

131 FERC ¶ 61,284
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Midwest Independent Transmission System Operator, Docket No. EL10-45-000
Inc. v. PJM Interconnection, L.L.C.

Midwest Independent Transmission System Operator, Docket No. EL10-46-000
Inc. v. PJM Interconnection, L.L.C.

PJM Interconnection, L.L.C. v. Midwest Independent Docket No. EL10-60-000
Transmission System Operator, Inc.

ORDER ON COMPLAINTS, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued June 29, 2010)

1. On March 9, 2010, pursuant to section 206 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed two separate complaints against PJM Interconnection, L.L.C. (PJM). The first complaint, filed in Docket No. EL10-45-000 (Redispatch Complaint), alleges that PJM has failed to initiate the market-to-market redispatch provisions of the Joint Operating Agreement (JOA) between Midwest ISO and PJM;² Midwest ISO seeks at least \$5 million from PJM

¹ 16 U.S.C. § 824e (2006).

² The Commission originally approved the JOA in March 2004; it is intended to improve reliability and economic efficiency at the irregular seam created by Commonwealth Edison Company's (ComEd) and American Electric Power Company's (AEP) decisions to join PJM instead of Midwest ISO. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251, *order on reh'g*, 108 FERC ¶ 61,143, *order on clarification and denying reh'g*, 109 FERC ¶ 61,166 (2004).

representing underpayments to Midwest ISO for just one of the alleged failures, and requests that the Commission order PJM to follow the subject JOA provisions as Midwest ISO interprets them. The second complaint, filed in Docket No. EL10-46-000 (Billing Complaint), alleges that PJM erroneously calculated charges to Midwest ISO for market-to-market settlements made from 2005-2009 pursuant to the congestion management provisions of the JOA; Midwest ISO seeks approximately \$130 million plus interest to correct for resultant net underpayments from PJM to Midwest ISO. On April 12, 2010, pursuant to section 206 of the FPA, PJM filed in Docket No. EL10-60-000 a complaint against Midwest ISO (Substitute Flowgate Complaint), alleging that Midwest ISO has improperly used substitute flowgates in redispatch procedures and market-to-market settlements under the JOA; PJM seeks recovery of approximately \$25 million in alleged overpayments to Midwest ISO and a cease and desist order prohibiting Midwest ISO from using substitute flowgates in market-to-market coordination under the JOA. Because these three complaints raise common disputed issues of material fact and law, we will consolidate the proceedings and establish hearing and settlement judge procedures.

I. Background

2. Midwest ISO is the regional transmission organization (RTO) that provides operating and reliability coordination functions in portions of the Midwestern states and one Canadian province. PJM is also an RTO and provides the same functions in portions of the mid-Atlantic and Midwestern states. The JOA allows transmission constraints that are significantly impacted by generation dispatch changes in both RTOs' markets to be jointly managed so that the more efficient and lower cost transmission congestion management solution is utilized. The JOA provides, among other things, a process for employing generation redispatch to resolve congestion at the operating seam between Midwest ISO and PJM on a least-cost basis, with financial settlements through which each RTO compensates the other RTO for redispatch provided by that other RTO. Specifically, the RTOs establish agreed-upon coordinated flowgates,³ called Reciprocal Coordinated Flowgates (RCFs),⁴ for which they monitor congestion and redispatch their

³ "Flowgates" are facilities or groups of facilities that may act as significant constraint points on the system. JOA, Article 2.2.24. "Coordinated Flowgates" are those that one of the RTOs has subjected to four specific tests (specified in Attachment 2 to the JOA) and thereby determined the impact of the flows that the RTOs' operations place on the flowgates. JOA, Article 2.2.12.

⁴ An RCF is either a coordinated flowgate affected by the transmission of energy by both RTOs, or a flowgate that both RTOs mutually agree should be a coordinated flowgate and for which reciprocal coordination will occur. JOA, Article 2.2.54.

systems when a particular RCF is congested or constrained (i.e., the flow on the RCF exceeds its rating and must be reduced).⁵ When an RCF is congested, the market-to-market coordination process is implemented, whereby one RTO (called the Monitoring RTO) will pay the other RTO (called the Non-Monitoring RTO) to redispatch for the Monitoring RTO's congestion relief obligation if that alternative is less expensive than using the Monitoring RTO's own resources. The settlement process for market-to-market dispatch is predicated on real-time calculated market flows and historic firm flow entitlements.

3. Central to all of the complaints is the congestion management provision in Article 11.2.3 of the JOA, which provides, "Parties shall utilize the Interregional Coordination Process on all market-to-market Flowgates that experience congestion. [A]nytime the Party that is responsible for a Flowgate is binding on that Flowgate to manage congestion, the responsible Party will implement the market-to-market process . . . to manage congestion." [6] When any of the RCFs under a Monitoring RTO's control is identified as a transmission constraint violation, the Monitoring RTO will enter the RCF into its security-constrained dispatch software, setting the flow limit equal to the appropriate facility rating.⁷

4. Factual allegations and arguments relevant to the congestion management provision follow.

II. The Pleadings

A. The Redispatch Complaint

5. In the Redispatch Complaint, Midwest ISO contends that PJM has violated the JOA on several occasions by binding an RCF but failing to initiate the market-to-market process. Midwest ISO contends that this failure likely imposes higher costs on PJM stakeholders who must pay more for redispatch, while depriving Midwest ISO generators of the opportunity to participate in reducing congestion for which they would receive revenues. The revenues instead flow to PJM generators that were redispatched to reduce congestion. Midwest ISO identifies several instances when it contends that PJM should

⁵ Attachments 2 (Congestion Management Process) and 3 (Interregional Coordination Process) to the JOA together provide the process by which the parties manage RCFs.

⁶ "Binding" means closing the flowgate to additional flows.

⁷ JOA, Attachment 3, Section 3.1.2.

have initiated the redispatch process for bound flowgates,⁸ and Midwest ISO estimates that it would have been paid approximately \$5 million with regard to just one of the flowgates (the AEP-Dominion interface flowgate). Midwest ISO states that it is necessary to obtain data in PJM's possession to identify all of the events when PJM improperly failed to utilize the redispatch process and determine the total amount due to Midwest ISO.

