BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Interstate Power Company's Petition for Approval of Transfer of Operational Control of Transmission Facilities to the Midwest Independent System Operator

ISSUE DATE: May 9, 2002

DOCKET NO. E-001/PA-01-1505

ORDER AUTHORIZING TRANSFER WITH CONDITIONS

PROCEDURAL HISTORY

On September 10, 2001, Interstate Power Company (IPC) petitioned for authority to give operating control of certain facilities to the Midwest Independent Transmission System Operator, Inc. (MISO), a regional transmission organization (RTO).

In November, 2001, the Commission received comments from Great River Energy (GRE), the Department of Commerce (Department) and the Residential and Small Business Utilities Division of the Office of Attorney General (RUD-OAG). GRE merely sought to exclude its own facilities in this arrangement. The Department and the RUD-OAG (collectively, "the public agencies") each filed comments recommending that the Commission assert jurisdiction over the transaction and approve the transaction with conditions. IPC filed replies on November 26, and revised them on December 3.

The matter came before the Commission on December 18, 2001, in conjunction with similar applications from three other utilities.[1] At that hearing, Northern States Power Company (NSP) d/b/a Xcel Energy, Inc. presented a list of conditions for the transfer, designed to accommodate many of the parties' concerns. The matter was tabled pending further review and negotiation by the parties.

On January 18, 2002, the Department – on behalf of the public agencies, IPC and three other electric utilities – filed a proposed settlement of most of the issues in this docket.

[1] In the Matter of the Petition for Approval to Transfer Functional Control of Certain Transmission Facilities to the Midwest Independent System Operator, Docket No. E-002/M-00-257 (Northern States Power Company d/b/a Xcel Energy); In the Matter of Minnesota Power's Petition for Approval of Transfer of Operational Control of Transmission Facilities, Docket No. E-015/PA-01-539; In the Matter of Otter Tail Power Company's Petition for Approval of Transfer of Operational Control of Transmission Facilities to the Midwest Independent System Operator, Docket No. E–017/PA-01-1391.

The matter returned to the Commission on January 24, 2002. At that hearing, the public agencies, IPC and other electric utilities jointly agreed to recommend granting IPC's petition under certain conditions. The Commission voted to grant the petition subject to conditions.

On January 31 and March 11, 2002, IPC petitioned to re-open the hearing.

On March 27, 2001, electric customer Myer Shark filed comments asking the Commission to refrain from further rulings in this docket until after all customers had received mailed notice of the motion and had had an opportunity to be heard.

The matter again returned to the Commission on March 28, 2002. At that hearing, the Commission reaffirmed its decision of January 24 but eliminated a redundant condition.

FINDINGS AND CONCLUSIONS

I. Background[2]

A. Development of the electric industry

Historically, electric utilities have been vertically integrated. That is, a utility built its own power plants to generate electricity, built its own transmission lines to transport its electricity over long distances, and built its own distribution lines to deliver electricity to its customers. The regulated price for electricity was designed to permit the utility to recover the cost for generation, transmission and distribution, all bundled together. Customers did not have the option – and generally did not have the need – to purchase generation, transmission or distribution services "unbundled" from the rest.

Electric service in such a stand-alone electric grid may be unreliable. The failure of any one power plant or transmission line could cause a local blackout or brownout. Electric utilities sought to enhance service reliability by interconnecting their systems. This permitted them to draw on a neighboring utility's capacities during emergencies, thereby enhancing service reliability for all. Eventually interconnecting utilities formed "power pools" to promote their mutual reliability.

Clearly a utility would prefer to draw on a neighboring utility's electricity than to suffer a blackout. But a utility may prefer to draw on a neighboring utility's electricity at other times as well. For example, if Utility X has excess capacity on a generator with low operating costs, Utility Y may prefer to purchase electricity from Utility X rather than incur the cost of generating its own energy, and Utility X may prefer to sell that electricity rather than leave the excess capacity unused. Such an arrangement may benefit both utilities, and potentially their customers.

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[2]*See* generally *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmission Utilities*, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Statutes and Regulations, Regulations Preambles January 1991 - June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), ("Order 888"), Part III ("Background"); *New York v. FERC*, 2002 WL 331835 (U.S., March 4, 2002).

