

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-6-023 ER05-6-028 ER05-6-030
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	Docket Nos. EL04-135-025 EL04-135-030 EL04-135-032
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	Docket Nos. EL02-111-043 EL02-111-048 EL02-111-050
Ameren Services Company	Docket Nos. EL03-212-039 EL03-212-044 EL03-212-046

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued November 21, 2005)

1. In this order we conditionally accept, subject to further compliance filings, the proposal for allocating to the customers of Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) the cost of new cross-border transmission facilities that are built in one of the Regional Transmission Organizations (RTO) but provide benefits to customers in the other RTO. Midwest ISO, PJM, the Midwest ISO Transmission Owners, the Midwest Stand-Alone Transmission Companies,¹ and the PJM Transmission Owners² (collectively, Applicants) jointly filed revisions to the Joint Operating Agreement between Midwest ISO and PJM (Joint

¹ The Midwest Stand-Alone Transmission Companies include: American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC.

² That is, the PJM and PJM West Transmission Owners Agreement Administrative Committees.

Operating Agreement), the Midwest ISO Open Access Transmission and Energy Markets Tariff (Midwest ISO TEMT), the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM (PJM Operating Agreement) to implement the proposed cross-border facility cost allocations.

I. Background

2. Transmission facilities in the Midwest ISO and PJM regions were traditionally constructed to serve the transmission owner's own load and financed through zonal or "license plate rates."³ With the creation of Midwest ISO's and PJM's regional planning protocols (Midwest ISO Transmission Expansion Plan (MTEP) and PJM's Regional Transmission Expansion Plan (RTEP), respectively), intended to provide a broader regional approach to transmission planning, a need for a different cost allocation methodology emerged. In this regard, the Commission has expressed concern that local load would bear the costs of new facilities without receiving commensurate benefits.⁴ Likewise, the Commission has noted that the Joint Operating Agreement, accepted by the Commission in March 2004,⁵ already embodies a commitment by the RTOs to develop a methodology for allocating costs of new transmission facilities through their joint RTO planning process. Accordingly, the Commission has required Midwest ISO and PJM, along with their transmission owners, to develop a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO.

3. Under the proposal filed by the Applicants, the cross-border cost allocation is based on a joint RTO load flow model that identifies project beneficiaries following cost causation principles. The Applicants state that the proposed protocol initially focuses

³ Under a license plate rate structure, the RTO's footprint is segregated into a number of distinct transmission pricing zones, typically based on the boundaries of individual transmission owners or groups of transmission owners, and customers taking transmission service for delivery to load within the RTO pay a rate based on the embedded cost of the transmission facilities in the transmission pricing zone where the load is located. Thus, with license plate rates, customers serving load within the RTO pay for the embedded cost of the transmission facilities in the transmission pricing zone where that load is located and receive reciprocal access to the entire regional grid.

⁴ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 at P 60 (2004) (November 18 Order), *reh'g pending*.

⁵ *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251 at P 56-57 (2004).

only on reliability projects and that projects addressing economic performance were not addressed in this filing because the RTOs needed additional time to gain experience from the joint operation of Midwest ISO and PJM energy markets. The Applicants state that, by June 1, 2006, they will file with the Commission a second cross-border cost allocation proposal for projects addressing economic performance. Applicants request that the current proposal be made effective on June 1, 2005.⁶

4. Under the proposal, the ultimate costs allocated to Midwest ISO or PJM for a so-called cross-border allocation project will be recovered by each RTO pursuant to the applicable provisions of Midwest ISO TEMT and the PJM Tariff. Applicants state that the loading contribution will be determined using a joint RTO planning model developed and agreed to by the planning staffs of the RTOs. In order for the project to be designated as a cross-border allocation project, the project must be a baseline reliability project as defined under the Midwest ISO and PJM tariffs and determined by the joint reliability project committee as being needed to efficiently meet applicable reliability criteria. The cost allocation to the RTO in which the project is not being constructed must meet the following criteria: (1) the cost allocation must be a minimum of \$10 million; (2) the contribution of the cross-border RTO to loading on the constrained facility giving rise to the cross-border allocation project must be at least five percent of the total loading on the constrained facility, using the Coordinated System Plan flow model; and (3) the cross-border allocation project must have an in-service date after December 31, 2007. In addition, the Applicants state that certain projects will be grandfathered and not included in a cross-border allocation notwithstanding their actual in-service dates.