6. The Redispatch Complaint further alleges that PJM has erroneously demanded the return of certain payments that PJM made to Midwest ISO under the market-to-market coordination process. Midwest ISO states that PJM has disputed Midwest ISO's use of RCFs as proxy or substitute flowgates, whereby Midwest ISO initiates the market-to-market coordination process on an RCF either to control congestion on flowgates that are not RCFs, or to control congestion on RCFs other than the ones for which the market-to-market process was initiated. Midwest ISO states that PJM has alleged that certain substitute flowgate usage during June 2008 was improper and that Midwest ISO is obligated to refund nearly \$9 million for just one instance. Midwest ISO contends that its use of substitute flowgates has been based upon market-to-market processes developed by mutual agreement and is documented in operating guides specifically identifying the substitute flowgate practice as the most efficient solution under the circumstances being addressed.⁹

7. Midwest ISO seeks a Commission order that: (1) directs PJM to employ the market-to-market process for redispatch and settlement when a PJM flowgate is an RCF and is the binding constraint; (2) directs PJM to resettle all sums previously paid to it, and to pay to Midwest ISO any sums not paid, as a result of failing to initiate the market-to-market process when required; (3) prohibits PJM from refusing to acknowledge the proper use of an RCF as a proxy flowgate to achieve lower cost congestion management as set forth in the JOA, from refusing to initiate the market-to-market process on appropriate flowgates, and from demanding resettlement of amounts related to Midwest ISO's previous use of proxy flowgates; and (4) directs PJM to produce all records indicating when it bound an RCF for congestion but failed to initiate the market-to-

⁸ These events are included in the affidavit of Thomas J. Mallinger, Midwest ISO's Technical Director of Real-Time Operations, attached to the Redispatch Complaint.

⁹ Midwest ISO states that the use of substitute flowgates is documented in the "Managing Flow on the NIPSCO [Northern Indiana Public Service Company] System During High West-East Transfers" Operating Guide that has been in place since October 2004.

market process, and preserve all records and communications relating to the use of market-to-market redispatch.

1. PJM's Answer

8. PJM seeks dismissal of the Redispatch Complaint for several reasons. First, PJM contends that Midwest ISO failed to seek dispute resolution, as required by Article 14.2 of the JOA,¹⁰ prior to filing the Redispatch Complaint. PJM contends that, pursuant to the JOA, only if a party determines that mediation has failed may it seek formal resolution by initiating a proceeding before the Commission.¹¹

9. Second, PJM asserts that, absent malicious and reckless conduct, the JOA's limited liability provision, Article 18.3.3, expressly precludes recovery of any damages and losses, even if PJM erroneously failed to initiate the market-to-market process,¹² i.e., Midwest ISO is contractually barred from recovering the relief it seeks.

¹⁰ Article 14.2 of the JOA specifies:

The Parties shall attempt in good faith to achieve consensus with respect to all matters arising under this Agreement and to use reasonable efforts through good faith discussion and negotiation to avoid and resolve disputes that could delay or impede either Party from receiving the benefits of this Agreement. These dispute resolution procedures apply to any dispute that arises from either Party's performance of, or failure to perform, this Agreement and which the Parties are unable to resolve prior to invocation of these procedures.

¹¹ PJM states that the parties have pursued dispute resolution concerning underreported market flows (the subject of the Billing Complaint) and Midwest ISO's alleged erroneous use of substitute flowgates (the subject of the Substitute Flowgate Complaint), but that the parties have not discussed PJM's alleged failure to initiate market-to-market processes, and the Redispatch Complaint is PJM's first notice of that issue.

¹² Article 18.3.3.1 of the JOA provides:

Except for amounts required to be paid under Article 16 [which addresses billing and invoice procedures] and Section 11.2.16 [which no longer exists] by one Party to the other under this Agreement, and except for amounts due under Section 18.3.1 and

(continued...)

10. Third, PJM contends that Midwest ISO has not demonstrated that it suffered any harm from PJM's alleged failure to initiate the market-to-market process. PJM states that Midwest ISO's claim for relief disregards the purpose of financial settlements under the JOA, which is to reimburse market participants in adjacent markets for the impacts of redispatch that is provided in the market-to-market process. PJM states that, in this case, no Midwest ISO generators were redispatched; consequently, no payment is due to them for energy actually produced.¹³

11. Fourth, PJM argues that granting the requested relief would require the Commission to re-run markets based on a *post hoc* hypothetical redispatch of the PJM and Midwest ISO systems, including speculation as to the redispatch that would have occurred, the response of market participants to the pricing signals that would have existed, and the resulting market flows and locational marginal prices, all contrary to Commission policy against recreating market settlements.¹⁴

12. PJM further contends that Midwest ISO itself improperly used substitute flowgates in the market-to-market settlement process, and as a result, has caused the improper payment by PJM to Midwest ISO of sums potentially in excess of \$25 million. PJM states that the Commission should set this issue for hearing to determine the extent of Midwest ISO's improper use of substitute flowgates and the amount of financial resettlement due to PJM.

2. The Parties' Responsive Pleadings

13. Midwest ISO and PJM each filed additional pleadings largely reiterating arguments set forth in the complaint or initial answer.¹⁵ Midwest ISO adds that, contrary

18.3.2 [which are indemnity provisions concerning liability to third parties], no party shall be liable to the other Party, directly or indirectly, for any damages or losses of any kind sustained due to any failure to perform this Agreement, unless such failure to perform was malicious or reckless.

¹³ PJM notes that while Midwest ISO claims that its generators *should* have been redispatched, if that had occurred, Midwest ISO loads would have paid more for energy at the higher average locational marginal prices that would have resulted.

¹⁴ PJM Answer at 9 (citing *N.Y. Indep. Sys. Operator, Inc.*, 115 FERC ¶ 61,026, at P 55 (2006)).

