

124 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Docket Nos. ER08-884-000
Inc. and PJM Interconnection, L.L.C.

Midwest Independent Transmission System Operator, ER08-913-000
Inc. and Southwest Power Pool, Inc.

ORDER ACCEPTING REVISIONS TO JOINT OPERATING AGREEMENTS AND
DIRECTING COMPLIANCE FILING

(Issued July 1, 2008)

1. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C., (PJM), in Docket No. ER08-884-000, and Midwest ISO and Southwest Power Pool, Inc. (SPP), in Docket No. ER08-913-000 (collectively, regional transmission organizations (RTOs) or Applicants), submitted proposed revisions to the Congestion Management Process that is part of the Joint Operating Agreements (JOA) between Midwest ISO and PJM and between Midwest ISO and SPP. In this order, we accept the proposed revisions, to be effective June 1, 2008, and direct Applicants to make a compliance filing that includes the field test methodology language in their Congestion Management Processes.

Background

2. In Order No. 693,¹ the Commission approved several mandatory reliability standards under section 215 of the Federal Power Act.² This included Reliability

¹ *Mandatory Reliability Standards for the Bulk Power System*, Order No. 693, 72 Fed. Reg. 16,416, (2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

² 16 U.S.C. § 824o(e)(3) (2006).

Standard IRO-006-3, which reflected North American Electric Reliability Corporation's (NERC's) Transmission Load Relief (TLR) procedures. Under the TLR procedures, NERC requires curtailment of interchange transactions that have a generation-to-load distribution factor on a constraint above a five percent threshold. However, Reliability Standard IRO-006-3 also established a "regional difference" for Midwest ISO, PJM and SPP under which the market flows from these RTO systems with a generation-to-load distribution factor on a constraint down to zero percent (instead of five percent) were subject to curtailment.³ This zero percent is reflected in the Congestion Management Process of Applicants' JOAs.⁴

3. After the regional difference was adopted, the RTOs raised concerns about their ability to meet their relief obligations at the zero percent level. In response, the NERC Operating Reliability Subcommittee recommended that the market flow threshold used by the NERC Interchange Distribution Calculator to assign relief obligations to the RTOs be changed from zero to three percent for a 12-month field test. During this interim period, the NERC Operating Reliability Subcommittee would investigate all situations in which the RTOs were unable to meet their relief assignments to determine whether the cause was the market flow threshold or some other factor. The results of the 12-month test will be used to decide whether to recommend a permanent change to the market flow threshold from zero to three percent, or to suggest a change to some other value.⁵

4. Subsequently, on May 25, 2007, Midwest ISO and PJM submitted proposed revisions to their JOA to incorporate the NERC-approved field test threshold. The Commission conditionally accepted the proposed changes and directed Midwest ISO and PJM to make a compliance filing explicitly stating the three percent market flow threshold that NERC had approved for the field test, the other terms and conditions of the 12-month field test, and the effective date on which Midwest ISO and PJM each planned to begin and end implementation of the field test, if known.⁶ Finally, the Commission directed the Midwest ISO and PJM to file for informational purposes, within 60 days of the completion of the field test, a report of NERC's findings related to the market flow test. Midwest ISO and PJM subsequently informed us that each would terminate

³ The Commission neither approved nor remanded this regional difference.

⁴ See Order No. 693 at P 966.

⁵ See Order No. 693 at P 976 and Comments of Midwest ISO and PJM in Docket No. RM06-16-000 at page 31 (January 3, 2007).

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083 (2007). On May 15, 2008, the Commission accepted Midwest ISO and PJM's compliance filing. *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,148 (2008).

implementation of the field test on October 31, 2008, regardless of when each test began.⁷

5. On November 27, 2007, Midwest ISO and SPP proposed revisions to the Congestion Management Process in their JOA to establish a “baseline” document representing a standardized congestion management process. The revisions, among other things, added language referring to the 12-month field test and increased the market flow threshold from zero to three percent. The Commission conditionally accepted Midwest ISO and SPP’s proposed revisions.⁸

Proposed Revisions

6. Midwest ISO, SPP and PJM have now filed proposed revisions to the Congestion Management Process in the JOAs. They state that based upon the results of the field test to date, the NERC Standards Committee agreed to change the market flow threshold from three percent to five percent, effective June 1, 2008, for the remaining period of the field test. Accordingly, the RTOs filed proposed revisions to sections 4.1 (*Market Flow Determination*) and 4.4 (*Firm Market Flow Calculation Rules*) of the Congestion Management Process to set out the new five percent market flow threshold. They also propose language that allows them, during the remaining period of the field test, to consider impacts below the five percent threshold at the direction of NERC if unanticipated reliability problems are observed as a result of the threshold limits.

Notice and Responses

7. Notice of the Applicants’ filings was published in the *Federal Register*, 73 Fed. Reg. 28,105 (2008), with protests and interventions due on or before May 23, 2008. Timely motions to intervene were filed by Consumers Energy Company, Ameren Energy Marketing Company, Exelon Corporation, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., Xcel Energy Services, Inc., and Duke Energy Corporation. Basin Electric Power Cooperative (Basin) filed a motion to intervene and protest. On June 9, 2008, Midwest ISO, PJM and SPP filed an answer.

