

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**APPLICATION OF KENTUCKY UTILITIES** )  
**COMPANY AND LOUISVILLE GAS AND ELECTRIC** ) **CASE NO.**  
**COMPANY TO TRANSFER CONTROL OF CERTAIN** ) **2012-00031**  
**TRANSMISSION FUNCTIONS** )

**RESPONSE OF**  
**LOUISVILLE GAS AND ELECTRIC COMPANY**  
**AND**  
**KENTUCKY UTILITIES COMPANY**  
**TO THE COMMISSION STAFF'S FIRST INFORMATION REQUEST**  
**DATED FEBRUARY 22, 2012**

**FILED: March 7, 2012**

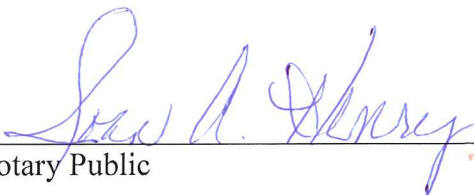
VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The undersigned, **Lonnie E. Bellar**, being duly sworn, deposes and says that he is Vice President, State Regulation and Rates for Louisville Gas and Electric Company and Kentucky Utilities Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
**Lonnie E. Bellar**

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7<sup>th</sup> day of March 2012.

  
\_\_\_\_\_  
Notary Public (SEAL)

My Commission Expires:

July 21, 2015

VERIFICATION

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

The undersigned, **Edwin R. Staton**, being duly sworn, deposes and says that he is Vice President, Transmission for Louisville Gas and Electric Company and an employee of LG&E and KU Services Company, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
Edwin R. Staton

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 7<sup>th</sup> day of March 2012.

  
Notary Public (SEAL)

My Commission Expires:

July 21, 2015

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 1**

**Witness: Edwin R. Staton/Lonnie E. Bellar**

- Q-1. Refer to the Verified Joint Application ("Application"), page 5, item 10. Concerning the Companies' Independent Transmission Operator ("ITO") payments to the Southwest Power Pool ("SPP"), it states, "[f]or these services, the Companies paid SPP \$3.4 million per year under their original contract, as well as an additional \$2.27 million one-time payment under a settlement agreement with SPP. Allocating the settlement amount across the 42 months of ITO services to which it was meant to apply, the Companies paid approximately \$4 million per year for SPP's ITO services."
- a. Explain when the \$2.27 million was paid, when the first month of the 42-month allocation of the one-time payment was booked, and how this was reflected in base rates.
  - b. Explain whether the \$2.27 million one-time payment was shared equally between the Companies.
  - c. Explain whether the Companies may have future payments to the SPP after SPP's role as the Companies' ITO. If yes, provide a list of types of expenses, amounts of expenses, and when the Companies expect the expenses will be paid.
- A-1 Please note that the Companies paid SPP \$3.34 million per year under the original contract with SPP.
- a. & b. The one-time SPP settlement in the amount of \$2.27 million was paid on January 14, 2010. The expense for the entire SPP settlement was recorded during August 2009. Per the Companies' Transmission Coordination Agreement, an amount of \$817,241.26 was recorded at LG&E and an amount of \$1,452,873.36 was recorded at KU (a split of 36% to LG&E and 64% to KU). With respect to how the settlement payment was reflected in base rates, the Companies' current rates are the result of negotiation, and therefore, the inclusion of specific rate items cannot be stated with any certainty. That said, the Companies' 2009 rate case proposed that the portion of the settlement amount relating to time periods outside of the test year should be removed from test-year operating expenses. The

amount requested to be included, then, would have been \$233,498 for LG&E and \$415,107 for KU.

- c. Section 4.3 of the Companies' ITO contract with SPP states that, unless terminated earlier, the contract will terminate effective August 31, 2012. Section 4.8 of the contract contemplates that SPP may provide "Hold-Over Services," i.e., continued ITO services, beginning September 1, 2012, if the Companies have not received all necessary governmental approvals to transition to TranServ as the ITO. If such Hold-Over Services are necessary, SPP will charge a one-time fee of \$3,000,000 and monthly fees of \$435,000 for each month that SPP provides such services. Pending the outcome of this proceeding, the Companies do not anticipate that SPP will be required to provide Hold-Over Services. The Companies do not anticipate contracting with SPP for additional services once the ITO contract terminates on August 31, 2012 and thus there are not expected to be any payments to SPP related to ITO work performed after August 31, 2012.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 2**

**Witness: Edwin R. Staton**

- Q-2. Refer to the Application, page 7, item 17. It states, “[t]he Companies began their replacement ITO search and selection process in February 2011 by issuing a Request for Information (“RFI”) to 19 potential ITO candidates. The RFI provided a general outline of the ITO’s responsibilities and asked interested parties to respond no later than March 7, 2011, to receive a copy of the Request for Proposals (“RFP”). Out of the 19 potential ITO candidates, six candidates asked to receive the RFP.”
- a. Provide a copy of the referenced RFI and RFP.
  - b. Provide a list of the 19 potential ITO candidates.
  - c. Identify the six candidates that asked to receive the RFP.
  - d. Identify and explain the qualitative and quantitative criteria utilized in evaluating the RFP.
  - e. Explain how and why the TranServ International, Inc. (“TranServ”) proposal was selected over the competing proposals.
- A-2. a. Attached is a copy of the RFI and the RFP issued by LG&E and KU.
- The requested information is being provided pursuant to the Companies’ Petition for Confidential Protection filed contemporaneously herewith.
- b. The 19 potential ITO candidates were:
    - 1. HDR Engineering, Inc.
    - 2. TranServ International, Inc.
    - 3. Midwest ISO
    - 4. Electric Reliability Council of Texas
    - 5. ISO New England

6. Trans-Elect Development Company LLC
  7. Southwest Power Pool
  8. New York ISO
  9. Mid-Continent Area Power Pool (MAPP)
  10. American Transmission Company (ATC)
  11. ICF International
  12. Black & Veatch Corp.
  13. Mesa Associates, Inc.
  14. PJM Interconnection
  15. Schweitzer Engineering Laboratories, Inc.
  16. ACES Power Marketing
  17. American Municipal Power, Inc.
  18. Tennessee Valley Authority (TVA)
  19. PowerSouth Energy Cooperative
- c. The six candidates that expressed interest in receiving the RFP were:
1. TranServ International Inc.
  2. Midwest ISO
  3. Mid-Continent Area Power Pool
  4. Black and Veatch Corp.
  5. Mesa Associates, Inc.
  6. Southwest Power Pool \*
- \*American Transmission Company did not ask to receive the RFP, but instead proposed a transfer of ownership of transmission assets from LG&E and KU to ATC.
- d. The Companies evaluated the bids provided to the RFP using the following criteria:
- Compliance Performance: How willing is the bidder to support the Companies' regulatory compliance requirements?
  - Staffing: Who would the bidder assign to perform the ITO Services? Would it be experienced individuals who have history with the bidder's company, or new hires with little experience?
  - Company Experience and Expertise: What is the company's history of working in the transmission environment, and providing ITO-type services?
  - Workplan/Approach to ITO Services: How much hands-on work will the bidder do? How much will be automated, or sent to subcontractors?
  - Management Interface Approach: Who will be in charge of managing the Companies' account, responding to issues, and working with the Companies to address customer concerns?
  - Transition Plan: How will the bidder ensure a smooth transition of services from SPP?

- **Conformity to Technical Specifications:** Did the bidder's proposal meet the technical requirements in order to perform the ITO services?
  - **References:** Who are the bidder's current/past clients? Do those clients recommend the bidder's work?
  - **Total Cost:** How much will the bidder charge the Companies to perform the specified ITO services?
  - **Method of Pricing:** Is the bidder charging a flat annual fee? Actual, variable costs in performing the work? A mix between the two?
- e. The Companies thoroughly evaluated the bids they received, including one prepared by their own transmission division. Based on the Companies' operational and pricing criteria Transerv provided the strongest bid demonstrating an ability to perform the ITO services at a reasonable price.





**Request for Information  
No. 020711**

**For the Administration of the Open Access Transmission Tariff  
Transmission Operations and Planning Responsibilities**

**Issued By:**

**LG&E and KU Services Company  
820 West Broadway  
Louisville, Kentucky 40202**

**Issue Date:  
February 7, 2011**

**Response Due Date:  
March 7, 2011**

**CONFIDENTIAL INFORMATION**

This document, including any exhibits or attachments, is solely for use by employees of LG&E and KU Services Company and affiliates and those employees or agents of suppliers invited to submit information, including their joint responders and subcontractors with a need to know. Not to be disclosed to or used by any other person without the express written consent of LG&E and KU Services Company.

**This information is being filed under a Petition for  
Confidential Protection**



**Request for Proposal  
No. 032111**

**For the Administration of the Open Access Transmission Tariff  
Transmission Operations and Planning Responsibilities**

**Issued By:**

**LG&E and KU Services Company  
820 West Broadway  
Louisville, Kentucky 40202**

**Issue Date:  
March 21, 2011**

**Proposal Due Date:  
April 25, 2011**

**CONFIDENTIAL INFORMATION**

This document, including any exhibits or attachments, is solely for use by employees of LG&E and KU Services Company and affiliates and those employees or agents of suppliers invited to submit information, including their joint responders and subcontractors with a need to know. Not to be disclosed to or used by any other person without the express written consent of LG&E and KU Services Company.

**This information is being filed under a Petition for  
Confidential Protection**

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 3**

**Witness: Edwin R. Staton**

- Q-3. Refer to the Application, pages 9-11, items 23-27. The Application states that TranServ and MAPPCOR have an extensive history of working together. TranServ was incorporated in 2005 and MAPPCOR was incorporated in 1990 as a not-for-profit organization.
- a. Explain how TranServ and MAPPCOR can have an extensive history of working together since TranServ was incorporated in 2005.
  - b. Explain how a not-for-profit organization that does long-range transmission planning and works in facilitating related stakeholder meetings is qualified as a subcontractor of an ITO.
  - c. Provide a list for each company showing each client and the services provided for the last five years.
  - d. Regarding ITO services provided by TranServ, provide a list of all companies TranServ has provided services for that are similar in size to the combined LG&E and KU companies.
  - e. Provide a list of client(s) that are no longer with TranServ and MAPPCOR and explain why those clients discontinued use of their services.
  - f. Provide a list, an explanation, and copies of any legal proceedings, statutory and regulatory violations, or other issues arising from problems or alleged problems with services that TranServ and MAPPCOR have experienced over the past five years.
- A-3. a. MAPPCOR and TranServ provided the following information:

The extensive history of TranServ and MAPPCOR working together is the result of personnel who have past employment with MAPPCOR prior to the incorporation of TranServ. Two former MAPPCOR employees hold key roles at TranServ as president and director of planning and engineering. During their employment at MAPPCOR they worked side-by-side with many of the current MAPPCOR

employees performing many of the same tasks as will be performed by the ITO. These tasks included developing and administering tariff automation software in addition to the administering the MAPP OASIS and transmission service request processing commencing in 1996. Both of these persons also maintained working relationships with MAPPCOR staff even after leaving MAPPCOR but prior to the incorporation of TranServ by either through a MAPP Member relationship or a vendor/supplier relationship with MAPPCOR. In summary, the history is nearly 20 years of past working relationship among current MAPPCOR and TranServ personnel.

- b. MAPPCOR is organized as a 501(C) 12 cooperative and, as such, is exempt from income tax as long as it receives at least 85% of its revenue from members of the cooperative. A tax-exempt, not-for-profit cooperative operates like any other company, except that profits, by law, may not be used to benefit private individuals. The profits must be reinvested in the organization to further its mission or be added to reserves. Duties to be performed by MAPPCOR as part of the ITO are a subset of those MAPPCOR provides to the Mid-Continent Area Power Pool (MAPP) organization and its other industry clients.

MAPPCOR is the service provider and contractor to members of MAPP. MAPP administers the Second MAPP Restated Agreement, the contract that governs the MAPP organization. MAPP was incorporated in June 1990 and has been providing transmission and reliability services to the MAPP members and industry participants since that time. Prior to the incorporation of MAPP, the MAPP organization was staffed through a contract with a MAPP Member, dating back to the 1960s.

Duties as the contractor to members of MAPP include:

- Regional Transmission Planning activities such as:
  1. Preparation of the annual regional transmission plan in accordance with FERC Order 890
  2. MAPP Stakeholder process facilitation
  3. FERC Form 715 compilation and submittal on behalf of the MAPP Members
  4. Performing economic planning studies which includes the use of Promod as well as power-flow-based analyses
  5. MAPP is currently working with MAPP Members in preparation for implementation of FERC Order 1000 requirements
  
- Annual NERC Reliability Assessments, which requires extensive knowledge in:
  1. Model building
  2. Power-flow analysis
  3. Stability analysis (transient and small signal)
  4. Voltage stability / VAR analysis
  5. NERC / Regional Entity compliant assessments

- Reliability Standards Compliance for MAPP, which is a NERC-registered Planning Authority.
  
- Open Access Tariff Administration activities including:
  1. OASIS administration
  2. Seams coordination / administration
  3. System impact studies

c. For TranServ:

Associated Electric Cooperative – Generator Interconnection studies as requested.

Basin Electric Power Cooperative -- Generator interconnection studies and transmission service studies as requested.

Corn Belt Power Cooperative – Generator interconnection studies and transmission service studies as requested.

Central Iowa Power Cooperative - Reliability Standards compliance assistance and OASIS and tariff administration services.

Great River Energy Cooperative – Transmission studies for the CapX2020 Project. CapX2020 is a joint initiative of 11 transmission-owning utilities in Minnesota and the surrounding region to expand the electric transmission and Great River is the contracting agent for study services.

Louisville Gas and Electric Company/ Kentucky Utilities Company – NERC Reliability Standards compliance assistance and transmission study services.

MAPPCOR – TranServ administered components of the MAPP Regional Tariff from 2007 – 2010, which included administering the OASIS and e-tag processes as well as the MAPPCOR/Midwest ISO seams agreement.

MATL – Montana-Alberta Tie Line (MATL) Project is a 230kV merchant transmission line for which TranServ has been providing compliance consulting since 2010 with regard to operational certification, transmission planning, and tariff services. When the line goes operational in Q4 2012, TranServ will provide administration of the MATL OASIS and scheduling (e-tag) processes and provide the required services needed to comply as the NERC Transmission Planner entity.

MidAmerican Energy – TranServ provide independent entity services as the Transmission Service Coordinator (TSC) for three years from 2006 through 2009 that

included OASIS administration, transmission service request and e-tag administration, and generator interconnection and transmission service studies. TranServ also administered the transmission billing process for MidAmerican network service customers.

Minnkota Power Cooperative – OASIS, service request, and e-tag administration as well as transmission study services as requested and NERC Reliability Standards compliance assistance as requested.

Midwest ISO – TranServ has provided transmission study services for Midwest ISO.

Rochester Public Utilities – provide compliance assistance for developing transmission business practices, NAESB standards compliance, and OASIS configuration.

Southern Company – Independent Energy Auction Administration service has been provided by TranServ since January 2010 to ensure compliance with the Southern Company OATT.