¹⁵ On April 27, 2010, Midwest ISO filed an answer to PJM's answer and PJM filed an answer to the intervenors' comments.

to PJM's assertion, issues in the Redispatch Complaint were indeed previously addressed in formal settlement discussions. Midwest ISO further asserts that, to the extent the issues were not informally discussed, the same holds true for the issues in PJM's Substitute Flowgate Complaint (addressed below). Midwest ISO notes that the Commission has acknowledged the right of RTO customers and other stakeholders to file complaints under the FPA, notwithstanding the preferred availability of tariff-based dispute resolution mechanisms.¹⁶

14. Midwest ISO also contends that its Redispatch Complaint seeks enforcement of the filed rate, and the JOA's limited liability provision can neither immunize a party for violations of the filed rate doctrine, nor deprive the Commission of its statutory authority to impose remedies for FPA violations.

15. Midwest ISO further disputes arguments that it failed to demonstrate any harm from PJM's alleged non-compliance with the JOA. Midwest ISO states that, in any case, there is no Commission precedent for excusing a party from its obligations on the basis that the customer is left better off.

3. Notice of the Filing and Interventions and Comments

16. Notice of the Redispatch Complaint filed in Docket No. EL10-45-000 was published in the Federal Register, 75 Fed. Reg. 12535 (March 16, 2010), with the answer, interventions, and comments due on or before March 29, 2010. The Commission subsequently extended the deadline to and including April 12, 2010.

17. Interventions and comments are listed in Appendix A attached hereto. Detroit Edison, NIPSCO, Xcel, Ameren, Dominion Resources, the Indiana Commission, and Alliant Energy filed comments in support of the Redispatch Complaint, which largely reiterate arguments set forth in Midwest ISO's pleadings.

¹⁶ Midwest ISO Answer at 10 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats & Regs. ¶ 31,241, at P 503 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, *order on Reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *Order on Clarification*, 129 FERC ¶ 61,126 (2009)).

18. PPL Parties, PSE&G, DC Energy and Allegheny filed comments in opposition to the Redispatch Complaint, which largely reiterate the arguments set forth in PJM's pleadings.¹⁷

B. The Billing Complaint

19. In the Billing Complaint, Midwest ISO claims that, from 2005-2009, following integration of AEP into PJM's market, PJM erroneously calculated its market flows, and, more specifically, the impact of ComEd on PJM's market flows. As a result of this error, Midwest ISO claims that it was required to reduce its own market flows, or paid PJM to redispatch, to remove congestion from certain flowgates when Midwest ISO would not otherwise have been required to do so.

20. Midwest ISO explains that, shortly after ComEd's integration into PJM in May 2004, west-to-east flows from ComEd to PJM began to cause disruptions on facilities under the operational control of Midwest ISO. According to the Billing Complaint, beginning in 2005, Midwest ISO repeatedly asked PJM to examine its market flow calculations, but PJM repeatedly assured Midwest ISO that its market flows were being determined correctly. Then, in April 2009, Midwest ISO determined that PJM's excess market flow on several constraints was most likely caused by missing generator capacity in the market flow models used for dispatch. In June 2009, PJM confirmed that the output of 34 generators, totaling 6,100 MW, in the ComEd area had been unaccounted for in the model used for calculating market flows.

21. Midwest ISO states that it and PJM had agreed upon a method to recalculate historic market flows in order to reflect what the market-to-market settlements should have been and that, for 2007-2009, but not 2005-2007, PJM had retained State Estimator data,¹⁸ including generation shift factors critical to the recalculation. Midwest ISO states

¹⁷ DC Energy urges the Commission to dismiss the complaints and to require PJM and Midwest ISO to focus on a compliance filing to ensure that the mistakes of the past are not repeated.

¹⁸ State Estimator data is a "standard industry tool that produces a power flow model based on available real-time metering information, information regarding the current status of lines, generators, transformers, and other equipment . . . to provide a complete description of system conditions [A] State Estimator solution [is obtained] every five minutes to provide the megawatt output of generators and the loads at buses in the PJM Region, transmission line losses, and actual flows or loadings on constrained transmission facilities." Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Third Revised Rate Schedule FERC No. 24, Schedule 1 § 2.3.

that it and PJM jointly approximated at \$65 million the under-compensation for 2007-2009. Midwest ISO seeks the same amount for the 2005-2007 period, alleging that PJM acted recklessly both by failing to properly model the ComEd generating units in its system and by failing to retain State Estimator data for that period. Midwest ISO seeks a total of approximately \$130 million, plus interest, to correct for alleged net underpayments from 2005-2009.

1. PJM's Answer

22. PJM acknowledges that errors in its market flow determinations resulted in underpayments to Midwest ISO for market-to-market settlements. However, PJM refutes liability for such errors for several reasons. First, PJM argues that the limited liability provision of the JOA, noted above, prohibits Midwest ISO's requested relief. PJM claims that the relief Midwest ISO seeks is properly characterized as "losses" under the limited liability provision, the recovery of which is contractually barred. PJM further disputes the accusation that it acted with malicious or reckless conduct, stating that it diligently investigated its market flow calculations, that the errors are attributable to a faulty generator table hard-coded into the market flow calculator at its creation, and that the documentation provided by the vendor of the relevant software did not identify a need to maintain or update the table. PJM additionally argues that Midwest ISO contributed to the delay in discovering the market flow calculation errors by failing to exercise its right to audit PJM's market flow analysis. With respect to the State Estimator data, PJM states that such data is obtained from literally thousands of nodes throughout the PJM grid, is over-written every five minutes, and, until 2007, PJM did not store such data as a matter of course.

23. Second, PJM argues that Midwest ISO's complaint exceeds certain temporal limits for filing claims. PJM cites a two-year limitation on billing claims as provided for under Section 10.4 of PJM's open access transmission tariff (OATT) and Delaware's three-year statute of limitations on breach of contract claims. PJM claims that the JOA incorporates the OATT and is governed by the law of the State of Delaware.¹⁹

24. Third, PJM claims that Midwest ISO has failed to make a prima facie case in support of the relief it seeks. PJM argues that the \$65 million Midwest ISO seeks for 2007-2009 was based on confidential information produced in the course of settlement discussions, which, per Rule 602(e) of the Commission's Rules of Practice and

¹⁹ Section 18.9 of the JOA provides: "This Agreement shall be interpreted, construed and governed by the applicable federal law and the laws of the state of Delaware, without giving effect to its conflict of law principles."