5. A new schedule 25 of the Midwest ISO TEMT, in turn, allocates costs for cross-border allocation projects among Midwest ISO entities. Under the proposal, Midwest ISO will “recover ... from Midwest ISO Entities based on an allocation of the relative contribution of Load in each of the affected pricing zones to the loading on the constrained facility giving rise to the Cross-Border Allocation Project as determined by the study performed pursuant to section 9.4.3.2 of the Joint Operating Agreement.”⁷

⁶ The very first Coordinated System Plan will be developed by Midwest ISO and PJM by June 2006. See Midwest ISO Transmission Expansion Plan 2005 at 29 (http://www.midwestiso.org/plan_inter/expansion.shtml).

⁷ We interpret “the study” to mean the Coordinated System Plan that results from using the joint RTO planning model.

Schedule 25 indicates that Midwest ISO, after distributing information to and soliciting comments from entities who would be allocated costs, will submit a filing to the Commission setting forth the charge to each relevant entity.

6. Revisions to schedule 6 of the PJM Operating Agreement, require that where the Coordinated System Plan under the Joint Operating Agreement assigns cost responsibility, the recommended PJM regional expansion plan will assign cost responsibility to market participants in one or more zones from which expansion costs shall be recovered. Such designation is ultimately incorporated in an amendment to a schedule in the PJM Tariff which establishes the associated charge for the project.⁸

7. Changes to schedule 12 of the PJM Tariff add the Joint Operating Agreement's Coordinated System Plan to PJM's RTEP and allow PJM transmission owners to recover costs for cross-border projects. The proposed revisions also state that transmission enhancement charges of one or more transmission owners shall be established in accordance with schedule 12. Applicants state that under "determination of transmission enhancement charges," the transmission owner's revenue requirement for the enhancement may either be determined through a unilateral filing at the Commission or a formula rate already in effect.⁹

II. Notice and Filings

8. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 30,431 (2005), with protests or interventions due on or before June 7, 2005. Michigan Public Power Agency and the Michigan South Central Power Agency (jointly Michigan Agencies) filed a motion to intervene. National Grid USA (National Grid), Wisconsin Electric Power Company (Wisconsin Electric), and WPS Resources Corporation on behalf of its operating companies Wisconsin Public Service Corporation and Upper Peninsula Power Company (collectively, WPS) filed motions to intervene and protests. Detroit Edison Company (Detroit Edison) and International Transmission Company (International) filed motions to intervene and comments. The Public Utilities Commission of Ohio (Ohio Commission) filed a notice of intervention and comments. The Midwest Stand-Alone Transmission Companies; PJM and Midwest ISO, jointly; and the Indicated PJM Transmission Owners¹⁰ filed answers.

⁸ Transmittal letter at II (B).

⁹ Proposed revised schedule 12.

¹⁰ Indicated PJM Transmission Owners include: Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and
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III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. 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 decisional authority. We will accept answers provided by the Midwest Stand-Alone Transmission Companies, PJM and Midwest ISO and the Indicated PJM Transmission Owners because they have provided information that assisted us in our decision-making process.

B. Commission Acceptance

10. We will conditionally accept the proposal filed by the Applicants. We find that the proposal meets the requirements of the November 18 Order by providing a regional approach to transmission planning that more accurately identifies the beneficiaries and allocates the associated costs of cross-border projects than the existing license plate rate structure. The proposed protocol for identifying cross-border projects and allocating associated costs will: (1) ease the burden on local loads, that were traditionally responsible for network upgrades, by identifying regional beneficiaries of such upgrades; (2) serve to eliminate seams between the two RTOs; and (3) ultimately support the future joint and common market.

11. We also recognize the importance of this effort in the larger context of RTO planning, which includes making arrangements with other RTOs and independent system operators, as well as non-RTO members of Mid-Continent Area Power Pool (MAPP), to improve reliability and to enhance operational performance and efficiency of the bulk power system.¹¹

West Penn Power Company; Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; Dayton Power and Light Company; Public Service Electric and Gas Company; PECO Energy Company; Pennsylvania Power & Light Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Rockland Electric Company; UGI Utilities, Inc.; and Virginia Electric and Power Company.

