

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

E.ON U.S. LLC, *et al.*

Docket Nos. EC06-4-002
and ER06-20-003

ORDER ON REHEARING

(Issued July 7, 2006)

1. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Dynegy Power Marketing, Inc.¹ (Dynegy) seek clarification and/or rehearing of a Commission order.² For the reasons discussed below, we will deny the Midwest ISO's requests for rehearing and clarification. We will grant Dynegy's requests for clarification.

Background

2. In the *Withdrawal Order*, the Commission conditionally approved a proposal submitted by LG&E Energy LLC (now E.ON U.S. LLC), on behalf of its public utility operating company subsidiaries, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, Applicants), to withdraw from the Midwest ISO. In lieu of their existing arrangements with the Midwest ISO, Applicants proposed to delegate certain tariff administration duties to the Southwest Power Pool, Inc. (SPP), serving as an Independent Transmission Organization. In addition, Applicants proposed to appoint the Tennessee Valley Authority (TVA) to serve as their Reliability Coordinator.

3. The *Withdrawal Order* found that, subject to conditions, Applicants' withdrawal proposal meets the requirements of the Midwest ISO Transmission Owners' Agreement (TO Agreement). Specifically, the *Withdrawal Order* found that with certain changes,

¹ Joined by its subsidiary, Bluegrass Generation Company, L.L.C. (Bluegrass).

² See *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282 (2006) (*Withdrawal Order*).

Applicants' withdrawal proposal satisfied the hold harmless obligation imposed by Article V, section 2(A) of the TO Agreement. The *Withdrawal Order* also found that with certain changes Applicants' proposed methodology for calculating their exit fee, as required under article V, section 2(B) of the TO Agreement, satisfied Applicants' obligations, subject to the submittal of the finalized exit fee.

4. The *Withdrawal Order* also found that with certain changes, the proposed operation of Applicants' transmission system by an Independent Transmission Organization and a Reliability Coordinator satisfied the requirements established by the Commission in connection with Applicants' prior merger.³ The *Withdrawal Order* found that Applicants' proposal would satisfy concerns relating to vertical market power if it is revised to: (i) meet certain independence requirements; and (ii) transfer certain transmission planning duties to SPP. The *Withdrawal Order* also found that Applicants' proposal will satisfy concerns relating to horizontal market power, if Applicants ensure that loads in the KU requirements customers' destination market do not pay pancaked transmission rates.

5. The *Withdrawal Order* also accepted, subject to revision, Applicants' proposed deviations from the Commission's *pro forma* open access transmission tariff (OATT). In addition, the *Withdrawal Order* addressed Applicants' proposed reliance on an existing inter-regional agreement, the Joint Reliability Coordination Agreement, to which the Midwest ISO, PJM Interconnection, L.L.C. (PJM), and TVA are parties. The *Withdrawal Order* required Applicants to finalize their arrangements regarding their proposed reliance on this agreement and to submit their proposal in a compliance filing.

6. The *Withdrawal Order* also accepted Applicants' proposed rates, subject to the submission of a section 205 filing that includes a proposed return on equity. In addition, the *Withdrawal Order* dismissed without prejudice Applicants' proposed mechanism to recover the cost of system expansions and transmission upgrades (a proposal that would have required individual customers to fund certain expansions necessary to satisfy their interconnection and delivery service requests). Finally, the *Withdrawal Order* addressed Dynegy's requests regarding its supply of Reactive Support and Voltage Control (reactive power) from a natural gas-fired peak generation facility owned by its subsidiary, Bluegrass, in Oldham, Kentucky (Bluegrass Facility).

³ See *Louisville Gas and Electric Co.*, 82 FERC ¶ 61,308 (1998).

