

ER04-375-017 and ER04-375-018 (October Informational Filing), and December 30, 2005, in Docket No. ER04-375-000 (December Informational Filing),¹ wherein the two RTOs discuss their analysis and consideration of various potential elements of a joint and common market and their plan to implement certain elements that have been found would be cost-effective, demonstrate that the two RTOs have abandoned efforts to establish a joint and common market between them, contrary to the requirements of prior Commission orders. WPS Companies also filed a protest of the October Informational Filing, identical to the November Complaint.

2. Because the RTOs have committed to further analysis of which elements to pursue, we will dismiss WPS Companies' complaints as premature. Additionally, we find that the October Informational Filing satisfies the Commission's March 3, 2005 directive that the RTOs file, by October 31, 2005, a description of the elements of a joint and common market, and their concrete plan and timeline for implementation of these elements.² We will therefore deny WPS Companies' protest of the October Informational Filing.

Background

3. The issues in this case date to the Commission's rejection of the proposal by various utilities in the Midwest to form the Alliance RTO and its accompanying decision to permit these utilities to choose which RTO to join. The Commission conditionally accepted the choices by American Electric Power Service Corporation (AEP)³ and

¹ Since 2002, the Commission has required Midwest ISO and PJM to file, every sixty days, informational reports describing their progress in achieving a common market across the two regions. *Alliance Cos.*, 100 FERC ¶ 61,137 at P 55 (2002), *order on clarification*, 102 FERC ¶ 61,214), *order on reh'g and clarification*, 103 FERC ¶ 61,274, *order denying reh'g and granting clarification*, 105 FERC ¶ 61,215 (2003), *appeal docketed sub nom. American Electric Power Service Corp. v. FERC*, No. 03-1223 (D.C. Cir. Aug. 1, 2003) (*Alliance*). In 2004, when the Commission conditionally accepted the Joint Operating Agreement (JOA) between Midwest ISO and PJM, it also expanded the scope of these 60-day reports to include progress in implementing the JOA. *Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251 at P 103, *order on reh'g and clarification*, 108 FERC ¶ 61,143 at P 59, *order on clarification and denying reh'g*, 109 FERC ¶ 61,166 at P 30 (2004).

² *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,226 at P 76 (2005) (March 2005 Order).

³ Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

Commonwealth Edison Company and Commonwealth Edison Company of Indiana (ComEd)⁴ to join PJM, instead of Midwest ISO, finding that, with certain conditions to address and mitigate the impact of the resultant RTO configurations, accepting these utilities' choices to join PJM would be consistent with the RTO scope and configuration requirements of Order No. 2000.⁵ The Commission cited Midwest ISO's statement that it and PJM were working together towards a common market that would minimize the impacts of the seams resulting from AEP's and ComEd's choices to join PJM. Therefore, among its conditions, the Commission required Midwest ISO and PJM to form a functional common market across the two organizations' footprints by October 1, 2004.⁶ The Commission did not, however, specify the details of what would constitute a "common market" (hereinafter referred to as joint and common market).⁷ Also, it stated that because the order was preliminary in nature and details would be forthcoming, its actions were not intended to prejudge the outcome or bind the Commission to a particular outcome other than to the extent stated therein.⁸

4. On August 15, 2002, Midwest ISO and PJM each filed its agreement to the conditions contained in *Alliance*, including an October 1, 2004 date for commencement of a common market. However, the two RTOs were unable to meet that deadline. On October 28, 2004, the Commission found that, despite delay in implementing the joint and common market, the two RTOs were making satisfactory progress towards that goal, as evidenced by the coordination achieved in the JOA. Since Midwest ISO and PJM were already required to make a filing 60 days before Midwest ISO commenced its day-ahead and real-time energy markets in March 2005, the Commission ordered the two RTOs to include, in that filing, a detailed timeline describing the steps to be taken to achieve the joint and common market and a date certain on which they expect commencement of the joint and common market to occur.⁹

⁴ ComEd is a wholly owned subsidiary of Exelon Corporation (Exelon).

⁵ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). (Order No. 2000). *Alliance*, 100 FERC ¶ 61,137 at P 38-41, 103 FERC ¶ 61,274 at P 20-33, 36-37.

⁶ *Alliance*, 100 FERC ¶ 61,137 at P 33, 37-40.

⁷ Previous orders have referred to "common market" or "joint and common market," without indicating a distinction in meaning.

⁸ *Alliance*, 100 FERC ¶ 61,137 at P 2.

⁹ *PJM Interconnection, LLC*, 109 FERC ¶ 61,094 at P 16 (2004).

