120 FERC ¶ 61,269
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Wisconsin Public Service Corp. | Docket No. EL06-97-001
Upper Peninsula Power Co.
WPS Energy Services, Inc. and
WPS Power Development, LLC

v.

Midwest Independent Transmission System
Operator, Inc. and
PJM Interconnection, L.L.C.

ORDER DENYING REHEARING

(Issued September 24, 2007)

1. Wisconsin Public Service Corporation (Wisconsin Public Service), Upper Peninsula Power Company (Upper Peninsula), WPS Energy Services, Inc., and WPS Power Development, LLC (collectively, WPS Companies)[1] request rehearing of the Commission's February 8, 2007 order[2] that dismissed WPS Companies' August 15, 2006 complaint (August 15 Complaint). WPS Companies ask the Commission to require Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) to promptly implement a fully functioning joint and common market by instituting single system dispatch[3] of their respective systems and

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[1] WPS Resources Corporation, the parent company of WPS Companies, changed its name to Integrys Energy Group, and WPS Energy Services, Inc. is now Integrys Energy Services, Inc. For consistency with prior orders and to avoid confusion, this order uses the companies' original names.

[2] *Wisconsin Pub. Serv. Corp.*, 118 FERC ¶ 61,089 (2007) (February 2007 Order).

[3] WPS Companies use the term "joint system dispatch," which they define as, "[a] single security-constrained unit commitment and security-constrained economic dispatch for the combined M[idwest] ISO and PJM operated systems." Rehearing Request at

(continued…)

three complementary measures. The complementary measures are: (1) depancaking of ancillary services rates through establishment of a single market-wide arrangement to purchase and sell ancillary services; (2) a single, integrated, Financial Transmission Rights (FTR) allocation process with one set of FTR rules so that Midwest ISO and PJM can internalize and manage their congestion on a unified basis; and (3) a single market portal so that suppliers, marketers, and consumers in one Regional Transmission Organization (RTO) can deal with counterparties in the other RTO as if within their RTO. For the reasons described below, we will deny rehearing.

<u>Background</u>

2. The Commission's requirement that Midwest ISO and PJM (together, the RTOs) participate in a joint and common market originated in 2002 when the Commission conditionally accepted the choices of certain utilities in the eastern portion of the Midwest[4] to join Midwest ISO or PJM.[5] Significantly, certain operating companies of the American Electric Power Service Corporation (AEP)[6] and Commonwealth Edison Company and Commonwealth Edison Company of Indiana (together, ComEd)[7] chose to

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Appendix A. The concept is also called "common dispatch," "single dispatch," "single economic dispatch," and "single system dispatch." Filings in this and related proceedings have used these terms interchangeably. For consistency with prior orders and to avoid confusion, this order will use the term "single system dispatch" unless quoting. Analogously, the terms "common market" and "joint and common market," which have been used interchangeably, refer to the same concept.

[4] These companies had proposed forming the Alliance RTO; however, the Commission found that the proposed RTO had insufficient scope. *Alliance Cos.*, 97 FERC ¶ 61,327 at 62,529, 62,531 (2001).

[5] *Alliance Cos.*, 100 FERC ¶ 61,137 (2002), *order on clarification*, 102 FERC ¶ 61,214, *order on reh'g and clarification*, 103 FERC ¶ 61,274, *order denying reh'g and granting clarification*, 105 FERC ¶ 61,215 (2003), *appeal docketed sub nom. Am. Elec. Power Serv. Corp. v. FERC*, No. 03-1223 (D.C. Cir. Aug. 1, 2003) (collectively, *Alliance* Orders).