Discussion

A. Issues Raised by the Midwest ISO

1. Whether the *Withdrawal Order* Failed to Apply the Commission's Standard Applicable to an RTO Withdrawal

7. The Midwest ISO argues that the Commission's standard of review for addressing a request by a transmission owner to withdraw from an RTO was established by the Commission in the *RTO Filing Requirements Policy Statement*.⁴ It notes that under this standard, a transmission owner seeking to withdraw from an RTO is "required to demonstrate [in a section 205 filing] that [it] meet[s] the principles of Order No. 2000."⁵

8. In the *Withdrawal Order*, we rejected the Midwest ISO's argument that this standard requires Applicants to demonstrate that their replacement arrangements meet the RTO formation requirements of Order No. 2000 (e.g., that Applicants' replacement arrangements satisfy the Order No. 2000 requirements regarding RTO independence or regional scope). We noted that Applicants were not seeking to establish or operate as an RTO, but rather were seeking approval to adopt an OATT that varies from the *pro forma* OATT. We held that, under these circumstances, Applicants were required to demonstrate, among other things, that their replacement arrangements are consistent with or superior to the *pro forma* OATT.⁶

9. The Midwest ISO fails to identify, in its rehearing request, *any* RTO principle that could have been but was not applied by the Commission in reviewing Applicants' requests. For example, the Midwest ISO does not suggest that the Commission's RTO independence or regional scope requirements could have been considered by the Commission in reviewing Applicants' requests. In fact, these RTO formation

⁴ See *Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements under the Federal Power Act*, 104 FERC ¶ 61,248 (2003) (*RTO Filing Requirements Policy Statement*).

⁵ *Id.* at P 3, citing *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁶ *Withdrawal Order*, 114 FERC ¶ 61,282 at P 30.

requirements, had they been applied to Applicants' requests, would have, in effect, mandated Applicants' continued participation in an RTO, contrary to: (i) our policy that RTOs are voluntary; and (ii) our findings in the *Withdrawal Order* that, subject to conditions, Applicants' withdrawal request satisfied the requirements applicable to such requests, set forth in the TO Agreement.

10. The Midwest ISO also misreads the *RTO Filing Requirements Policy Statement*. In that order, the Commission clarified a public utility's filing requirements under sections 203 and 205 of the Federal Power Act (FPA)⁷ following the rulings by the U.S. Court of Appeals for the District of Columbia Circuit in *Atlantic City Electric Co. v. FERC*.⁸ In the aftermath of *Atlantic City*, then, the Commission's policy statement was required to clarify and distinguish a public utility's filing rights and obligations under section 205, on the one hand, and under section 203, on the other hand.⁹

11. While noting the applicability of its Order No. 2000 principles, the Commission provided no further elaboration on how these principles would be applied when a transmission owner seeks to leave an RTO. The *RTO Filing Requirements Policy Statement* does say that an entity seeking to re-establish its stand-alone operating status must meet, with respect to its own system, the RTO formation requirements established in Order No. 2000. That would essentially have made continued RTO membership mandatory, which is clearly not the case. The Commission did not require that a

⁷ 16 U.S.C. §§ 824b and 824d (2000).

⁸ 295 F.3d 1 (D.C. Cir. 2002) (holding that the Commission lacks authority: (i) to require a public utility owner to give up its section 205 filings rights, or (ii) to condition a public utility's withdrawal from an Independent System Operator (ISO) on a section 203 filing, where the disposition at issue concerns only a change in the operational control of a facility).

⁹ In doing so, the Commission clarified that for any transfer of operational control of jurisdictional transmission facilities to or from an RTO or ISO that does not involve a transfer of ownership or other proprietary interest in transmission facilities or a lease of jurisdictional transmission facilities, the Commission will no longer require a public utility to make a filing pursuant to section 203. The Commission clarified that, instead, arrangements to join or exit an RTO or ISO will be reviewed by the Commission under section 205. The Commission added that, in undertaking its review of these filings, "the Commission will consider whether all of the elements contained in the filed arrangements meet the principles of Order No. 2000 and are just and reasonable. . . ." See *RTO Filing Requirement Policy Statement*, 104 FERC ¶ 61,248 at P 3.

departing RTO member, in effect, re-establish itself as an RTO. In the *Withdrawal Order*, then, we properly rejected this unwarranted interpretation of the *RTO Filing Requirements Policy Statement*.