5. Midwest ISO and PJM jointly made the required submittal in their December 30, 2004 filing, in Docket No. ER04-375-017 (December 2004 Informational Filing). During the following year, the RTOs envisaged assessing the need for and the costs and benefits of further changes to the JOA that might be needed.¹⁰ In its March 2005 Order on that filing, the Commission agreed with the RTOs that future market development would benefit from allowing some time for Midwest ISO's markets and the market-to-market coordination protocols to stabilize following implementation. However, the Commission required the RTOs to continue working toward a joint and common market and directed the RTOs to identify each specific element of a joint and common market, and the efforts and costs necessary to achieve each of these elements in a report to be filed with the Commission. In particular, the Commission required the RTOs to evaluate and report, for each element, "the expected costs and benefits associated with achieving the element."¹¹ On October 31, 2005, Midwest ISO and PJM jointly made the requisite filing, the October Informational Filing.

6. On December 30, 2005, the RTOs filed their regular, 60-day report, the December Informational Filing.

Notices of Complaints

7. Notice of WPS Companies' November Complaint was published in the Federal Register, 70 Fed. Reg. 72,814 (2005), with answers, motions to intervene, and comments and protests due on or before December 19, 2005. Notice of WPS Companies' complaint was published in the Federal Register, 71 Fed. Reg. 6467 (2006), with answers, motions to intervene, and comments and protests due on or before February 21, 2006. Midwest ISO and PJM filed joint answer to each of WPS Companies' complaints. The Appendix lists the parties that intervened in these proceedings and indicates those that filed comments.

November Complaint

A. October Informational Filing

8. In the October Informational Filing, Midwest ISO and PJM state that the need for a single market to address seams issues and Order No. 2000 scope and configuration requirements has been overtaken by the benefits already achieved through interregional coordination in their individual markets. They state that each RTO held stakeholder meetings and committee meetings, and conducted a stakeholder survey to identify the objectives to be achieved by a joint and common market. Meeting participants agreed

¹⁰ Midwest ISO and PJM's December 2004 Informational Filing at 11-21.

¹¹ March 2005 Order, 110 FERC ¶ 61,226 at P 73-75, 76.

that all proposed initiatives would be evaluated for cost effectiveness in achieving these objectives. The RTOs and their consultants also investigated, further developed, and quantified the stakeholder-identified benefits of potential coordination mechanisms, and approximated the costs of implementing these mechanisms.

9. Using the input from their stakeholders, the RTOs divided the identified initiatives into three groups. Committed (Green) Initiatives are those for which the RTOs will initiate the process and take the steps necessary for implementation, with a designated completion date. Further Action Needed (Yellow) Initiatives are those that require further cost/benefit studies, investigation, or overcoming of obstacles that prevent the RTOs from committing, at this time, to a definitive implementation plan and schedule, and for which the RTOs will present their findings to stakeholders for future discussion. No Action (Red) Initiatives are those that did not receive stakeholder support and/or cannot be justified under current conditions, and will not be pursued at the present time. As relevant here, the Red Initiatives include a single OASIS, single energy and ancillary service markets, a single Financial Transmission Right (FTR) allocation process and auction across the two RTOs, a single common solution for providing for resource adequacy, and depancaking of rates for ancillary services.

B. WPS Companies' November Complaint

10. On November 23, 2005, WPS Companies filed their complaint *cum* protest¹² of the October Informational Filing. WPS Companies object that the filing is unjust and unreasonable for its failure to propose the comprehensive joint and common market required by *Alliance* and subsequent Commission orders.¹³ WPS Companies state that Midwest ISO and PJM have signaled their intent to propose modifications to the JOA that would perpetuate the current dual market arrangements that create trading barriers between the two RTOs' regions and cause WPS Companies and other market participants irreparable financial loss, in violation of the RTOs' stated commitments and the Commission's orders. WPS Companies urge that the JOA is merely a short-term solution pending establishment of the joint and common market.¹⁴ They refer to the

¹² WPS Companies state that if the Commission accepts the protest, the complaint may be deemed moot. WPS Companies also ask the Commission to consolidate this complaint proceeding with Docket Nos. ER04-375-017 and ER04-375-018 proceedings.

¹³ November Complaint at 14-17. WPS Companies cite: *Alliance*, 100 FERC ¶ 61,137 at P 2, 35, 37 & n.17, 38; 103 FERC ¶ 61,274 at P 20, 24, 26; March 2005 Order, 110 FERC ¶ 226 at P 73, 76.