Procedure,²⁰ Midwest ISO may not rely upon to support its complaint. PJM also argues that it is unreasonable to conclude, as Midwest ISO does, that the amount of underpayments for 2005-2007 were approximately the same as determined for 2007-2009, given potential variations in system topology, loads, generation fleet, and other metrics over the two periods.

2. The Parties' Responsive Pleadings

25. Midwest ISO and PJM each filed additional pleadings largely reiterating arguments set forth in the complaint or initial answer.²¹ In addition, Midwest ISO seeks summary disposition as to the Billing Complaint, contending that the parties agree on two facts: (1) PJM failed to accurately account for market flows between 2005 and 2009; and (2) as a direct result of this error, Midwest ISO was overcharged for market-to-market settlements under the JOA. Midwest ISO asserts that the only issue is the exact reimbursement due from PJM to Midwest ISO. Midwest ISO claims that the onus is on PJM to demonstrate that refunds should be less than the proposed amount for 2007-2009 and that Midwest ISO's refund methodology for 2005-2007 is unreasonable. Midwest ISO asserts that PJM failed to satisfy its burden on both counts.

26. Midwest ISO also disputes applicability of the JOA's limited liability provision for several reasons. First, Midwest ISO argues that the relief it seeks is not consequential damages or losses but amounts due under the JOA and therefore falls within Article 16 (addressing billing and invoice procedures) as a stated exception to the limited liability provision. Second, Midwest ISO argues that the JOA cannot rationally be interpreted as simultaneously requiring and nullifying obligations of the parties. Third, Midwest ISO argues that the Commission actively sought development of the JOA and that to allow the parties to evade performance renders the JOA illusory. Fourth, Midwest ISO argues that if no obligation to pay corrected invoices could ever be enforced, no generator would redispach to relieve congestion, leaving the JOA unenforceable. Fifth, Midwest ISO argues that, even if the limited liability provision might otherwise bar the requested relief,

²⁰ 18 C.F.R. § 385.602(e)(1) (2010) provides: "An offer of settlement that is not approved by the Commission and any comment on that offer, is not admissible in evidence against any participant who objects to its admission." 18 C.F.R. § 385.602(e)(2) (2010) provides: "Any discussion of the parties with respect to an offer of settlement that is not approved by the Commission is not subject to discovery or admissible in evidence."

²¹ On April 27, 2010, Midwest ISO filed an answer to PJM's answer and PJM filed an answer to comments. PJM and Midwest ISO each filed additional answers on May 12, 2010 and May 26, 2010, respectively.

PJM acted recklessly by failing to discover the error in its market flow calculations and by failing to retain the State Estimator data necessary to correct the erroneous calculations.

27. Midwest ISO further disputes PJM's assertion that the Billing Complaint is untimely under Delaware's statute of limitations and temporal limits in PJM's OATT. Midwest ISO asserts that the FPA, not Delaware law, governs the dispute;²² that, in any case, the factual circumstances of the case warrant tolling the statute of limitations under Delaware law;²³ and that Midwest ISO is not subject to PJM's OATT.

28. Midwest ISO also disputes PJM's assertion that the Billing Complaint relies upon confidential information produced in the course of settlement discussions. Midwest ISO asserts that PJM failed to designate several relevant documents as either privileged or confidential, that the parties agreed upon a methodology for recalculating market flows prior to the start of formal settlement discussions, and that PJM has made public -- and thereby waived privilege or confidentiality regarding -- several documents, including information presented to its stakeholders and found on its website, relating the parties' efforts to reach an agreed-upon methodology.

29. Finally, while it does not oppose efforts to consolidate the Redispatch and Substitute Flowgate Complaint proceedings, Midwest ISO contends that the Billing Complaint should remain a separate proceeding, because, in Midwest ISO's view, the underlying facts of the Billing Complaint are largely uncontested.

3. Notice of the Filing and Interventions and Comments

30. Notice of the Billing Complaint filed in Docket No. EL10-46-000 was published in the Federal Register, 75 Fed. Reg. 12536 (March 16, 2010), with the answer,

²² Midwest ISO asserts that its complaint is based upon a violation of the filed rate doctrine and that such claims are exclusively controlled by the FPA, and that under section 309 of the FPA, there are no temporal limits on the Commission's remedial authority. Midwest ISO argues that, where the FPA applies and state law conflicts with the exercise of the Commission's jurisdiction under the FPA, state law has no application. *See, e.g., PUC of California v. FERC*, 456 F.3d 1025, 1046 (9th Cir. 2006); *Consolidated Edison v. FERC*, 347 F.3d 964, 967 (D.C. Cir. 2003).

²³ Midwest ISO claims that Delaware law recognizes that the statute of limitations can be stayed for as long as the cause of action is undiscoverable by a plaintiff; Midwest ISO claims such "blameless ignorance" in the circumstances of this case. Midwest ISO Answer at 27.

interventions, and comments due on or before March 29, 2010. The deadline was subsequently extended to and including April 12, 2010.

31. Interventions and comments filed in response to the Billing Complaint are listed in Appendix B attached hereto.

32. Alliant Energy, Ameren, Detroit Edison, FirstEnergy, Indiana Commission, NIPSCO, the Wisconsin Commission, and Xcel Energy filed comments in support of the Billing Complaint. These parties largely reiterate the arguments set forth in Midwest ISO's pleadings.²⁴

33. Xcel, Ameren, and NIPSCO further argue that Midwest ISO market participants were subjected to severe market harm and financial consequences, as well as adverse reliability impacts, by PJM's modeling error. NIPSCO states that unaccounted for energy flows led to frequent transmission loading relief events which caused NIPSCO to back-off generation and purchase more expensive power in the market, curtail non-firm transactions, redispatch its generating units, reconfigure its transmission system, and make last-minute cancellations of scheduled maintenance. Ameren states that, based upon a presentation given by Midwest ISO at the March 31, 2010 Market Subcommittee Meeting, PJM's error caused \$98 million in harm to the market.