12. The Midwest ISO also suggests that the *Withdrawal Order* failed to comply with the Commission's interpretation of the *RTO Filing Requirements Policy Statement* adopted in our orders authorizing the establishment of ISO New England, Inc. (ISO New England) as an RTO.¹⁰ The Midwest ISO notes, for example, that in the *ISO New England RTO Rehearing Order*, the Commission stated that “[a]lthough participation in an RTO is voluntary, a transmission owner’s withdrawal can have a substantial impact on other market participants and the markets themselves [and that under] these circumstances, the policies enunciated in Order No. 2000 would be relevant and must be considered.”¹¹

13. We disagree that we failed to apply this standard in the *Withdrawal Order*. In the *Withdrawal Order*, we found that the effect of Applicants’ withdrawal on third parties will be addressed in this case by the consumer protection provisions of article V of the TO Agreement and by the satisfaction of Applicants’ Merger Conditions.¹² In fact, the *Withdrawal Order* required Applicants to address loop flow concerns as part of their hold harmless obligation.¹³ In addition, while we shared the concern expressed by the Midwest ISO regarding Applicants’ ability to use and/or benefit from the Midwest ISO’s regional markets while avoiding the costs of RTO membership, we said that this concern should be addressed on a generic basis rather than in this case. Thus, we established a technical conference proceeding to do so.¹⁴ In any event, the *RTO Filing Requirements*

¹⁰ See Midwest ISO rehearing request at 8, citing *ISO New England Inc.*, 106 FERC ¶ 61,280 (2004), *order on reh’g*, 109 FERC ¶ 61,147 (2004) (*ISO New England RTO Rehearing Order*), *order authorizing operations*, 110 FERC ¶ 61,111 (2005).

¹¹ *ISO New England RTO Rehearing Order*, 109 FERC ¶ 61,147 at P 41. See also *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,010 (2004), *order on reh’g*, 110 FERC ¶ 61,137 (2005); *Pennsylvania-New Jersey-Maryland Interconnection*, 105 FERC ¶ 61,294 (2003).

¹² *Withdrawal Order*, 114 FERC ¶ 61,282 at P 28

¹³ *Id.* at P 47.

¹⁴ *Id.* at P 65.

Policy Statement cannot trump the requirements of the TO Agreement, a Commission-approved agreement expressly defining the requirements applicable to Applicants' withdrawal from the Midwest ISO.

2. Whether the *Withdrawal Order* Failed to Consider Cost Shifting Issues Relating to Applicants' Withdrawal

14. For the reasons discussed below, we reject the Midwest ISO's argument that the *Withdrawal Order* did not resolve whether Applicants' withdrawal from the Midwest ISO will shift costs to others. The Midwest ISO states that under Applicants' replacement arrangements, Applicants will be benefiting from the reliability capabilities of the Midwest ISO without paying their fair share of the costs of this service. For example, Applicants plan to rely on the existing Joint Reliability Coordination Agreement (an agreement to which they are not a party) to manage loop flow on their stand-alone system and to provide TVA with the information it will need to perform its reliability coordination functions for Applicants' benefit. In addition, the Midwest ISO points out that Applicants will be participating in the Midwest ISO's markets but not paying the same costs members pay.

15. The Midwest ISO notes that the *Withdrawal Order* acknowledged that: (i) Applicants' withdrawal may present serious cost avoidance issues; (ii) free riding is basically unfair; and (iii) cost avoidance of this sort may discourage membership in RTOs. The Midwest ISO notes, however, that the *Withdrawal Order* then offered to address these issues on only a generic basis in the context of an industry-wide technical conference. The Midwest ISO argues that a technical conference is an inadequate forum for resolving these issues because it may be unable to deal with the need for retroactive relief. The Midwest ISO argues that the issues it has raised should have been set for an evidentiary hearing in this proceeding and are not appropriate for resolution through a written record. Even if the Commission proceeds with its proposed technical conference, Applicants should be required to abide by the Commission's orders issued in that proceeding as a condition of their withdrawal from the Midwest ISO.