¹¹ Midwest ISO has recently developed seams coordination agreements with
(continued...)

12. However, we note that this proposal does not address identification or cost allocation for economic projects between the RTOs. As discussed below, we will condition our acceptance here on Applicants filing, no later than June 1, 2006, a proposal addressing the distinction between reliability and economic transmission projects; whether and how these two categories of projects should be planned for differently; and finally, how costs should be allocated for economic projects to produce just and reasonable results. In developing this proposal, we encourage the Applicants to employ a stakeholder process that is transparent and accessible to all market participants, and we urge that any cost allocation methods agreed to follow cost causation principles.

C. Cost Allocation Proposal

1. Comments

13. National Grid asserts that the proposal fails to specify a well-defined cost allocation methodology. According to National Grid, new sections 9.4.3.2 and 9.4.3.3 of the Joint Operating Agreement do not contain even broad standards for determining such allocation and do not identify the joint RTO planning model. At best, says National Grid, section 9.4.3.2 alludes to a methodology for allocating costs, but does not provide detail as to what that methodology is or how it will be carried out. National Grid similarly finds fault with the lack of explanation regarding cost allocation for non-thermal constraints in section 9.4.3.3.¹²

14. National Grid further argues that schedules 6, 12 and 25 serve as little more than placeholders for future filings and do not describe how costs that are shared between PJM and Midwest ISO will, in turn, ultimately be allocated to the transmission customer. National Grid states that schedule 25 of Midwest ISO's TEMT does not even attempt to establish a methodology for such allocation. Revisions to schedule 12 of PJM's Tariff provides that new transmission costs associated with cross-border allocation projects will be subject to one or more transmission enhancement charges. Revisions to schedule 6 of

Tennessee Valley Authority, SPP and non-Midwest ISO members of *MAPP*.

PJM is also actively participating in interregional planning efforts. As a member of Inter-Area Planning Stakeholder Advisory Committee, it works with neighboring Northeastern RTOs on regional planning.

¹² National Grid at 10-11.

PJM's Operating Agreement provide that cost allocation within the transmission enhancement charges "shall be incorporated in an amendment to a schedule of the PJM Tariff."¹³

15. PJM and Midwest ISO answer National Grid's arguments by saying that, under the proposal, the loading contribution will be determined using a joint RTO planning model developed and agreed to by the planning staffs of the RTO.¹⁴

2. Commission Determination

16. We agree with the protesters. Schedule 6 of the PJM Tariff and schedule 25 of the Midwest ISO TEMT provide that, once the Coordinated System Plan allocates cross-border project costs between the RTOs, each RTO then conducts further analysis to identify the cost responsibility of individual loads or market participants based on their relative contribution to loading. Under both schedule 6 and schedule 25, cost allocation relies on the same flow-based model that allocates costs between the RTOs. However, because we find that the model is not described as we would prefer, as discussed below, we will require that Applicants more fully explain in a compliance filing, to be made within 90 days of this order, the joint RTO planning model referenced in these schedules.

17. Also, we note that, while Applicants apparently propose to allocate costs for thermal constraints under section 9.4.3.2 of the Joint Operating Agreement and non-thermal constraints under section 9.4.3.3 of the Joint Operating Agreement, schedule 25 to the Midwest ISO TEMT only refers to section 9.4.3.2. We will also require that the Applicants address this discontinuity in a compliance filing to be made 90 days after the issuance of this order.

D. Specificity of the Joint RTO Planning Model

1. Comments

18. Protesters point to language in proposed section 9.4.3.2 of the Joint Operating Agreement, which states that "[t]he loading contribution will be determined using a joint RTO planning model agreed to by the staff[s] of the RTOs," and fault the proposal for failing to identify what this model is, the process by which the RTO staffs will reach agreement, how often the model will be run, whether/how the model will be updated, or

¹³ National Grid at 19.