Western Area Power Administration – administered the short-term transmission service request process on OASIS during 2008-2010 and provides transmission study services as requested.

Xcel Energy Company – TranServ performs transmission interconnection service studies and long-term transmission service studies for the Public Service Company of Colorado (PSCo) operating company as requested.

For MAPPCOR:

- Members of the Mid-Continent Area Power Pool

- Ames Municipal Electric System
- Basin Electric Power Cooperative
- Cargill Power Markets, LLC
- Central Iowa Power Cooperative
- Constellation Energy Commodities Group
- Corn Belt Power Cooperative
- Heartland Consumers Power District
- Iberdrola Renewables
- Integrys Energy Services, Inc.
- Minnesota Municipal Power Agency
- Minnesota Municipal Utilities Association
- Minnkota Power Cooperative, Inc.
- Missouri River Energy Services
- Montana-Dakota Utilities



Morgan Stanley Capital Group, Inc.  
Northwestern Energy  
Rainbow Energy Marketing Corp.  
Rochester Public Utilities  
Shell Energy North America (US), LP  
Sunflower Electric Power Corporation  
Tenaska Power Services Co.  
TransAlta Energy Marketing Corp.  
TransCanada Power  
Western Area Power Administration

Duties in the last five years, in addition to those listed in b. above, included:

Administration of the MAPP regional transmission tariff, either directly or through a contractor. The tariff was in place from May 1, 1995 through March 31, 2010.

Administration of the MAPP generation reserve sharing pool. The pool terminated operation on December 31, 2009.

- WestConnect (2011-present)

MAPPCOR is an independent contractor responsible for managing the WestConnect regional transmission planning process. Duties include drafting the annual 10-year plan document and facilitation of stakeholder meetings. WestConnect members are utilities in all or parts of Wyoming, Colorado, New Mexico, Arizona, Nevada, and California (46,000 MW of load, 32,000 miles of transmission line).

- Central Nebraska Public Power Irrigation District (2011)

MAPPCOR assisted the client in developing a NERC Standards Compliance Program.

- Corn Belt Power Cooperative (2011)

MAPPCOR assisted the client in demonstrating compliance with NERC Reliability Standards MOD-001, MOD-004, MOD-008, MOD-028, MOD-029, and MOD-030.

- Corn Belt Power Cooperative (2010)

MAPPCOR assisted the client in their preparation for NERC Audit.

- ITC Midwest (2011 – present)

MAPPCOR is assisting the client with reliability assessments and FERC Form 715 filing.

- Omaha Public Power District (2011)

MAPPCOR assisted the client in its deliberations regarding membership in the Southwest Power Pool.

- Short, Elliot, Hendrickson, Inc. (2010)

MAPPCOR created a database of planned generation and transmission line projects in the MAPP area.

- US Department of Energy (2010 – present)

Acting as one of eight Principal Investigators for the transmission planning study for the entire Eastern Interconnection.

- Western Area Power Administration (2011 – present)

MAPPCOR provides the client with a monthly analysis of transmission congestion impacting WAPA system.

- d. MidAmerican Energy Company – provides electric service for approximately 730,000 retail customers; operates a transmission system of 1,000 miles of 345 kilovolt (“kV”) lines and 1,300 miles of 161 kV lines; electric distribution system with 400 substations; operates 5,200 MW of generation and had a peak load of 4,500 MW. MidAmerican also operates a natural gas system that serves approximately 700,000 retail customers.

MAPPCOR – MAPPCOR is the contractor for the Mid-Continent Areas Power Pool (MAPP). At the time TranServ provided tariff and OASIS administration services for MAPP, it consisted of 60 members and 21,000 miles of transmission lines in seven states and one Canadian province.

Western Area Power Administration (Upper Great Plains Region) – WAPA UGPR operates 7,800 miles of transmission lines connecting 100 substations. It operates in a six-state region by providing wholesale energy to rural electric cooperatives, municipals, public utility districts, irrigation districts, state agencies, and Native Americans.

e. For TranServ:

MidAmerican Energy Company – MidAmerican joined Midwest ISO in 2010 thereby turning over the administration of their transmission facilities to Midwest ISO and the Midwest ISO tariff.

MAPPCOR – the MAPP Regional tariff had a sunset clause based upon miles of transmission under the tariff that was triggered by the event of MidAmerican transmission joining Midwest ISO.

For MAPPCOR:

Name	Why Service Discontinued
Alliant Energy Corporate Services, Inc.	Joined Midwest ISO
Aquila Merchant Services, Inc.	Withdrew from MAPP Membership
Aquila Networks	Withdrew from MAPP Membership
Cedar Falls Municipal Utilities	Joined Midwest ISO
Cinergy Services, Inc.	Withdrew from MAPP Membership
ConAgra Energy Services, Inc.	Withdrew from MAPP Membership
Consolidated Water Power Company	Withdrew from MAPP Membership
Dairyland Power Cooperative	Joined Midwest ISO
Duke Energy Trading & Marketing LLC	Withdrew from MAPP Membership
Edison Mission Marketing & Trading, Inc	Withdrew from MAPP Membership
El Paso Merchant Energy	Withdrew from MAPP Membership
Energy Masters International, Inc.	Withdrew from MAPP Membership
Entergy-Koch Trading, LP	Sold assets to Merrill-Lynch
ENRON Power Marketing, Inc.	Bankruptcy
Exelon Generation Company LLC	Withdrew from MAPP Membership
IDACORP Energy, LP	Withdrew from MAPP Membership
GEN~SYS Energy	Withdrew from MAPP Membership
Great River Energy	Joined Midwest ISO
Hastings Utilities	Joined SPP
Iowa Electric Services Company	Withdrew from MAPP Membership
Iowa Association of Municipal Utilities	Withdrew from MAPP Membership
Interstate Power Company	Withdrew from MAPP Membership
Kansas City Power & Light	Withdrew from MAPP Membership
Lincoln Electric System	Joined SPP
Madison Gas & Electric Company	Joined Midwest ISO
Manitoba Hydro	Withdrew from MAPP Membership
MidAmerican Capital for InterCoast Power	Withdrew from MAPP
Marketing Membership	Joined Midwest ISO
MidAmerican Energy Company	Joined Midwest ISO
Minnesota Power	Joined Midwest ISO
Municipal Energy Agency of Nebraska	Joined SPP

Muscatine Power & Water	Joined Midwest ISO
Nebraska Public Power District	Joined SPP
Omaha Public Power District	Joined SPP
Otter Tail Power Company	Joined Midwest ISO
PacifiCorp	Withdrew from MAPP Membership
The Power Company of America	Nonpayment - Membership Terminated
Powerex	Withdrew from MAPP Membership
Reliant Energy Services, Inc.	Withdrew from MAPP Membership
Southern MN Municipal Power Agency	Joined Midwest ISO
Split Rock Energy	No Longer in Business
St. Joseph Light and Power	Withdrew from MAPP Membership
The Energy Authority	Withdrew from MAPP Membership
Wood County Municipal	Withdrew from MAPP Membership
WPPI Energy	Joined Midwest ISO
Xcel Energy, Inc.	Joined Midwest ISO
Central Nebraska Public Power Irrigation District	
Short, Elliot, Hendrickson, Inc.	The project was completed The project was completed

f. None for either TranServ or MAPPCOR.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 4**

**Witness: Edwin R. Staton**

- Q-4. Refer to the Application, page 11, item 28. It states, “[c]ompensation for TranServ will be \$2,495,938 for the first year of service. This amount will increase 2.5% for each contract year. The Companies will also reimburse TranServ for certain out-of-pocket costs (such as legal support and travel and lodging related to performance of the ITO services). Finally, the Companies may also pay to TranServ an additional amount related to certain transmission study revenue. If TranServ does not receive at least \$225,000 in transmission study revenue during a contract year pursuant to the Companies’ OATT, subject to certain conditions the Companies will pay to TranServ the difference between \$225,000 and the amount it received.”
- a. Explain how the \$2,495,938 was determined.
  - b. Explain how the 2.5 percent increase for each contract year was determined.
  - c. Explain whether the 2.5 percent increase per contract year will ever be escalated if the rate of inflation exceeds 2.5 percent on an annual basis.
  - d. Explain transmission study revenue and the \$225,000 threshold.
  - e. Explain the variance and factors that cause such a difference in the \$8 million annual total compensation ITO cost of SPP, referenced on page 7, item 16, and the TranServ amount of \$2,495,938.
  - f. Explain whether TranServ and MAPPCOR can provide the same level of service as SPP at the lower annual cost.
- A-4 a. The proposal submitted by TranServ reflects costs based on the calculation of full-time equivalents of personnel TranServ determined it needed to complete the scope of work as described in the RFP. These full-time equivalents include staffing for transmission engineers and analysts, tariff services engineers, planning engineers, support analysts, project management, administrative staff, and general management

- staff. The cost of these full-time equivalents, as proposed by TranServ, resulted in its bid of \$2,495,938 for the first year of service.
- b. The 2.5% increase was a result of extensive negotiation with TranServ. The Companies' basis for negotiating to 2.5% was a review of the CPI (Consumer Price Index) and the ECI (Employer Costs for Employee Compensation Index) history for the past 5 and 9 years respectively, which indicates that a 2.5% escalation is commercially reasonable.
  - c. The 2.5% annual increase is fixed for the term of the contract and is not tied to any inflation or cost index.
  - d. The threshold acts as a resource credit allowance that provides a credit of up to \$225,000 (escalated by 2.5% annually) back to the Companies to reflect the funds TranServ anticipates receiving from the Companies' tariff customers to compensate TranServ for the cost of transmission studies performed under the Companies' tariff. This amount is an estimate based upon the number of studies that are anticipated to be performed and charged to customers each year. If the total compensation from study customers does not exceed \$225,000 on an annual basis, the Companies will pay TranServ the difference between the amount collected and \$225,000.
  - e. As the Companies described in paragraphs 11 through 16 of their application in this proceeding, the Companies paid SPP approximately \$4 million annually for the initial term of their ITO contract (including ratably allocating the \$2.7 million settlement amount). SPP informed the Companies that it did not desire to continue acting as the Companies' ITO after the initial term expired on August 31, 2010. The Companies therefore issued an RFP seeking a replacement ITO, which yielded only one respondent that ultimately decided not to pursue a contract with the Companies. The Companies then sought approval to act as their own ITO, which the Commission approved in Case No. 2009-00427, but which the Federal Energy Regulatory Commission ("FERC") had not approved by June 14, 2010. It was on that date that the Companies filed their application with the Commission in Case No. 2010-00237 seeking to continue with SPP as their ITO for two more years to prevent non-compliance with FERC's requirements concerning independence of transmission administration. Therefore, the \$8 million annual fee that the Companies currently pay to SPP resulted from negotiations with the only vendor willing to offer the needed services at the time, and a reluctant vendor at that.

In contrast, TranServ's compensation is based upon a robust competitive bid process among multiple vendors to reasonably provide the services at a low cost to the Companies.

- f. The annual cost being charged by TranServ takes into account the requisite staffing to perform all of the required ITO services that SPP has been providing. Given the level of expertise and experience TranServ and MAPPCOR are able to bring, it is

anticipated that the new ITO would be able to fulfill its functional role in accordance with the requirements of the Transmission OATT.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 5**

**Witness: Edwin R. Staton**

- Q-5. Refer to the Application, pages 12-13, item 32. It states, “[u]nder the TranServ ITO Agreement, if approved, the only way in which TranServ’s ITO responsibilities will differ from SPP’s current ITO responsibilities is that the Companies will assume all Balancing Authority functions. As the NERC-approved Balancing Authority for their Balancing Authority Area, the Companies currently perform almost all of the Balancing Authority functions, but some items are delegated to SPP as the ITO. When TranServ assumes the role of the ITO, the Companies will assume responsibility for evaluating, approving, and monitoring all interchange schedules in and out of the Balancing Authority Area for purposes of ensuring reliability. This includes the responsibility to curtail interchange schedules if necessary to comply with Transmission Loading Relief (“TLR”) procedures. The Companies do not anticipate requiring any additional staffing to perform these services, and any additional software costs that might be incurred should be minimal.” Explain whether there is any lack of independence resulting from the Companies assuming all Balancing Authority functions.
- A-5. The Companies’ assumption of Balancing Authority (“BA”) functions will not compromise the independence of the provision of open access transmission service over the Companies’ system. The ITO will continue to be responsible for granting transmission service requests on the Companies’ system, including approval and modification of interchange schedules as the transmission provider. The Companies’ ability to implement schedule modifications (including curtailments) as the BA is limited to the local level (usually at 69 kV and below), and only when necessary to address reliability issues. The Reliability Coordinator retains its authority to address regional reliability issues. If the Companies do modify a schedule, both the customer and the Reliability Coordinator receive real-time communications regarding the modified schedule through the North American Electric Reliability Corporation (“NERC”) Electronic Tagging System. The Companies will also post statistics on the Open Access Same-time Information System (“OASIS”) regarding any schedule modifications implemented by the BA, to ensure transparency in the performance of these functions. Finally, the Companies’ actions as the BA are subject to NERC Reliability Standards, and oversight by NERC, SERC Reliability Corporation, and the Reliability Coordinator. Thus, the Companies’ assumption of the BA functions in-house will not impact independence on the system.