16. We disagree that the technical conference proceeding established by the Commission in Docket No. AD06-9-000 will be an inadequate forum regarding the cost shifting issues raised by the Midwest ISO in this proceeding. In the *Withdrawal Order*, we agreed that potential cost shifts attributable to Applicants' withdrawal from the Midwest ISO are important. However, we also recognized that these concerns raised broader, generic implications applicable to all RTOs and ISOs and to all market participants with whom they interact, whether directly or indirectly.¹⁵ In addition, the

¹⁵ *Id.* at P 65.

free rider concerns raised by the Midwest ISO are not unique to requested RTO withdrawals -- these issues, rather, can encompass entities that have never joined an RTO. Thus, our reliance on an industry-wide technical conference to examine these industry-wide issues is an appropriate means of addressing these issues on a comprehensive, non-discriminatory basis.

17. While the Midwest ISO suggests that Applicants' stand-alone system will rely upon the reliability capabilities of the Midwest ISO's system (and the Joint Reliability Coordination Agreement, to which the Midwest ISO is a party), we cannot know in advance how much such use may occur. The Midwest ISO has not attempted to place a dollar value on this service. If it does so in the future, the Commission's complaint procedures, including the refund protection allowance provided under section 206 of the FPA, or a rate filing under section 205, will be available to the Midwest ISO.

3. Whether the Withdrawal Order Erred in Allowing Applicants To Rely on Transmission Loading Relief Measures

18. We reject the Midwest's ISO assertion that the *Withdrawal Order* erred in accepting Applicants' proposal to use Transmission Loading Relief (TLR) measures to manage congestion. The Midwest ISO points out that under the TO Agreement, at article V, section 3, Applicants' withdrawal is subject to "applicable federal and state regulatory approvals or procedures." The Midwest ISO argues that this obligates the Commission to consider whether Applicants' proposed reliance on TLRs is just and reasonable *vis a vis* the Midwest ISO's superior method for managing congestion, *i.e.*, within the context of its organized market. It notes that in areas lacking an RTO, the Commission has accepted a public utility's reliance on an independent transmission coordinator as an improvement on the prior arrangements.¹⁶ The Midwest ISO argues that in this case, by contrast, Applicants' replacement arrangements are inferior to an existing, superior model.

19. The Midwest ISO further argues that in *Duke*, the Commission approved the proposal at issue *not* because it was an improvement over the *pro forma* tariff, but

¹⁶ Midwest ISO rehearing request at 19-20, *citing Entergy Services, Inc.*, 110 FERC ¶ 61,295, *order on clarification*, 111 FERC ¶ 61,222 (2005), *reh'g pending*; *Duke Power*, 113 FERC ¶ 61,288 (2005) (*Duke*); *MidAmerican Energy Co.*, 113 FERC ¶ 61,274 (2005).

because it was an improvement over the service that Duke provided.¹⁷ The Midwest ISO adds that in accepting Applicants' proposed reliance on TLRs, the *Withdrawal Order* applies a rationale that cannot be reconciled with the Commission's nearly contemporaneous ruling on a comparable issue (relating to imbalance provisions) in *Southwest Power Pool, Inc.*¹⁸