¹⁴ PJM and Midwest ISO Answer at 6.

how the outage transfer distribution factor and power transfer distribution factor¹⁵ will be determined or utilized in the model. Certain parties assert that, although a flow-based analysis may be satisfactory for operational analysis, it is insufficiently accurate for transmission expansion analysis and cost allocation.¹⁶

2. Commission Determination

19. We agree with the protestors that the joint RTO planning model is not fully described, and we urge the Applicants to describe in more detail the joint RTO planning model. Since this model will be used as a tool for determining beneficiaries of any cross-border project, it is critical to understand how this model will be used, what type of inputs and assumptions it requires, how often it will be updated, who will have access to the model, etc. As we acknowledged in footnote 7, the two RTOs are planning on developing the first Coordinated System Plan by June 2006, and, therefore, it is critical that the Applicants make the details of the model transparent to the stakeholders and to the Commission. Applicants should provide this information in a compliance filing to be made within 90 days of the issuance of this order.

E. Economic Planning

1. Comments

20. National Grid asserts that the November 18 Order neither authorized the Applicants to distinguish between reliability and non-reliability projects, nor did it specify different deadlines based on such distinction.¹⁷ National Grid believes that the proposal addressing reliability-only projects fails to comply with the November 18 Order. National Grid argues that, as an interim measure, the RTOs could adopt the cost-benefits standards found in the PJM Tariff for the allocation of cross border costs.

21. International, to the contrary, states that, by deferring an economic cost allocation proposal until June 1, 2006, stakeholders will be able to develop a proposal that is more conducive to these types of investments and more accurately identifies relevant

¹⁵ Outage transfer distribution and power transfer distribution factors are used in flow-based analyses.

¹⁶ National Grid at 12; WPS Resources at 9-10.

¹⁷ National Grid at 15.

beneficiaries.¹⁸ International notes that the load flow studies used to identify the beneficiaries of reliability projects may not be sufficient to identify the beneficiaries of other types of projects. International adds that improper allocation schemes may have a chilling effect on investments in transmission facilities that may reduce or eliminate congestion, but yet are not categorized as reliability projects.¹⁹

22. WPS argues that the attempt to allocate costs based upon the theory that projects can be categorized as meeting purely reliability or economic needs is fatally flawed.²⁰ In addition, WPS argues that such cost allocation cannot be accurately determined based upon a one-time “snapshot” analysis of such benefits. WPS and National Grid agree that the proposed allocation method fails to recognize that today’s economic project will provide tomorrow’s system reliability, and that the beneficiaries will change as the market changes. WPS states that a region-wide market requires a single region-wide rate.

23. PJM and Midwest ISO answer that their decision was based on the need for the Locational Marginal Price (LMP) signals to be in place for a sufficient time to be able to identify whether particular congestion on each RTO’s system is short-term or chronic in nature.²¹ PJM and Midwest ISO also reiterate their commitment to file with the Commission a second cross-border cost allocation proposal addressing economic and operational performance projects by June 1, 2006.

2. Commission Determination

24. We agree that in order to find a meaningful solution to economic planning problems, it is best to have locational marginal price signals that identify whether particular congestion on each RTO’s system is short-term or chronic in nature. Therefore, we accept the Applicants commitment to file a proposal no later than June 1, 2006, addressing the distinction between reliability and economic transmission projects; whether and how these categories of projects should be planned for differently; and finally, how costs should be allocated for economic projects to produce just and reasonable results.²²

¹⁸ International at 4.

¹⁹ *Id.*

²⁰ WPS at 7.

²¹ PJM and Midwest ISO Answer at 8.

²² Also, Midwest ISO recently submitted in Docket No. ER06-18-000 its Regional
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25. While we recognize National Grid's desire to quickly put in place the ground rules for economic projects, we also find great merit in International's call for a full and meaningful involvement of all RTO stakeholders in the development of these ground rules as well allowing the RTOs to gain experience in the collective operation of the two markets. Therefore, we find that the filing date of June 1, 2006 will provide the Applicants sufficient time to develop the missing component of the cross-border cost allocation methodology. In that filing, the Applicants should address intervenors' comments submitted in this proceeding relating to the distinction between reliability and economic transmission projects and the reasons why they should or should not be treated differently.