B. Federal policy

The Federal Energy Regulatory Commission (FERC) has jurisdiction over the rates, terms, and conditions of electricity sold at wholesale, and for transmission services provided in interstate commerce.[3] With the passage of the Public Utilities Regulatory Policy Act of 1978 (PURPA)[4] and the Energy Policy Act of 1992 (EPAct),[5] federal policy permitted a growing array of competitors to sell energy onto the electric grid. Federal policy also permitted a growing array of customers to purchase wholesale energy directly from these competitors, and to have the energy delivered via public utilities' transmission lines.

But people seeking to use a public utility's transmission lines face various obstacles. First, they may face physical limitations. Transmission lines, typically built to move electricity from a utility's generator to a utility's customers, may not always be well designed or sized to facilitate other transactions. Second, the terms for gaining access to these lines are drafted by the utility owning them, and may seem disadvantageous to the competitor. These problems are complicated by the conflicting roles that a public utility plays in the current environment. A utility treats other generators and marketers as customers, selling them transmission services to deliver their energy. But it also treats those same generators and marketers as competitors with its own generation business. While antitrust law and FERC decisions seek to prohibit a transmission owner from overtly discriminating against an unaffiliated generator or marketer, the potential for anti-competitive conduct persists.

In April 1996, the FERC addressed this situation in Order No. 888.[6] That order required transmission-owning utilities to give transmission users non-discriminatory open access to the utilities' transmission systems. FERC suggested that one way to ensure the efficient management of the transmission grid was to form independent system operators (ISOs).

In December 1999, FERC issued Order No. 2000,[7] its Final Rules on RTOs.[8] An RTO would be a voluntary arrangement among transmission owners "to provide reliable, non-discriminatory and efficiently-priced transmission services to support competitive regional bulk power markets."[9] FERC established a RTO's "minimum characteristics": Independence from market participants,

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[3]16 U.S.C. § 824.

[4]Pub. L. No. 95-617, 92 Stat. 3117, codified in U.S.C. §§ 15, 16, 26, 30, 42 and 43.

[5]Pub. L. No. 102-486, 106 Stat. 2776 (1992), codified at, among other places, 15 U.S.C. § 79z-5a and 16 U.S.C. §§ 796 (22-25), 824j-l.

[6]*See* n. 2, *supra*.

[7]*Regional Transmission Organizations*, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom.* Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, *et al.* (D.C. Cir. 2001).

[8]18 CFR Part 35.

[9]*Id.*, pp. 151-52.

adequate scope and regional configuration, operational authority over transmission, and responsibility for maintaining electric flows throughout the RTO's region in the short term. FERC also listed minimum functions that an RTO must perform.

Order No. 2000 required each public utility that owns, operates or controls interstate transmission facilities to file a proposal to participate in an RTO. Alternatively, a utility could make a filing explaining the reasons the utility had not made a filing to participate in an RTO, and describing the utility's efforts to participate in an RTO.

C. Midwest Independent Transmission System Operator, Inc. (MISO)

On January 15, 1998, several Midwestern public utilities asked FERC for permission to give operational control of certain assets to the MISO, a nonprofit corporation organized in Delaware and based in Indiana (FERC Docket No. EC98-24). These assets would include virtually all their facilities for transmitting electricity at a voltage exceeding 100 kV. In conjunction with the transfer of control, the participants filed an Open Access Transmission Tariff, an agreement setting forth the structure of the MISO and establishing the rights and obligations of the MISO and MISO members (FERC Docket No. ER98-1438).

On November 19, 1999, IPC applied to join MISO. The next month IPC's parent company Alliant Energy Corporate Services asked FERC for authority to transfer operational control of transmission facilities, including IPC's facilities, to the MISO. FERC approved this request on March 31, 2000.

In November 2000, several electric companies withdrew from the MISO to join in forming a separate RTO named Alliance. But by March 2001, the MISO and Alliance had reached an accord. The two organizations would remain separate, but operate jointly. They agreed to offer a single price for transmitting electricity from any source within their joint region to any load within their joint region, but only for members that joined by February 28, 2001. And they agreed to permit companies to withdraw from MISO for a fee.

On May 8, 2001, FERC largely accepted the terms of the MISO/Alliance settlement agreement.

On October 10, 2001, IPC asked the Minnesota Commission to approve giving operational control of transmission facilities to the MISO, or in the alternative, to find that Commission prior approval was not necessary.

On October 11, 2001, FERC issued Opinion No. 453 in Docket No. ER98-1438. Among other things, FERC ordered the MISO to conform its Agreement and Tariff, as necessary, to govern the price of transmission services for all electricity in the MISO region, including the transmission included as part of a utilities' traditional bundled retail service. But on February 13, FERC issued Opinion No. 453-A, clarifying that it did not assert jurisdiction over bundled retail sales.