34. Allegheny Energy, BG&E, Consolidated Edison, AEP and Old Dominion, PPL Parties, and PSE&G filed comments opposing the complaint, for largely the same reasons set forth in PJM's pleadings. These parties add that ordering refunds would upset confidence in the markets and disrupt economic positions that market participants have for years relied upon.

35. If the Commission does order refunds, PPL Parties contend that PJM should not be allowed to pass such costs through to its members. PPL Parties suggest that PJM should first exhaust any relevant insurance coverage and cover the remainder with any excess revenues currently held in its stated rate account.²⁵

²⁴ FirstEnergy requests that Midwest ISO's request for relief for the 2007-2009 period be granted, and that the Commission establish limited hearing procedures for the purpose of determining refund amounts for the 2005-2007 period. Additionally, FirstEnergy states that the Commission should approve a mechanism for PJM to collect the refunds from the appropriate market participants.

²⁵ If these sources prove insufficient, PPL Parties suggest two methods for determining payments from PJM members which PPL Parties state are already incorporated into the PJM OATT: (1) the "weighted interest" method, which uses a

(continued...)

36. DC Energy contends that both RTOs are at fault and, instead of establishing a resource-intensive hearing on the Billing Complaint issues, the Commission should direct the parties to develop procedures to ensure that these (or other) circumstances are not repeated in the future. If the Commission does allow retroactive remedies, DC Energy states that financial impacts on both sides of the seam should be considered and minimized.

37. Dominion urges the Commission to first rule on whether the limited liability provision of the JOA or temporal limits in PJM's OATT act as a bar to the Billing Complaint and then set the remaining issues for hearing. Dominion suggests that the costs of any refunds to Midwest ISO be socialized among all PJM members.

38. Duke Energy contends that PJM's Operating Agreement provides for refunds to be collected from market participants, and therefore the Commission does not need to determine this issue. Duke Energy asserts that PJM's April 12, 2010 answer correctly explained that for the 2007-2009 time period, Financial Transmission Rights (FTR) holders should be responsible for any refunds, and that for the 2005-2007 period, FTR holders and transmission customers should pay any refunds. Duke Energy asserts that PJM's Manual 28, which has been in effect since May 1, 2005, supports this methodology by stating that "any revenues paid to or received from [Midwest ISO] for JOA market-to-market congestion relief measures are also applied to the applicable hours' congestion revenues."²⁶

4. PJM's Response to the Comments

39. In response to adverse comments, PJM states that its calculation errors neither affected reliability nor produced changes in operations or dispatch to resolve

formula that considers each member's internal peak demand, generating capability, and circuit miles of transmission; and (2) the "default allocation assessment" method, which considers the total number of PJM members and their gross activity in the market. AEP and Old Dominion state that they reserve their right to challenge PJM's ability to collect any such amounts from them. Consolidated Edison asserts that any re-billings should not apply to load-serving entities, since they do not have the means to recover additional charges from their end-use customers.

²⁶ Duke Energy May 5, 2010 Comments at 3 (citing PJM Manual 28 at 56).

congestion.²⁷ PJM claims that all generators, including those that were inadvertently omitted from PJM's after-the-fact market flow determinations, were properly included in PJM and Midwest ISO's network models, and in the RTOs' coordinated redispatch. With regard to arguments that PJM's error caused secondary harm to the Midwest ISO market, PJM states that recovery of damages and losses, such as for the purported harms in Midwest ISO's day-ahead and FTR markets, are prohibited by the limitation on liability provision of the JOA. PJM notes that Midwest ISO has not asserted any claims for secondary or additional damages. Moreover, PJM asserts that the "Commission has no authority to award damages for a breach of contract."²⁸

C. The Substitute Flowgate Complaint

40. PJM's Substitute Flowgate Complaint alleges that Midwest ISO has violated the JOA by relying on substitute or proxy flowgates in the market-to-market coordination process, resulting in continuing net overpayments by PJM to Midwest ISO. Specifically, PJM alleges that Midwest ISO has erroneously initiated the market-to-market coordination process: (1) by setting limits on other unconstrained, substitute RCFs below the established ratings for those facilities to control facilities that are not designated RCFs; and (2) by setting limits on unconstrained substitute RCFs below their ratings in order to indirectly control the flows on RCFs other than the ones for which the market-to-market coordination process is being initiated. In both instances, PJM alleges that Midwest ISO violated the JOA by limiting flows on facilities when those facilities were not congested and then obtaining payments from PJM for the flows on these facilities under the market-to-market coordination process. PJM claims that Midwest ISO's use of substitute flowgates may have also resulted in Midwest ISO obtaining settlements twice for the same facility – once by including the actually congested RCF in the market-to-market settlements and then again by obtaining settlements on the substitute flowgate. As a result, PJM believes that it has overpaid at least approximately \$25 million for the period from April 2005 to June 2009 and that it continues to overpay Midwest ISO under the JOA settlement process for Midwest ISO's inappropriate use of substitute flowgates.

²⁷ PJM explains that the errors were confined to market flow determinations performed by its Super-Regional Congestion Management system, which is a separate system that only determines after-the-fact what the inter-RTO energy flows were, and only for the purposes of determining market-to-market settlements under the JOA.

²⁸ PJM April 27, 2010 Answer at 8 (citing *Owens-Corning Fiberglas Corp. v. Transcon. Gas Pipe Line Corp.*, 49 FERC ¶ 61,282 at 62,064 (1989) (citing *Kansas-Nebraska Natural Gas Co., Inc.*, 21 FERC ¶ 61,285 (1982))).

41. PJM seeks: (1) a hearing to determine the amounts owed to PJM for Midwest ISO's improper use of substitute flowgates; (2) refunds with interest of any amounts PJM overpaid to Midwest ISO stemming from Midwest ISO's use of substitute flowgates; and (3) a Commission directive that Midwest ISO cease and desist from using substitute flowgates in market-to-market coordination under the JOA. PJM also requests that the Commission consolidate the Substitute Flowgate Complaint with Midwest ISO's complaints for purposes of settlement, hearing and decision.