[6] Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

[7] ComEd is a wholly owned subsidiary of Exelon Corp. In 2001, ComEd withdrew from Midwest ISO. *See Illinois Power Co.*, 95 FERC ¶ 61,183, *reh'g denied*, 96 FERC ¶ 61,026 (2001).

join PJM. The Commission found that AEP's and ComEd's decisions to join PJM instead of Midwest ISO could result in pricing differentials and trading barriers between the systems (seams). However, the Commission found that with certain conditions to address and mitigate the impact of seams, AEP's and ComEd's decisions to join PJM would be consistent with the scope and configuration requirements of Order No. 2000.[8] Accordingly, the Commission accepted those utilities' choices to join PJM, subject to, among other conditions, AEP, ComEd, and the RTOs proposing a solution that would effectively hold harmless utilities in Wisconsin and Michigan from any loop flows or congestion that resulted from the proposed RTO configuration.[9] The Commission also required that Midwest ISO and PJM form a functional joint and common market across the two organizations.[10] In order to adequately monitor the RTOs' progress toward a joint and common market, the Commission required them to file, for informational purposes, an implementation plan for achieving a joint and common market and progress reports every 60 days.[11] The Commission, however, did not specify the details of the joint and common market.

3. On rehearing, the Commission clarified that the RTOs were required to file a joint operating agreement no later than 60 days prior to the commencement of transmission service over the transmission systems of AEP or ComEd under the PJM tariff or integration of any of those systems into the PJM market. Midwest ISO and PJM were also required to demonstrate in the filing that such agreement will provide for management of the seam between them in an efficient and reliable manner.[12] The Commission also clarified that utilities in Wisconsin and Michigan should be held harmless from any such adverse operational and financial impacts during the interim period prior to commencement of the joint and common market, at which point congestion and loop flows would be effectively internalized.[13]

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[8] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[9] *Alliance* Orders, 100 FERC ¶ 61,137 at P 53.

[10] *Id.* P 37-40.

[11] *Id.* P 55. The Commission subsequently extended the time between reports to every 120 days. *See Wisconsin Pub. Serv. Corp.,* 114 FERC ¶ 61,277 at P 30 (2006)**.**

[12] *Alliance* Orders, 103 FERC ¶ 61,274 at P 36.

[13] *Id.* P 47.

4. The RTOs developed, and the Commission conditionally accepted on March 18, 2004, Phase 1 of the PJM-Midwest ISO Joint Operating Agreement (JOA), which provided, among other things, for coordinated redispatch to manage congestion and loop flow across the RTOs' systems. Phase 1, the market-to-non-market phase, covered the period during which PJM's market-driven operation would interface with Midwest ISO's non-market operation. The RTOs outlined the market-to-non market protocols in an attachment to the JOA called the Congestion Management Process. In accepting the JOA, the Commission also expanded the scope of the RTOs' existing 60-day informational reporting requirement to include progress in implementing the JOA.[14]

5. On April 27, 2004, the Commission issued an order establishing hearing procedures related to the hold harmless requirement.[15] Subsequently, between September 2004 and May 2005, AEP and ComEd filed uncontested settlement agreements that addressed the hold harmless issues between them and the utilities in Michigan and Wisconsin (including Wisconsin Public Service and Upper Peninsula). The Commission accepted the uncontested settlement agreements, which resolved all issues between AEP, ComEd and the Michigan and Wisconsin utilities relating to AEP's and ComEd's obligation to hold harmless those utilities from the impacts of loop flow and congestion resulting from AEP's and ComEd's choice to join PJM instead of Midwest ISO.[16]

6. On November 18, 2004, the Commission instituted a new long-term pricing structure, effective, December 1, 2004, across the Midwest ISO and PJM regions that eliminated rate pancaking for transmission service under the tariffs of the RTOs to serve load in their combined regions. Among other things, the Commission conditionally accepted for filing a license plate rate design for transmission service between the RTOs

[14] *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251, at P 103, *order on reh'g, clarification, and compliance*, 108 FERC ¶ 61,143, at P 159, *order on clarification and reh'g*, 109 FERC ¶ 61,166, at P 30 (2004) (Phase 1 JOA Orders).

[15] *PJM Interconnection, LLC*, 107 FERC ¶ 61,087 (2004).