F. Relationship of This Proposal to the Cost Recovery Mechanism for New Transmission Facilities within Midwest ISO

1. Comments

26. International asks the Commission to require Midwest ISO to submit a further compliance filing in this proceeding once Midwest ISO's Regional Expansion Criteria Benefits (RECB) Task Force has completed its work.²³ International argues that it would be illogical and inconsistent for the costs of new transmission facilities to be allocated amongst Midwest ISO entities using a different methodology.

27. Detroit Edison, on the contrary, asks the Commission to find that none of the elements of the present proposal will set precedent or influence how the costs of transmission expansion internal to Midwest ISO are recovered and allocated among Midwest ISO's members..

2. Commission Determination

28. Our acceptance of the Applicants' filing is without prejudice to any findings or orders to be made by the Commission in any other cost allocation proceedings now pending or instituted in the future by or against Midwest ISO or PJM. We will address such matters when they are before us.

Expansion Criteria Benefits (RECB) filing to identify and determine cost responsibility for economic projects, among other things.

²³ Docket No. ER06-18-000.

G. Eligibility Criteria

1. Comments

29. International and National Grid state that, although minimum criteria may be necessary from an administrative efficiency standpoint, the proposed minimum may be too high. International argues that the \$10 million threshold may exclude projects that are clearly regional in nature. International does not request the criteria be changed but rather revisited if future experience indicates that larger projects with clear regional benefits are being excluded.²⁴ WPS also argues that the proposed criteria lack explanation and support, and are subjective.²⁵ WPS states that such subjective and unsupported criteria present a real opportunity for case-by-case treatment that would be unduly discriminatory or preferential.

2. Commission Determination

30. We support Applicants' decision to establish thresholds for projects to be considered for cross-border cost allocation. We find that thresholds for designating cross-border allocation projects are needed in order to expedite selection of projects needed to maintain reliability. Such thresholds will also help differentiate those projects with only de minimus cross-border impacts and focus the RTOs' efforts on the most critical network upgrades.

31. We reject International's and National Grid's arguments that the proposed thresholds would limit cross-border cost allocation treatment to only a major new transmission line. National Grid claims that, in order for a single project with a five percent impact on a specific constraint (or set of constraints) to qualify as a cross-border allocation project, the thresholds would require such a project to have a total cost of at least \$200 million (*i.e.*, \$200 million * 5 percent = \$10 million). We find that National Grid's example is atypical and distorts the true threshold. As a counter-example, we can consider a \$20 million project. Despite National Grid's claim, this relatively small project would qualify for cross-border cost allocation if costs were split 50/50, satisfying both eligibility criteria.

32. Thus, we find that the particular thresholds adopted by the Applicants do represent a reasonable starting point. When applied uniformly, these eligibility criteria will prevent unduly discriminatory or preferential treatment of any new project. If the stakeholders

²⁴ International at 3.

²⁵ WPS at 9.

find in the future that these thresholds do not correspond to their needs, proposed modifications to relevant Joint Operating Agreement provisions should be filed with the Commission.

H. Grandfathered Projects

1. Comments

33. WPS and Wisconsin Electric protest the grandfathering of the Arrowhead-Gardner Park 345 kV Line, a project intended to provide partial relief to one of the most congested interfaces in the Eastern interconnection, the Wisconsin–Minnesota interface.²⁶ They further state that the congestion, in significant part, results from inter-RTO transactions and loop flows, and that this project should not be arbitrarily excluded from the cross-border cost allocation.

34. WPS states that summary exclusion of this project (or any project) without applying the eligibility criteria and without analyzing whether the non-constructing RTO's customers benefit from such construction is unduly discriminatory or preferential. WPS avers that, rather than create objective criteria that could potentially eliminate all currently planned projects, the Applicants decided, using undisclosed criteria, to carve out just two projects.

2. Commission Determination

35. We are not persuaded by WPS' and Wisconsin Electric's arguments. First, the Commission ordered the development of the cross-border cost allocation methodology to mitigate the impact of license plate rates on the decision to build transmission facilities.²⁷ The cross-border cost allocation was to be prospective in nature and thus the exclusion of projects which are already well underway is appropriate. Applicants clearly recognized the prospective nature of the cross-border cost allocation and stated that their objective is to ensure that the proposal neither abridges the expectations of those who have projects underway, nor places burdens on those who had no reasonable expectation of participation in the planning of projects by and for the benefit of others. Grandfathering the two projects listed on Attachment 4 to the Joint Operating Agreement is thus appropriate to maintain the expectations of the parties responsible, and not responsible,

²⁶ WPS at 7 and Wisconsin Electric at 3-4.

