

the motion filed by the Wisconsin and Michigan Hold-Harmless Utilities (MW Utilities)² for consolidation of the hearing they anticipate will be ordered in this proceeding with a related, on-going hearing in Docket No. ER04-718-000. Lastly, this order addresses MW Utilities' request for clarification of the scope of the hold harmless requirement.

2. We will accept and suspend the AEP Agreement, to become effective October 1, 2004, subject to refund and to the outcome of a hearing on the question of the appropriate compensation to utilities in Wisconsin and Michigan for any adverse impacts related to AEP's decision to join PJM, and subject also to the further conditions established in this order. We will grant MW Utilities' motion for consolidation of this hearing with the on-going hearing in Docket No. ER04-718-000. We will provide clarification of the hold harmless requirement.

Background

3. AEP is under a merger commitment to join a regional transmission organization (RTO).³ Along with Commonwealth Edison Company (ComEd), AEP elected to fulfill that commitment by joining PJM rather than the Midwest Independent Transmission System Operator (Midwest ISO). Utilities in Wisconsin and Michigan anticipated that these companies' choices of PJM over Midwest ISO would cause the Wisconsin and Michigan utilities harm related to loop flow and congestion effects. Therefore, when approving the transmission owners' choices, the Commission directed AEP, ComEd, Midwest ISO, and PJM to propose a solution that will effectively hold harmless the utilities in Wisconsin and Michigan from any adverse effects associated with loop flows

² The 16 entities comprising MW Utilities are: Association of Businesses Advocating Tariff Equity; American Transmission Company, LLC; Consumers Energy Company; City of Crosswell, Michigan; Dairyland Power Cooperative; Detroit Edison Company; Madison Gas and Electric Company; Michigan Electric Transmission Company; LLC, Nordic Marketing, LLC; City of Sebawaing, Michigan; Thumb Electric Corporation; Upper Peninsula Power Company; Wisconsin Electric Power Company d/b/a We-Energies; Wisconsin Power & Light Company; Wisconsin Public Power Inc.; and Wisconsin Public Service Corporation.

³ See American Electric Power Company and Central and South West Corporation, Opinion No. 442, 90 FERC ¶ 61,242 at 61,788, *on reh'g*, Opinion No. 442-A, 91 FERC ¶ 61,129 (2000), *petition for review denied sub nom. Wabash Valley Power Ass'n v. FERC*, 268 F.3d 1105 (D.C. Cir. 2001) (AEP's merger with Central and South West Corporation conditioned, in part, on AEP transferring operational control of its transmission facilities to a Commission-approved RTO).

or congestion resulting from AEP and ComEd joining PJM. Previous Commission orders give detailed background leading to the Commission's requirement of hold harmless compensation,⁴ and clarifications.⁵

4. On December 31, 2003, ComEd and AEP jointly filed their first hold harmless proposal. The Commission rejected this filing, on March 18, 2004, for failure to comply substantially with the requirements of the hold harmless condition established in the Commission's prior orders.⁶ In particular, the Commission found that it could not accept and suspend the filing subject to refund because such an action would not adequately protect the Wisconsin and Michigan utilities if the compensation determined at the conclusion of the hearing were greater than that proposed by ComEd and AEP. Recognizing the needs of the parties to integrate into PJM as soon as possible, the Commission stated that such a proposal could be accepted if it contained "an explicit contractual mechanism to ensure that ComEd and AEP provide appropriate compensation to Wisconsin and Michigan utilities for any adverse impacts during the entire period that the hold harmless condition is in effect, starting with the integration of ComEd into PJM, including a provision that permits the compensation to be increased, based on the outcome of the hearing."⁷ The order also gave guidance regarding the parameters of an appropriate hold harmless mechanism in order to facilitate ComEd's desired integration into PJM as of May 1, 2004.