[16] *See PJM Interconnection, LLC*, 109 FERC ¶ 61,228 (2004) (between ComEd and International Transmission Company (ITC)), 110 FERC ¶ 61,015 (2005) (between ComEd and the utilities in Wisconsin and Michigan other than ITC), 110 FERC ¶ 61,256 (2005) (between AEP and the utilities in Wisconsin), 111 FERC ¶ 61,459 (2005) (between AEP and ITC), 111 FERC ¶ 61,460 (2005) (between AEP and the utilities in Michigan other than ITC).

filing, suspended it for a nominal period, effective on December 1, 2004, subject to refund and adopted a seams elimination charge/cost adjustment assignment (SECA) transition methodology.[17]

7. On March 3, 2005, the Commission conditionally accepted a new attachment to the JOA, the Interregional Coordination Process, which set forth the Phase 2 market-to-market coordination protocols that would apply between the RTOs with the start-up of Midwest ISO's market operations. In addition, the Commission conditionally accepted amendments to the JOA that were necessary to implement the Phase 2 market-to-market coordination protocols.[18] The Commission also directed the RTOs to consult with their stakeholders to develop a concrete joint and common market plan that identified individual elements of the joint and common market that are feasible and beneficial to implement, including an evaluation of the expected costs and benefits associated with achieving each element, and that provided a timeline for implementing those elements. The RTOs were required to file this plan in their informational progress report on the joint and common market.[19] Midwest ISO and PJM made the requisite informational filing on October 31, 2005 (October 2005 Report).[20]

8. In the October 2005 Report, the RTOs stated that the need for single system dispatch to address seams issues and Order No. 2000 scope and configuration requirements had been overtaken by the benefits already achieved through the interregional coordination of their individual markets under the JOA, which incorporates their Congestion Management Process and Interregional Coordination Process. The RTOs stated that they had held stakeholder meetings, committee meetings, and conducted a stakeholder survey to: (1) define the objectives of the joint and common market; (2) identify the additional initiatives that could achieve these objectives; and (3) determine for each initiative the cost to implement versus the benefit to be achieved. As part of this process, the RTOs, together with their consultants, quantified the benefits of each initiative and approximated the costs of implementing each initiative.[21]

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[17] *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004), *reh'g pending*.

[18] *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,226 (2005) (March 2005 Order).

[19] *Id.* P 73-76.

[20] Docket Nos. ER04-375-017 and ER04-375-018.

[21] October 2005 Report at 9, 17.

9. As a result of this process, the RTOs divided the identified initiatives into three groups: (1) those that the stakeholders and RTOs committed to implement, with a designated completion date; (2) those that required further study of costs and benefits, or overcoming of obstacles that prevented the RTOs from committing to these initiatives at that time; and (3) those that were not recommended for further consideration at that time because they did not have stakeholder support and/or could not be justified under current conditions.[22] The RTOs also stated that the successful coordination of their two large markets under the JOA, combined with additional initiatives that will be implemented, obviates the need for a single market operating under single system dispatch. The cost of single system dispatch cannot be justified by the marginal benefits it would produce above those already achieved in Phase 2 of the JOA and the initiatives that the RTOs will pursue.[23]

10. In response to the October 2005 Report, WPS Companies filed, on November 23, 2005, a protest of the report and a complaint (November 2005 Complaint).[24] WPS Companies claimed that the initiatives the RTOs committed to implement would not address the seams issues. They argued that a joint and common market identified in the Commission's earlier orders must include certain elements, including a single energy market with single system dispatch, a single market portal for data entry and retrieval, elimination of pancaked rates for ancillary services, and a single FTR process.

11. On January 30, 2006, WPS Companies filed a second complaint (January 2006 Complaint),[25] this time reacting to the RTOs' December 30, 2005 periodic informational report on progress in achieving a joint and common market across the two regions (December 2005 Report).[26] In this report, the RTOs continued their three-group classification of the initiatives related to implementing a joint and common market. The

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[22] *Id.* at 45-49. The last category included single system dispatch and certain complementary measures.