²⁷ November 18 Order.

for these two projects. These projects should be excluded because they are legacy projects for which their need, justification and initial regulatory approvals pre-date both Midwest ISO and PJM involvement in these systems.

I. Mismatch in Planning Cycles

1. Comments

36. National Grid argues that, by tying super-regional cost allocation to the planning under the Joint Operating Agreement, the filing highlights the multiple planning timelines utilized by Midwest ISO, PJM and the Joint RTO Planning Committee.²⁸ National Grid states that, although super-regional planning takes place every three years, planning within the Midwest ISO and PJM footprints takes place every two years and annually, respectively. This mismatch of planning cycles, according to National Grid, belies the coordinated planning promised in the Joint Operating Agreement. National Grid suggests that the mismatch of planning cycles creates substantial uncertainty as to the status of any given project or as to how the costs of such project are to be allocated.

2. Commission Determination

37. We disagree with National Grid's argument about the timing of the RTOs' planning cycles. Even though the Coordinated System Plan, envisioned in proposed section 9.3.5.2 of the Joint Operating Agreement, will be created every three years, the Joint Operating Agreement also explicitly states in proposed section 9.4.3.4 that either RTO may request that a "project be tested against the cross-border cost allocation criteria during the interim periods between periodic formal releases of the Coordinated System Plan." We also note that in their answer, PJM and Midwest ISO commit to ensure that any differences in timing will not stand in the way of the coordination the Commission seeks. In our view, these provisions and commitments will provide sufficient opportunities for parties to identify on a timely basis those projects that are built in one RTO but provide benefits to customers in the other RTO.

38. Nonetheless, we do share National Grid's concern with regard to the promptness with which projects are identified as cross-border in the middle of a planning cycle. National Grid provides this example:

Consider, for example, a project determined to be needed for reliability in the PJM regional transmission expansion plan (RTEP) process in year one. Depending on how the planning cycles are lined up and whether a project

²⁸ National Grid at 18-19.

can be introduced for consideration in the middle of a planning cycle, such a project may not be considered in the [Midwest ISO] transmission expansion plan (MTEP) process until the year three, and the [joint RTO planning committee] may not consider the project in the Coordinated System Plan until year six. Until that time a project sponsor may have to wait anywhere from 3 to 6 years before it is clear whether or not the project will be considered a ‘Cross-Border Allocation Project.’ Until that determination is made, it is entirely unclear how that project will be treated within its “host” region for purposes of planning or cost allocation.²⁹

39. Since the proposed Joint Operating Agreement does not provide any timelines with regard to mid-cycle review, we are unclear whether the implied sequence of intra- and inter-RTO review may slow down project development or in effect “veto” a project. This would be of special concern if one RTO was in an urgent need of a new transmission facility and was responsible for 75 percent of the project’s costs, but was still required to wait for the other RTO’s approval for the remaining 25 percent of the project’s costs. We, therefore, require the Applicants to clarify the timelines for mid-cycle review in a compliance to be made to the Commission within 90 days.

J. Stakeholder Process

1. Comments

40. Protesters argue that the Applicants inaccurately describe pre-filing communication with the non-transmission owning Midwest ISO stakeholders as “meaningful stakeholder” input. In a similar vein, Wisconsin Electric protests the “lack of a minimum comment period” for Midwest ISO entities in schedule 25 and states that there may or may not be meaningful opportunity to comment and for Midwest ISO to actually respond to those comments and amend the allocation, if appropriate.³⁰

41. Applicants answer that they jointly held two stakeholder meetings: one in Indiana on March 21, 2005 and another in Maryland on April 11, 2005, and that both meetings included conference call capabilities. Applicants state that, on April 12 and 13, 2005, PJM met with, and requested comments from, the PJM Electricity Market Committee and the PJM Reliability Committee. Midwest ISO states that it met with the Midwest ISO Advisory Committee on April 20, 2005, distributing the draft proposal and other

²⁹ National Grid at 17-18.

