to Answers

61. In its answer to Detroit Edison and the Midwest ISO TOs' answers, Union Electric argues that the Midwest ISO TOs' reliance on Note T of Attachment O is flawed. Union Electric maintains that Note T "does not inform whether revenues and load associated with GFAs are included in calculating a Transmission Owner's revenue credit. It only gives instruction as to what types of revenues are to be included in the revenue credit *if* the revenues from a GFA are included in a revenue credit."⁵⁶

62. Union Electric also argues that the Midwest ISO TOs ignore Note S, which provides instruction as to the treatment of GFAs with regard to the revenue requirements formula. Union Electric maintains that Note S "demonstrates that transmission revenues associated with unchanged GFA are not treated as credits to the revenue requirements; rather, unchanged GFA load is included in the divisor for the purpose of calculating rates. . . ."⁵⁷ Union Electric asserts that the direct conflict on these questions of TEMT interpretation with respect to GFAs raises material issues of fact for which a hearing is necessary.

d. Commission Determination

63. Similar to the exemption under section 37.3(a) of the TEMT for service for the Midwest ISO TOs' bundled retail load, sections 37.3(b) and 37.3(c) exempt the Midwest ISO TOs from paying certain charges associated with PTP Service and NITS that they take under the TEMT to meet their obligations under their GFAs.⁵⁸ We agree with Union

⁵⁵ Midwest ISO TOs Answer at 26 (citing TEMT, Att. O, Note T, at 5).

⁵⁶ Union Electric January 18 Answer at 10.

⁵⁷ *Id.* at 11 (citing TEMT, Att. O, Note S, at 1).

⁵⁸ While Union Electric cites provisions in section 38.8.4.6 of the TEMT exempting "carved-out" GFAs from certain charges under the TEMT, Union Electric Protest at 17, section 37.3 exempts *all* GFAs from the transmission charges in Schedules 7, 8, and 9 that are relevant to the instant proceeding.

Electric that it would be unduly discriminatory for the Midwest ISO to distribute revenues to the Midwest ISO TOs with GFAs based on a revenue requirement that includes the costs of serving the GFA customers without also accounting for the revenues that the Midwest ISO TOs receive pursuant to the terms of their GFAs. Instead, the revenues that the Midwest ISO TOs receive directly from their GFA customers should be taken into account in the Midwest ISO's revenue distribution in a manner similar to the revenues that the Midwest ISO TOs receive directly from their bundled retail load. We agree with the Midwest ISO TOs that, to the extent that revenues that a Midwest ISO TO receives directly from its GFA customers is already reflected as a revenue credit in the Attachment O rate formula, the revenues are already taken into consideration in the revenue distribution. However, as Union Electric points out in its answer, not all of the revenues that a TO receives directly from its GFA customers are reflected as a revenue credit in Attachment O. Rather, only revenues received pursuant to GFAs whose rates have been changed to eliminate or mitigate rate pancaking are revenue credited; for all other GFAs, the load or contract demand is included in the Attachment O rate denominator and the revenues *are not* credited in the revenue requirement. Accordingly, sections 37.3(b) and 37.3(c) of the TEMT should be revised to require the Midwest ISO, while distributing revenues, to impute revenues for GFAs where the load or contract demand is included in the rate denominator. The Midwest ISO and the Midwest ISO TOs are directed to submit revised tariff sheets reflecting these revisions, within 30 days of the date of this order.

3. Additional Modifications to the Proposed Tariff Revisions

a. Comments

64. Integrys asks the Commission to direct the Midwest ISO and the Midwest ISO TOs to capitalize the proposed term "imputed revenues" in proposed section 37.3 of the TEMT. Integrys argues that "[t]he proposed term is defined in [s]ection 37.3, and thus should be capitalized so that it can be recognized as a defined term when used."⁵⁹

b. Answers

65. The Midwest ISO TOs argue that this change is not necessary. They maintain that the phrase "imputed revenues" is used only once and is defined in that same section. The Midwest ISO TOs assert that "there is no likelihood of the phrase being misunderstood or confused in another section of the TEMT, and that adding this phrase to the long list of defined terms therefore is unnecessary."⁶⁰

⁵⁹ Integrys Comments at 3.

⁶⁰ Midwest ISO TOs Answer at 36.

c. **Commission Determination**

66. We agree with the Midwest ISO TOs that, because the term “imputed revenues” is not referenced elsewhere in the TEMT, there is no need to capitalize and formally define the term. The proposed tariff revisions specify in adequate detail how the imputed revenues will be quantified. Accordingly, we will not require the Midwest ISO and the Midwest ISO TOs to capitalize the term “imputed revenues” in proposed section 37.3 of the TEMT.

The Commission orders:

(A) The Midwest ISO and the Midwest ISO TOs’ proposed tariff revisions are hereby conditionally accepted for filing, effective February 3, 2008, as discussed in the body of this order.

(B) The Midwest ISO and the Midwest ISO TOs are hereby directed to make a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.