**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 6**

**Witness: Edwin R. Staton**

- Q-6. Refer to the Application, page 15, item 36. It states, “[n]othing about the proposed transfer will diminish or impair ability to perform its role as the Companies’ RC; rather, the proposed transfer and the Companies’ performance of all Balancing Authority functions should ensure that possible reliability concerns will continue to be efficiently resolved.”
- a. Explain whether TVA, TranServ, and MAPPCOR have ever worked together. If so, provide an explanation of the working relationship(s).
  - b. Explain what steps the Companies, TVA, TranServ, and MAPPCOR are taking to ensure a smooth transition in the transfer of ITO responsibilities.
- A-6.
- a. TranServ and MAPPCOR have not previously worked with TVA, but do have extensive work experience with other Reliability Coordinators such the Midwest ISO. With the Companies assuming the Balancing Area functions under the new agreement, more of the communication required to maintain reliable transmission operations will occur between the Companies and TVA directly and less through the ITO.
  - b. The Companies, along with TranServ and MAPPCOR, have developed a detailed implementation plan for transitioning the ITO from SPP. The transition plan consists of three phases that are defined as follows:
    - Phase 1: Functional area inventory, initial interviews  
September 2011 through December 2011
    - Phase 2: Readiness Activities and Project Plan Development  
January 2012 through April 2012
    - Phase 3: Transition Activities  
April 2012 through the startup date of September 1, 2012

The key function areas that were identified in Phase 1 to be transitioned for Phase 2 and 3 are:

- 1) Transmission Services Provider
- 2) TSR Studies and Queue Management

- 3) Balancing Authority
- 4) Administration of AFC/ATC/ASTFC and Congestion Management Process (CMP)
- 5) Transmission Planning
- 6) Generation Interconnections
- 7) OATI webOASIS
- 8) OATI webTrans
- 9) IT Infrastructure
- 10) Transmission Billing Support Services

TVA has been advised of the Companies' proposed change of ITOs, but does not have a role in the transition.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 7**

**Witness: Edwin R. Staton**

- Q-7. Refer to the Application, pages 15-16, item 37. It states, “[i]n addition to creating savings and preserving reliability, the Companies do not anticipate that the proposed transfer will in any way compromise or impair the Companies’ ability to make off-system sales. The FERC order conditionally approving TranServ as the Companies’ new ITO confirms that the transfer of the ITO role will not affect the Companies’ market-based rate authority.”
- a. Explain the opportunities for enhancing off-system sales as a result of having TranServ as the Companies’ ITO.
  - b. In addition to the annual cost savings, explain the opportunities to the ratepayers as a result of having TranServ as the Companies’ ITO.
- A-7.
- a. The purpose of the ITO is to vest in an independent third-party the responsibility for evaluating and granting transmission service and generator interconnection requests for the Companies’ transmission system. The Companies’ requests for transmission service in support of off-system sales will be evaluated in the same manner as all other parties’ requests for transmission service. Having TranServ act as the Companies’ ITO will have no impact, positive or negative, on the Companies’ ability to sell power off system.
  - b. TranServ will be performing the same functions as SPP in the role of the ITO, excepting the BA functions the Companies will perform. The Companies anticipate that the transition from SPP to TranServ will be seamless, and that TranServ will perform its functions efficiently and effectively. Therefore, the benefit the Companies’ customers will receive will be a lower cost for ITO services when such are eventually reflected in base rates.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 8**

**Witness: Edwin R. Staton**

- Q-8. Describe the impacts, if any, of the move from the SPP to TranServ and its subcontractor MAPPCOR on other Kentucky transmission owners.
- A-8. TranServ will be performing the same functions as SPP in the role of the ITO, excepting the BA functions the Companies will perform. The Companies anticipate that the transition from SPP to TranServ will be seamless, and that TranServ will perform its functions efficiently and effectively. There will be no impacts on other Kentucky transmission owners as a result of the move from SPP to TranServ (and its subcontractor MAPPCOR) as the ITO.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 9**

**Witness: Edwin R. Staton**

- Q-9. Provide documentation to show approval of the North American Electric Reliability Corporation and Federal Energy Regulatory Commission that TranServ is legitimate and registered ITO.
- A-9. The role of the ITO is specific to the Companies' transmission system, and is not a reliability function identified by NERC. Thus, there is no specific NERC registry for TranServ as an ITO.

On December 15, 2011, the Federal Energy Regulatory Commission ("FERC") issued an order approving TranServ as the ITO for the Companies beginning September 1, 2012. *See Louisville Gas and Electric Co. and Kentucky Utilities Co.*, 137 FERC ¶ 61,195 (2011), a copy of which is attached hereto.<sup>1</sup> FERC has previously accepted TranServ as the transmission service coordinator ("TSC," an ITO-like function) for MidAmerican Energy Company. *See MidAmerican Energy Co.*, 115 FERC ¶ 61,326 (2006), a copy of which is also attached hereto. But unlike Independent System Operators ("ISOs") and Regional Transmission Organizations ("RTOs"), which are categories of entities specifically created by FERC orders (Orders 888 and 2000, respectively), FERC approved the ITO arrangement uniquely for the Companies. As such, there are no "registered" ITOs, in contrast to the multiple FERC-approved and -designated ISOs and RTOs.

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<sup>1</sup> FERC conditionally accepted the Companies' proposal to transition to a new ITO beginning September 1, 2012, subject to a subsequent compliance filing. FERC's conditions related to clarification of certain items contained in the Companies' Open Access Transmission Tariff ("OATT") and not to TranServ's qualifications to act as the ITO.

137 FERC ¶ 61,195  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Louisville Gas and Electric Company and  
Kentucky Utilities Company

Docket Nos. ER11-4396-000  
EC98-2-000  
(not consolidated)

ORDER CONDITIONALLY APPROVING TARIFF REVISIONS

(Issued December 15, 2011)

1. On August 30, 2011, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, Applicants) submitted under sections 203 and 205 of the Federal Power Act (FPA)<sup>1</sup> a proposal to revise certain provisions of their open access transmission tariff (OATT) that pertain to their Independent Transmission Organization (ITO). Specifically, Applicants propose to change the entity that serves as their ITO, and to change certain aspects of the ITO arrangement. Applicants state that their proposal satisfies: (i) the conditions established by the Commission in connection with Applicants' merger in 1998;<sup>2</sup> and (ii) the conditions placed on Applicants in connection with their withdrawal from the Midwest Independent Transmission System Operator, Inc. (MISO).<sup>3</sup>

2. For the reasons discussed below, we conditionally accept Applicants' proposal, to become effective September 1, 2012, as requested, subject to a compliance filing.

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<sup>1</sup> 16 U.S.C. §§ 824b and 824d (2006).

<sup>2</sup> See *Louisville Gas and Electric Co.*, 82 FERC ¶ 61,308 (1998) (Merger Order); *E.ON AG*, 97 FERC ¶ 61,049 (2001) (E.ON Merger Order).

<sup>3</sup> See *Louisville Gas and Electric Co., et al.*, 114 FERC ¶ 61,282 (2006) (Withdrawal Order).

**I. Background**

**A. Applicants**

3. Applicants are transmission-owning utilities operating in the Commonwealth of Kentucky. LG&E provides retail electric service to over 397,000 customers.<sup>4</sup> KU provides retail electric service to over 546,000 customers. Under the name Old Dominion Power, KU also provides retail electric service to over 29,000 retail customers in Virginia. In addition to its retail service, KU also sells wholesale electric energy to 12 municipalities in Kentucky. Applicants' total generation capacity is 3,320 megawatts (MW) and 4,989 MW, respectively.

4. Applicants are wholly-owned subsidiaries of PPL Corporation (PPL).<sup>5</sup> PPL is headquartered in Allentown, Pennsylvania and controls about 19,000 MW of generation in Pennsylvania, Montana, and Kentucky.

**B. Merger Order**

5. In evaluating Applicants' proposed merger in 1998, the Commission found that the companies' participation in MISO would ensure that the merger did not adversely affect competition in the wholesale power market.<sup>6</sup> The Commission accepted Applicants' joining MISO (and turning over operation of their transmission facilities to MISO) as a mitigation measure that would provide: (i) impartial transmission planning to reduce congestion; (ii) fair and efficient congestion management; (iii) removal of abuses of native load priority; (iv) elimination of incentives to curtail competitors' generation; and (v) removal of incentives to game Open Access Same-Time Information System (OASIS) management.<sup>7</sup> Applicants were involved in two subsequent mergers, the first in 2000 with PowerGen plc,<sup>8</sup> and the second in 2001 with E.ON AG.<sup>9</sup> In the E.ON Merger Order, the Commission noted Applicants' MISO membership and found

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<sup>4</sup> Applicants' August 30 Filing at 5.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (citing Merger Order, 82 FERC at 62,214).

<sup>7</sup> Merger Order, 82 FERC at 62,222, n.39.

<sup>8</sup> *Louisville Gas & Elec. Co.*, 91 FERC ¶ 61,321 (2000).

<sup>9</sup> E.ON Merger Order, 97 FERC ¶ 61,049.

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that, as a result of such membership, Applicants lacked the ability to exploit their transmission assets to harm competition in wholesale electricity markets.<sup>10</sup>

### C. Withdrawal Order

6. In 2005, Applicants filed with the Commission to withdraw from MISO.<sup>11</sup> Applicants proposed to utilize independent third parties as their ITO and Reliability Coordinator in order to “maintain the requisite level of independence with respect to the operation of their transmission system and administration of the OATT.”<sup>12</sup> In the Withdrawal Order, the Commission found that Applicants’ proposal to use an ITO and Reliability Coordinator addressed horizontal and vertical market power concerns arising from Applicants’ previous mergers.<sup>13</sup> Southwest Power Pool, Inc. (SPP) has been Applicants’ ITO since Applicants withdrew from MISO on September 1, 2006.

## II. Applicants’ Proposal

7. Applicants propose to appoint TranServ International, Inc. (TranServ) as the new ITO for Applicants’ transmission system. They propose that TranServ, together with its subcontractor MAPPCOR, will perform the functions currently performed by the current ITO (SPP), after SPP’s contract as ITO expires on August 31, 2012.

### A. Consistency with Merger Order and Withdrawal Order

8. Applicants request that the Commission find that the assignment of functions under their proposed ITO arrangement with TranServ continues to satisfy their merger commitments as modified by the Withdrawal Order and is otherwise consistent with the requirements of section 203(b) of the FPA. Applicants submit that their continued use of an ITO is in the public interest, and will not have an adverse effect on rates, regulation, or competition.

9. Applicants assert that their proposal to appoint TranServ as ITO will have no adverse effect on rates because the amount paid to TranServ will be less than the amount

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<sup>10</sup> Applicants’ August 30 Filing at 5-6 (citing E.ON Merger Order, 97 FERC at 61,283).

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* (citing Louisville Gas and Electric Company, Filing to Withdraw from the Midwest ISO, Docket Nos. ER06-20-000 and EC06-4-000 (filed Oct. 7, 2005)).

<sup>13</sup> Withdrawal Order, 114 FERC ¶ 61,282 at P 80.



previously paid to SPP. Applicants state that they will reimburse TranServ for certain expenses and costs in addition to annual compensation, but, according to Applicants, TranServ's total compensation will be a significant cost savings to their customers over SPP.<sup>14</sup>

10. With regard to regulation, Applicants state that their proposal presents no change in Applicants' current federal/state regulatory obligations. Accordingly, Applicants argue that there is no adverse impact on regulation.<sup>15</sup>

11. Applicants also argue that except for the functions specifically proposed to be assumed by Applicants, the proposed ITO arrangement assigns to TranServ the same functions as ITO that are currently assigned to SPP as ITO. Applicants note their proposal continues to satisfy the five specific areas where an independent entity can mitigate transmission-related vertical market power, as set forth in the Withdrawal Order.<sup>16</sup> Therefore, Applicants assert that their proposal will have no adverse effect on competition.

12. While Applicants request an effective date of September 1, 2012, Applicants request Commission action by January 1, 2012, to allow time for transition. Applicants request waiver of any portion of FPA section 205 or 18 C.F.R. Part 35 that has not been satisfied by their filing.

#### **B. Change in ITO Entity**

13. SPP's term as ITO expires on August 31, 2012.<sup>17</sup> With stakeholder input, Applicants developed a solicitation process for a successor ITO.<sup>18</sup> Based on the review and evaluation of the numerous bids received (including a bid from SPP), Applicants selected TranServ. Accordingly, on August 29, 2011, Applicants and TranServ entered into an Independent Transmission Organization Agreement (ITO Agreement), which Applicants have filed as part of Attachment Q to Applicants' OATT.<sup>19</sup> Tennessee Valley

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<sup>14</sup> Applicants' August 30 Filing at 24.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 19-22 (citing Withdrawal Order, 114 FERC 61,282 at P 81).

<sup>17</sup> *Id.* at 7 (citing Amended and Restated Independent Transmission Organization Agreement, at section 4.8).

<sup>18</sup> *Id.* at 7-9.

<sup>19</sup> *Id.* at 9-10.

Authority (TVA) will continue to serve as Applicants' Reliability Coordinator.<sup>20</sup> Applicants state that they chose TranServ to be the ITO because of its "extensive knowledge and experience, thorough work plan, and reasonable cost bid."<sup>21</sup> TranServ will employ a subcontractor, MAPPCOR, for long-term planning support.<sup>22</sup> The ITO Agreement states that TranServ, its personnel and designees (including MAPPCOR) are subject to the Commission's Standards of Conduct<sup>23</sup> as transmission function employees, and will take steps to ensure compliance.<sup>24</sup> The ITO Agreement has an initial term of three years, with successive two-year terms if neither party terminates it.<sup>25</sup>

### **C. Changes to ITO Arrangement**

14. Applicants state that under their proposal, with certain exceptions described below, the functions assigned to TranServ as the ITO will be the same as the functions assigned to SPP.<sup>26</sup> TranServ will, among other things, be responsible for receiving and approving/denying transmission and generator interconnection service requests, including Available Transmission Capacity (ATC) evaluation, performing system impact studies or feasibility analysis studies as provided under Applicants' OATT, calculation and posting of ATC, validating interchange schedules, reviewing and approving all planning activities, administering Applicants' OATT, and operating and maintaining the OASIS site, in the same manner as SPP.<sup>27</sup> TranServ will review the Available Flowgate Capacity<sup>28</sup> values and flowgate allocations made by TVA for Applicants' system.

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<sup>20</sup> The Amended Reliability Coordinator Agreement, dated July 19, 2006, between Applicants and TVA is part of Attachment Q to Applicants' OATT. See Louisville Gas and Electric Company, Compliance Filing, Docket No. ER06-20-004 (filed July 19, 2006).

<sup>21</sup> Applicants' August 30 Filing at 2.

<sup>22</sup> *Id.*

<sup>23</sup> 18 C.F.R. Part 358 (2011).

<sup>24</sup> Applicants' August 30 Filing at 12 (citing ITO Agreement at section 2.2).

<sup>25</sup> ITO Agreement at section 4.

<sup>26</sup> Applicants' August 30 Filing at 14.

<sup>27</sup> *Id.*

<sup>28</sup> Available Flowgate Capacity is the process used to calculate ATC on the Applicants' transmission system.

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TranServ will also submit a report to the Commission every six months, as SPP has done, describing any concerns expressed by stakeholders, and the ITO's responses, and any issues or OATT provisions that hinder the ITO from performing its functions and responsibilities.<sup>29</sup>

15. Applicants state that MAPPCOR, serving as TranServ's subcontractor, will be responsible for performing Applicants' long-range transmission planning and for facilitating stakeholder meetings on long-range transmission planning issues.<sup>30</sup>

16. However, Applicants' proposal (which modifies Appendix 5 (Balancing Authority Functions Performed) of Attachment P (Functions of the Reliability Coordinator and the ITO) of their OATT and places the ITO Agreement with TranServ in Attachment Q) changes the current ITO assignment of functions such that Applicants will assume all of the functions generally performed by a Balancing Authority entity registered with the North American Electric Reliability Corporation (NERC).<sup>31</sup>

17. Applicants state that they currently perform almost all of the Balancing Authority functions, but some are assigned to SPP as the ITO. When TranServ assumes the role of the ITO, Applicants will assume responsibility for evaluating, approving and monitoring all interchange schedules in and out of the Balancing Authority area for purposes of ensuring reliability. Applicants state that this includes the responsibility to curtail interchange schedules if necessary to comply with transmission loading relief (TLR) procedures. Applicants state that, today, this responsibility rests with SPP as the ITO, which Applicants state has resulted in operational inefficiencies and difficulty in implementing reliability measures.<sup>32</sup>

18. Applicants state that six NERC Reliability Standards are implicated in the current delineation of Balancing Authority functions between Applicants and SPP: IRO-006, curtailing an interchange schedule in response to a reliability event; INT-001, coordinating and verifying interchange transaction tags coming into the system; INT-003, coordinating schedules between neighboring Balancing Authorities; INT-004, dynamic

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<sup>29</sup> Applicants' August 30 Filing at 14 (citing ITO Agreement at section 2.1.2). We note that the reporting requirement is also set down in section 3.2.11 of Attachment P (Functions of the Reliability Coordinator and the ITO).