[23] *Id.* at 19.

[24] Docket No. EL06-20-000.

[25] Docket No. EL06-49-000. The November 2005 and January 2006 Complaints were essentially the same.

[26] Filed in Docket No. ER04-375-000.

RTOs stated that they had committed to pursue production cost studies of initiatives to which they have not yet committed, and that they were working on the parameters and process for conducting the study.[27]

12. The Commission addressed WPS Companies' protest and both complaints on March 16, 2006, when it denied the protest of the October 2005 Report and dismissed both complaints as premature.[28] The Commission found that the October 2005 Report complied with the requirement of the March 2005 Order that the RTOs file their plan for development of a joint and common market. The Commission accepted the RTOs' plan for an ongoing process to evaluate the costs, benefits and feasibility of adding additional elements to their joint and common market before they or their stakeholders commit to implementing any of those remaining elements. The Commission agreed with the RTOs and their stakeholders that further joint and common market initiatives should not be pursued if they are not shown to produce net benefits. The Commission pointed out that it had not identified in previous orders the elements of the required joint and common market, but had left that determination to the RTOs and their stakeholders. Because the RTOs had committed to perform a study assessing the costs, benefits, and feasibility of those initiatives that they had not yet committed to implement, the Commission found it premature to address the merits of the four specific items listed in WPS Companies' complaints until after the RTOs' final decisions on which initiatives to pursue and the timeliness of their adoption.[29] On rehearing, the Commission clarified that it had not foreclosed WPS Companies' right to raise the same matters when the RTOs filed the conclusions of the forthcoming production cost study and any proposed tariff revisions to implement certain joint and common market initiatives.[30]

13. The RTOs' June 28, 2006 informational filing (June 2006 Report) combined their regular periodic report on the status of achieving a joint and common market with a report on various initiatives. They explained that they had presented to stakeholders their analyses of single system dispatch across their combined market footprint based on a

[27] December 2005 Report at 9.

[28] *Wisconsin Pub. Serv. Corp.,* 114 FERC ¶ 61,277, *order on reh'g*, 115 FERC ¶ 61,185 (2006) (2006 Dismissal Order).

[29] 2006 Dismissal Order, 114 FERC ¶ 61,277 at P 25-28.

[30] 2006 Dismissal Order, 115 FERC ¶ 61,185 at P 5.

May 25, 2006 production cost study (Production Cost Study).[31] The RTOs reported that a number of joint and common market initiatives currently under development are expected to achieve a significant portion of the production cost savings estimated in the study's simulations and could further enhance the convergence of their two markets, but at substantially less cost than single system dispatch. In addition, PJM and Midwest ISO reported that they would continue to analyze and improve the operation of the market-to-market coordination implemented in Phase 2 of the JOA.

14. The RTOs stated that significant benefits have been realized through their coordinated market operations, and that the results of the Production Cost Study indicate that the cost of implementing single system dispatch could outweigh the achievable level of associated savings. They concluded that implementation of a number of significantly less-costly initiatives must be completed and be effective for a sufficient timeframe in order to judge the actual achievable level of savings still available through the much more costly development of single system dispatch. The RTOs added that they have serious doubts that current technology could accommodate a single dispatch of the entire region.

15. WPS Companies' August 15 Complaint followed. WPS Companies again asked the Commission to require the RTOs to promptly institute single system dispatch to end the barriers that hamper transactions across the Midwest ISO-PJM seam, including poor congestion and loop flow management, and that reduce market efficiency and competitiveness. They also requested depancaking of ancillary service rates and a single integrated FTR allocation process. In addition, they requested a single market portal to provide one-stop shopping so that customers in Wisconsin could deal easily and quickly with counterparties in either RTO.