20. We disagree that our acceptance of Applicants' TLR proposal departs from our prior cases. In fact, we have accepted a non-RTO entity's continued reliance on TLR procedures with respect to each of the other independent entity proposals we have considered.¹⁹ In *SPP*, by contrast, we addressed these issues not in the context of a stand-alone system, but in the context of an organized market. For a stand-alone system, however, TLR procedures are an acceptable methodology that can be used to manage congestion on a reliable basis and thus are appropriate here. While the Midwest ISO argues that a market-based congestion management system would provide a superior means of managing congestion, the Midwest ISO does not suggest that Applicants would be able to use that method for their system. Thus, the Midwest ISO's argument, again, essentially would make it impossible for an RTO member to ever withdraw from the RTO, making permanent membership mandatory. Finally, we note that under the standard of review applicable here, TLR procedures have been determined by the Commission to be consistent with or superior to the *pro forma* tariff.²⁰

¹⁷ *Id.*, citing *Duke*, 113 FERC ¶ 61,288 at P 18 (“We find that Duke’s Independent Entity proposal is an improvement over the existing transmission services and transmission decision-making offered under Duke’s OATT and thus meets our ‘consistent with or superior to’ standard under Order No. 888.”).

¹⁸ 114 FERC ¶ 61,289 at P 2 (2006) (*SPP*) (finding that with improved imbalance service, *SPP*’s market participants will benefit from a more efficient use of the constrained transmission system and fewer TLR events).

¹⁹ See *Entergy*, 110 FERC ¶ 61,295; *Duke*, 113 FERC ¶ 61,288; and *MidAmerican Energy Co.*, 113 FERC ¶ 61,274.

²⁰ See *North American Electric Reliability Council*, 85 FERC ¶ 61,353 (1998).

4. **Whether the *Withdrawal Order* Departs from the Commission's Hold Harmless Precedents Regarding the Creation of New Seams**

21. The Midwest ISO asserts that the *Withdrawal Order* departs from the Commission's policy with respect to the obligation, in the case of a withdrawal proposal that creates a new seam, to hold neighboring markets harmless. The Midwest ISO notes that in the *Withdrawal Order*, the Commission found that Applicants' hold harmless obligation under the TO Agreement was limited to existing transmission customers.²¹ It argues that this interpretation of Applicants' hold harmless obligation is inconsistent with the Commission's policy set forth in *Alliance Companies* (a case in which the Commission addressed the decision of the Commonwealth Edison Company and the Commonwealth Edison Company of Indiana, Inc. (ComEd) to join PJM).²²

22. The Midwest ISO argues that in *Alliance*, the Commission required ComEd to demonstrate that its proposal to join the PJM RTO would not harm PJM's neighboring transmission providers and their customers. The Commission held that a proposal that would create an operating seam was unjust and unreasonable in the absence of an operational and financial hold harmless agreement.²³

23. The Midwest ISO argues that under Applicants' proposal, Applicants' generation will be subject to their own internal dispatch, flows will change, and the border entities will no longer have the benefit of Applicants' generation to assist in congestion management. This situation is indistinguishable from the facts presented by ComEd's decision to join PJM; that decision created an operating seam detrimental to the Midwest

²¹ March 17 Order, 114 FERC ¶ 61,282 at PP 47-51. In addition, the *Withdrawal Order* also interpreted Applicants' hold harmless obligation to extend to the allocation of flowgate capacity and real-time management of loop flows necessary for customers with existing contracts to continue to receive the same service they would have received absent Applicants' withdrawal. *Id.* at P 47.

²² 103 FERC ¶ 61,274 (*Alliance*).

²³ *Id.* at P 43 (“[i]n order to ensure that the proposed configuration is reasonable, utilities in Wisconsin and Michigan . . . must be held harmless from congestion or loop flows resulting from the creation of this seam during the interim period prior to the commencement of the common market (at which time congestion and loop flows will be effectively internalized).”).

ISO and its customers. The Midwest ISO concludes that the hold harmless obligation imposed by the Commission on ComEd should also be imposed, for the same reason, on Applicants.