⁴ See Commonwealth Edison Company and American Electric Power Service Corporation, 106 FERC ¶ 61,250 at P 2-12 (2004), *reh'g pending* and PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, 107 FERC ¶ 61,087 at P 3-6 (2004), *reh'g pending*. See also Alliance Companies, 100 FERC ¶ 61,137 (2002) (July 31, 2002 Order), *order on clarification*, 102 FERC ¶ 61,214 (February 26, 2003 Order), *order on reh'g and clarification* (June 4, 2003 Order), 103 FERC ¶ 61,274, *order denying reh'g and granting clarification*, 105 FERC ¶ 61,215 (November 17, 2003 Order), *appeal docketed sub nom.* American Electric Power Service Corp. v. FERC, No. 03-1223 (D.C. Cir. Aug. 1, 2003).

⁵ See February 26, 2003 Order, 102 FERC ¶ 61,214 at P 7; June 4, 2003 Order, 103 FERC ¶ 61,274 at n.37; November 17, 2003 Order, 105 FERC ¶ 61,215 at P 8.

⁶ Commonwealth Edison Company and American Electric Power Service Corporation, 106 FERC ¶ 61,250 (2004), *reh'g pending* (March 18, 2004 Order).

⁷ *Id.* at P 45.

5. On April 6, 2004, in Docket No. ER04-718-000, PJM and Exelon Corporation (Exelon), on behalf of its subsidiary ComEd, jointly filed a new hold harmless agreement, a service agreement under the PJM OATT (ComEd Agreement), to meet the conditions in the Commission's collective orders and to enable ComEd to integrate into PJM on May 1, 2004. In an April 27, 2004 Order,⁸ the Commission conditionally accepted the ComEd Agreement,⁹ thus enabling ComEd to integrate into PJM on May 1, 2004. In an April 30, 2004 filing, Exelon, on ComEd's behalf, fulfilled the stated conditions. The April 27 Order also set for hearing the justness and reasonableness of ComEd's proposed hold harmless compensation.

6. On July 30, 2004, PJM and AEP filed the AEP Agreement in the instant proceeding and requested an effective date of October 1, 2004 in order to enable AEP's integration into PJM as of that date. The AEP Agreement is nearly identical to the ComEd Agreement and, like that agreement, was filed unexecuted.

Notice and Responsive Filings

7. Notice of the filing of the AEP Agreement was published in the *Federal Register*, 69 Fed. Reg. 50,377, 50,378 (August 16, 2004), with comments, protests, and interventions due on or before August 20, 2004. Exelon and Midwest ISO filed motions to intervene. Entities that filed motions to intervention and protest are: American Municipal Power-Ohio (AMP-Ohio); Consumers Energy Company (Consumers Energy);

⁸ PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,087 (2004), *reh'g pending* (April 27 Order).

⁹ The conditions were that ComEd file an executed service agreement, and that it withdraw the portion of its rehearing request of the March 18 Order contending that the Commission exceeded its statutory authority in requiring a contractual commitment to compensate Wisconsin and Michigan utilities retroactively should such compensation be found appropriate after an administrative hearing. April 27 Order, 107 FERC ¶ 61,087 at P 29, 33.

International Transmission Company (International Transmission); Wisconsin Electric Power Company and Edison Sault Electric Company, jointly (WEPCO); and 14 entities joining together as the Michigan and Wisconsin Hold-Harmless Parties (MW Parties).¹⁰

8. On September 3, 2004, AEP filed an answer to MW Parties' and other entities' protests. On September 7, 2004, PJM filed an answer to MW Parties' protest

9. On August 13, 2004, in this proceeding and in Docket No. ER04-718-000, the MW Utilities filed a motion for consolidation of the on-going hearing on the ComEd Agreement (ComEd Hearing) with the hearing anticipated to be ordered for the AEP Agreement. The motion also asks the Commission to clarify that quantifiable financial injuries due to locational price increases in Michigan and Wisconsin resulting from ComEd's and AEP's choosing to join Midwest ISO instead of PJM count towards the net harm that the hold harmless payments are to offset.