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 15.

<sup>32</sup> *Id.*

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transfer scheduling; INT-006, reliability assessments for transactions; and INT-009, monitoring and validating net schedule interchange calculations.<sup>33</sup>

19. Applicants describe how, for each of the six NERC Reliability Standards, the parties operate now and how they propose to operate if Applicants assume all of the Balancing Authority functions.

**1. IRO-006 – Transmission Loading Relief Procedures**

20. With respect to IRO-006, Applicants state that there are operational inefficiencies which can set back the parties' ability to curtail a schedule quickly when necessary for reliability.<sup>34</sup> Applicants state that SPP does not maintain the same reliability-related operational view of Applicants' system, and thus requires a directive from the Reliability Coordinator (TVA) in order to curtail a schedule.<sup>35</sup> Applicants state that, when the curtailment will occur at a local level (usually 69 kV and below), the Reliability Coordinator does not believe that it has an obligation to step in. Applicants state that they must get all the parties (Applicants, TVA, SPP, and the customer) on the phone in order to have the schedule curtailed, which they argue can challenge the real-time nature of managing reliability.<sup>36</sup>

21. Applicants propose to assume the IRO-006 Balancing Authority functions in-house, which they argue will significantly streamline compliance with this requirement. Applicants state that, prior to implementing a redispatch or curtailment, they will attempt to contact the affected customer and work out a solution to the reliability problem, and they will only ask for redispatch or curtail a schedule if the customer is unable or unwilling to remedy the problem itself. Further, Applicants state that the customer, TranServ, and the Reliability Coordinator (TVA) will receive real-time communication through the scheduling system that the schedule will be curtailed and the reasons therefore, providing these parties with a means to follow up and audit the curtailment

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<sup>33</sup> Applicants' August 30 Filing at 16-17. According to the list of standards posted on the NERC website, <http://www.nerc.com/page.php?cid=2|20>, "IRO" stands for "Interconnection Reliability Operations and Coordination," and "INT" stands for Interchange Scheduling and Coordination."

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

process if necessary.<sup>37</sup> Applicants state that they will institute procedures whereby statistics regarding schedules that Applicants modify and the reasons therefore are posted on OASIS.<sup>38</sup> Applicants also note that their actions are subject to TVA, SERC, and NERC oversight.<sup>39</sup> Applicants state that there is no opportunity for them to discriminate against customers in performing this function, because Applicants can only curtail a schedule pursuant to the NERC Reliability Standards.<sup>40</sup> Thus, Applicants state that they cannot exercise market power or otherwise harm competition by assuming this function.<sup>41</sup>

**2. INT-001 (Interchange Information)**

22. Applicants state that, under this standard, a Balancing Authority coordinates and verifies interchange transaction tags coming into the system from Source Balancing Authorities. Although today SPP performs this function as ITO, Applicants propose to assume this function. Applicants assert that this is primarily a matching function, ensuring that the Source Balancing Authority and Applicants have the same schedule in their systems.

**3. INT-003 (Interchange Transaction Implementation)**

23. Applicants state that, under this standard, a Balancing Authority coordinates schedules with Sending and Receiving Balancing Authorities, i.e., neighboring Balancing Authorities that will be transmitting energy into and from a system. Although today SPP performs this function as ITO, Applicants propose to assume this function in-house. Applicants assert that, like INT-001, this is primarily a matching activity, ensuring that the Sending and Receiving Balancing Authorities' schedules match Applicants' schedules.

**4. INT-004 (Dynamic Interchange Transaction Modifications)**

24. Applicants state that, under this standard, if a Dynamic Transfer schedule is curtailed, once the reliability event is complete, the transaction must be resubmitted and

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 18.

<sup>40</sup> *Id.* at 16-17.

<sup>41</sup> *Id.* at 17.

approved, and the Sink Balancing Authority informed.<sup>42</sup> Applicants state that, at this time, there is only one customer on Applicants' transmission system that requires Dynamic Transfer; therefore, this NERC standard is rarely implicated. Nevertheless, Applicants state that, if a Dynamic Transfer transaction must be reloaded, this responsibility currently rests with SPP as ITO. Applicants propose to assume this function, which they state is purely administrative.

**5. INT-006 (Response to Interchange Authority)**

25. Applicants state that, under this standard, the Balancing Authority must perform a reliability assessment of a transaction before it is implemented.<sup>43</sup> Applicants state that SPP currently performs this function as ITO. Applicants note that SPP does not have the same reliability-related operational view of their transmission system as Applicants have. Thus, Applicants state that SPP relies on information and data that Applicants provide. Applicants propose to assume this function, which they argue allows for more efficient performance of this activity.

**6. INT-009 (Implementation of Interchange)**

26. Applicants state that, under this standard, a Balancing Authority must implement Confirm Interchange as received from the Interchange Authority.<sup>44</sup> Applicants state that they already perform this function today. Applicants state that OATI software calculates the Net Scheduled Interchange value which is then provided to SPP. SPP provides that data to Applicants, who then verify that the value matches the value in the Energy Management System. Applicants state that the only change under their proposal is that the OATI Net Scheduled Interchange calculation will be provided directly to Applicants, rather than going through TranServ. Applicants state that TranServ will remain responsible for monitoring and validating the Net Scheduled Interchange calculation.

27. Applicants note that all the functions described above are circumscribed by the NERC Reliability Standards and are subject to the Reliability Coordinator (as well as SERC and NERC) oversight. Further, Applicants argue that assuming these functions in-house will result in a savings to customers because if TranServ were to take on these functions, it would have to establish a desk with NERC-Certified Operators that is staffed

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 18.

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24 hours a day, seven days a week, which would require additional staffing and training, resulting in higher costs to customers.

### **III. Notice of Filing And Responsive Pleadings**

28. Notice of Applicants' filing was published in the *Federal Register*, 76 Fed. Reg. 55,896 (2011), with interventions, protests, and comments due on or before September 20, 2011. Bluegrass Generation Company, LLC filed a motion to intervene. SPP and American Municipal Power, Inc. filed motions to intervene in Docket No. ER11-4396-000. East Kentucky Power Cooperative, Inc. (East Kentucky) filed a motion to intervene and comments and supplemental comments in Docket No. EC98-2-000. Kentucky Municipals<sup>45</sup> filed a motion to intervene and comments in Docket No. ER11-4396-000. On October 4, 2011, Applicants filed an answer responding to the comments.

#### **A. Comments**

29. East Kentucky states that while it does not oppose Applicants' filing, it has two potential concerns relating to future implementation of the proposal. East Kentucky notes that Applicants intend to assume the operational responsibility of implementing requested curtailments of schedules when and as necessary to comply with TLRs initiated by the Balancing Authority and/or the Reliability Coordinator, as required under the NERC Reliability Standards. East Kentucky argues that the Commission must strictly limit Applicants' role to operational implementation of TLRs initiated by the Balancing Authority and/or the Reliability Coordinator and make clear that Applicants will have no authority to initiate TLRs.<sup>46</sup>

30. East Kentucky also strongly urges the Commission to make clear that Applicants intend that TranServ perform all the functions and responsibilities described in Applicants' August 30 Filing, including receipt and processing of all transmission and generator interconnection service requests, ATC evaluation, performance of system impact studies or feasibility analysis studies as provided under the OATT, receipt and processing of requests to designate or undesignate network resources, receipt and processing of service modifications or assignments as provided under the OATT, and tracking and posting all required study performance metrics.<sup>47</sup> East Kentucky clarifies in

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<sup>45</sup> Kentucky Municipals consist of: Kentucky municipal requirements customers of KU; Owensboro Municipal Utilities; Kentucky Municipal Power Agency and its members; Paducah Power System; and the Princeton Electric Plant Board.

<sup>46</sup> East Kentucky September 20, 2011 Comments at 2-3.

<sup>47</sup> *Id.* at 4 (citing Applicants' August 30 Filing at 14).

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its supplemental comments that it believes that transmission interconnection issues, including transmission system-to-transmission system issues, should be considered part of the ITO's independent oversight.

31. Kentucky Municipals state that they do not oppose appointment of TranServ as ITO. However, Kentucky Municipals request that the Commission make acceptance of the filing conditional on Applicants abiding by statements in Applicants' filing, including but not limited to: the statement that Applicants' ability to curtail transactions is limited to instances where it is necessary to implement TLRs, as described in the NERC IRO Standards; the statement that the Reliability Coordinator and the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment; and the statement that TranServ will have the same planning authority that SPP has had as the ITO.<sup>48</sup>

**B. Answer**

32. In their answer, Applicants reply that East Kentucky is correct that the initiation of TLRs may be declared only by the Reliability Coordinator. Applicants counter, though, that Applicants have not proposed to alter the status quo with regard to how and when TLRs are initiated and the Balancing Authority's response to them. Applicants state that TLRs are initiated only in response to regional, rather than local, reliability events. Applicants reiterate that they do not seek to remove or modify the Reliability Coordinator's sole authority to initiate TLRs.<sup>49</sup>

33. Applicants state that, as described in Applicants' Filing, the Reliability Coordinator has made it clear that when a schedule modification is required to address a reliability problem at the local level (usually 69 kV and below), resolution of such issues properly rests with the Balancing Authority rather than the Reliability Coordinator. Applicants note that they themselves are the Balancing Authority for their system. Applicants clarify that they have proposed that, as the Balancing Authority, they must have the ability to curtail transmission schedules in order to address reliability issues at the local level as they arise. Applicants state that this function currently rests with SPP in its capacity as ITO. Applicants state that the current terms of the OATT provide that the ITO is responsible for implementing schedule changes in such a circumstance, and SPP requires a directive from the Reliability Coordinator before SPP will act. Applicants state that in order to modify a schedule, Applicants must gather all parties (TVA, SPP, the

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<sup>48</sup> See Kentucky Municipals September 20, 2011 Comments at 5-6 (citing Applicants' August 30 Filing at 3, 22).

<sup>49</sup> Applicants' October 4 Answer at 9-10.



customer, and itself) on a conference call before SPP will modify the schedule. Applicants state that this can be a time-consuming process, causing particular reliability challenges when the circumstances call for an immediate response.<sup>50</sup>

34. In proposing to manage curtailment that occurs at a local level, Applicants identify safeguards to ensure that Applicants cannot favor their own generation or otherwise harm competition by assuming this function. First, Applicants' actions in modifying a schedule are subject to Reliability Coordinator, SERC, and NERC oversight. As a Balancing Authority, Applicants may modify a schedule only in response to a legitimate, verifiable reliability event, not for competitive purposes. Second, the customer, the ITO, and the Reliability Coordinator will receive real-time communication through the scheduling system that the schedule will be modified and the reliability reasons for such modification. This will provide the affected party with the means to follow up on and audit Applicants' decision-making process, if necessary. Third, Applicants propose to post statistics regarding such curtailments on OASIS, to ensure transparency and independent oversight by all customers. Fourth, TranServ, as the ITO, will remain responsible for granting transmission service, including schedule approval and modification as the transmission provider. Applicants submit that, taken together, these measures make certain that Applicants will have no opportunity to harm competition by assuming these additional Balancing Authority functions.<sup>51</sup>

35. Applicants also object to East Kentucky's concern over ITO involvement in transmission system-to-transmission-system issues. Applicants state that East Kentucky is concerned that requests for new interconnections pursuant to the parties' interconnection agreement are currently negotiated directly between the parties, without the ITO playing a role. Applicants note that this is the first time East Kentucky has mentioned such concerns. Applicants state that when Applicants withdrew from MISO, they proposed the ITO in order to administer the terms of the OATT and ensure that transmission service is provided in an open and transparent manner. Applicants state that the ITO's functions have never included oversight for the transmission system-to-transmission system issues addressed by the interconnection agreement, which Applicants describe as physical interconnection issues such as metering, equipment operation, and identification of the parties' transmission assets at a given interconnection point. Applicants state that they did not propose, nor did the Commission ever require, that the ITO have a role in such issues. Applicants claim that besides stating a general belief that transmission system-to-transmission system issues could have an influence on transmission service, East Kentucky cites no specific incident or concern that requires

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 10-11.

modification of the status quo with regard to the interconnection agreement.<sup>52</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>53</sup> the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.<sup>54</sup> We accept Applicants' answer because it provides information that assisted us in our decision-making process.

##### **B. Substantive Matters**

###### **1. Whether Applicants' Proposal is Consistent with the Requirements in the Merger Order and Withdrawal Order**

37. As discussed below, we find that, subject to certain conditions, the arrangement with TranServ likewise satisfies the requirements in the Merger Order and Withdrawal Order. Regarding horizontal competition concerns, in the Merger Order the Commission found that Applicants' participation in MISO, by making available transmission service at non-pancaked rates, increased the number of suppliers able to reach the KU requirements customers' destination market, thereby expanding the geographic scope of the market and adequately lowering market concentration. Thus, the Commission conditioned its approval of Applicants' merger on their participation in MISO.<sup>55</sup> Regarding vertical competition concerns, in the Merger Order the Commission outlined five specific areas where an independent entity can mitigate transmission-related vertical market power: determining system expansion, a lack of economic stake in maintaining congested interfaces, eliminating the potential for the strategic use of the transmission owner's priority to use internal system capacity for native load, eliminating the incentive

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<sup>52</sup> *Id.* at 12.

<sup>53</sup> 18 C.F.R. § 385.214 (2011).

<sup>54</sup> *Id.* § 385.213(a)(2).

<sup>55</sup> Merger Order, 82 FERC at 62,214.

to engage in strategic curtailments of generation owned by the transmission owner's generation service competitors, and lack of incentive to game OASIS.<sup>56</sup>

38. In the Withdrawal Order, the Commission found that Applicants' ITO proposal (after revision and in combination with the Reliability Coordinator arrangement with TVA) satisfied the vertical market power concerns in these five areas, and therefore met the Commission's merger requirements in Docket No. EC98-2-000.<sup>57</sup> The Commission also conditionally accepted Applicants' proposed arrangement for maintaining rate pancaking on their withdrawal from MISO to satisfy horizontal market power concerns.<sup>58</sup>

39. Applicants' proposal does not have an adverse impact on horizontal market power or on rates or regulation. Applicants' proposed change in the entity serving as ITO and certain of the ITO functions in no way implicate the Applicants' Commission approved

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<sup>56</sup> Merger Order, 82 FERC at 62,222, n.39:

[I]f properly structured, an ISO . . . can improve the process for determining system expansion needs because that process will no longer be dominated by a transmission operator that also owns generation assets. A properly structured ISO would have no economic stake in maintaining congested interfaces. Moreover, an ISO could eliminate the potential for the strategic use of the transmission owner's priority to use internal system capacity for native load. The ISO could also eliminate the incentive to engage in strategic curtailments of generation owned by the transmission operator's generation service competitors. Also, any incentives for gaming OASIS operations could be removed. These benefits will promote generation entry and competition because the affected markets will be perceived by potential entrants as fairer as a result of the transmission system no longer being controlled by their generation service competitors.