On December 20, 2001, FERC granted RTO status to MISO but not Alliance.

II. IPC's petition

A. Summary

IPC filed its petition as part of its compliance with Order No. 2000. IPC proposes to give the MISO control of certain transmission assets. IPC would retain ownership of its transmission facilities, and IPC would physically operate and maintain these facilities, subject to MISO direction.

IPC acknowledged that the Commission has jurisdiction over the functional classification of IPC's transmission facilities as well as the effect on IPC's retail rates resulting from changes in IPC's transmission costs. IPC says that the Commission may rule on its petition without determining the functional classification of transmission facilities, resolving all cost or rate issues, or addressing the accounting treatment of the affected assets.

B. Benefits

IPC claims that its proposal will produce a variety of benefits, including –

- "one stop" shopping for transmission services, without the need to negotiate and pay for the use of each utility's lines individually,
- the establishment of uniform and clear transmission usage rules,
- control over transmission facilities more clearly separated from the influence of electric market participants,
- large scale regional coordination and planning of new transmission construction,
- enhanced reliability, and
- a more competitive market for wholesale power.

1. "One stop" shopping for transmission services

IPC claims that the MISO will be the provider of all transmission services in the region. At least twenty utilities, with service territories over portions of eleven states and the Province of Manitoba, have committed to giving the MISO operational control of their transmission facilities. Within its region, the MISO will –

- calculate available transmission capacity,
- maintain an open access same-time information system,
- receive, approve, schedule and confirm transmission service requests,
- provide or arrange for ancillary services under the tariff, and
- coordinate security for transmission-owning members.

2. Independence

To ensure that an RTO is not biased in favor of some market participants over others, FERC requires their boards to be financially independent of the transmission system's owners, members, or users. FERC has found that the MISO satisfies this requirement.

3. Reliability

According to IPC, the Midwest has suffered reliability problems. The current grid – a patchwork of interconnected transmission systems – was not designed to carry the current volume of wholesale transactions. No entity has had sufficient authority over the entire region's grid to permit coordination.

IPC argues that the MISO will solve these problems. For example, the MISO would have –

- real time information over the entire Midwest regional geographic area it serves,
- authority to direct switching, generation redispatch and selective transmission curtailment as necessary to address constraints and resolve reliability problems
- the ability to resolve long-term problems through regional planning and construction of new facilities, and
- authority over non-transferred facilities it deems to be necessary to maintain system reliability.

In addition, the National Energy Reliability Commission is beginning to develop the framework for reliability standards. These standards will be designed to be implemented by RTOs such as the MISO.

4. Monitoring for discrimination

Transmission owners would generally maintain physical operation of their own plant, subject to MISO direction. But FERC requires the MISO to monitor this arrangement to guard against discriminatory behavior by the transmission owners.

5. Planning and new construction

The MISO would develop a long range plan to address regional transmission needs, coordinating the transmission plans of MISO members. The MISO would have the authority to direct members to build needed facilities within their service areas.

6. Congestion management

On a daily basis, the MISO would identify the transmission lines that it expects to be overloaded, and the principal generators that could relieve those lines.

7. Reporting

IPC pledges to continue to keep the Commission informed of MISO activities and developments. Specifically, it will provide all of the reports required by the FERC. IPC proposes that the Commission convene a standing committee or workgroup including Minnesota-based MISO members, Commission and Department representatives, and other interested parties that would meet periodically to share MISO-related and other transmission-related information.

C. Rate impact

IPC has had difficulty describing the precise financial effects of this transfer. Given various assumptions, however, IPC anticipates that joining the MISO would cause IPC's transmission costs to increase slightly. But IPC also anticipates that the MISO would improve access to low-cost generation, thereby reducing wholesale electricity costs and offsetting any anticipated transmission cost increase.

The Department reviewed IPC's estimates and finds them reasonable.

III. Commission action

A. Jurisdiction

The public agencies argue that the Commission has jurisdiction over this matter, variously citing Minn. Stat. §§ 216B.03 (reasonable rates), 216B.04 (standard of service), 216B.05 (filing schedules, rules, and service agreements), 216B.14 and .21 (investigation, summary investigation), 216B.48 (affiliated interests) and 216B.50 (property transfers and mergers). Without identifying a specific statutory basis, IPC concedes that the Commission has jurisdiction over this matter.