³⁰ WPS Resources at 3; Wisconsin Electric at 4-5.

materials. Because there was insufficient time to discuss this topic at that April 20, 2005, meeting, Midwest ISO states that it again scheduled discussions with the Advisory Committee on cross-border cost allocation on April 26, 2005. The RTOs indicate that neither RTO received comments from their respective members requesting further stakeholder meetings or analysis.³¹

2. Commission Determination

42. The present filing is accepted with the condition that Applicants make another comprehensive filing in June 1, 2006. We envision active involvement, to the greatest possible extent, on behalf of the RTOs and the transmission owners, as well as other stakeholders. We expect a combination of public meetings open to all stakeholders and meetings with appropriate committees. We encourage the RTOs to conduct public meetings early in the process.

43. We ask parties that make pleadings in response to the future comprehensive filing to indicate how they participated through meetings and otherwise made use of the RTO's governance process to voice their concerns. Given the complexity of the issues being addressed and the variety of interested parties affected by these issues, we want to know how both RTOs afforded their stakeholders opportunities to participate and to what extent the stakeholders availed themselves to those opportunities.

K. Section 205 Filing Rights

1. Comments

44. Detroit Edison requests that the Commission require that assessments for cross-border allocation projects only be made pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2000).³² Detroit Edison asserts that the RTOs should be required to prove the justness and reasonableness of any cross-border cost allocations prior to assessing them. Detroit Edison argues that Midwest ISO proposes to only make an informational filing as to how the costs will be collected. Consequently, Detroit Edison argues that, in order to contest any cross-border allocation charges, companies would be required to file a complaint under section 206 of the FPA, 16 U.S.C. § 824e (2000), thereby placing the burden on the complaining party to establish the unjustness and unreasonableness of the charges. Detroit Edison argues that instead Midwest ISO

³¹ PJM and Midwest ISO Answer at 11-12.

³² Detroit Edison at 4.

should carry this burden and prove the justness and reasonableness of the allocation among customers within its footprint of the costs of cross-border allocation projects prior to assessing charges to recover such costs.

45. The Midwest Stand-Alone Transmission Companies respond that the Commission approved the use of the formula rate provisions as established in schedule 25.³³ They argue that the Commission precedent supports and even encourages the use of formula rates to recover the costs of new transmission facilities.³⁴ They assert that formula rates encourage investment in transmission facilities by providing certainty of cost recovery. They argue that, by granting Detroit Edison's request and requiring section 205 filings, the Joint Operating Agreement would increase uncertainty and discourage investment in needed reliability projects.

46. National Grid states that it prefers an *ex ante* approach over a formulaic approach to allocation of costs. However, National Grid acknowledges that, with the appropriate safeguards for clarity, mechanistic application, and minimization of disputes, a formulaic approach can work.³⁵

2. Commission Determination

47. The Commission has used formula rates for public utilities for many years as long as the formula is sufficiently clear that all parties can determine what costs go into the rate and how it will be calculated.³⁶ In such a case, the formula constitutes the filed rate. Here, we will accept an interim formula rate to be used by Midwest ISO to allocate among customers within its footprint the costs of cross-border allocation projects conditioned on Applicants providing supplemental information regarding the joint RTO planning model in 90 days and on Applicants filing a comprehensive cross-border pricing proposal no later than June 1, 2006, which they committed to do in this filing. Thus, we will consider further this proposal at these dates to ensure that both this formula, and the comprehensive proposal, are just and reasonable.

³³ Midwest Stand-Alone Transmission Companies at 3.

³⁴ Midwest Stand-Alone Transmission Companies at 4.

³⁵ National Grid at 24-27.

³⁶ See *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 at P 64 (2002), *order on reh'g*, 103 FERC ¶ 61,035 (2003), *order on paper hearing and compliance filing*, 108 FERC ¶ 61,235 at P 60-62, 68-75 (2004).

The Commission orders:

(A) Applicants' compliance filing is hereby conditionally accepted, as discussed in the body of this order.

(B) Applicants are hereby directed to submit further compliance filings, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.