<sup>57</sup> Withdrawal Order, 114 FERC 61,282 at P 80-81.

<sup>58</sup> See Withdrawal Order, 114 FERC ¶ 61,282 at P 108-119 (finding that Applicants' rate proposal addresses concerns regarding horizontal market power); see also *E.ON U.S. LLC*, 116 FERC ¶ 61,019 (2006) (conditionally accepting Applicants' proposal on compliance); *E.ON U.S. LLC*, Docket Nos. ER06-20-004 and ER06-20-005, (Aug. 23, 2006) (unpublished letter order) (accepting Applicants' proposal on compliance, including a rate schedule with KU requirements customers).

rate de-pancaking arrangement. Therefore, we find that Applicants' proposal continues to satisfy the Commission's concerns with regard to horizontal competition. With respect to rates, we note Applicants' statement that their proposal to employ TranServ represents a cost savings to customers over the current arrangement with SPP. With regard to regulation, we note that Applicants' proposal presents no change in Applicants' current federal/state regulatory obligations.

40. With respect to vertical market power, TranServ as the ITO will be independent from Applicants, transmission customers, wholesale power customers, and any other Market Participants.<sup>59</sup> Applicants will have no veto authority over TranServ's personnel decisions.<sup>60</sup> Compensation disputes will be adjudicated before the Commission.<sup>61</sup> In addition, TranServ will submit a report to the Commission every six months, describing any stakeholder concerns and the ITO's responses, and any issues or OATT provisions that hinder the ITO's performance.<sup>62</sup> In addition, Applicants have not proposed any changes to TVA's role as Reliability Coordinator, as described in Applicants' OATT and as approved in the Withdrawal Order.<sup>63</sup> As noted above, the Commission outlined five specific areas where an independent entity such as an independent system operator (ISO) can mitigate transmission-related vertical market power.<sup>64</sup> We consider each of these issues here.<sup>65</sup>

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<sup>59</sup> See proposed Attachment P (Functions of the Reliability Coordinator and the ITO), section 3 (Functions of the ITO), section 3.3 (Independence).

<sup>60</sup> See ITO Agreement, section 2.1 (TranServ Personnel).

<sup>61</sup> See *id.*, section 3.6 (Compensation Disputes).

<sup>62</sup> See proposed Attachment P (Functions of the Reliability Coordinator and the ITO), section 3 (Functions of the ITO), section 3.2 (General Functions), 3.2.11 (providing for and describing the contents of ITO reports to the Commission every six months).

<sup>63</sup> TVA will no longer be contacted regarding curtailments at the local level, below the view of the interchange distribution calculator. As described by Applicants, TVA did not believe it was required to be involved, and the change formalizes TVA's non-involvement.

<sup>64</sup> Merger Order, 82 FERC at 62,222, n.39.

<sup>65</sup> We note that our analysis in this section presumes that Applicants will satisfy the compliance directives set forth herein.

a. **System Expansion**

41. In the Merger Order, the Commission found that an ISO can improve the process for determining system expansion needs because that process would not be dominated by a transmission operator that also owns generation assets.<sup>66</sup> In the Withdrawal Order, the Commission required Applicants to modify their proposed allocation of functions listed in Attachment L of their OATT and in all related agreements to give the entity serving as ITO the same authority over Applicants' transmission planning duties that MISO had at that time.<sup>67</sup> Specifically, the Commission required Applicants to assign to the ITO approval authority over all models, planning criteria, study criteria, plans, studies, the methodology for calculating ATC, and any inputs or numerical values provided by Applicants to the same extent as MISO had authority over these matters at that time.<sup>68</sup>

42. Additionally, the Commission stated that while the Reliability Coordinator may retain authority to certify transmission plans for reliability purposes, the ITO must have ultimate review and approval authority over such planning functions to the same extent as MISO had at that time.<sup>69</sup> Applicants submitted a compliance filing on July 19, 2006 to address the Commission's requirements, and the compliance filing was subsequently accepted by the Commission.<sup>70</sup>

43. Our review of the proposal's provisions governing long-term planning on Applicants' system indicates that TranServ will continue to have the same planning authority that SPP currently has as ITO.<sup>71</sup> We reject East Kentucky's argument (filed in Docket No. EC98-2-000) that the ITO should handle transmission system-to-transmission system interconnection issues. Nothing in the Merger Order or Withdrawal Order

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<sup>66</sup> Merger Order, 82 FERC at ¶ 62,222, n.39.

<sup>67</sup> Withdrawal Order, 114 FERC ¶ 61,282 at P 86.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See *Louisville Gas and Electric Co.*, Docket Nos. ER06-20-004 and ER06-20-005 (Aug. 23, 2006) (unpublished letter order).

<sup>71</sup> The blackline version of Attachment P (Functions of the Reliability Coordinator and the ITO), proposed Appendix 2 (Division of Responsibilities for the Planning Function), shows that TranServ's planning authority as ITO is unchanged from SPP's planning authority as ITO.

requires the ITO to handle such issues. Therefore, we find that Applicants' proposal adequately addresses concerns regarding system expansion.

**b. Maintenance of Congested Interfaces**

44. In the Withdrawal Order the Commission conditionally approved Applicants proposal on the basis that SPP and TVA, as entities independent from Applicants, would perform functions that take away Applicants' ability to maintain congested interfaces.<sup>72</sup> Specifically, the Commission directed that SPP as ITO would calculate ATC and Total Transmission Capability and would be responsible for ensuring that ATC values are calculated on a nondiscriminatory basis consistent with the ATC methodology in the Applicants' OATT. SPP would also validate interchange schedules, including verification of valid sources, sinks and transmission arrangements for such schedules.<sup>73</sup>

45. Additionally, the Commission determined that TVA, as Reliability Coordinator, would be responsible for coordination of the interfaces between Applicants' system and those of MISO and PJM Interconnection, LLC under the Joint Reliability Agreement. The Commission concluded that neither SPP nor TVA would benefit from higher prices in Applicants' markets, and, therefore SPP and TVA do not have the incentive to maintain congested interfaces on Applicants' system for the purpose of creating higher prices in Applicants' markets.<sup>74</sup>

46. Our review of the proposal indicates that TranServ will continue to calculate and post ATC in the same manner that SPP does currently as ITO.<sup>75</sup> Under the proposal, TranServ as ITO will not approve interchange schedules, as SPP as ITO did. Instead, Applicants will approve interchange schedules, and TranServ will monitor and validate them.<sup>76</sup> We find this change is consistent with the Merger Order and Withdrawal Order

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<sup>72</sup> Withdrawal Order, 114 FERC ¶ 61,282 at P 89.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> The blackline version of proposed Appendix 1 (Division of Responsibility for Transmission Service and Interchange) to Attachment P (Functions of the Reliability Coordinator and the ITO) shows that TranServ's authority over calculating and posting ATC as ITO is unchanged from SPP's authority as ITO.

<sup>76</sup> Proposed Appendix 5 (Balancing Authority Functions Performed) of Attachment P (Functions of the Reliability Coordinator and the ITO) provides that

requirements. NERC Reliability Standards state that Balancing Authorities are to approve interchange transactions,<sup>77</sup> and Applicants are the Balancing Authority for their system. We agree with Applicants that approving interchange transactions is primarily a matching function, ensuring that the adjacent Balancing Authority and Applicants have the same schedule in their systems, and does not give Applicants discretion over transmission service. Therefore, we find that this change is consistent with the Merger Order and Withdrawal Order. In addition, because TranServ, like SPP and TVA, would not benefit from higher prices in Applicants' markets, we find that the proposal does not provide an incentive to maintain congested interfaces on Applicants' transmission system.

c. **Transmission Provider's Use of its Internal System Capacity**

47. In the Withdrawal Order, the Commission conditionally approved Applicants' proposal on the basis that SPP, as an independent entity separate from Applicants and market participants, would perform functions that take away Applicants' ability to improperly use their native load priority to make off system sales. Specifically, SPP would receive and approve or deny all transmission service requests, as well as calculate and post ATC. SPP would also validate interchange schedules, including verification of valid sinks and transmission arrangements for such schedules. The Commission concluded that as an independent entity, SPP, like MISO, would have no incentive to facilitate any such abuse.<sup>78</sup>

48. As discussed above, our review of the proposal indicates that TranServ will be responsible for receiving and approving or denying all transmission service requests, calculating and posting ATC in the same manner that SPP does currently, and will monitor and validate interchange schedules.<sup>79</sup> Additionally, TranServ's actions are subject to audit by SERC and NERC. Thus we find that, as an independent entity, TranServ will have no incentive to facilitate any abuse relating to Applicants' use of internal system capacity.

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TranServ as ITO will monitor and validate interchange schedules, and Applicants will approve them.

<sup>77</sup> Subsequent to the date of the Withdrawal Order, NERC standards have become mandatory rather than voluntary.

<sup>78</sup> Withdrawal Order, 114 FERC ¶ 61,282 at P 91.

<sup>79</sup> Applicants' August 30 Filing at 23.

**d. Curtailments**

49. In the Merger Order, the Commission found that an independent entity such as an ISO could eliminate the incentive to engage in strategic curtailments of generation owned by the transmission owner's generation service competitors. The Commission found that SPP, serving as ITO, adequately addressed concerns about strategic curtailments. Under Applicants' proposal, TVA, not Applicants, will continue to have the sole ability to initiate the curtailment of generation by initiating TLRs.<sup>80</sup> The functions that Applicants propose to assume do not allow for discretion, in that they are governed by NERC Reliability Standards concerning Balancing Authorities. The relevant NERC Reliability Standard provides that the Regional Coordinator initiates all TLRs, whether inter-regional or intra-regional.<sup>81</sup> Accordingly, we find that the proposed changes comply with the Merger Order and Withdrawal Order and continue to mitigate Applicants' horizontal and vertical market power.

50. We note that in contrast to Applicants' agreement with SPP as ITO, TLR directives will be handed down from the Reliability Coordinator to Applicants rather than to the ITO. For interchange transactions that are causing an overload in the Applicants' system, TVA will notify Applicants of the specific transaction(s) and amount(s) to be curtailed. For overloads not caused by interchange transactions (i.e., overloads caused by transactions that source and sink within the Applicants' Balancing Authority, including network and native load), TVA will notify Applicants of the total amount of reduction needed, and Applicants will then use curtailment and/or redispatch and, if necessary, load shedding, as appropriate, to mitigate the overload, consistent with the curtailment priorities in their OATT.<sup>82</sup> We find that Applicants' implementation of these curtailments, as the Balancing Authority, removes the operational inefficiency under the previous arrangement without significantly reducing the ITO's ability to prevent Applicants from exercising market power.

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<sup>80</sup> In response to Kentucky Municipals' and East Kentucky's concerns, we note that Applicants' proposal does not give Applicants the ability to initiate TLRs.

<sup>81</sup> See NERC Reliability Standard IRO-006-EAST-1 (Regional Coordinator will initiate TLR procedures resulting in one or more of the following actions: Inter-area redispatch of generation, Intra-area redispatch of generation, reconfiguration of the transmission system, demand side management, load shedding, etc.).

<sup>82</sup> Curtailment procedures and priorities are set out in section 13.6 of Applicants' OATT.



51. In regard to Applicants' statements that TVA will not be involved in a curtailment that occurs at the local level,<sup>83</sup> the Commission understands these statements as referring to curtailments on non-Bulk Electric System<sup>84</sup> facilities. Although NERC Reliability Standards do not govern such facilities, we find that Applicants' proposal to post on their OASIS details of any curtailments on these facilities will provide adequate transparency and oversight for the ITO and customers because they will have the real-time notice of Applicants' actions and they will have the ability to make these actions the subject of audits or complaints.<sup>85</sup>

**e. ATC Posting**

52. In the Withdrawal Order, the Commission stated that an OASIS operator that also owns generation assets would have the ability and incentive to understate the calculation of ATC posted on its OASIS in order to foreclose rival generators. We find Applicants' proposal adequately addresses this concern.

53. Under Applicants' proposal, TranServ will be responsible for the review of transmission service requests, eTag action and statistics, ATC calculation, and the posting of ATC on OASIS, in accordance with SPP's current responsibilities as ITO. TranServ, as an independent entity, has no incentive to manipulate OASIS operations. In addition, TVA will review Applicants' Base Case Model used by TranServ for calculating ATC for reliability purposes. Finally, TVA, not Applicants, will determine Available Flowgate Capacity values and flowgate allocations, and TranServ will have the authority to review these values.

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<sup>83</sup> In the Applicants' August 30 Filing at 16, Applicants state, "[h]owever, when the curtailment will occur at a local level (usually 69-kV and below), the RC [Reliability Coordinator] does not believe that it has an obligation to step in – the RC [Reliability Coordinator] understands that resolution of such issues rest with the BA [Balancing Authority]."

<sup>84</sup> The NERC's definition of bulk electric system states "[a]s defined by the Regional Reliability Organization, the electrical generation resources, transmission lines, interconnections with neighboring systems, and associated equipment, generally operated at voltages of 100 kV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition." NERC is currently revising this definition. *See Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 (2010).

<sup>85</sup> *See Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 542, 392 U.S. App. D.C. 339 (D.C. Cir. 2010).

2. **Whether the Proposal is Just and Reasonable and Not Unduly Discriminatory or Preferential**

54. Applicants' proposal is consistent with the ITO arrangement conditionally approved in the Withdrawal Order as just and reasonable, not unduly discriminatory, and consistent with or superior to the *pro forma* OATT.<sup>86</sup>

55. We reject Kentucky Municipals' request (filed in Docket No. ER11-4396-000) that we make our acceptance of the filing conditional on Applicants' abiding by all statements in Applicants' August 30 transmittal letter.<sup>87</sup> Applicants' OATT provisions, rather than Applicants' statements in the transmittal letter, are binding on Applicants.<sup>88</sup> We note that of Kentucky Municipals' three examples of transmittal letter statements that should be binding on Applicants, two of the three examples are reflected in Applicants' proposed OATT provisions, while one is not.<sup>89</sup> Below we direct Applicants to revise the

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<sup>86</sup> Withdrawal Order, 114 FERC ¶ 61,282 at P 91.

<sup>87</sup> See Kentucky Municipals September 20, 2011 Comments at 5-6 (citing Applicants' August 30 Filing at 3, 22).

<sup>88</sup> Applicants, as the NERC-certified Balancing Authority, must also abide by all applicable NERC Reliability Standards.

<sup>89</sup> With one partial exception, the three transmittal letter statements cited by Kentucky Municipals are reflected in provisions in proposed Attachment P (Functions of the Reliability Coordinator and the ITO). Specifically, the statement that Applicants' ability to curtail transactions is limited to instances where it is necessary to implement TLRs, as described in the NERC IRO Standards, is reflected in proposed Attachment P, Appendix 4 (Division of Responsibilities for the Reliability Function), section 2.1 (Reliability Coordinator Functions) and section 2.2 (Transmission Owner Responsibilities) (providing TVA will determine, direct, and document appropriate actions to be taken in accordance with NERC Reliability Standards, and Applicants will receive reliability alerts from TVA and follow TVA directives for corrective actions). The statement that TranServ will have the same planning authority that SPP has had as ITO is reflected in proposed Attachment P, Appendix 2 (Division of Responsibilities for the Planning Function) (providing that the ITO's planning authority is unchanged from what it is with SPP as the ITO). However, Applicants' statement in the transmittal letter that the Reliability Coordinator and the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment is only partially reflected in the proposed OATT revisions. Attachment P, Appendix 5 (Balancing Authority Functions Performed), section 1 (Balancing Authority Functions performed by the Transmission Owner) states that Applicants will provide real-time operational

(continued...)