Consistent with the views of all parties, the Commission finds that it has ongoing jurisdiction over the matters within this docket.

B. Motion for Additional Public Notice

Customer Myer Shark argues that the Due Process clause of the 14th Amendment to the U.S. Constitution requires that IPC's customers receive notice and an opportunity to be heard on this matter before the Commission may act. Mr. Shark asks the Commission to delay acting until these conditions are fulfilled.

The Commission will deny Mr. Shark's request. While Mr. Shark may seek relief on his own behalf, he lacks standing to seek relief on behalf of the public at large. That duty is given to the Department and the RUD-OAG.

As a public agency, the Commission complies with the requirements of the Minnesota Open Meeting Law, Minnesota Statutes § 471.705, and its own rules of practice and procedure, Minnesota Rules chapter 7829. In addition to the notice required by those laws, the Commission provides notice of matters coming before it via its Weekly Calendar and on its World Wide Web site at http://www.puc.state.mn.us/ The Commission is not persuaded that further procedural safeguards are warranted before proceeding.

C. Merits

1. Whether to grant the petition

The chief obstacle posed by IPC's petition is uncertainty. Even after long analysis by the parties, the long-term effects of IPC's proposal remain unknown and unknowable.

Broadly speaking, these questions concern service reliability and the effect of these new arrangements on retail rates. Will facilitating more wholesale transactions over the existing transmission grid have the net effect of enhancing service reliability, or harming it? Will future transmission lines, coordinated by MISO system planners, ameliorate future reliability problems? Given the complex interplay between MISO organizing rules and formulas on the one hand, and the physical constraints of the transmission grid on the other, can IPC be assured of recovering the cost of its transmission plant? Assuming that the MISO functions as planned, will it have a net effect of benefitting other regions at the expense of our own? Assuming that the MISO doesn't function as planned, will this Commission retain the authority to protect Minnesotans?

The Commission is faced with three choices. It can deny IPC's petition for lack of information. It can delay its decision until more information becomes available (by, for example, observing the operation of other RTOs). Or it can evaluate the petition on the basis of the best information currently available.

IPC argues that it has made a good-faith effort to provide all the available information about its proposal, and that delaying or denying its petition would be costly. Transmission constraints are growing, but an uncertain regulatory environment could make investors hesitant to fund new transmission projects. The MISO offers a means of addressing this issue. In addition, the MISO holds out the promise of a larger, more competitive market for wholesale power driving down prices for all. But early entry into the MISO offers the most favorable terms and the opportunity to help influence its policies during the organization's infancy; on the other hand, IPC's failure to consummate its membership will result in financial penalties.

The Commission acknowledges the evolving nature of the electric industry. Current regulation has generally provided Minnesotans with reliable service at low cost. But maintaining the same regulatory regime into the future cannot guarantee the same results into the future. It is pointless to ask whether granting IPC's petition will make electric service more reliable or less expensive than it was in the past; living in the past is not an option. The Commission must ask whether, *in the future*, electric service will be more reliable and less expensive if the Commission grants IPC's petition than if it does not.

The Commission resolves to act on the basis of the best information currently available. Under these circumstances, the Commission finds that granting IPC's proposal would be reasonable and in the public interest. But given the degree of uncertainty about IPC's proposal, the Commission can make this finding only with certain conditions. These are discussed further below.

2. Conditions

a. The MISO's status

The first conditions that the Commission will impose on any transfer of control to the MISO are procedural: the MISO must fulfill the terms of an RTO, described above, and of its own Owner's Agreement. The public agencies recommend conditioning approval of IPC's petition on FERC's approval of the MISO as an RTO, and authorization of the MISO to begin full RTO operations. In addition, they recommend conditioning approval on the MISO's successful completion of all the applicable conditions of the MISO Owner's Agreement. IPC agrees to these recommendations, and no party opposed them.

b. Reliability

IPC's petition raises concerns about system reliability. Does the growing use of IPC's transmission system to deliver energy to wholesale customers impede the system's capacity to deliver energy to IPC's native load? If an emergency arises and the grid lacks sufficient power to meet all demands, will the MISO direct IPC to curtail energy flowing to its native load for the benefit of others?