16. WPS Companies argued that the June 2006 Report showed that single system dispatch is cost effective, will pay for itself in less than three years, and will also provide significant savings to customers. WPS Companies stated that major differences remain between prices on each side of the seam and between the RTO shadow prices that each RTO uses to relieve congestion on flowgates subject to coordinated congestion management under the JOA.[32] In addition, WPS Companies disagree with the RTOs' assertion that significant benefits of single system dispatch have already been achieved

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[31] *Midwest ISO Results and Assumptions for Single Economic Dispatch Production /Cost Study – PROMOD Component* and *PJM Simulation of PJM/MISO Single Economic Dispatch of Production Cost Analysis*, RTOs' September 15, 2006 Answer to the August 15 Complaint (September 15 Answer) at Attachment 1 & 2.

[32] A shadow price is the economic value each RTO places on a constraint, as calculated by its respective dispatch model.

by existing coordination under the JOA and that a number of the joint and common market initiatives currently under development or under consideration will achieve a significant portion of the remaining production cost savings estimated by the Production Cost Study. According to WPS Companies, the initiatives would produce only a very small fraction of the estimated savings related to single system dispatch. Furthermore, they argued, the RTOs offered the remaining initiatives with no cost benefit analysis, little information, no implementation schedule, no assurance that they would be implemented, and no basis for concluding that even if adopted they would achieve any of the estimated benefits.

17. Finally, WPS Companies argued that the Production Cost Study did not fully capture the inefficiencies created by poorly coordinated congestion and loop flow management across the seam. WPS Companies argued that without single system dispatch, the benefits projected by the Production Cost Study will not occur. They insisted that without single system dispatch, the Commission's requirement that the RTOs form a functional joint and common market that internalizes congestion and loop flows cannot be achieved.

18. The RTOs' September 15 Answer denied that the RTOs were not in compliance with prior Commission orders or had violated any of their prior commitments; the Production Cost Study or any previous studies are flawed or support establishment of single system dispatch; the current state of the joint and common market is inadequate; and WPS Companies had sustained any actionable harm from the lack of single system dispatch.

19. On October 2, 2006, WPS Companies filed a response to the September 15 Answer (WPS Companies' Response), which included Exhibit WPS-11, a rebuttal affidavit that estimated that establishing a single market over the combined region would provide $568 million in annual savings.[33] The RTOs replied, asking the Commission to reject WPS Companies' Response as impermissible under Commission rules (RTOs' Reply). WPS Companies answered, urging Commission acceptance of its response (WPS Companies' Answer).

<u>February 2007 Order</u>

20. The February 2007 Order dismissed the August 15 Complaint. It addressed first the complaint's basic premise – that the Commission's previous orders had directed

[33] Ex. WPS-11 at P 7. The rebuttal affidavit was prepared by Mr. Johannes P. Pfeifenberger whose earlier affidavit was included in WPS Companies' August 15 Complaint as Exhibit WPS-1.

Midwest ISO and PJM to implement single system dispatch as part of a joint and common market. The Commission found that this premise was incorrect and cited its previous finding that the RTOs' achievements, such as their JOA, place them in compliance with their obligation to establish a joint and common market.[34]

21. Accordingly, the Commission stated that for WPS Companies to prevail in their complaint under section 206 of the Federal Power Act (FPA),[35] they must show first that the RTOs' existing tariffs are unjust, unreasonable or unduly discriminatory, and then that implementation of single system dispatch is a just and reasonable replacement. The Commission found that WPS Companies had satisfied neither part of this burden. It rejected WPS Companies' conclusion that the Production Cost Study provides a sufficient basis, in its projections of annual cost savings, for the Commission to find that the RTOs' existing tariff processes for dealing with seams are unjust or unreasonable.[36]

22. The Commission cited the wide range of estimated cost savings in the Production Cost Study, from $15 million to $99 million depending on the underlying assumptions, and the study's estimates of the costs to implement single system dispatch at $105 million in capital costs and $7 million in increased annual operating costs. The Commission noted that the Production Cost Study used market data from only the early stages of Midwest ISO's market operations and did not include initiatives that the RTOs committed to implement and are implementing. The Commission found that, therefore, the Production Cost Study could not take into account the economic benefits that these initiatives provide.[37]