1. Midwest ISO's Answer

42. Midwest ISO seeks dismissal of the Substitute Flowgate Complaint, contending that there is nothing in the JOA prohibiting the use of substitute flowgates and that using market-to-market settlements whenever possible is consistent with the achieving cost-efficient seams management. Midwest ISO states that the parties have mutually agreed to employ proxy flowgates in the past, and Midwest ISO provides six examples of such alleged events. In any case, Midwest ISO argues that PJM does not adequately support or identify which proxy flowgate events provide the basis for its complaint.

2. The Parties' Responsive Pleadings

43. PJM and Midwest ISO each filed additional pleadings largely reiterating arguments set forth in the complaint or initial answer.²⁹ PJM further asserts that market-to-market coordination is authorized under the JOA only when constraints are present on a specific set of flowgates. PJM argues that agreed-upon RCFs have been tested and evaluated to determine the extent to which PJM's and Midwest ISO's market flows impact the flowgate, and that when Midwest ISO uses substitute flowgates, PJM pays for relief on flowgates for which there has been no such determination, and such payment is based on wrong market flows, wrong historic firm flow entitlements, and wrong shadow prices.

44. In addition, PJM flatly disputes the examples provided by Midwest ISO which supposedly demonstrate agreed-upon use of substitute flowgates. PJM claims that for the cited incidents, no substitute flowgate was in fact used, PJM did not acquiesce to use of a substitute flowgate, or market-to-market coordination was mistakenly initiated for a flowgate other than an RCF and PJM self-reported the error.

45. PJM further argues that, contrary to Midwest ISO's assertion, it has satisfied the requirements for establishing a claim, and that a full evidentiary hearing is necessary to

²⁹ On May 18, 2010, PJM filed an answer to Midwest ISO's answer. On June 2, 2010, Midwest ISO filed an answer to PJM's answer.

identify specific incidents when Midwest ISO used a substitute flowgate in violation of the JOA.

46. Midwest ISO responds that PJM's interpretation of the market-to-market coordination process conflicts with the Congestion Management Process, an attachment to the JOA, which, in Midwest ISO's view, allows the use of substitute flowgates. Midwest ISO further disputes PJM's assertion that the use of substitute flowgates may have resulted in Midwest ISO obtaining settlements twice for the same facility.

D. Notices of the Filing and Interventions and Comments

47. Notice of the Substitute Flowgate Complaint filed in Docket No. EL10-60-000 was published in the Federal Register, 75 Fed. Reg. 20590 (April 20, 2010) with interventions, answers and comments due on or before May 3, 2010.

48. Interventions and comments are listed in Appendix C attached hereto.

49. BG&E, AMP and Allegheny filed comments in support of the Substitute Flowgate Complaint, largely reiterating arguments set forth by PJM.

III. Commission Determination

A. Procedural Matters

50. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they filed them. We will grant the motions for late intervention filed by Duke Energy, Consolidated Edison, Dayton, Rockland Electric, Consumers Energy, FirstEnergy, Potomac Economics, RRI Energy, Shell, and Wisconsin Electric, given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

51. As noted above, in each proceeding, Midwest ISO and PJM each filed an answer to the answer and an answer to comments.³⁰ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits answers to answers unless otherwise ordered by the decisional authority. We will accept the answers

³⁰ Some intervenors filed self-styled "answers" to the respondent RTO's answer, but these pleadings are essentially late-filed comments, which we accept.

to answers and answers to comments filed in these proceedings, because they have provided information that has assisted us in the decision-making process.³¹

52. Midwest ISO and other intervenors have moved to strike as untimely PJM's answers filed in Docket Nos. ER10-45-000 and ER10-46-000.³² These parties note that the March 19, 2010 notice granting an extension of time to file responsive pleadings in those proceedings did not explicitly extend to answers. However, the extension of time was intended to apply to answers, and in any case, accepting PJM's answers does not cause undue delay, prejudice or burden to the parties.

53. We will also deny all requests for summary disposition as to any of the complaints. We will instead establish hearing and settlement judge procedures, for the reasons set forth below.

B. Discussion

54. We find that the complaints in Docket Nos. EL10-45-000, EL10-46-000 and EL10-60-000 raise disputed issues of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Although Midwest ISO and other parties seek summary disposition of the Billing Complaint and assert that there are no material factual issues in dispute, PJM and its allied parties disagree, and so do we. As an initial matter, Midwest ISO and PJM dispute whether the JOA's limited liability provision presents a contractual bar to relief, which raises legal and factual questions, including whether the parties intended for the provision to apply to the types of requested relief in these proceedings, and whether either party acted with malicious or reckless conduct. In addition, while Midwest ISO asserts that the parties agreed to a methodology for recalculating amounts owed for 2007-2009 related to the Billing Complaint, this is an assertion that PJM disputes. On this point, the parties further dispute the factual issue of whether the recalculation methodology was developed during the course of protected settlement discussions.

³¹ In its answer filed on June 2, 2010 in Docket No. EL10-60-000, Midwest ISO argued that PJM's answer to Midwest ISO's answer should be struck as an impermissible pleading. We deny Midwest ISO's request, for the reason stated above, and note that Midwest ISO itself filed answers to PJM's answers in the other proceedings addressed herein.

³² PJM filed its answer on April 12, 2010.

55. Indeed, numerous disputed issues of material fact bear upon the exact amount of financial recovery due, if any, to each party as to each complaint. These issues include, among others, how far back in time PJM improperly accounted for certain generators and when its market flow calculator used for determining market-to-market settlement charges became outdated (relevant to Midwest ISO's Billing Complaint); whether and every occasion that PJM should have but failed to initiate the market-to-market settlement process (relevant to Midwest ISO's Redispatch Complaint); whether and every occasion that Midwest ISO used a substitute flowgate, and whether this was in violation of the JOA and without mutual agreement by the parties (relevant to PJM's Substitute Proxy Complaint). Given the significant disagreement concerning these critical issues, we will set the complaints for investigation and a trial-type evidentiary hearing under section 206 of the FPA. In order to ensure a full and complete record upon which the Commission can base its ultimate decision in these proceedings, the presiding judge's review should include, but is not limited to, the foregoing issues. It is within the presiding judge's discretion to phase or bifurcate the hearing to address whether the limited liability or other provisions of the JOA present a contractual bar to the relief requested in any of the complaints, and whether relief may be granted based on the substantive allegations.