24. We disagree that the *Withdrawal Order* misconstrued Applicants' hold harmless obligations under the TO Agreement. Article V, section 2(A) of the TO Agreement states as follows:

Users taking service which involves the withdrawing Owner and which involves transmission contracts executed before the Owner provided notice of its withdrawal shall continue to receive the same service for the remaining term of the contract at the same rates, terms, and conditions that would have been applicable if there were no withdrawal. The withdrawing Owner shall agree to continue providing service to such Users and shall receive no more in revenues for that service than if there had been no withdrawal by such Owner.

The *Withdrawal Order* correctly found, based on this language, that Applicants' hold harmless obligations extended only to existing transmission contracts entered into before the date on which Applicants gave notice of their intent to withdraw from the Midwest ISO. This interpretation is expressly contemplated by the term "transmission contracts," as it is used in article V, section 2(A), and by the requirement that these transmission contracts be "executed." We also correctly interpreted the term "transmission contracts" to encompass all grandfathered agreements, executed transmission service agreements under the Midwest ISO Transmission and Energy Markets Tariff (TEMT) that cover specific transactions, and confirmed reservations on the Midwest ISO open access same-time information system in existence as of the notice date. This interpretation is consistent with the understanding that "[u]sers taking service" under these contracts may "involve[] the withdrawing Owner," *i.e.*, to the extent that Applicants' facilities may be utilized by the Midwest ISO to provide the service to which these customers are entitled. For this same reason, our finding that Applicants' hold harmless obligation extends to loop flow considerations was also warranted.

25. *Alliance* was a very different situation. First, the Commission, in *Alliance*, was not required to apply a transmission owner's agreement addressing the withdrawal rights of an RTO member. In this case, by contrast, Applicants' right and obligations are already specifically set forth by a binding agreement, *i.e.*, by the TO Agreement. Second, the hold harmless conditions imposed in the case of transmission owners at issue in *Alliance* were conditions to these entities' voluntary decision to join an RTO and were imposed upon these entities to meet the Commission's RTO policies as they relate to the internalization of loop flows and the appropriate configuration of an RTO. Moreover,

these requirements were not unilaterally imposed on these entities by the Commission. Rather, the Commission directed the parties to confer and settle their differences and then propose a workable solution consistent with the establishment of their proposed RTO. In this case, by contrast, Applicants are exercising their contractual rights under the TO Agreement to re-establish their stand-alone status.

5. Whether the *Withdrawal Order* should be Clarified with Respect to Regional Coordination and Seams Management Issues

26. The Midwest ISO requests clarification of the *Withdrawal Order* regarding Applicants' obligations to perform and/or oversee certain regional coordination and seams management functions. Specifically, the Midwest ISO asserts that it is unclear whether Applicants will be required to: (i) enter into a seams agreement with the Midwest ISO; (ii) become a party to the existing Joint Reliability Coordination Agreement, to which TVA, PJM, and the Midwest ISO are parties; or (iii) file an alternative proposal. The Midwest ISO further seeks clarification on whether the execution of the Joint Reliability Coordination Agreement is a condition of approval applicable to Applicants' withdrawal from the Midwest ISO. The Midwest ISO also seeks clarification that in its negotiations with Applicants regarding the Joint Reliability Coordination Agreement, it has no legal obligation to compromise its reliability obligations or to undermine the economic interest of its members.

27. In our order addressing Applicants' April 11, 2006 compliance filing, we addressed Applicants' obligations as they relate to the Joint Reliability Coordination Agreement. We note that Applicants' compliance filing clarifies, in contractual terms, their commitment to the Joint Reliability Coordination Agreement, subject to the submission of an additional compliance filing. Thus, we dismiss as moot the Midwest ISO's requests for clarification concerning these issues.