¹⁴ November Complaint at 17-19. WPS Companies cite: *Alliance*, 100 FERC ¶ 61,137 at P 33; 103 FERC ¶ 61,274 at P 36, 37; *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,094 at P 16 (2004); March 2005 Order, 110 FERC ¶ 61,226 at P 47;

Commission's requirement that the RTOs and AEP and ComEd hold Wisconsin and Michigan utilities harmless from loop flow and congestion resulting from the inappropriate RTO configuration caused by AEP's and ComEd's decisions to join PJM instead of Midwest ISO.¹⁵ WPS Companies state that their settlements of these hold harmless obligations were conditioned on the premise that, within a relatively short time, a joint and common market would resolve the conditions caused by the companies' decisions.

11. Citing a study performed in 2002 (2002 Study),¹⁶ WPS Companies state that this study showed savings from the implementation of a comprehensive joint and common market covering Midwest ISO, PJM, and the Southwest Power Pool in the tens of billions of dollars in just ten years. WPS Companies criticize the October Informational Filing for failing to rebut the findings of the 2002 Study when concluding that the joint and common market is too expensive to pursue. WPS Companies list the components of a joint and common market that they claim prior Commission orders require, and ask the Commission to order Midwest ISO and PJM to prepare a plan to establish the joint and common market by implementing them. These components essentially include the initiatives that PJM and Midwest ISO termed the Red Initiatives, which the stakeholders did not support.

C. Comments, Answer, and Reply to the November Complaint

12. WPS Companies' November Complaint found support from Consumers Energy, Midwest Coalition, Indiana Municipal, Wisconsin Electric, and the state commissions. The RTOs' position, that progress should be made along the lines of the October Informational Filing, was supported by Dayton, Dominion, PSEG Companies, and Xcel. AEP, Cinergy, and Exelon refrained from taking positions on the November Complaint, but commented on how the RTOs should proceed towards a joint and common market.

13. Consumers-Wisconsin, Wisconsin Commission and Exelon find that the cost-benefit analysis in the October Informational Filing is incomplete and overly simplistic. They ask the Commission to require an independent study and analysis of all critical

¹⁵ November Complaint at 19. WPS Companies cite *Alliance*, 100 FERC ¶ 61,137 at P 53; 102 FERC ¶ 61,214 at P 7; 103 FERC ¶ 61,274 at P 43; *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,087 at P 49 (2004).

¹⁶ "Impact of the Creation of a Single MISO-PJM-SPP Power Market; prepared for MISO-PJM-SPP by Energy Security Analysis, Inc., July 2002," Attachment A in Comments filed by Certain Concerned Stakeholders, in Docket Nos. ER04-375-017 and ER04-375-018, on November 29, 2005.

inputs. Consumers-Wisconsin believe that the stakeholder process can address these issues if the RTOs honor their commitments to conduct the study and to fully vet the issues before filing the study.

14. Midwest ISO and PJM state that WPS Companies have misconstrued the Commission's prior directives; these directives do not require a single energy market operating under a single day-ahead unit commitment and a single real-time dispatch engine, regardless of costs or lack of support from the stakeholders bearing the costs. The RTOs state that the joint and common market proposal set forth in the October Informational Filing complies with the Commission's orders. They state that the filing properly evaluated expected costs and benefits associated with each element, based on actual operating costs, market price differentials, loading tables, and other actual information from summer 2005, after implementation of Midwest ISO's markets and integration of additional control areas into PJM.

15. Midwest ISO and PJM state that today's assumptions and starting point for analysis differ from those of the 2002 Study. They state that they have largely achieved the benefits predicted in the 2002 Study, mostly by inclusion of all the currently relevant companies into one of two large markets coordinated by a market-to-market congestion management process that has achieved a high degree of price convergence. They add that the 2002 Study itself does not justify the expense of a single security-constrained economic dispatch across the two regions.

16. Midwest ISO and PJM state that their analysis was performed by an outside consultant and was based upon actual operating costs and other actual information from summer 2005 (2005 Study). Nevertheless, they have committed to stakeholders to perform a production cost study, in 2006, that will provide a more traditional analysis of the savings that could be realized from a single security constrained economic dispatch across the two regions.

17. WPS Companies clarify, in their reply, that they do not ask for a comprehensive joint and common market irrespective of its cost. WPS Companies ask, should the Commission require a new study of the costs and benefits of a joint and common market, that this new study be conducted expeditiously, objectively, and independently of the RTOs' control and influence. They ask also that where the new study disagrees with the 2002 Study, the new study explain why the 2002 Study's determinations lack validity.