56. In addition, we will consolidate Docket Nos. EL10-45-000, EL10-46-000, and EL10-60-000 for purposes of hearing and decision because the proceedings present common issues of law and fact which are most efficiently addressed in a single forum. Midwest ISO contends that Docket No. EL10-46-000 should not be consolidated with the other proceedings, because, in Midwest ISO's view, the parties agree on the underlying facts of the Billing Complaint. However, as noted above, the record makes clear that significant disagreement on the facts exists so that we are unable to render a determination on the pleadings. In addition, as to each complaint, the parties dispute interpretation and application of the limited liability and market-to-market settlement provisions of the JOA, as well as other billing and temporal provisions of the JOA and/or PJM's OATT, and the potential application of Delaware's statute of limitations. Moreover, the complaint proceedings involve the same parties and share a common factual history and common intervenors, and the outcome of the proceedings will likely impact common market participants in PJM and Midwest ISO. For all of these reasons, consolidation of the complaint proceedings is appropriate.

57. We expect Midwest ISO and PJM to continue to implement the JOA on a cooperative basis during the potentially protracted pendency of these proceedings.³³ We

³³ We note that a Memorandum of Understanding posted on PJM's website indicates the parties' agreement to cooperate and implement the JOA in good faith as these proceedings move forward. *See* Memorandum of Understanding dated May 27,

also require Midwest ISO and PJM to promptly notify the Commission if they perceive any threat to reliability arising from the disputed application of the JOA provisions. Further, although we establish hearing procedures, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

58. If settlement discussions ultimately prove unsuccessful, a public hearing shall be held concerning whether there have been violations of the JOA and, if so, who should reimburse whom and in what amount.³⁵ In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005,³⁶ requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date.³⁷ Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, i.e., the date of the filing of the complaints,

2010, found at <http://www.pjm.com/~media/documents/agreements/pjm-miso-mou-may-2010.ashx>.

³⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their backgrounds and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

³⁵ See, e.g., *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,065 (2005).

³⁶ 16 U.S.C. § 824e(b) (2006).

³⁷ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

which is March 9, 2010, for the Redispatch Complaint and the Billing Complaint, and April 12, 2010 for the Substitute Flowgate Complaint.³⁸

59. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. We have set this proceeding for hearing and settlement judge procedures. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures or, if this case were to go to hearing immediately, by June 30, 2011. We estimate that, if the case were to go to hearing immediately we would be able to issue our decision within approximately seven months of the filing of briefs on and opposing exceptions, or by March 31, 2012.

The Commission orders:

(A) Docket Nos. EL10-45-000, EL10-46-000 and EL10-60-000 are hereby consolidated for purposes of settlement, hearing, and decision.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205, 206, and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the issues identified in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603

³⁸ Where it is found that the rates charged were contrary to the filed rate, the Commission has statutory authority to order refunds that extend beyond the stated refund effective dates. *See, e.g., N.Y. Power Authority v. Consolidated Edison Co. of N.Y., Inc.*, 112 FERC ¶ 61,304, at P 56 (2005) (Commission granted retroactive refunds, explaining that it was not "changing a rate on file, but . . . enforcing the rates, terms, and conditions of several filed rate schedules.").

and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The refund effective dates established pursuant to section 206(b) are March 9, 2010 for the Redispatch Complaint and the Billing Complaint, and April 12, 2010 for the Substitute Flowgate Complaint.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: EL10-45-000 Intervenors

Intervenors that also filed Comments or a Protest are so indicated as are their abbreviated names.

An asterisk indicates that the entity intervened out-of-time.

<u>Entities</u>	<u>Comments/Protest</u>
Allegheny Power and Allegheny Energy Supply Company, LLC (Allegheny)	Protest; Motions to Dismiss, Consolidate; Late Comments
Alliant Energy Corporate Services, Inc. (Alliant)	Comments
Ameren Services Company (Ameren)	Comments
American Electric Power Service Corporation (AEP)	
American Municipal Power	
Baltimore Gas and Electric Company (BG&E)	Comments
Blue Ridge Power Agency	
BP Energy Company	
Calpine Corporation	
Chambersburg, Pennsylvania, Borough of	
Constellation Energy Commodities Group, Inc.	
Consumers Energy Company	
Dayton Power and Light Company (Dayton)	
DC Energy, LLC and DC Energy Midwest, LLC (DC Energy)	Comments
Detroit Edison Company (Detroit Edison)	Comments
Dominion Resources Services, Inc. (Dominion)	Comments

*Duke Energy Corporation (Duke Energy)

Duquesne Light Company

Dynegy Power Marketing, Inc.

Edison Mission Energy, Inc. and Edison Mission
Marketing & Trading, Inc.

Electric Power Supply Association

Epic Merchant Energy, L.P.

Exelon Corporation

FirstEnergy Service Corporation

Illinois Commerce Commission

Indiana Office of Utility Consumer Counselor

Indiana Utility Regulatory Commission (Indiana
Commission)

Comments

Integrus Energy Group, Inc.

IPA Central, LLC and Troy Energy, LLC

JP Morgan Ventures Energy Corporation

Macquarie Energy LLC

Madison Gas & Electric Company

Maryland, Public Service Commission of

MidAmerican Energy Company

Mid-Continent Area Power Pool

Mirant Parties

Monitoring Analytics, LLC

NextEra Generators

North Carolina Electric Membership Corporation

Northern Indiana Public Service Company (NIPSCO) Comments

NRG Companies

Ohio Consumers' Counsel, Office of

Ohio, Public Utilities Commission of

Old Dominion Electric Corporation

Organization of MISO States

Pennsylvania Municipal Electric Association
(Pennsylvania Municipals) Comments

Pennsylvania Public Utility Commission

Pepco Holdings, Inc.