While the public agencies recommend that the Commission approve IPC's petition, they argue that, in order to find that IPC's petition is reasonable and in the public interest, IPC must agree to make various reports. Specifically, they ask the Commission to condition approval of IPC's petition on IPC's agreement to do the following:

- Give timely notice to the Commission and the public agencies when tariff or rule changes are made at FERC or filed by the MISO that may reasonably be construed as having the potential to negatively affect the transmission service priority of native load or hamper reliability to Minnesota ratepayers. The Department notes that FERC lacks the jurisdiction to interfere with a utility's practice of curtailing electricity for wholesale customers when the electricity is needed for the utility's native load.[10] The Department expressed concern that FERC or the MISO might not give the same priority to serving native load.

- Hold meetings on at least a quarterly basis with Commission staff, the public agencies and other interested parties to discuss MISO-related issues. The meetings may be conducted jointly with other utilities, and on a regional basis with neighboring state commissions. The utilities shall keep written meeting minutes, which should be submitted to the Commission. These meetings will continue until such time as parties jointly petition the Commission for changes to the meeting schedule.

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[10] *NSP v. FERC*, 176 F.3d 1090 (8th Cir. 1999), *reh'g denied* (unpublished order dated Sept. 1, 1999), *order on remand*, 89 FERC ¶ 61,178 (1999).

- Report to the Commission staff and the public agencies at the meetings on a quarterly basis on any existing or proposed MISO policies, standards, tariffs, or plans that could adversely affect IPC's ability to provide reliable service to retail customers in Minnesota, including any proposed MISO policies that could affect interruption of native load.

- Report to the Commission, in IPC's Annual Automatic Adjustment of Charges report (AAA) filed under Minnesota Rules part 7825.2800, each instance where the MISO directed IPC to curtail its owned generation, for reliability reasons, that resulted in an interruption of firm retail electric service to IPC's retail customers in Minnesota.

- Report to the Commission in IPC's AAA report each instance where the MISO directed the curtailment of a delivery of a firm purchased power supply that subsequently resulted in an interruption of firm retail electric service to IPC's retail customers in Minnesota.

- Report to Commission staff and the public agencies within 24 hours of an interruption of firm retail electric service in IPC's service area that occurred at the direction of the MISO, and the reason for each incident.

- Give the Commission and the public agencies a copy of any Form EIA-417R report submitted by IPC. The U.S. Department of Energy's Energy Information Administration (EIA) directs utilities to file an EIA-417R Electric Power Systems Emergency Report when an emergency arises that affects the nation's power system. 10 CFR §§ 205.350 - .353

- Give the Commission and the public agencies a copy of MISO reports to FERC regarding control area operations and reliability.

In addition, the public agencies recommend conditioning approval on IPC's agreement to work with the Commission and the public agencies to address any reliability concerns that result from giving operational control of IPC's transmission facilities to the MISO. IPC would have the opportunity to address these concerns through FERC, through the MISO stakeholder advisory process, or through the MISO transmission owners committee.

IPC agrees to all these conditions, and no party opposed them.

c. Costs

As noted above, IPC's petition raises questions about what additional costs IPC will incur, and who will bear those costs. While the public agencies recommend that the Commission approve IPC's petition, they argue that, in order to find that IPC's petition is reasonable and in the public interest, IPC must agree to various conditions. Specifically, they ask the Commission to condition approval of IPC's petition on IPC's agreement to make the following reports:

- Give the Commission and the public agencies timely notice of all MISO tariff filings at FERC.

- Report, in its AAA report, on changes to MISO tariffs that may ultimately affect the rates of retail customers in Minnesota, and on IPC's efforts to minimize MISO transmission service costs.

- Submit, in its AAA report, an annual analysis of how the transfer of operational control to the MISO has affected IPC's overall transmission costs and revenues and its overall energy costs for retail customers. IPC should include an analysis of how MISO membership has affected IPC's ability to use its own generating sources when they are the least-cost power source, as well as IPC's ability to access low-cost power on the wholesale market for its retail customers.

- Report, in its AAA report, each instance where the MISO directed IPC to redispatch its owned generation for reliability reasons, including an explanation of any financial impact on rates and the reason for the redispatch (if known).

- Report annually, in its AAA report, the administrative charges paid to the MISO under MISO tariff, Schedule 10. Schedule 10 seeks to recover MISO administrative costs and investments through a surcharge on transmission services. In addition, IPC must report any amount of MISO administrative charges deferred by the MISO for later recovery.

In addition, the public agencies ask the Commission to condition approval of IPC's petition on IPC's agreement to do the following:

- Work with the Commission and the public agencies to promote policies at the MISO that will allow IPC to continue to meet its obligation to provide least-cost power to its retail customers in Minnesota.