10. On August 30, 2004, ComEd and AEP filed a joint answer to the MW Utilities' motions for consolidation and clarification, opposing the requested clarification but not opposing consolidation of the hearings in the two dockets.

¹⁰ The 14 entities comprising the MW Parties are: Dairyland Power Cooperative; The Detroit Edison Company; Michigan Electric Transmission Company, LLC; Wisconsin Public Service Corporation; Upper Peninsula Power Company; Wolverine Power Supply Cooperative, Inc. (Wolverine); Alliant Energy Corporate Services, Inc. (Alliant); Madison Gas and Electric Company; Wisconsin Public Power, Inc.; Thumb Electric Cooperative; City of Sebewaing, Michigan; Nordic Marketing, L.L.C., City of Crosswell, Michigan; and The Association of Businesses Advocating Tariff Equity.

The difference in composition between the MW Parties and the MW Utilities is that the latter also includes American Transmission Company, LLC, Consumers Energy Company, Wisconsin Electric Power Company, and Wisconsin Power & Light Company, and excludes Woverine and Alliant.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹² prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ComEd and AEP's August 30, 2004 joint answer, AEP's September 3, 2004 answer, and PJM's September 7, 2004 answer because they have provided information that assisted us in our decision-making process.

B. Consolidation of Hearings

13. We will grant MW Utilities' unopposed motion for consolidation of the on-going ComEd Hearing with the hearing that we order *infra* to determine AEP's equivalent obligation.¹³ We agree with MW Utilities and other parties that the two hearings will consider very similar issues. Our review of the procedural schedule issued on May 26, 2004 by the presiding judge conducting the ComEd Hearing shows that consolidation now would have a small impact on the procedural schedule. We will, as requested by ComEd and AEP, in their joint answer,¹⁴ defer to the presiding judge for modifications to the existing procedural schedule necessitated by this consolidation.

C. Protests to AEP Agreement

14. The Commission has already addressed in previous orders nearly all the objections raised by the protestors. These objections are that: PJM and AEP filed an unexecuted agreement so that there is no straight-forward, contract guarantee that hold harmless payments will be made; Midwest ISO is not a party to the AEP Agreement, as the Commission had ordered; section 3.3 of the AEP Agreement gives AEP the right to terminate the hold harmless obligation if PJM and Midwest ISO fail to commence their

¹¹ 18 C.F.R. § 385.214 (2004).

¹² 18 C.F.R. § 385.213(a)(2) (2004).

¹³ See P 35, *infra*.

¹⁴ ComEd and AEP's joint filing of August 30, 2004 at 3-4.

common market by December 31, 2006; sections 1.2 and 2.2 of the AEP Agreement unreasonably limit the scope of hold harmless relief; the Commission should rule that AEP's customers should not bear any costs related to the hold harmless requirement; AEP unreasonably restricts the right of the Michigan and Wisconsin companies to audit AEP's performance; the cover letter to PJM and AEP's joint filing unreasonably restricts the hold harmless issues to be resolved at hearing; and the cover letter reserves to AEP the unilateral right to conduct studies. Newly raised are the objections to AEP being the entity determining the real power losses (section 4.3 of the AEP Agreement) and keeping a running account of net financial harm (section 5.1 of the AEP Agreement), with a request that not AEP but a neutral, independent third party, such as PJM and Midwest ISO together, or a market monitor, perform these functions.

15. These issues are addressed below.

1. AEP Agreement to Provide Retroactive Compensation

16. WEPCO asks the Commission to condition its acceptance of the AEP Agreement on AEP withdrawing that portion of its rehearing request of the March 18, 2004 Order that argues that the Commission does not have statutory authority to require increased hold harmless payments following a hearing.