6. Whether the *Withdrawal Order* is Inconsistent with EAct 2005

28. We reject the Midwest ISO's argument that the *Withdrawal Order* is inconsistent with the intent of the Energy Policy Act of 2005 (EAct 2005), section 1298,²⁴ concerning reliability and transmission access issues. The Midwest ISO argues that EAct 2005, section 1298 requires the Commission to convene joint federal/state boards on a regional basis to study the issue of security constrained dispatch to promote regional

²⁴ Pub. L. No. 109-58, 119 Stat. 594, 986 (2005).

reliability.²⁵ The Midwest ISO argues that permitting Applicants to withdraw from the Midwest ISO, without ensuring a comparable level of reliability, seriously prejudices the inquiry and studies mandated by Congress.

29. In addition, the Midwest ISO points out that EAct 2005, section 1211 provides for the development of the first enforceable standards for electric reliability and provides for the creation of the Electric Reliability Organization.²⁶ The Midwest ISO argues that the Commission has now been tasked with the responsibility of protecting reliability, but the *Withdrawal Order's* approval of Applicants' proposal will undermine this directive. Finally, the Midwest ISO argues that EAct 2005 evidences the intent of Congress to remove all impediments to regional coordination, RTO development, and efficient management of the transmission grid.²⁷ It argues that the *Withdrawal Order* undermines these policies by allowing Applicants to weaken an existing RTO.

30. We disagree that the *Withdrawal Order* is inconsistent with either the spirit or the letter of EAct 2005 as it relates to regional coordination issues. When Congress adopted EAct 2005, it did not revise the principle of Order No. 2000 that participation in an RTO is voluntary, nor did it amend a public utility's section 205 filing rights. Our findings in the *Withdrawal Order* were necessarily built upon this foundation. Since Applicants, subject to conditions, satisfied the withdrawal requirements of the TO Agreement, Applicants are entitled to propose rates, terms and conditions applicable to their stand-alone operation. The Midwest ISO's argument that Applicants' facilities could be operated in a more reliable, efficient manner in an RTO (and thus promote the regional coordination goals of EAct 2005) simply overlooks Applicants' contractual rights under the TO Agreement, which we are not at liberty to ignore.

²⁵ 16 U.S.C. § 824w(c). See also *Order Convening Joint Boards Pursuant to Section 223 of the Federal Power Act*, 113 FERC ¶ 61,353 (2005).

²⁶ 16 U.S.C. § 824o. See also *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104 at P 29 (2005).

²⁷ Specifically, the Midwest ISO cites EAct 2005, section 1241(c) (permitting incentive rates for RTO membership); section 1232 (allowing TVA and federal power marketers to join and to transfer functional control of their transmission systems to transmission organizations); and section 1231 (permitting the Commission to require non-jurisdictional utilities to provide open access transmission service).

31. Moreover, the *Withdrawal Order* did consider regional concerns. We required Applicants to address loop flow concerns as part of their hold harmless obligation. In addition, we found that the concerns expressed by the Midwest ISO regarding Applicants' ability to benefit from the Midwest ISO's regional markets, should be addressed in a generic technical conference proceeding.²⁸

B. Issues Raised by Dynegy

32. We will grant Dynegy's request for clarification that the *Withdrawal Order* does not address any issue pending in the *Bluegrass Reactive Power Tariff Proceeding*,²⁹ or foreclose Dynegy, or its subsidiary, Bluegrass, from making any filing concerning the Bluegrass Facility. Dynegy had requested that Applicants' authorization to withdraw from the Midwest ISO be conditioned on: (i) the continued operation and effect of the Bluegrass Reactive Power Tariff, as conditionally accepted by the Commission; and (ii) Applicants' obligation to pay for reactive power (an obligation currently assumed by the Midwest ISO by operation of schedule 2 of the Midwest ISO TEMT).³⁰ The *Withdrawal Order* noted that Applicants, in their answer, acknowledged that under the parties' interconnection agreement (the Bluegrass Interconnection Agreement),

²⁸ *Withdrawal Order*, 114 FERC ¶ 61,282 at P 65.