Basin’s Protest

8. Basin requests that the Commission reject the RTOs’ proposal to increase the market flow threshold for the field test from three percent to five percent. Basin asserts

⁷ See Transmittal Letter in Docket No. ER07-940-001, at P 3 (filed on May 22, 2008).

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,202 (2007).

that the Commission has told the RTOs to ensure that non-market entities are not harmed by the implementation of their markets. Specifically, Basin states that when the Commission evaluated Midwest ISO and PJM's proposal to raise the market flow threshold from zero to three percent, it expressed concern about the effect of a higher market threshold on neighboring systems. The Commission stated that while it recognized that the requirement to provide redispatch to relieve constrained flowgates (where their dispatch of generation has a small effect on the loading on a flowgate) could impose burdens on the RTOs, neighboring utilities also had legitimate concerns that they could bear a larger share of redispatch responsibilities as a result of RTO market flows.

9. Relying on the Commission's statement that the startup of markets "should not subject either non-RTO transmission owners or the RTO markets to unreasonable redispatch responsibilities,"⁹ Basin asserts that the three percent market flow threshold already causes burdens on non-RTO transmission providers because it shifts the responsibility for relieving constraints to non-RTOs.¹⁰ The proposal to increase the

⁹ See Basin Protest at 6, citing Order No. 693 at P 990.

¹⁰ Basin provides the following example:

[A]ssume that a portion of the output of 15 of the generators that the Midwest ISO dispatches crosses a specific flowgate. At a zero percent market flow threshold, the Midwest ISO would have to redispatch generation to achieve reductions in loading with respect to all 15 of those generators in the event of a constraint. At a three percent market threshold, it would have to redispatch generation to achieve reductions in loadings with respect to all generators as to which at least three percent of its output crosses that flowgate – perhaps 10 generators. At a five percent market flow threshold it might have to redispatch generation to achieve reductions in loadings with respect to the flows of only 4 generators. However, the amount of the Midwest ISO's generation that crosses that flowgate from the 11 generators as to which there is no obligation to reduce flows on the flowgate may in fact constitute a significant amount of the total flow on that flowgate. Since the non-RTO transmission provider is responsible for relieving whatever portion of the constraint is not relieved by the RTO, its redispatch obligations would increase to compensate for the 11 Midwest ISO generators that are not included in the calculation of the Midwest ISO's redispatch obligation. See Basin Protest at 6-7.

threshold is presumptively unjust and unreasonable, according to Basin, because it imposes an even larger obligation on neighboring non-RTO entities to relieve the portion of the constraints that is caused by the RTOs.

10. Basin asserts that the only basis for the RTOs' proposal is that the RTOs allegedly cannot meet their obligations in a timely manner. Basin points out that although the NERC Operating Reliability Subcommittee Executive Committee found that the field test result through February showed that the RTOs could not achieve their relief obligations within the required 30 minute deadline, the NERC Operating Reliability Subcommittee Task Force did not recommend any action that might improve the speed with which solutions to congestion are identified or to find solutions that can relieve constraints more quickly. Instead, it proposed to re-define the problem so that there is less need for the RTOs to redispatch generation to relieve constraints.¹¹

11. Basin also requests that the Commission direct the RTOs to modify the Congestion Management Process to incorporate the conditions of the field test. The Congestion Management Process previously referred to the terms and conditions set forth in the joint compliance filing letter dated August 23, 2007, in Docket No. ER07-940-000. The RTOs removed this reference in the filing in which they proposed to establish the "baseline" Congestion Management Process. In addition, Basin requests that the Commission require the Applicants to make data obtained during the field test available to the non-RTO transmission providers so that they can evaluate the effects of the field test on the economics and reliability of their systems.¹²

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the dockets in which they filed.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise permitted by the decisional authority. Midwest ISO, PJM and SPP's answer to Basin's protest assisted us in our decision-making process and, therefore, we accept it.

¹¹ *Id.* at 10.

¹² *Id.* at 13-15.

Commission Determination

14. We find that Applicants have shown that their proposal to increase the market threshold from three percent to five percent for the remaining duration of the NERC-approved field test is just and reasonable. The results of the field test to date indicate that in most cases the RTOs have been unable to meet their relief obligations at 30 minutes using a three percent threshold. Because the goal of the field test is to determine whether the RTOs' inability to meet their relief assignments is due to the market flow threshold or some other factor, and because the RTOs have not adequately met their relief obligations at the three percent threshold, a switch to a five percent threshold to determine whether the RTOs will be able to meet their relief obligations at that level is reasonable.¹³ We also note that the proposal to increase the market flow threshold from three percent to five percent for the field test was approved by the NERC Operating Reliability Subcommittee without objection or abstention.¹⁴

15. As the Commission previously explained, the field test will help the parties to the seams agreements, NERC, and the Commission to evaluate the impact and effectiveness of the Congestion Management Process and determine what, if any, permanent modifications to these agreements or the NERC TLR procedures may be appropriate.¹⁵ The field test is also important in addressing reliability and equity issues associated with the treatment of the RTOs' market flows under the TLR procedures. Therefore, we find that Applicants should have the flexibility to continue the field test at a five percent threshold.