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proposed OATT provisions to include this statement. With the clarifying changes directed herein, Applicants' proposed OATT revisions are just and reasonable and adequately formalize the relative responsibilities of Applicants and TranServ, and are otherwise consistent with the Merger Order and Withdrawal Order.

56. While we find the overall proposed ITO arrangement to be just, reasonable, and not unduly discriminatory or preferential, we find certain aspects of the proposal to be unclear, and therefore we require Applicants to submit, within 30 days of the issuance of this order, a revised proposal that addresses the following issues.

57. First, in the Applicants' August 30 Filing, Applicants state that TranServ will not maintain a 24/7 call center. Sections 4 and 4.1 of Appendix A (Independent Transmission Organization Service Specification) of the ITO Agreement provide that TranServ personnel will provide 24-hour support, and that after normal business hours the support is by telephone, with TranServ personnel responding within 30 minutes of notification of a "critical" or "high" importance event. In contrast, Applicants' Attachment P at section 1 of Appendix 1 (Division of Responsibility for Transmission Service and Interchange) states that consistent with the OATT, "the ITO will notify Transmission Customers of curtailments and interruptions of TSRs [transmission service requests]." Curtailments can occur outside of regular business hours, but the provision does not address how TranServ can notify a customer of a curtailment that occurs outside of TranServ's business hours, given that TranServ's personnel may not respond for 30 minutes. Therefore, we direct Applicants to file, in a compliance filing to be submitted within 30 days of the date of this order, revisions to Attachment P or the ITO Agreement to clarify TranServ's role in notifying customers of curtailments that occur outside of regular business hours.

58. Second, Applicants' Attachment P, Appendix 5 (Balancing Authority Functions Performed) states: "The Transmission Owner and ITO will split the functional responsibilities for the Balancing Authority, as defined in *Version 2* of the NERC Reliability Functional Model, as follows . . ." [Italics added.] However, the current NERC Reliability Functional Model is Version 5.<sup>90</sup> Therefore, we direct Applicants to include in their compliance filing tariff revisions that refer to Version 5 instead of

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information to TVA for monitoring, but it does not state that the customer will receive real-time communications regarding the curtailed schedule and the reasons for the curtailment. As stated below, we direct Applicants to file revised language addressing this omission, within 30 days of the issuance of this order.

<sup>90</sup> NERC posts the current version of the Reliability Functional Model: [http://www.nerc.com/files/Functional\\_Model\\_V5\\_Final\\_2009Dec1.pdf](http://www.nerc.com/files/Functional_Model_V5_Final_2009Dec1.pdf).

Version 2. In addition, if Version 5 differs from Version 2 in any way that affects the functional responsibilities for the Balancing Authority, Applicants must revise the responsibilities to reflect the difference, and must describe and explain the revisions in the transmittal letter.

59. Third, as noted above, Applicants state in their transmittal letter that the customer and the ITO, and the Reliability Coordinator will receive real-time communications regarding a schedule curtailment and the reasons for the curtailment through the scheduling system.<sup>91</sup> However, this statement is not reflected in the proposed OATT provisions. Therefore, we direct Applicants to include in their compliance filing tariff revisions providing that the customer, the ITO, and the Reliability Coordinator will receive real-time communications regarding a schedule curtailment and the reasons for the curtailment.

60. Finally, we will grant waiver of the Commission's advance notice requirement to permit an effective date of September 1, 2012 for the proposed OATT revisions.<sup>92</sup>

The Commission orders:

(A) Applicants' proposal to appoint TranServ as their ITO and change certain aspects of the ITO arrangement is hereby conditionally approved, as discussed in the body of this order.

(B) Applicants' tariff revisions are hereby conditionally accepted to become effective September 1, 2012, as requested, as discussed in the body of this order.

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<sup>91</sup> Applicants' August 30 Filing at 16.

<sup>92</sup> See *PSI Energy, Inc.*, 56 FERC ¶ 61,237, at 61,911 (1991) (waiving 120-day advance notice requirement); see also *Trans Bay Cable LLC*, 112 FERC ¶ 61,095, at P 2-3, 32 (2005).

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(C) Applicants 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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company

Docket Nos. ER06-847-000 and  
ER05-1235-001

ORDER CONDITIONALLY ACCEPTING TRANSMISSION SERVICE  
COORDINATOR AGREEMENT AND COMPLIANCE FILING

(Issued June 15, 2006)

1. In this order, we conditionally accept MidAmerican Energy Company's (MidAmerican) filing. MidAmerican's filing consists of an executed Transmission Service Coordinator (TSC) Agreement with TranServ International, Inc. (TranServ) filed under Federal Power Act (FPA) section 205,<sup>1</sup> and modifications to Attachment K of MidAmerican's Open Access Transmission Tariff (OATT) required by the Commission's order dated December 16, 2005.<sup>2</sup>

**Background**

2. On July 22, 2005, MidAmerican filed to add Attachment K to its OATT to implement a proposal to contract with a TSC that would administer various OATT-related functions with respect to transmission service provided over MidAmerican's transmission system.<sup>3</sup> Generally, MidAmerican's filing proposed that the TSC would assume responsibility for, among other things: (1) evaluation and approval of all transmission service requests; (2) calculation of total transfer capability (TTC) and available transmission capacity (ATC) not otherwise calculated by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO); (3) operation and

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> *MidAmerican Energy Company*, 113 FERC ¶ 61,274 (2005) (December 16 Order).

<sup>3</sup> MidAmerican will remain the owner and operator of the transmission system, and will continue to have ultimate responsibility for providing transmission service under its OATT, including sole authority to amend its OATT pursuant to Federal Power Act section 205, and for providing transmission service under grandfathered agreements.

administration of MidAmerican's Open Access Same-Time Information System (OASIS); (4) evaluation, processing and approval of all generation interconnection requests, and performance and/or oversight of related interconnection studies;<sup>4</sup> and (5) coordination of transmission planning.

3. Since MidAmerican had not yet contracted with anyone to become its TSC, MidAmerican's filing contained a draft agreement intended to serve as the basis for negotiations with parties interested in becoming MidAmerican's TSC. MidAmerican stated that the filing would address any residual concerns about the exercise of transmission market power that were expressed by the Commission in an order dated June 1, 2005 regarding MidAmerican's updated market power analysis<sup>5</sup> and would address concerns as to compliance with its standards of conduct raised in an audit report in Docket No. PA04-18-000.<sup>6</sup>

4. In the December 16 Order, the Commission conditionally accepted MidAmerican's proposal subject to MidAmerican making certain modifications to Attachment K to its OATT to address concerns regarding the TSC's independence and MidAmerican's compliance with the audit report. These modifications included, among other things, having the TSC perform the system impact studies from the date it commences service, modifying the reporting requirements to eliminate prior review by MidAmerican of TSC reports, continuing all third party audits identified in the audit report for at least the first twelve months of TSC operation, and ensuring that all employees and directors of the TSC are independent of any market participant and adhere to the Commission's Standards of Conduct. The Commission required that MidAmerican make these changes in a compliance filing.

5. Additionally, because MidAmerican only submitted a draft TSC Agreement in its July 22 filing, the Commission required MidAmerican file the final TSC Agreement with the Commission pursuant to FPA section 205 after it has selected an entity to be its TSC. The Commission also explained that the executed TSC Agreement would be made a part of MidAmerican's OATT.

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<sup>4</sup> As an independent entity, the TSC would administer generator requests to interconnect with the MidAmerican system. The TSC would be responsible for implementing and applying MidAmerican's generator interconnection procedures in accordance with MidAmerican's OATT, queuing all such requests, performing studies necessary for such requests, and providing all notices related to such requests.

<sup>5</sup> *MidAmerican Energy Company*, 111 FERC ¶ 61,320 at P 28-29 (2005).

<sup>6</sup> *MidAmerican Energy Company*, 112 FERC ¶ 61,346 (2005).

6. On April 7, 2006, MidAmerican filed under FPA section 205 executed TSC Agreement with TranServ and a compliance filing addressing the modifications to Attachment K to MidAmerican's OATT that were required by the December 16 Order. MidAmerican's filing is discussed in more detail below.

### **Notice and Responsive Pleadings**

7. Notice of MidAmerican's filing was published in the *Federal Register*, 71 Fed. Reg. 21,008 (2006), with protests and interventions due on or before April 28, 2006. Dairyland Power Cooperative (Dairyland), Participants in the TSC Project – Western MAPP Region (the Participants),<sup>7</sup> and TranServ filed timely motions to intervene and comments in support of the filing. Additionally, the Municipal Energy Agency of Nebraska (MEAN) and the Midwest Municipal Transmission Group (MMTG) filed a joint motion to intervene and comments in support. Great River Energy (Great River) filed a motion to intervene out-of-time raising no substantive issues.

8. The Midwest ISO protested the filing<sup>8</sup> and subsequently supplemented its protest on June 5, 2006. MidAmerican, TranServ and the Participants filed answers to the Midwest ISO's protest. The Midwest ISO filed a further response on May 26, 2006.

### **Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene in Docket No. ER06-847-000 serve to make the entities that filed them parties to this proceeding. We will also grant the untimely motion to intervene filed by Great River given the early stage of this proceeding, its interests, and the absence of any undue burden or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the

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<sup>7</sup> The Participants in the TSC Project – Western MAPP Region are: Basin Electric Power Cooperative, Corn Belt Power Cooperative, Dairyland Power Cooperative, Heartland Consumers Power District, Lincoln Electric System, MidAmerican Energy Company, Minnkota Power Cooperative, Muscatine Power and Water, Nebraska Public Power District, NorthWestern Energy, Omaha Public Power District, Rochester Public Utilities, and the Western Area Power Administration.

<sup>8</sup> We note that Midwest ISO did not move to intervene in Docket No. ER06-847-000. The filing of its protest does not make Midwest ISO a party in that docket. See 18 C.F.R. § 385.211(a)(2) (2005).



decisional authority. We will accept the answers of MidAmerican, TranServ, and the Participants because their answers have provided information that assisted us in our decision-making process. We are not persuaded to accept the Midwest ISO's May 26, 2006 answer, dealing exclusively with an issue we do not consider in this order, and will, therefore, reject it.

**B. Selection of TranServ as TSC**

**1. Proposal**

11. In its filing, MidAmerican describes the Request for Proposals (RFP) process by which it selected TranServ to serve as the TSC. MidAmerican states that the criteria in the RFP included: independence from MidAmerican and other market participants, having experience in the areas covered by Attachment K, and being able to provide the Attachment K services on an efficient and cost-effective basis. MidAmerican found that TranServ's proposal provided the best combination of expertise and cost effectiveness. Following the selection of TranServ as the TSC, MidAmerican has been meeting with key stakeholders, including wholesale transmission customers, neighboring transmission owners, the Midwest ISO and MAPP COR,<sup>9</sup> to address any concerns with the selection of TranServ and to coordinate the transfer of obligations to TranServ.

12. MidAmerican states that TranServ is affiliated with Open Access Technology Inc. (OATI), a software company, but is not affiliated with any market participant or transmission provider. MidAmerican contends that TranServ staff has experience developing computer systems used by control area and transmission operators to calculate ATC, to schedule and curtail transactions and to manage E-tags, energy accounting and OASIS.

13. Regarding personnel, MidAmerican states that as of the date that TranServ begins providing services under Attachment K, those responsible for the day-to-day management of TranServ will not provide any other services to any market participant, as defined in Attachment K. Moreover, TranServ's directors, officers, employees and subcontractors shall be considered as employees engaged in transmission system operations or reliability functions of MidAmerican and will comply with all restrictions related to such status.

14. MidAmerican states that TranServ will utilize subcontractors to perform some of the work required of the TSC to augment its own expertise and to keep costs low. Specifically, TranServ intends to use OATI for hardware and software support, firms such as Siemens PTI, Excel Engineering, and Utility System Efficiencies to provide

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<sup>9</sup> MAPP COR is the contractor to MAPP that administers the MAPP Restated Agreement, the contract that governs the MAPP organization.

support for facilities studies and system impact studies, and specific MAPP COR personnel to consult with in regard to transmission planning matters during the transition period prior to the TSC operations.<sup>10</sup>

## **2. Comments**

15. TranServ states that it will use software automation to process transmission service requests and E-tags, thereby reducing the amount of human interaction in the MidAmerican OATT service request process and eliminating the opportunity for operating discretion. TranServ also states that it is committed to developing and managing an open stakeholder process that will solicit market participants' views on such issues as changes to business practices, sharing of benefits of economic facility upgrades, or voicing concerns about TSC or MidAmerican's performance. Further, TranServ states that it will also participate in regional processes to coordinate, monitor or attend MAPP, the Midwest ISO or Midwest Reliability Organization activities necessary to meet the open planning process and tariff administration requirements identified in MidAmerican's OATT Attachment K.

16. Dairyland, the Participants, MEAN and MMTG support MidAmerican's proposal to transfer its administrative functions to a TSC. They state in their comments that they are exploring the possibility of expanding the TSC to encompass other transmission systems in the region.

17. Dairyland, Participants, MEAN and MMTG are comfortable with the selection of TranServ as the TSC because they believe TranServ has the knowledge and experience to undertake the role of MidAmerican's TSC. Dairyland and Participants add that they believe TranServ has the necessary independence to undertake its role, while MEAN and MMTG state that they are generally supportive of the concept of independence that underlies the TSC proposal.

18. Additionally, Dairyland urges the Commission to recognize that MidAmerican's process and innovative choice of TranServ to be the TSC has the potential to address tariff administrative functions in a cost effective, reliable manner. Similarly, MEAN and MMTG state that they see the potential benefits of giving a new player in the field the opportunity to show that it can provide independent transmission coordinator services in a cost-effective manner. MEAN and MMTG add that, even though MidAmerican may terminate the TSC Agreement with TranServ at the end of the initial three year term, in

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<sup>10</sup> MidAmerican states that this arrangement to work with specific MAPP COR personnel will be terminated as of the date that TranServ begins operation.

the meantime, “entry of a new supplier into the market for such services may spur existing providers of such services to improve their level of service and attendant costs.”<sup>11</sup>

19. The Midwest ISO protests the terms and conditions of MidAmerican’s filing to the extent that the entity selected is not regulated under the FPA. The Midwest ISO contends that the activities of both TranServ and OATI are jurisdictional and that the interlocking officers and directors of both companies are subject to FPA requirements for Commission approval.