January Complaint

A. December 2005 Informational Filing

18. In their December Informational Filing, in the series of required 60-day reports, the RTOs state that they intend future 60-day reports to focus on current issues and progress related to the joint and common market initiatives set forth in their October Informational Filing. They further state that they are working on the parameters and process for developing the production cost study, and plan on posting the proposed methodology for stakeholder comment in early 2006, for discussion at a subsequent stakeholder meeting.

B. WPS Companies' January Complaint

19. WPS Companies object to the December Informational Filing for the same reasons that they objected to the October Informational Filing, namely their view that Midwest ISO and PJM are abandoning the joint and common market in violation of the RTOs' own commitments and prior Commission orders. They ask the Commission to consolidate their two complaint proceedings.

C. Comments and Answer to the January Complaint

20. Commentors largely repeat their positions as stated in their comments on the November Complaint. Concerning the production cost study that Midwest ISO and PJM intend to conduct in 2006, Indiana Municipal asks the Commission to undertake its own analysis of the costs and benefits of a full joint and common market. Dayton and Dominion ask that the RTOs be allowed to undertake their production cost study with participation from interested stakeholders and without unnecessary oversight or restrictions proposed by WPS Companies.

21. Midwest ISO and PJM deny that they will conduct a cost benefit analysis that would not provide an objective and reliable quantification of joint and common market costs and benefits.

Discussion

A. Procedural Matters

22. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

23. 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 an answer unless otherwise ordered by the decisional authority. We will accept WPS Companies' Reply because it has provided information that assisted us in our decision-making process.

24. We will deny WPS Companies' requests to consolidate the Docket Nos. EL06-20-000, ER04-375-017 and ER04-375-018 proceedings. We will deny also the requests of WPS Companies and Wisconsin Commission to consolidate the Docket No. EL06-49-000 proceedings with the earlier proceedings. This order addresses both WPS Companies' complaints as well as their protest on the October Informational Filing, and considers all the comments filed in all four dockets. Moreover, the comments filed in Docket Nos. ER04-375-017 and ER04-375-018 were filed also in Docket No. EL06-20-000. Thus, no entity's comments are excluded from our consideration.

B. Commission Determination

1. WPS Companies' Complaints

25. We will dismiss WPS Companies' complaints as premature. In its initial orders, the Commission did not identify the elements of a joint and common market that must be implemented, but left that determination to the RTOs and their stakeholders. All parties recognize, and we agree, that implementation of additional elements of a joint and common market should be undertaken only if the benefits of those changes to the market exceed the costs of implementing the changes.

26. The 2002 study cited by WPS Companies may not adequately reflect the existing market. This study was completed before Midwest ISO and PJM began their joint operation under the JOA and did not take into account the integration achieved through the market-to-market coordination under the JOA, whereby the RTOs manage loop flows and congestion by redispatch decisions that are most cost-effective for the combined regions. Also, since the 2002 Study, rate pancaking for transmission service between the two RTOs' systems has been eliminated.¹⁷ Whether the conclusions reached under the 2002 Study are still valid cannot be known without further study, which the RTOs began in 2005 and have committed to continuing through a more thorough production cost study in 2006.

27. In the production cost study, the RTOs have committed to assess the costs, benefits, and feasibility of the Yellow and Red Initiatives before deciding finally whether

¹⁷ See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 (2004), *reh'g pending*.

or not to commit to implement each of them. It therefore is premature for the Commission to decide on the merits of any of the specific items listed by WPS Companies.

28. We see no need for further Commission involvement in designing the study, as urged by several parties. Midwest ISO and PJM are voluntary organizations whose decision making processes are independent of the financial interests of any market participant or class of market participants.¹⁸ They have stated, in their answers, that they will make final decisions as to which joint and common market initiatives to pursue and the timelines to adopt only upon conclusion of the forthcoming, objectively-conducted, production cost study, and with stakeholder consultation.¹⁹ We see no reason to believe that Midwest ISO and PJM will not conduct the forthcoming study with sound assumptions and methodology.

29. The March 2005 Order required that the RTOs file their plan for development of a joint and common market, including an evaluation of the costs and benefits of each element, but did not specify any specific format or other requirements. The Midwest ISO and PJM's October Informational Filing is in compliance with this requirement, and we will deny WPS Companies' protest of the October Informational Filing.

C. Terminating 60-Day Reports

30. We find that implementation of the first and second phases of Midwest ISO and PJM's JOA (market-to-non-market coordination and market-to-market coordination) has stabilized sufficiently well for us to conclude that 60-day intervals for the RTOs' regular periodic reports on implementation of the JOA are too frequent. Instead, we will revise the reporting requirement to every 120 days.