16. Regarding Basin's concerns about the impact of the increase from three percent to five percent, we first note that, in response to similar concerns raised by Mid-Continent Area Power Pool (MAPP), of which Basin is a member, the Commission required Midwest ISO to implement the field test in such a manner that its market flow impacts on reciprocal coordinated flowgates between Midwest ISO and MAPP will continue to receive relief assignments based on a zero percent threshold.¹⁶ Midwest ISO reiterates in its answer that it will maintain the zero percent threshold on flowgates that are reciprocal

¹³ RTOs Answer at Attachment B.

¹⁴ See Basin Protest at Attachment A.

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc*, 120 FERC ¶ 61,083, at P 25 (2007).

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc*, 120 FERC ¶ 61,083 at P 26.

with MAPP as long there is a contractual obligation to do so.¹⁷ Therefore, nothing in the instant proposal will adversely affect Basin or the other MAPP entities.

17. Furthermore, with regard to Basin's request that the Commission require Applicants to make data obtained during the field test available, the Commission has required Midwest ISO and PJM to file a report of NERC's findings on the results of the field test¹⁸ within 60 days of the completion of the field test.¹⁹ Therefore, all interested parties will have access to the information necessary to evaluate the impact any increase to the market threshold will have on their systems before any such increase is implemented on a permanent basis. In addition, the RTOs state in their answer that periodic reports on the field test results are being provided to the NERC Operating Reliability Subcommittee, the NERC TLR Standard Drafting Team, the North American Energy Standards Board (NAESB) Business Practices Subcommittee, and the NERC Standards Committee. The periodic reports are also posted on the NERC and NAESB websites as meeting material for each of these groups.²⁰

18. We agree with Basin, however, that both the Congestion Management Process in the Midwest ISO-PJM JOA and the Midwest ISO-SPP JOA should include language the Commission previously required as a condition to its acceptance of the field test. In particular, the Commission required that the Midwest ISO-PJM JOA be revised to

¹⁷ The initial term of the current Midwest ISO-MAPP Seams Operating Agreement (Seams Agreement) (with the zero percent threshold) expired on February 1, 2008, but Midwest ISO agreed to extend the Seams Agreement pending the approval and implementation of the standardized seams agreement that Midwest ISO submitted as part of its Open Access Transmission and Energy Markets Tariff in Docket No. ER08-637-000. The Commission conditionally accepted the standardized seams agreement and found that customers can raise any concerns about the transition from existing agreements to the standardized seams agreement when Midwest ISO makes its filing under section 205 proposing to cancel or supersede existing agreements such as the MAPP Seams Agreement. *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,265, at P 54 (2008).

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083, at P 28 (2007). The Commission also stated that it expects "that the RTOs and other interested parties will evaluate the impacts of the field test on their redispatch obligations under the NERC TLR procedures and the CMP and compile information necessary to determine whether permanent modifications to the seams agreements are appropriate." *Id.* P 29.

¹⁹ As noted above, the field test will end on October 31, 2008.

²⁰ RTOs Answer at 11.

specify the terms and conditions of the 12-month field test, as well as the effective date on which each RTO will commence and terminate the implementation of the field test, if known.²¹ On compliance, Midwest ISO and PJM proposed, and the Commission accepted the following language in their Congestion Management Process:

[T]his Market Flow threshold is subject to the outcome of the NERC approved TLR procedures 12 month field test and the specific terms and conditions and effective date on which each Market-Based Operating Entity will or has started the 12 month field test which are set forth in the joint compliance filing letter dated August 23, 2007, in FERC Docket No. ER07-940-000).

19. As the RTOs note in their answer, however, they subsequently adopted a standardized Congestion Management Process that does not include a reference to “the filing letter dated August 23, 2007, in FERC Docket No. ER07-940-000.”²² They removed that language because “it would be inappropriate to include such language in other baseline Congestion Management Process documents to which either party is not a signatory.”²³ However, Midwest ISO and PJM also state in the same filing that the remaining differences in the baseline Congestion Management Process documents would be set out in their respective appendices.²⁴ Consistent with the Commission’s previous requirement that the Congestion Management Process provide specific terms and conditions that apply for the field test, we will require, in the compliance filing directed below, that Midwest ISO, PJM and SPP include in the appropriate appendix to the Congestion Management Process in their JOAs information about the specific terms and conditions of the field test.

The Commission orders:

(A) Applicants’ proposed JOA revisions are hereby accepted for filing, as modified, to become effective June 1, 2008, as requested.

²¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083, at P 27 (2007).

²² *See Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER08-55-000 (Feb. 4, 2008) (unpublished letter order) (accepting conforming changes to the Midwest ISO-PJM CMP).

²³ *See* Oct. 15, 2008 Transmittal Letter in Docket No. ER08-55-000 at 8.

²⁴ *Id.* at 2.

(B) Applicants are hereby directed to submit a compliance filing within fifteen (15) days, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.