### **3. Answers**

20. MidAmerican notes that not a single customer or neighboring transmission owner raised any concerns about the selection of TranServ as the TSC, and contends that the Midwest ISO protested the filing because it was not selected as the TSC. Notwithstanding the Midwest ISO’s protest, MidAmerican asserts that TranServ has the independence, expertise and confidence of the customers to be the TSC. MidAmerican states that the Midwest ISO has not relayed to it or to the Commission in the protest any functional, operational or reliability concerns with MidAmerican’s selection of the TSC.

21. In response to the Midwest ISO’s protest, the Participants note that the Commission required in the December 16 Order that the TSC Agreement be filed under FPA section 205, and, thus, the Commission retains authority over the provision of transmission service under MidAmerican’s OATT and over the terms and conditions of the executed TSC Agreement. Thus, the Participants conclude that it is unnecessary for the Commission to require that the TSC be a jurisdictional public utility. Moreover, the Participants assert that the Midwest ISO’s protest constitutes an untimely request for rehearing of the December 16 Order, and consequently the Commission should reject the Midwest ISO’s argument that the TSC should be a public utility subject to the Commission’s jurisdiction.

### **4. Commission Determination**

22. We are not persuaded that TranServ lacks the required technical expertise to serve as MidAmerican’s TSC, and MidAmerican has also appropriately required TranServ to certify its readiness prior to actual commencement of service. We discuss the issue of TranServ’s independence below.

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<sup>11</sup> MEAN and MMTG at 2, n.2 (noting the Commission’s concern about accountability of existing independent system operators (ISOs) and regional transmission organizations (RTOs) with respect to their administrative costs).

23. We find that we need not decide whether TranServ is a public utility in order to accept the TSC Agreement and the compliance filing, and thus we will not address that issue at this time.<sup>12</sup> Similarly, the activities of OATI (except as they may relate to TranServ's independence) are not relevant to the outcome of this proceeding, and we need not examine them here.

### **C. TranServ's Independence**

#### **1. Proposal**

24. MidAmerican states that TranServ has been structured to meet the criteria for independence under MidAmerican's TSC proposal as required under Attachment K. For example, TranServ's directors, officers, employees and subcontractors shall be considered as employees engaged in transmission system operations or reliability functions of MidAmerican, and will be required to comply with all restrictions relating to information sharing and other relationships between employees engaged in merchant functions and those engaged in transmission functions.

#### **2. Comments**

25. TranServ states that it is independent operationally and financially from MidAmerican and market participants and has the necessary experience to perform the assigned tasks.<sup>13</sup> To further ensure its independence, TranServ proposes to take various additional steps including having the certificate of incorporation of the company prohibit TranServ from owning electric transmission, generation and distribution facilities and precluding market participants from owning shares of TranServ. Additionally, TranServ's Bylaws will, among other things, require that directors of TranServ be independent from market participants and require TranServ to maintain separate office space from any customer or affiliate of a customer. Moreover, TranServ's Bylaws will require TranServ to retain an independent compliance auditor to ensure ongoing compliance with the requirements to maintain financial independence from any market participant. TranServ also states that it will establish a Code of Business Conduct and Ethics.

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<sup>12</sup> MidAmerican did not seek such a ruling in its application. While TranServ's comments contain a brief footnote asserting that it is not a public utility, TranServ should file a petition for declaratory order if it seeks a ruling on this issue. *See* 18 C.F.R. §§ 381.302, 385.207 (2005).

<sup>13</sup> TranServ states that it will augment its own capabilities by contracting with industry leading providers of services and that these contractors will be under direct TranServ oversight and contractually bound to comply with the TranServ Code of Business Conduct and Ethics.

26. The Midwest ISO argues that TranServ is not independent because TranServ is affiliated with OATI,<sup>14</sup> which the Midwest ISO states should be considered a market participant. The Midwest ISO also asserts that OATI should be considered a market participant and public utility because it has assumed a position of power and control over the transmission systems of the Eastern Interconnection that exceeds that of any single transmission provider or transmission owner; it also claims that the reliability of the grid rests in private, unregulated hands unless the Commission claims jurisdiction.

27. The Midwest ISO states that OATI has attained this position of power because it is the sole software vendor that owns, maintains, and operates the North American Electric Reliability Council (NERC) Interchange Distribution Calculator (IDC) that is used to control tagged transmission transactions, and Transmission Loading Relief (TLR) responses to congestion in the Eastern Interconnection. The Midwest ISO also notes that OATI provides software development services to RTOs, such as the Physical Scheduling System provided to the Midwest ISO. The Midwest ISO states that OATI does not sell its software, but insists on retaining ownership of the software it develops for the industry which it can do because its monopoly position with regard to the IDC enables it to dominate the market for other key software applications used by the electric industry to provide transmission services.<sup>15</sup>

28. As an example of the potential conflict of interests, the Midwest ISO states that OATI has occasionally made changes to the tagging code in its IDC, and has simultaneously made changes to its software interface, but OATI did not notify competing software vendors or their customers of these changes. Consequently, the customers of competing software vendors found their tags rejected until the problem could be identified and changes made to the non-OATI software. The Midwest ISO argues that this is the software analogue of transmission owners selectively blocking access to the system to favor their own transactions, and the impact on the customer is the same whether the discrimination originates with the owner of the wires, or the owner of the software. The Midwest ISO maintains that this is similar to an example provided by the Commission as to what may constitute an unacceptable abuse:

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<sup>14</sup> Midwest ISO notes that the equity owners, principals, officers and (some) employees of TranServ are also equity owners, principals, officers and employees of OATI.

<sup>15</sup> For example, OATI is able to dominate the software to interface with the IDC so that users can enter E-tags for transmission transactions and OATI is also a digital certificate authority responsible for generating certificates used to secure access to OASIS sites by transmission customers and to market portals by market participants.

However, in an investigation of Transco, the Commission learned that there are instances in which a shared information technology function provided a marketing affiliate an undue preference. Specifically, a shared IT employee designed a software program for the marketing affiliate that gave the marketing affiliate access to the pipeline's mainframe databases and used the pipeline's modeling information to optimize the marketing affiliate's nominations on the pipeline's transmission system. In these circumstances, the IT employees were no longer "support" employees, and gave the marketing affiliate unduly preferential access to valuable transmission information.<sup>16]</sup>

29. The Midwest ISO also contends that OATI should be considered a public utility because, according to the Midwest ISO, OATI owns and operates jurisdictional facilities that are not only used for, but are vital to, the transmission of electric energy in interstate commerce. The Midwest ISO states that the IDC is a critical software application that enables transmission service and permits energy markets to function compatibly with non-market areas.<sup>17</sup> For example, the Midwest ISO explains that when the IDC goes down, transmission transactions must be "frozen" and controlled locally. Moreover, new tags for badly needed power transfers cannot be entered and transmission operators are not able to manage congestion under their pro forma OATTs because they cannot calculate the appropriate curtailment priorities or megawatt amounts to relieve congestion in an orderly manner.

30. The Midwest ISO states that the Commission has determined that "facilities" subject to its jurisdiction include more than mere physical plant. For example, contracts for the purchase and sale of wholesale electric energy make those who trade energy

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<sup>16</sup> Midwest ISO at 7, quoting *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 119 (2003) (footnote omitted), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *appeal docketed sub nom. Natural Gas Fuel Supply Corp. v. FERC*, No. 04-1183 (D.C. Cir.).

<sup>17</sup> Midwest ISO states that initially the IDC was a NERC contract project designed to assist transmission operators with tagged transactions to respond to TLRs and after the market to non-market congestion management process was developed by PJM and Midwest ISO, the IDC incorporated market flows and tagged transactions into its calculations. Midwest ISO states that it does not have access to the contract between NERC and OATI, but believes that the actual software and computer systems are owned and operated by OATI.

commodities subject to the Commission's regulation. In support of finding such hardware and software to be "facilities," the Midwest ISO notes that the Commission has recently recognized the nature of hardware and software used for transmission services. The Midwest ISO states that in Order No. 668 the Commission discussed allocating such hardware and software by function, stating in part:

Commenters note that the RTOs' primary function in the administration of transmission systems and the use of their hardware, software and communication equipment is more easily identifiable as transmission related. . . . Therefore, we have decided...[to] require RTOs and non-RTO public utilities to record the costs of maintaining these assets that are related to providing transmission services in Accounts 569.1, 569.2 and 569.3 as proposed.<sup>[18]</sup>

31. The Midwest ISO argues that, if the activities engaged in are jurisdictional under the FPA, the Commission may not excuse from regulation small entities or transactions that are otherwise jurisdictional unless the burdens of regulation yield a gain of trivial or no value. Moreover, the Midwest ISO states that the Commission may not apply a *de minimis* exemption simply because the cost of regulation exceeds its benefits.<sup>19</sup>

### 3. Answers

32. TranServ states that the Midwest ISO's contention that it is not independent appears to rest on the premise that its affiliate, OATI, should be deemed to be a market participant. TranServ asserts that it complies with the independence requirements set forth in Attachment K. Moreover, TranServ notes that the definition of market participant in Attachment K, which is virtually identical to the definition of market participant adopted in Order No. 2000,<sup>20</sup> provides that a market participant is an entity that directly or indirectly purchases, sells or brokers electric energy or provides ancillary services. Since OATI is a software company, TranServ states that OATI does not fit the definition of market participant as used in Attachment K and the Commission's *pro*

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<sup>18</sup> *Accounting and Financial Reporting for Public Utilities Including RTOs*, Order No. 668, FERC Stats. & Regs. ¶ 31,199 at P 34, 39 (2005), *reh'g denied*, Order No. 668-A, FERC Stats. & Regs. ¶ 31,215 (2006).

<sup>19</sup> Midwest ISO at 14 & n.12, *citing Alabama Power Co. v. Costle*, 636 F.2d 323, 357-58, 360-61 (D.C. Cir. 1979).

<sup>20</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,105 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

*forma* OATT in Order No. 2000. Thus, TranServ concludes that the Midwest ISO's argument should be summarily rejected. With respect to the Midwest ISO's contention that OATI is also a public utility, TranServ argues that the allegation is without merit, noting OATI is not a party to this proceeding.

33. MidAmerican contests the Midwest ISO's assertion that TranServ should not be considered independent because of TranServ's affiliation with OATI. MidAmerican states that the Midwest ISO is not using the term market participant as defined in Attachment K or as vetted as part of Order No. 2000. MidAmerican states that using the Midwest ISO's definition of market participant would render all software companies market participants, and, as a practical matter, that it would make little sense for OATI to favor MidAmerican or TranServ at the risk of jeopardizing business relationships with its large base of other customers across the country.

34. MidAmerican also states that the Midwest ISO's allegations about OATI and its performance are beyond the scope of this proceeding because they have nothing to do with MidAmerican's selection of TranServ as the TSC, and have no bearing on TranServ's ability to perform as the TSC.

#### **4. Commission Determination**

35. We find that TranServ is independent of market participants. OATI is not a market participant. OATI neither purchases, sells, or brokers electric energy nor provides ancillary services, as provided in Attachment K.<sup>21</sup> Further, the Midwest ISO has not persuaded us that OATI "has economic or financial interests that would be significantly affected by" MidAmerican's or TranServ's actions or decisions.<sup>22</sup> The fact that OATI's software happens to be commonly used by transmission providers to control tagged transmission transactions and TLR responses does not impair TranServ's independence. Moreover, the restrictions on TranServ's activities, as provided in Attachment K and, by extension, the Commission's Standards of Conduct, should ensure that TranServ will evenhandedly carry out its responsibilities as TSC.

#### **D. Other TSC Agreement Issues**

36. We conditionally accept the proposed TSC Agreement subject to MidAmerican making the modifications identified in this order. We find that certain provisions will need to be modified to be consistent with Commission precedent<sup>23</sup> or to ensure the TSC's

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<sup>21</sup> Attachment K at section 1.5.

<sup>22</sup> *Id.*

<sup>23</sup> See *Louisville Gas & Electric Company*, 114 FERC ¶ 61,282 (LG&E); *Entergy Services, Inc.*, 115 FERC ¶ 61,095 (2006) (*Entergy*).



independence. Specifically, in section 1.3 of the proposed TSC Agreement, TranServ will use certain “key personnel” listed on Attachment A to the TSC Agreement, which is signed by both MidAmerican and TranServ, in the performance of its duties under the TSC Agreement and Attachment K to the MidAmerican OATT. The Commission has expressed concern in other independent transmission coordinator proceedings with allowing the transmission provider to have veto authority over the key personnel used by the independent transmission coordinator as that may negatively affect the independence of the independent transmission coordinator.<sup>24</sup> Since no party has protested the key personnel agreed to by MidAmerican and TranServ, as currently provided in Attachment A, we conditionally accept Attachment A to the TSC Agreement subject to MidAmerican revising section 1.3 of the TSC Agreement and Attachment A to the TSC Agreement to state that, prospectively, MidAmerican will not have veto authority over any changes to the key personnel employed by TranServ to perform the functions under Attachment K and the TSC Agreement.<sup>25</sup>

37. Section 2.1 of the TSC Agreement states that service will be performed by personnel of TranServ or any agent or sub-contractor that is independent of MidAmerican. We require modification of this section to require that such personnel, agents and sub-contractors are also independent of other market participants.

38. Section 3.2 of the TSC Agreement requires TranServ to serve as the TSC for the remainder of 2006 and all of 2007 at fixed prices. For subsequent periods, TranServ would prepare a budget by July 1 for review and approval by MidAmerican, and the parties will attempt to agree on the budget by September 30.<sup>26</sup> Section 3.2 of the TSC Agreement states that, if the parties are unable to agree, then the following year’s budget will be based on the TSC’s actual expenses during the preceding calendar year escalated by certain price indices. We note that, in *Entergy*, the Commission expressed concern that the budgetary provisions must ensure the independence of the TSC and not allow the independent transmission coordinator’s compensation to be affected by its treatment of

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<sup>24</sup> *Entergy*, 115 FERC ¶ 61,095 at P 114.

<sup>25</sup> Section 19.2 of the TSC Agreement contains similar language providing MidAmerican with approval authority over the sub-contractors used by TranServ. We will require MidAmerican to modify section 19.2 to clarify that MidAmerican does not have veto authority over TranServ’s subcontractors. While it is understandable that MidAmerican would want to know the contractors working on its system, providing MidAmerican with veto authority over the sub-contractors used by TranServ could impair TranServ’s independence.

<sup>26</sup> Attachment K states that, if the parties are unable to agree, then either party may refer the matter to the Commission’s Dispute Resolution Service.

the transmission provider.<sup>27</sup> The Commission stated that no entity will perform the functions of an independent coordinator of transmission if the compensation is not adequate. Among other things, the Commission required that the transmission provider file with the Commission asking the Commission to resolve the dispute.<sup>28</sup> Accordingly, we clarify that, consistent with Attachment K, either party may refer the budgetary dispute to the Commission's Dispute Resolution Service at any time during the negotiation process. If the parties, even with the assistance of the Dispute Resolution Service, are unable to resolve the dispute by September 30 of a given year, we will require MidAmerican to file with the Commission by October 15 of the calendar year, a request that the Commission resolve the dispute. If the Commission is unable to resolve the dispute by the end of the calendar year, then the parties may utilize the provisions in section 3.2 of the TSC Agreement to fund the TSC Agreement until the Commission resolves the dispute. We direct MidAmerican to modify section 3.2 of the TSC Agreement to incorporate this clarification.<sup>29</sup>

39. We will also require MidAmerican to modify section 7.3, "Dispute Resolution by Contract Managers," to provide that, if the MidAmerican and TranServ contract managers are not able to resolve a dispute, then either party may bring their dispute to the Commission. The provision, as currently stated, could be interpreted as precluding either party from exercising their rights. Such modification would harmonize section 7.3 with section 9(a) of Attachment K, which states that with a certain limited exception,<sup>30</sup> the Transmission Provider and any other entity (which we interpret to include the TSC) is not precluded from exercising its rights under the FPA, including the filing of a petition or initiating a proceeding before the Commission.