Potomac Economics, Ltd.

PPL Electric Utilities Corporation, *et al.* (PPL Parties) Protest

Public Service Electric and Gas Company and PSEG
Energy Resources and Trade, LLC (PSE&G) Protest; Motion to
Dismiss

RRI Energy, Inc.

*Shell Energy North American (US), L.P.

Wisconsin Electric Power Company

Wisconsin, Public Service Commission of (Wisconsin
Commission) Comments

WPPI Energy

Xcel Energy Services, Inc. (Xcel)

Comments

Appendix B: EL10-46-000 Intervenors

Intervenors that also filed Comments or a Protest are so indicated as are their abbreviated names.

An asterisk indicates that the entity intervened out-of-time.

<u>Entities</u>	<u>Comments/Protest</u>
Allegheny Power and Allegheny Energy Company, LLC (Allegheny)	Protest and Motion to Consolidate; Late Comments
Alliant Energy Corporate Services, Inc. (Alliant)	Comments
Ameren Services Company (Ameren)	Comments
American Electric Power Service Corporation (AEP)	Comments and Protest, jointly with Old Dominion
American Municipal Power, Inc.	
Baltimore Gas and Electric Company (BG&E)	Comments
Blue Ridge Power Agency	
BP Energy Company	
Calpine Corporation	
Chambersburg, Pennsylvania, Borough of	
*Consolidated Edison Energy Solutions, Inc. and Consolidated Edison Energy, Inc. (Consolidated Edison)	Comments
Constellation Energy Commodities Group, Inc.	
Consumers Energy Company	

*Dayton Power and Light Company (Dayton)	
DC Energy, LLC and DC Energy Midwest, LLC (DC Energy)	Comments
Detroit Edison Company (Detroit Edison)	Comments
Dominion Resources Services, Inc. (Dominion Resources)	Comments
*Duke Energy Corporation (Duke Energy)	Late Comments
Duquesne Light Company	
Dynegy Power Marketing, Inc.	
Edison Mission Trading, Inc. and Edison Mission Marketing & Trading, Inc.	
Electric Power Supply Association	
Epic Merchant Energy, L.P.	
Exelon Corporation	
FirstEnergy Service Company (FirstEnergy)	Comments; Late Comments
Illinois Commerce Commission (Illinois Commission)	Comments
Indiana Office of Utility Consumer Counselor	
Indiana Utility Regulatory Commission (Indiana Commission)	Comments
Integrus Energy Group, Inc.	
IPA Central, LLC	
JP Morgan Ventures Energy Corporation	
Macquarie Energy LLC	

Madison Gas & Electric Company	
Maryland, Public Service Commission of	
MidAmerican Energy Company	
Mid-Continent Area Power Pool	
Mirant Parties	
Monitoring Analytics, LLC	
NextEra Generators	
North Carolina Electric Membership Corporation	
Northern Indiana Public Service Company (NIPSCO)	Comments; Late Comments
NRG Companies	
Ohio Consumers' Counsel, Office of	
Ohio, Public Utilities Commission of	
Old Dominion Electric Cooperative (Old Dominion)	Comments and Protest, jointly with AEP
Organization of MISO States	
Pennsylvania Municipal Electric Association (Pennsylvania Municipals)	Comments
Pennsylvania Public Utility Commission	
Pepco Holdings, Inc.	
Potomac Economics, Ltd.	
PPL Electric Utilities Corporation, <i>et al.</i> (PPL Parties)	Protest
Public Service Electric and Gas Company and PSEG Energy Resources and Trade, LLC (PSE&G)	Protest and Motion to Dismiss
*Rockland Electric Company (Rockland Electric)	

RRI Energy, Inc.

*Shell Energy North America (US) (Shell)

Wisconsin Electric Power Company

Wisconsin, Public Service Commission of (Wisconsin Commission) Comments

WPPI Energy

Xcel Energy Services, Inc. (Xcel) Comments

Appendix C: EL10-60-000 Intervenors

Intervenors that also filed Comments are so indicated along with their abbreviated names.

An asterisk indicates that the entity intervened out-of-time.

<u>Entities</u>	<u>Comments</u>
Allegheny Power and Energy Supply Company, LLC (Allegheny)	Comments; Late Comments
Ameren Services Company	
American Municipal Power, Inc. (AMP)	Comments
Baltimore Gas and Electric Company (BG&E)	
BP Energy Company	
Calpine Corporation	
Chambersburg, Pennsylvania, Borough of	
Consolidated Edison Energy Solutions, Inc. and Consolidated Edison Energy, Inc.	

Constellation Energy Commodities Group, Inc.

*Consumers Energy Company (Consumers Energy)

DC Energy, LLC and DC Energy Midwest, LLC

Detroit Edison Company

Dominion Resources Services, Inc.

Duke Energy Corporation

Dynegy Power Marketing

Electric Power Supply Association

Exelon Corporation

*FirstEnergy Service Company (FirstEnergy)

Illinois Commerce Commission

Indiana Utility Regulatory Commission

JP Morgan Ventures Energy Corporation

Madison Gas & Electric Company

Maryland, Public Service Commission of

MidAmerican Energy Company

North Carolina Electric Membership Corporation

Northern Indiana Public Service Company

NRG Companies

Ohio Consumers' Counsel, Office of

Ohio, Public Utilities Commission of

Old Dominion Electric Corporation

Pennsylvania Municipal Electric Association

*Potomac Economics, Ltd. (Potomac Economics)

PPL Electric Utilities Corporation, *et al.*

Public Service Electric and Gas Company and PSEG
Energy Resources and Trade, LLC

*RRI Energy, Inc. (RRI Energy)

Shell Energy North American (US)

*Wisconsin Electric Power Company (Wisconsin
Electric)

Wisconsin, Public Service Commission of

WPPI Energy

Xcel Energy Services, Inc. (Xcel)