- Refrain from proposing retail rate changes due to future wholesale transmission rate changes except in the context of a rate proceeding, or if otherwise authorized by the Commission. A rate proceeding provides an opportunity to consider both increasing *and decreasing* costs, and to evaluate the accuracy, prudence and reasonableness of those costs.

- Refrain from asserting that FERC Opinion No. 453 unbundles or allows unbundling of IPC's Minnesota retail rates, tariffs or services.

- Refrain from seeking recovery of MISO Schedule 10 administrative charges in IPC's retail rates, unless otherwise authorized by the Commission.

IPC agrees to these conditions, and no party opposes them.

d. Market power

As noted above, IPC's petition raises questions about whether the new MISO rules will permit any entity or group to use market power to, for example, raise the cost of transmission. While the public agencies recommend that the Commission approve IPC's petition, they argue that, in order to find that IPC's petition is reasonable and in the public interest, IPC must agree to various conditions. Specifically, they ask the Commission to condition approval of IPC's petition on IPC's agreement to do the following:

- Promptly give the Commission staff and the public agencies the following FERC-required reports filed by the MISO:
    1. the 18 month assessment;
    2. ongoing reports on the effectiveness of the MISO's system of fines and penalties and the ability to ensure compliance with MISO orders and instructions;
    3. current list of transmission facilities transferred to the MISO and the operating entity with control over each facility;
    4. decisions reached through the MISO alternative dispute resolution process affecting IPC or the cost or reliability of service to its customers in Minnesota; and
    5. any reports submitted by the MISO to FERC relating to competitive or reliability concerns arising from IPC's control-area operations.

- Report at the quarterly meetings with Commission staff, the public agencies, and other interested parties on market power issues, including market monitoring and congestion management.

- Work with the Commission and the public agencies to address market power issues.

IPC agrees to these conditions, and no party opposed them.

e. Analysis of conditions

The public agencies propose three types of conditions: procedural, informational, and representational.

Procedural conditions: The public agencies ask the Commission to make any approval contingent upon the MISO fulfilling all its requirements to begin full operations. As noted above, IPC agrees to these conditions, and no party opposed them.

It would serve no purpose to grant control over transmission facilities to an entity, only to find that the entity lacks the legal authority to fulfill its intended functions. The Commission finds the public agencies' recommendations reasonable and will adopt them.

Informational conditions: Most of the conditions involve IPC agreeing to meet with the parties and share information about MISO developments. As noted above, IPC agrees to these conditions, and no party opposed them.

Given the degree of uncertainty in this docket, the Commission finds these informational conditions necessary to make IPC's proposal reasonable and in the public interest. Therefore, the Commission will adopt the recommendations of the public agencies. IPC may coordinate reporting with other utilities and/or the MISO to fulfill these conditions.

Representational conditions: Some of the conditions involve IPC agreeing to act in the interest of Minnesota energy users. These include the recommendations that IPC agree to –

- address reliability concerns that result from the transfer of operational control of IPC's transmission facilities;
- promote MISO policies that will allow IPC to provide least-cost power to its retail customers;
- address market power issues;
- refrain from asserting that Opinion No. 453 allows unbundling of retail rates, tariffs or services in Minnesota; and
- refrain from seeking recovery of certain administrative charges or transmission costs in retail rates without Commission authorization.

The uncertainties of this docket make these conditions appropriate as well. They are similar in purpose to the public agencies' request (discussed below) that this Commission find that this Order does not address the reasonableness of costs arising from granting this petition. That is, they are designed to preserve the state's ability to address issues relevant to the public welfare.

Permitting the transfer of operational control to the MISO may complicate regulatory dynamics, potentially constraining this Commission's options for protecting Minnesota's energy users. But IPC alleged that, as a member of the MISO, IPC will be in a better position to promote Minnesota's interests. The proposed conditions are designed to secure IPC's cooperation in doing so.

In addition, the conditions seek to maintain the risk of the proposal on the proposer. As discussed above, IPC's petition is fraught with uncertainties. But IPC has more intimate knowledge of both the MISO and its own transmission system than do the public agencies or this Commission. Plus, as noted above, IPC claims that its MISO membership will place it in a position to influence events. As a result, IPC is willing to agree to seek recovery of certain MISO-related costs only through a rate proceeding, where the Commission can consider the costs' reasonableness and prudence before deciding whether to pass the cost on to consumers. In so doing, IPC attests to the good faith with which the proposal was made and provides the strongest evidence of the proposal's reasonableness.