40. Section 8.2 of the TSC Agreement provides for data to be given by MidAmerican to TranServ.<sup>31</sup> In *Entergy*, the Commission addressed language that was nearly identical to this provision. The Commission stated, in part:

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<sup>27</sup> *Entergy*, 115 FERC ¶ 61,095 at P 105.

<sup>28</sup> *Id.*

<sup>29</sup> Similarly, any changes to the MidAmerican-approved budgets must also be approved by MidAmerican pursuant to section 3.3 of the TSC Agreement. We direct MidAmerican to clarify in section 3.3 that any budget-related dispute must be filed with the Commission within 15 days after negotiations between the parties end.

<sup>30</sup> The limited exception is the limitation of liability provisions agreed to by the TSC and MidAmerican.

<sup>31</sup> Addendum A to Attachment K also contains a non-exclusive list of data the TSC may request from the transmission provider.

Although Entergy has provided a non-exclusive list of data and reports that the [Independent Coordinator of Transmission] ICT may request from Entergy in Addendum A to Attachment S and which Entergy must provide, we do not find this to be sufficient. In order for the ICT to perform its functions in an independent, transparent and reliable manner, it must have unfettered access to all information necessary to perform the functions it has undertaken under contract. Therefore, we will require Entergy to provide explicitly that the ICT will have full access to any data it requests in performing its functions in the executed ICT Agreement. Since the ICT will be independent of market participants, it will have no incentive to abuse this access to information. However, if Entergy believes that the ICT is making inappropriate use of this access to information, Entergy will be protected by its ability under the contract to bring the dispute to the Commission.<sup>32]</sup>

41. We have the same concerns with respect to section 8.2 of MidAmerican's TSC Agreement. Accordingly, consistent with *Entergy*, we will require MidAmerican to make the same modifications required in Entergy and to reference section 7.2, as revised, and Addendum A of Attachment K in section 8.2 of the TSC Agreement.

42. Since the December 16 Order, we have issued other orders addressing independent transmission coordinator proposals, including the independent transmission coordinator for Entergy.<sup>33</sup> *Entergy* was the first time the Commission was faced with contested supply of data provisions in an independent transmission coordinator proceeding. The Commission determined in *Entergy* that in the case of a dispute over data between the ICT and Entergy, the independent transmission coordinator's position should prevail. This is in contrast to MidAmerican's Attachment K provision dealing with data, which states that MidAmerican's position shall prevail during a dispute. We note that, in the December 16 Order, we conditionally accepted Attachment K subject to a compliance filing and subsequent orders. Specifically, we recognized that the review of the final, executed TSC Agreement in conjunction with Attachment K, as revised by the compliance filing, may necessitate MidAmerican making further modifications to Attachment K and the TSC Agreement.<sup>34</sup> Accordingly, we will require MidAmerican to

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<sup>32</sup> *Entergy*, 115 FERC ¶ 61,095 at P 107.

<sup>33</sup> *See supra* note 21.

<sup>34</sup> December 16 Order, 113 FERC ¶ 61,274 at P 26 & n.25.

explicitly clarify in the TSC Agreement and to revise section 4.3(a) of Attachment K to state that, in the case of dispute between MidAmerican and TranServ over the supply of data, that TranServ's position controls in a dispute while the dispute is pending.<sup>35</sup>

43. In the December 16 Order, the Commission stated that obtaining information within specified timeframes, including confidential information, is critical to the Commission's ability to monitor and address market power concerns and ensure that rates remain just and reasonable and not unduly discriminatory or preferential.<sup>36</sup> Accordingly, the Commission required MidAmerican to include specific language in Attachment K to ensure that the Commission could obtain the necessary information in a timely manner. However, the confidentiality provisions in section 11 of the TSC Agreement are more restrictive regarding the disclosure of confidential information to regulatory agencies than what the Commission required for Attachment K. For example, the confidentiality provisions in the TSC Agreement require a final order of a regulatory agency to disclose such information;<sup>37</sup> however, the Commission may conduct informal investigations that require access to confidential information in order to issue a final order. Consequently, the Commission requires MidAmerican to include the confidentiality language required by the December 16 Order for Attachment K to also be included in the TSC Agreement.

44. Section 20 of the TSC Agreement allows MidAmerican to change the scope of the work performed by TranServ, including decreasing the amount of work to be done by TranServ.<sup>38</sup> These provisions of the TSC Agreement are unclear as to the potential impact on the scope of the work performed by the TSC required in Attachment K and the remainder of the TSC Agreement. For example, it is unclear whether these provisions would allow MidAmerican to reduce the scope of the work for the TSC in performing ATC calculations (and have MidAmerican perform those functions) in a way that would compromise the TSC's independence. Accordingly, we require MidAmerican to modify

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<sup>35</sup> *Id.* at P 134 (requiring a similar clarification).

<sup>36</sup> December 16 Order, 113 FERC ¶ 61,274 at P 49.

<sup>37</sup> We note that the confidentiality provisions of the TSC Agreement state that the TSC should also adhere to the confidentiality provisions of Attachment K; however, since the confidentiality provisions of the TSC Agreement are more restrictive on the release of confidential information to the Commission than the confidentiality provisions of Attachment K, it is unclear whether confidential information could be supplied to the Commission under those circumstances where disclosure is allowed under Attachment K but not the TSC Agreement.

<sup>38</sup> Similarly, section 17 allows MidAmerican to stop the work performed by TranServ, and section 18 allows MidAmerican to carry out the work not done by TranServ.

the TSC Agreement to state that, prior to any changes in the work under section 20 or any actions under sections 17 and 18, MidAmerican will file with the Commission for approval.<sup>39</sup>

45. In the December 16 Order, we conditionally accepted Attachment K subject to a compliance filing and subsequent orders. Specifically, we recognized that the review of the final executed TSC Agreement in conjunction with Attachment K, as revised by the compliance filing, may necessitate MidAmerican making further modifications to Attachment K.<sup>40</sup> In this light, we will require MidAmerican to modify section 13.1 of the proposed TSC Agreement, as well as section 2.2 of Attachment K, to state that the TSC will notify the Commission of anything that may impair the TSC's independence<sup>41</sup> or any concerns not remedied by MidAmerican over data, criteria, standards or policies developed by MidAmerican that may preclude the TSC from performing its duties including providing non-discriminatory open access transmission service. Additionally, the revisions should require reports detailing any concerns raised by stakeholders and the TSC's response to those concerns.<sup>42</sup>

46. Finally, the Commission notes that Order No. 614<sup>43</sup> requires applicants to properly format and designate their proposed tariff sheets. Accordingly, we will conditionally accept for filing the revised TSC Agreement, provided MidAmerican properly formats and designates those sheets in accordance with Order No. 614 as an attachment to MidAmerican's OATT and otherwise modifies the TSC Agreement as provided for in this order.

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<sup>39</sup> Additionally, in the December 16 Order, we stated that we would defer addressing regional coordination/seams issues and the splitting of functions because it would be premature to do so. We stated that protesters could raise their concerns when MidAmerican files its TSC Agreement, but that we, nonetheless, expect the TSC to manage the seams and coordinate regionally. We note that no party has raised these deferred issues in response to the instant submittal.

<sup>40</sup> December 16 Order, 113 FERC ¶ 61,274 at P 26 & n.25.

<sup>41</sup> The independence of the TSC addresses the Commission's concerns regarding MidAmerican's noncompliance with its Standards of Conduct and other requirements raised in an audit report. *See Id.* at P 24.

<sup>42</sup> *LG&E*, 114 FERC ¶ 61,282 at P 152.

<sup>43</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 at 31,505 (2000).

**E. Attachment K Compliance Filing**

**1. Proposal**

47. MidAmerican states that it made all the changes to Attachment K that were required by the Commission in the December 16 Order. Specifically, MidAmerican states that it has revised section 7.1.2 of Addendum B to Attachment K to provide that the TSC will perform (or cause to be performed by an independent contractor) the system impact studies. MidAmerican also revised section 2.2 of Attachment K to require the TSC to file its periodic and ad hoc reports directly with the Commission without prior review by MidAmerican. Additionally, MidAmerican has revised section 2.3 of Attachment K to provide that not only employees (which would include officers) but also directors of the TSC may not have any financial interest in any market participant and will be subject to the Commission's Standards of Conduct and information sharing restrictions, and that the directors may not otherwise be affiliated with MidAmerican or its affiliates, any transmission customer or any market participant. Further, MidAmerican modified section 7.2.5 of Attachment K to provide that the TSC will timely file with the Commission, as comments in any contested proceeding, the Facility Study and identify all areas of dispute between the TSC and MidAmerican. Finally, MidAmerican also modified section 6.4 of Attachment K to include certain language required by the Commission's December 16 Order regarding the release of confidential information to the Commission and its staff.

48. MidAmerican also states that it incorporated into the final TSC Agreement with TranServ (as opposed to modifying Attachment K) the requirement in the Commission's December 16 Order to have the TSC continue all third-party audits identified in the audit report and use its periodic and ad hoc reports for the first twelve months after operation to, among other things, inform the Commission as to whether MidAmerican permitted its wholesale merchant function to use network service to import power into MidAmerican's system to make possible off-system sales.

**2. Comments**

49. The Midwest ISO states that the compliance filing notes that certain MAPP COR employees will be assisting during the transition period. The Midwest ISO also notes that the filing states that when TranServ begins operation, the MAPP COR relationship will be terminated.

50. The Midwest ISO states that MAPP COR was designated in the Commission-approved MAPP Restated Agreement to provide staff support and certain transmission reliability related service for MAPP and under the by-laws of MAPP COR, it is precluded from engaging in activities for profit or in other ventures inconsistently with its obligations to MAPP. The Midwest ISO contends that the compliance filing does not explain under what authority or contractual arrangement MAPP COR plans to provide

these services, or for how long, whether MAPPCOR employees will become TranServ employees upon startup, or whether the other MAPP members will share in revenues from this project.

51. The Midwest ISO also states that the compliance filing is silent with respect to the corporate form under which OATI and TranServ operate and that, if the Commission agrees that one or both of these entities should be classified as jurisdictional utilities under the FPA, then there is a possibility that a requirement to obtain prior approvals for interlocking officer or director applies. The Midwest ISO states that MidAmerican must provide more information before the Commission can accept the proposal.

### **3. Answers**

52. TranServ states that it has contracted with MAPPCOR to provide certain specific services for a limited period of time ending no later than commencement of TSC operation. The purpose of the contract is to obtain the benefit of MAPPCOR's expertise and experience to ensure that TranServ provides MidAmerican transmission customers with high-quality transmission planning services and tariff administration services consistent with regional practices. TranServ notes that many MAPP members have intervened in this proceeding and not raised any concerns regarding the propriety of the arrangement with MAPPCOR, and comments that the Midwest ISO has not offered any facts to support its contention that MAPPCOR does not have the authority to perform these services.

53. MidAmerican reiterates that the arrangement with MAPPCOR is only during the period prior to commencement of operations. Moreover, MidAmerican states that TranServ is working with MAPPCOR, among others, to ensure a smooth transition and that any entity selected as TSC would have to do the same. MidAmerican also notes that the Midwest ISO does not provide any citation to MAPPCOR bylaws or any other authority to support its contention that MAPPCOR is precluded from engaging in activities for profit. MidAmerican argues that MAPPCOR, as a non-profit entity, is no more precluded from engaging in these limited services than is the Midwest ISO, also a non-profit company. MidAmerican also states that the filing contains sufficient information about TranServ and OATI.

### **4. Commission Determination**

54. We find that MidAmerican has made most of the modifications to Attachment K required by the December 16 Order. However, the December 16 Order required MidAmerican to modify section 7.2 of Addendum B to Attachment K to require the TSC to timely file comments in any contested proceeding (pertinent to section 7.2) pertaining to the Facilities Studies. MidAmerican's compliance filing states that "[f]or any disputed Facilities Agreement, the TSC shall timely file with the Commission comments identifying and describing all areas of disagreement between the TSC and the

Transmission Provider.” The term “Facilities Agreement” is not defined in section 7.2 of Addendum B, in Attachment K or generally in section 1 of the OATT.<sup>44</sup> Moreover, the Commission required the TSC to file the Facilities Study and identification of all issues, yet MidAmerican’s compliance filing would only require the filing of the identification of all disputed issues. Accordingly, MidAmerican has not satisfactorily complied with the Commission’s requirements and MidAmerican is required to replace its proposed language with the following language, “For any dispute relevant to section 7.2, the TSC is required to file the Facilities Study with all documents related to the disputed issues, and identify and explain all areas of dispute between the TSC and the Transmission Provider.” We will require MidAmerican to modify Attachment K accordingly within 30 days of the date of this order.

55. MidAmerican has revised section 7.1.2 of Addendum B, Transmission System Protocols, to reflect that the TSC may perform or cause to be performed system impact studies by an independent contractor. The modifications to section 7.1.2 of Addendum B are accepted conditioned on MidAmerican making conforming changes to section 2.5 of Addendum B.<sup>45</sup> The conforming change to section 2.5 should define independent contractor so as to completely exclude MidAmerican and its affiliates, any transmission customer, and any other market participant.

The Commission orders:

(A) MidAmerican’s TSC Agreement is hereby conditionally accepted for filing, as discussed in the body of this order.

(B) The revisions to MidAmerican’s Attachment K are hereby conditionally accepted for filing, as discussed in the body of this order.

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<sup>44</sup> Elsewhere in section 7.2.5, MidAmerican uses the term “Facilities Study” or “Facilities Study report.”

<sup>45</sup> Section 2.5 of Addendum B defines independent contractor as “a third party that the TSC and Transmission Provider agree is qualified to perform transmission system studies on behalf of the TSC. Except as provided in section 7.1.2 of this Protocol, an Independent Contractor cannot be the Transmission Provider or an affiliate of a Transmission Provider.”



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(C) MidAmerican is hereby directed to make a compliance filing, as discussed in the body of this order, within 30 days after the date of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**LOUISVILLE GAS AND ELECTRIC COMPANY  
KENTUCKY UTILITIES COMPANY**

**Response to the Commission Staff's First Information Request  
Dated February 22, 2012**

**Case No. 2012-00031**

**Question No. 10**

**Witness: Lonnie E. Bellar**

- Q-10. Explain what impacts and the Companies' proposed transfer of the ITO function from SPP to TranServ will have on federal and state regulatory decision making processes.
- A-10. The Companies do not anticipate this transfer will have any impact on federal or state regulatory decision-making processes.