17. The Commission rejected the initial ComEd and AEP hold harmless proposal for failure to comply substantially with the requirements of the hold harmless condition established in the Commission's prior orders. Although ComEd and AEP had asked that their proposal be placed into effect, subject to refund, while further proceedings took place to establish a just and reasonable hold harmless mechanism, the Commission found that to do so would not necessarily ensure that the Wisconsin and Michigan companies were adequately protected from the commencement of ComEd's or AEP's integration into PJM. If the proposed compensation rate were lower than the rate ultimately determined, the Wisconsin and Michigan companies would not be adequately compensated during the hearing period.¹⁵

18. To permit ComEd and AEP to join PJM before a hearing established just and reasonable hold harmless compensation rates, the Commission stated that the parties could file a service agreement that includes an explicit contractual mechanism ensuring that ComEd and AEP would provide appropriate compensation to the Wisconsin and Michigan companies for any adverse impacts during the entire period that the hold

¹⁵ See March 18 Order, 106 FERC ¶ 61,250 at P 43.

harmless condition is in effect, starting with ComEd's integration into PJM. The service agreement would also have to provide that the compensation could be increased, based on the outcome of the hearing.¹⁶

19. AEP, in the instant proceeding, filed an unexecuted service agreement, providing the appropriate guarantee that compensation could be increased if so determined by the hearing.¹⁷ However, in the transmittal letter, AEP states that it is challenging the requirement for additional retroactive compensation in its rehearing request of the Commission's March 18 Order as beyond the Commission's statutory authority (section II.B of the joint AEP-ComEd April 16, 2004 rehearing request). AEP states further that should the requirement be eliminated or changed on rehearing or judicial review, the AEP Agreement will be changed accordingly.¹⁸

20. As explained in its April 27, 2004 order on the ComEd Agreement, the Commission realizes that should the hearing conclude that compensation higher than that proposed by AEP or ComEd is appropriate, there is a significant issue as to whether, under section 205 of the Federal Power Act, such an increase could be imposed retroactively to the date on which the integration took place.¹⁹ In order to ensure that the integration decisions of ComEd and AEP would not be delayed, the Commission found that providing an executed service agreement committing to provide such compensation, if determined by the hearing, would permit the integration proposal to proceed.

21. To fulfill its merger obligation, AEP chose to join PJM, rather than Midwest ISO, and has been on notice for two years that this choice requires it to hold the Wisconsin and Michigan utilities harmless from the effects of that choice. The AEP Agreement, including the compensation provision, complies with that requirement. However, as the

¹⁶ *Id.* at P 45.

¹⁷ Section 1.2 of the AEP Agreement provides:

The compensation to the Michigan and Wisconsin Utilities may be increased, based on the outcome of a final Commission order in this proceeding, if the Net Financial Harm exceeds zero. The compensation for Net Financial Harm due from AEP shall be retroactive to the date of AEP's integration into PJM.

¹⁸ Transmittal letter to July 30, 2004 filing of the AEP Agreement at 2.

¹⁹ April 27 Order, 107 FERC ¶ 61,087 at P 31.

Commission found in the April 27 Order, if AEP seeks to integrate on October 1, 2004, its commitment to the Hold Harmless Service Agreement it filed must be full, complete, and unqualified. Therefore, consistent with the April 27 Order, AEP cannot condition its agreement to provide hold harmless compensation and integrate with PJM prior to the conclusion of the hold harmless hearing. Accordingly, as a condition to AEP integrating into PJM on October 1, 2004, AEP must, within two days of the date of issuance of this order, file to withdraw section II.B of its April 16, 2004 rehearing request of the Commission's March 18 Order, effective as of September 30, 2004.²⁰

22. In addition, due to issues raised with respect to ensuring adequate compensation, we will institute a proceeding under section 206 of the FPA, with a refund effective date 60 days from the date of this order, to examine whether the hold harmless compensation proposed by AEP is adequate.²¹ Moreover, consistent with the Commission's actions on the ComEd Agreement, we will also require AEP to file an executed hold harmless service agreement within five days of the date of issue of this order, effective as of September 30, 2004.