31. Midwest ISO and PJM ask the Commission to "prohibit[] WPS Companies from initiating any further complaints on the subject of whether the RTOs' joint and common market proposal complies with the previous orders of the Commission,"²⁰ a request to which WPS Companies objected.²¹ We will deny the request. Midwest ISO and PJM have offered no justification for prohibiting a further complaint regarding their joint and common market proposal, particularly since they are conducting a further study of the costs and benefits of relevant proposals.

¹⁸ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,046-47, 31,061.

¹⁹ See Joint RTO December Answer at 4-5 and February Answer at 10.

²⁰ Joint RTO filing of February 17, 2006 at 9.

²¹ WPS Companies filing of March 6, 2006.

The Commission orders:

(A) WPS Companies' November and January Complaints are hereby dismissed.

(B) The October Informational Filing is hereby accepted as being in satisfactory compliance with the Commission's order of March 3, 2005.

(C) The requirement that Midwest ISO and PJM file informational reports every 60 days, as directed in the Commission's orders of July 31, 2002, and March 18, 2004, is hereby revised to every 120 days.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix: Intervenors and Commentors

An asterisk before the name indicates the filing of comments or a protest.

Docket Nos. EL06-20-000, ER04-375-017, and ER04-375-018

Entities Seeking Intervention

State Commissions

- *The Illinois Commerce Commission (Illinois Commission)
- The Public Service Commission of Maryland
- *The Public Service Commission of Wisconsin (Wisconsin Commission)

Other Entities

- *AEP, on behalf of its operating companies;
- *Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company, PSI Energy, Inc., and the Union Light, Heat and Power Company (Cinergy)
- *The Coalition of Midwest Transmission Customers (Midwest Coalition) and the PJM Industrial Customer Coalition (PJM Coalition)²²
- *Consumers Energy Company (Consumers Energy)
- *Dayton Power and Light Company (Dayton)
- *Dominion Resources Services, Inc., on behalf of Armstrong Energy Limited Partnership, LLP, Dominion Energy Kewaunee, Inc., Dominion Energy Marketing, Inc., Dominion Retail, Inc., Dresden Energy, LLC, Elwood Energy, LLC, Fairless Energy, LLC, Kincaid Generation, L.L.C., Pleasants Energy, LLC, State Line Energy, L.L.C., Troy Energy, LLC, and Virginia Electric and Power Company (collectively, Dominion)
- *Exelon
- Great Lakes Utilities
- Illinois Municipal Electric Agency (Illinois Municipal)²³

²² Midwest Coalition is an *ad hoc* coalition of large commercial and industrial end-users of electricity that purchase electric delivery service or bundled electric service from the transmission owners encompassed by Midwest ISO. PJM Coalition is an *ad hoc* coalition of large commercial and industrial end-users of electricity that operate manufacturing facilities throughout the expanded PJM footprint.

²³ Illinois Municipal filed a motion to intervene out of time.

- *Indiana Municipal Power Agency, Madison Gas and Electric Company, and Wisconsin Public Power Inc. (Wisconsin Power), (collectively, Indiana Municipal)
- Midwest Stand-Alone Transmission Companies, on behalf of American Transmission Company LLC, International Transmission Company, and Michigan Electric Transmission Company, LLC
- Mittal Steel USA ISG Inc.
- *The PSEG Companies, on behalf of PSEG Energy Resources & Trade LLC and PSEG Power LLC collectively, PSEG)
- *Wisconsin Electric Power Company (Wisconsin Electric)²⁴
- *Xcel Energy Services, Inc., on behalf of Northern States Power Company and Northern States Power Company-Wisconsin (collectively, Xcel).

Commentors Not Seeking Intervention

- *Pennsylvania Public Utility Commission
- *Michigan Public Service Commission (Michigan Commission)
- *Public Utilities Commission of Ohio

Docket No. EL06-49-000

Entities Seeking Intervention

State Commissions

- Illinois Commission
- Michigan Commission
- *Wisconsin Commission

Other Entities

- Cinergy
- Dairyland Power Cooperative
- *Dayton
- *Dominion
- Exelon
- First Energy Service Company
- Illinois Municipal
- *Indiana Municipal
- The Midwest ISO Transmission Owners
- Wisconsin Electric
- *Xcel

²⁴ Consumers Energy and Wisconsin Electric (Consumers-Wisconsin) intervened jointly as Certain Concerned Stakeholders.