Given the degree of uncertainty in this docket, the Commission finds these representational conditions necessary to make IPC's proposal reasonable and in the public interest. Therefore, the Commission will adopt the recommendations of the public agencies.

D. Ratemaking consequences

The public agencies recommend that the Commission clarify the rate-making consequence of this docket. Specifically, they ask the Commission to find that it is not making a determination as to the reasonableness of any costs IPC may seek to recover from retail customers associated with the transfer of operational control of its transmission facilities to the MISO, MISO operation of those facilities, the services taken from the MISO by IPC, or IPC's MISO membership. They also recommend that the Commission declare that no party may use the Commission's decision in this matter as evidence of reasonableness in any later proceeding regarding whether MISO-related costs or rates should be recovered in IPC's retail rates.

IPC agrees to these recommendations, and no party opposed them. The Commission finds these recommendations reasonable, and will adopt them.

E. Transferring property to the MISO

A public utility needs Commission approval before it can sell, lease, rent a Minnesota operating unit or system worth more than $100,000, or to merge or consolidate with another Minnesota public utility. Minn. Stat. § 216B.50. Minn. Rules part 7825.1800, subp. B, directs such a utility to disclose certain financial information as part of its approval petition.

Parties disagree about whether § 216B.50 governs the transfer of operational control of transmission facilities to the MISO. But in any event, they agree that 7825.1800 disclosure is unnecessary. The information required by that rule is financial in nature, not operational. Since IPC does not intend to relinquish ownership of its transmission assets, the 7825.1800 disclosures are not especially relevant to this analysis. IPC asks the Commission to vary this rule such that IPC need not compile the specified information. The public agencies support this request, and no party opposed it.

The Commission may vary its rules when enforcement would pose an excessive burden, when granting the variance would not harm the public interest, and when not otherwise prohibited. Minn. Rules part 7829.3200. Here the Commission finds that 1) the burdens of filing a financial assessment of IPC's transmission assets far outweigh the benefit, 2) the failure to file unnecessary information will not harm the public interest, and 3) no party has identified an independent legal basis for filing the 7825.1800 information other than the rule itself. On the basis of the record, the Commission finds the parties' recommendation reasonable. Consequently the Commission will grant IPC's request to vary Minn. Rules part 7825.1800, subp. B.

F. Consummation notice

Finally, in order to keep state entities apprised of current developments in this docket, the public agencies ask the Commission to direct IPC to give written notice to the Commission and the public agencies within five business days of giving operational control to the MISO (the "Transfer Date"). IPC agrees to this recommendation, and no party opposed it. The Commission finds the recommendation reasonable and will adopt it.

ORDER

1. The Commission has continuing jurisdiction over the utilities, contract terms, and arrangements between the utilities and the MISO, including but not limited to the proposed transfer of operational control of certain transmission facilities. The Commission continues to exercise its authority under Minnesota statutes.

2. IPC is authorized to give operating control of the identified facilities to the MISO on the following conditions:

   A. FERC –

      1) Approves the MISO as a regional transmission organization (RTO) under FERC Order No. 2000, and

      2) Authorizes the MISO to commence full RTO operations.

   B. The MISO successfully completes all applicable conditions of the MISO Owner's Agreement.

   C. IPC shall –

      1) Make reasonable efforts to notify the Commission and the public agencies of any announced mergers or joint agreements of the MISO with other regional entities that result in changes in the MISO corporate structure, tariff, rates or Administrative Charge. Interested parties may then petition the Commission to determine whether the merger or joint agreement affects the Commission's determination in this docket or requires modification of reporting requirements or conditions.

      2) Not seek retail rate changes due to future wholesale transmission rate changes except –
         a) In the context of a rate proceeding, or
         b) If otherwise authorized by the Commission.

      3) Report, as part of its Annual Automatic Adjustment of Charges report (AAA) filed under Minnesota Rules part 7825.2800, the following:
         a) The Schedule 10 administrative charges paid to the MISO under the MISO tariff, and
         b) Any amount of MISO administrative charge deferred by the MISO for later recovery.

4) Not –
   a) Assert that FERC Opinion No. 453 unbundles or allows unbundling of IPC's Minnesota retail rates, tariffs or services; nor
   b) Recover the MISO Schedule 10 administrative charge in IPC's retail rates, unless otherwise authorized by the Commission.