2. Midwest ISO's Inclusion as a Party

23. Consumers Energy objects that the AEP Agreement is defective because Midwest ISO, which will be affected by loop flows and congestion resulting from AEP's transmission usage, has not joined in filing it. The Commission addressed the omission of Midwest ISO as a party to the ComEd Agreement in its April 27 Order. It said that while inclusion of Midwest ISO may have been preferable, Midwest ISO need not be a signatory because the contractual obligation to hold harmless was ComEd's. In the ComEd Agreement proceeding, Midwest ISO had committed its cooperation and assistance to allow appropriate hold harmless compensation to be made to the Michigan

²⁰ Nothing in this order affects AEP's challenge to the legality of imposing the hold harmless condition in the first place. *Alliance Companies*, 100 FERC ¶ 61,137 (2002) (July 31, 2002 Order), *order on clarification*, 102 FERC ¶ 61,214 (February 26, 2003 Order), *order on reh'g and clarification* (June 4, 2003 Order), 103 FERC ¶ 61,274, *order denying reh'g and granting clarification*, 105 FERC ¶ 61,215 (November 17, 2003 Order), *appeal docketed sub nom. American Electric Power Service Corp. v. FERC*, No. 03-1223 (D.C. Cir. Aug. 1, 2003).

²¹ Although the April 27 Order, 107 FERC ¶ 61,087 at P 31, indicated that a prospective §206 proceeding to determine the adverse effects of loop flow and congestion might not be provide adequate protection, we are here establishing a refund effective date in this proceeding, which should provide enhanced protection.

and Wisconsin companies.²² Although Midwest ISO has not made that same explicit commitment in the instant proceeding, we will assume, unless Midwest ISO advises us differently within five days, that it intends a similar commitment in this proceeding.

3. Section 3.3 of the Agreement

24. Protesters contend that section 3.3 of the AEP Agreement gives AEP the ability to terminate its hold harmless obligation if the joint Midwest ISO-PJM common market does not commence by December 31, 2006. The April 27 Order addressed the same objection to the identical provision of the ComEd Agreement. The Commission found that the party seeking to terminate the ComEd Agreement would have to fulfill the Commission's regulations. The party would have to demonstrate why the proposed termination date is consistent with the Commission's directive. The termination would not be effective until the Commission acted upon it, which would require a finding that the hold harmless termination requirements of its previous orders have been satisfied, or that the hold harmless requirement should otherwise terminate.²³ The same reasoning and conclusion applies to section 3.3 of the AEP Agreement. AEP's proposed termination of its hold harmless obligation will require specific Commission approval.

4. Sections 1.2 and 2.2

25. Protesters claim that section 1.2 of the AEP Agreement unreasonably limits the scope of hold harmless relief because it nets among the Wisconsin and Michigan companies as a class as opposed to netting on an individual basis. They object to section 2.2's definition of Net Financial Harm as incorporating the netting restriction. They object further that the section is unnecessarily complex so that parties and lawyers will dispute its meaning, the parties' rights, and whether additional compensation other than the formulation of relief in the AEP Agreement can be required. Protestors advocate replacing section 2.2 with a commitment by AEP to provide, "hold-harmless compensation in accordance with the terms of the Commission's March 18, 2004 Order in Docket No. ER04-364-000 and its final order as ultimately issued in this [Docket No. ER04-1072] proceeding."

26. The provisions of sections 1.2 and 2.2 are substantially identical to the same sections in the ComEd Agreement. The April 27 Order found that section 2.2 of the ComEd Agreement does not hinder the Commission from assigning hold harmless

²² *Id.* at P 38.