²⁹ See *Bluegrass Generating Co., L.L.C.*, 110 FERC ¶ 61,349 (2005) (order accepting and suspending the Bluegrass Reactive Power Tariff and establishing hearing and settlement judge procedures). An initial decision in this proceeding has been issued. See *Bluegrass Generation Co., L.L.C.*, 115 FERC ¶ 63,015 (2006).

³⁰ On October 17, 2005, the Commission conditionally accepted for filing, subject to refund, the Midwest ISO's schedule 2 to compensate generators within the Midwest ISO footprint for reactive power, effective January 1, 2005. See *Midwest Independent System Operator, Inc.*, 113 FERC ¶ 61,046 (2005), *order on reh'g and compliance*, 114 FERC ¶ 61,192 (2006).

Applicants were obligated to purchase reactive power from the Bluegrass Facility even after Applicants withdraw from the Midwest ISO.³¹ The *Withdrawal Order* did not address the Bluegrass Reactive Power Tariff.

33. In its request for clarification, Dynegy notes that the *Withdrawal Order*, in addressing section 8.4.4(ii) of the Bluegrass Interconnection Agreement (and the nominal compensation provide under that agreement to Bluegrass), does not address the separate issue of whether the Bluegrass Reactive Power Tariff applies to Applicants' OATT, *i.e.*, the *Withdrawal Order* does not ensure continued compensation to Bluegrass at a level comparable to that currently being provided by the Midwest ISO. Accordingly, Dynegy seeks clarification that the *Withdrawal Order* does not: (i) terminate the Bluegrass Reactive Power Tariff, or otherwise endorse Applicants' position, asserted in the *Bluegrass Reactive Power Tariff Proceeding*, that the rates under that tariff are applicable only for reactive power sales made within the Midwest ISO;³² (ii) preclude Bluegrass from filing to transition the Bluegrass Reactive Power Tariff from the Midwest ISO's TEMT to Applicants' OATT; or (iii) keep Bluegrass from being paid for its supply of reactive power, subject to a transition filing and the outcome of the *Bluegrass Reactive Power Tariff Proceeding*.

³¹ *Withdrawal Order*, 114 FERC ¶ 61,282 at P 51. The provision at issue, section 8.4.4(ii), states as follows:

Compensation – LG&E/KU agrees to compensate [Bluegrass] for providing reactive support pursuant to Section 8.4 as follows:

- (i) In the event that the FERC, or any other applicable Governmental Authority, issues an order or approves a tariff establishing a specific compensation to be paid to [Bluegrass] for reactive power support, LG&E/KU shall pay [Bluegrass] pursuant to such order or tariff; or
- (ii) In the absence of such an order or tariff, and subject to any applicable rules and regulations of FERC, LG&E/KU shall pay [Bluegrass] for he reactive power absorbed by the [Bluegrass Facility] and the reactive power produced by the [Bluegrass Facility] on a per MVARh basis for the total MVARh for the hours operated . . . at the rate of \$0.50 per MVARh[.]

³² Dynegy notes that Applicants, in the *Bluegrass Reactive Power Tariff Proceeding*, have taken the position that Bluegrass Reactive Power Tariff should terminate following Applicants' departure from the Midwest ISO.

34. Dynegy's requests for clarification are hereby granted. The *Withdrawal Order* does not address any issue currently pending in the *Bluegrass Reactive Power Tariff Proceeding*, nor does it preclude Bluegrass from making any filing concerning the Bluegrass Facility. We note, however, that the rights and obligations of the parties, as they concern these issues, are governed, in part, by an existing agreement (the Bluegrass Interconnection Agreement) and a filed tariff (the Bluegrass Reactive Power Tariff). Should Bluegrass wish to amend or modify its rights and obligations under these arrangements, it is free to do so, subject to the limitations of sections 205 and 206 of the FPA.

The Commission orders:

(A) Rehearing and/or clarification of the *Withdrawal Order*, as requested by the Midwest ISO, is hereby denied, as discussed in the body of this order.

(B) Clarification of the *Withdrawal Order*, as requested by Dynegy, is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.