5) Do the following:
   a) Give timely notice to the Commission and the public agencies when tariff or rule changes are made at FERC or filed by the MISO that may reasonably be construed as having the potential to negatively affect the transmission service priority of native load or to hamper reliability to Minnesota ratepayers.
   b) Report to the Commission staff and the public agencies at the meetings required below on a quarterly basis on any existing or proposed MISO policies, standards, tariffs, or plans that could adversely affect IPC's ability to provide reliable service to retail customers in Minnesota, including any proposed MISO policies that could affect interruption of native load.
   c) Report to the Commission, in IPC's annual AAA report, each instance where the MISO directed IPC to curtail IPC's owned generation, for reliability reasons, that resulted in an interruption of firm retail electric service to IPC's retail customers in Minnesota.
   d) Report to the Commission in IPC's annual AAA report each instance where the MISO directed the curtailment of a delivery of a firm purchased power supply that subsequently resulted in an interruption of firm retail electric service to IPC's retail customers in Minnesota.
   e) Report to Commission staff and the public agencies within 24 hours of an interruption of firm retail electric service in IPC's service territory that occurred at the MISO's direction, and the reason for each incident.
   f) Give the Commission and the public agencies a copy of any Form EIA-417R report submitted by IPC to the DOE as soon as practicable after submission to the DOE.
   g) Give the Commission and the public agencies a copy of MISO reports to FERC regarding control area operations and reliability.

   IPC may coordinate joint reporting with other utilities and/or the MISO to meet the reporting requirements listed above.

6) Work with the Commission and the public agencies to address – through FERC, the MISO stakeholder advisory process, or the MISO transmission owners committee – any reliability concerns that result from transferring operational control of IPC's transmission facilities to the MISO.

7) Hold meetings on at least a quarterly basis with Commission staff, the public agencies and other interested parties to discuss MISO-related issues. IPC shall keep written meeting minutes, and submit them to the Commission. The meetings may be conducted jointly with other utilities, and on a regional basis with neighboring state commissions. IPC shall continue holding these meetings until such time as parties jointly petition the Commission for changes to the meeting schedule.

8) Do the following:
   a) Give the Commission and the public agencies timely notice of all MISO tariff filings at FERC. IPC may provide the notice jointly with other utilities and/or MISO.

b) Report in its AAA report on changes to MISO tariffs that may ultimately affect the rates of retail customers in Minnesota, and on IPC's efforts to minimize MISO transmission service costs.

c) Submit in its AAA reports an annual analysis of how the transfer of operational control to the MISO has affected IPC's overall transmission costs and revenues and its overall energy costs for retail customers, including –

   i. an analysis of how MISO membership has affected IPC's ability to use its own generating sources when they are the least-cost power source and

   ii. IPC's ability to access low-cost power on the wholesale market for its retail customers.

d) Report in its AAA report each instance where the MISO directed IPC to redispatch IPC's owned generation for reliability reasons, including an explanation of financial impact on rates, if any, and the reason for the redispatch, if known.

IPC may coordinate joint reporting with other utilities and/or the MISO to meet the above reporting requirements.

9) Work with the Commission and the public agencies to promote policies at the MISO that will allow IPC to continue to meet its obligation to provide least-cost power to its retail customers in Minnesota.

10) Do the following:

a) Give to Commission staff and the public agencies in a timely manner the following FERC-required reports filed by the MISO:

   1) 18-month assessment;
   2) Ongoing reports on the effectiveness of the MISO's system of fines and penalties and the ability to ensure compliance with MISO orders and instructions;
   3) Current list of transmission facilities transferred to the MISO and the operating entity with control over each facility;
   4) Decisions reached through the MISO alternative dispute resolution process affecting IPC or the cost or reliability of service to its customers in Minnesota; and
   5) Any reports submitted by the MISO to FERC relating to competitive or reliability concerns arising from IPC's control-area operations.

   IPC may jointly provide the reports required by this provision with other utilities and/or the MISO.

b) Report at the quarterly meetings with Commission staff, the public agencies and other interested parties on market power issues, including market monitoring and congestion management.

11) Work with the Commission and the public agencies to address market power issues.

3. If IPC transfers operational control of its transmission assets to the MISO, the Commission will vary Minnesota Rules part 7825.1800, subpart B such that IPC need not file the information listed in that rule at this time.

4. Within 5 business days of the occurrence of the Transfer Date for IPC, IPC shall submit written notice to the Commission and the public agencies of the transfer event.

5. No party may use the Commission's decision in this matter as evidence of reasonableness in any later proceeding regarding whether MISO-related costs or rates should be recovered in IPC's retail rates.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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