²³ *Id.* at P 49, *citing* 18 C.F.R. § 35.15 (2004).

compensation that is just and reasonable and consistent with prior Commission orders.²⁴ The same reasoning and conclusion apply to section 2.2 of the AEP Agreement. Unlike the protestors, we do not read section 1.2²⁵ to mandate compensation by class instead of by individual company. Moreover, prior Commission orders that have required compensation to the Wisconsin and Michigan companies have not grouped the companies into a single unit.

5. Hold Harmless Costs

27. AMP-Ohio contends that AEP's customers should not have to bear any costs related to the hold harmless requirement. AEP claims that this request is not ripe for decision because the AEP Agreement does not propose to recover such costs from its customers. AEP states its belief that this concern will become a non-issue because the Michigan and Wisconsin companies will suffer no significant harm as a result of AEP's choice to join PJM.²⁶

28. In its March 18 Order, the Commission addressed the issue of who ultimately pays for the hold harmless payments and accompanying administrative costs. It found that the issue is premature. The Commission will decide cost responsibility for implementing the hold harmless condition once an adequate hold harmless mechanism has been fully established.²⁷ We are of the same opinion here. We will decide the question of who is responsible for the hold harmless solution only after resolution of the hold harmless requirement.

6. Limiting the Issues Set for Hearing

29. MW Parties and International Transmission are concerned that AEP is unreasonably restricting the hold-harmless issues to be set for hearing and that AEP seeks to conduct studies for the hearing to the exclusion of studies by others. This concern is based on the cover letter to the filing of the AEP Agreement, in which AEP states its expectations that the Commission will set for hearing the question whether transactions

²⁴ April 27 Order, 107 FERC ¶ 61,087 at P 44.

²⁵ See note 17, *supra*.

²⁶ AEP's September 3, 2004 filing at 8-9.

²⁷ March 18 Order, 106 FERC ¶ 61,250 at P 80, *citing* November 17, 2003 Order, 103 FERC ¶ 61,274 at P 47.

and flows will remain significantly unchanged as a result of AEP's choice of PJM, and that AEP will provide the analysis sought by the Commission in the context of the administrative hearing.

30. In the April 27 Order, the Commission stated that the scope of the hearing on the hold harmless requirement is bound only by the specific determinations made in prior orders. The Commission continued that parties are free to include in the hearing issues that the Commission has not specifically addressed.²⁸ We, similarly, find that the issues set for hearing here are not limited, as MW Parties fear, and will deny their protest.

31. We make the same finding in answer to MW Parties' and International Transmission's concerns that section 6.1 of the AEP Agreement unreasonably restricts requests for auditing of hold harmless calculations to one request annually, and that, under sections 4.3 and 5.1 of the AEP Agreement, only AEP determines and keeps track of hold harmless accounts. The entities prefer Midwest ISO and PJM in place of AEP. These matters are best resolved in the forthcoming hearing.

7. Clarification of Hold Harmless Impacts

32. MW Utilities request clarification of whether the Commission intends the required hold harmless compensation to include the financial harm caused by locational price increases in Michigan and Wisconsin. MW Utilities ask, "[I]f the hearing were to establish that locational prices at load nodes in Michigan and Wisconsin were higher as a but-for result of AEP's and ComEd's RTO choices, and that such locational price increases caused quantifiable financial harm to Michigan and Wisconsin utilities, would such financial harm count towards the net harm that is to be offset by hold harmless payments?" MW Utilities state that ComEd is characterizing the scope of the hold harmless obligation as limited to the consequences of incremental congestion that results from incremental loop flow caused by ComEd's and AEP's choices of PJM, and that this position would shield ComEd from any hold harmless obligation if the quantity of loop flows traversing Michigan and Wisconsin were not to increase even though the costs of these loop flows to the Michigan and Wisconsin companies did increase.²⁹

33. AEP and ComEd oppose MW Utilities' requested clarification as an attempt to redefine the hold harmless condition that previous Commission orders have limited to the operational and financial impacts of loop flow and congestion caused by AEP's and

²⁸ April 27 Order, 107 FERC ¶ 61,087 at P 55.

²⁹ MW Utilities' August 13, 2004 filing at 5-7.

ComEd's choices to join PJM. They object that the MW Utilities seek to expand the condition's scope to include higher energy prices resulting from AEP and ComEd participating in PJM. The requested clarification, according to AEP and ComEd, would make loop flow and congestion impacts irrelevant. They point out that the purpose of the hold harmless condition is to remedy only the electrical isolation of the Michigan and Wisconsin companies from the rest of Midwest ISO – the void at the center of Midwest ISO and the seam at the southern interface of the already-constrained Wisconsin Upper Michigan System. It is not to compensate for all higher energy costs that might occur while PJM and Midwest ISO move towards a common market, change that includes expanded supply opportunities and differences in energy prices and production costs.³⁰

34. We will provide clarification regarding the scope of the hold harmless condition. In the June 4, 2003 Order, the Commission found that, “even if loop flows and congestion remain the same, the financial and operational impacts associated with such loop flows and congestion may not be the same under the proposed configuration as compared to a configuration where loop flows were internalized within one RTO.”³¹ Thus, compensation would be due the Wisconsin and Michigan utilities to the extent that the seams created by AEP's and ComEd's joining PJM, as opposed to Midwest ISO, impede the RTOs from maximizing efficiency when dispatching generation to manage congestion. For example, the Wisconsin and Michigan utilities would receive compensation for increased energy prices on their systems caused by less efficient dispatch of generation even though PJM's or Midwest ISO's choice of generator did not affect the quantity of loop flows on the Wisconsin and Michigan systems.

Hearing Procedures

35. The proposed AEP Agreement raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the AEP Agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the AEP Agreement for filing, suspend it for a nominal period, and set it for hearing, subject to the conditions of this order. As stated previously, we will combine this hearing with the on-going hearing of the ComEd Agreement in Docket No. ER04-718-000.

³⁰ AEP and ComEd's joint filing of August 30, 2004 at 4-12.

³¹ June 4, 2003 Order, 103 FERC ¶ 61,274 at P 44.

36. Pursuant to section 206 of the FPA we are also initiating in Docket No. EL04-138-000, a proceeding to examine the justness and reasonableness of AEP's hold harmless compensation. Pursuant to section 206(b) of the FPA, the Commission must establish a refund effective date that is no earlier than sixty (60) days after the publication of notice of the Commission's intent to institute a proceeding, and no later than five (5) months subsequent to the expiration of the 60-day period. We will establish a refund effective date of 60 days from the issue date of this order. The Commission is also required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this section 206 investigation within 180 days of the conclusion of the consolidated hearing, currently projected for April 25, 2005. This proceeding is to be combined with the hearing we are requiring under section 205 of the FPA, and consolidated with the on-going hearing in Docket No. ER04-718-000.

The Commission orders:

(A) PJM and AEP's July 30, 2004 filing of a service agreement to the PJM OATT is hereby accepted for filing and suspended for a nominal period, consistent with this order, to become effective October 1, 2004, subject to refund and subject to the conditions set forth in the order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the AEP Agreement and whether significant changes will occur in transactions, energy flows, and congestion as a result of AEP joining PJM.

(C) The aforesaid hearing is to be consolidated with the on-going hearing in Docket No. ER04-718-000 for purposes of hearing and decision. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL04-138-000 concerning the establishment of hold harmless payments, as discussed in the body of this order.

(E) Any interested person desiring to be heard in the proceedings in Docket No. EL04-138-000 should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 21 days of the issue date of this order.

(F) The Secretary is directed to publish a notice of this section 206 proceeding in the *Federal Register*.

(G) The motion for hearings consolidation filed in this proceeding, on August 13, 2004, by MW Utilities is hereby granted, as discussed in the body of this order.

(H) The request for clarification filed in this proceeding, on August 13, 2004, by MW Utilities is hereby provided, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.