23. Furthermore, the Commission observed that many of the initiatives that the RTOs were pursuing address specific concerns raised by WPS Companies in a less expensive way than single system dispatch. It observed that these planned initiatives may provide

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[34] February 2007 Order, 118 FERC ¶ 61,089 at P 33-34, *citing* 2006 Dismissal Order at P 29 (when Commission ordered the RTOs to file their plan for a joint and common market the Commission did not specify specific format or other requirements, *citing* March 2005 Order, 110 FERC ¶ 61,226).

[35] 16 U.S.C. § 824e (2000).

[36] February 2007 Order, 118 FERC ¶ 61,089 at P 35-36.

[37] *Id.* P 37, *citing* affidavit of Alan Adams (Adams Affidavit) at P 14, Ex. RTO-2, *in* September 15 Answer.

the competitive benefits of the single system dispatch that WPS Companies seek – benefits that WPS Companies acknowledge are speculative, difficult to quantify, and likely to vary greatly with market conditions.[38]

24. The Commission stated that the RTOs' record demonstrates that they are proceeding with regular and significant improvements to their joint and common market. The Commission also noted that the RTOs will continue the stakeholder process in implementing their joint and common market. The Commission expressed confidence that the RTOs and their stakeholders will continue to judge new and existing proposals on the merits while they pursue less costly initiatives that produce similar benefits to single system dispatch. It referred to the RTOs' policy of first allowing all the committed initiatives to take effect before gauging further benefits that single system dispatch would bring.[39]

25. Because of the essentially speculative nature of the benefits to be achieved through single system dispatch and because such benefits may well be achieved in other, less costly ways, the Commission declined to direct the RTOs to immediately establish single system dispatch system. WPS Companies had not shown that the RTOs' current steps towards developing a joint and common market are unjust, unreasonable, or unduly discriminatory, nor had they shown that immediate implementation of all the elements of single system dispatch, without regard to the potential costs and benefits of each of the elements, is just and reasonable. Also, WPS Companies had not shown that implementation of single system dispatch is technologically feasible.[40]

26. Lastly, because the RTOs had implemented the JOA, had committed to implement certain of the identified initiatives, and were required to maintain a process for further change, through stakeholder evaluation and adoption of existing or future initiatives, the Commission again concluded that the RTOs had satisfied the joint and common market condition established in the *Alliance* Orders. The Commission therefore ended the obligation for the RTOs to file periodic reports on their progress toward developing and implementing a joint and common market.[41]

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[38] February 2007 Order, 118 FERC ¶ 61,089 at P 38-42.

[39] *Id.* P 41-44.

[40] *Id.* P 45-46.

[41] *Id*. P 49-50.

Rehearing Request

27. On rehearing, WPS Companies first repeat the premise on which their complaint is based – that the Commission's previous orders directed establishment of single system dispatch across both RTOs and not two coordinated markets. They object that the Commission in the February 2007 Order relieved the RTOs of their obligations to depancake all costs and to internalize congestion and loop flow effects as if they were a single RTO. Currently, WPS Companies argue, the two separate markets are not effectively integrated and will not become the Commission-required single market in the foreseeable future unless the Commission requires the RTOs to adopt single system dispatch and the three complementary measures that WPS Companies seek. WPS Companies state that they relied on the RTOs' obligation to establish promptly the required single market when acting in other proceedings, such as those involving the hold harmless settlements.

28. WPS Companies criticize the February 2007 Order as failing to interpret properly the Production Cost Study data, which show that single system dispatch is cost effective. WPS Companies also argue that the Commission wrongly relied on the RTOs' conclusions from the study. Instead, the Commission should have required the RTOs to perform an independent and comprehensive study of the total costs and benefits of single system dispatch, including consumer benefits. WPS Companies fault the February 2007 Order for failing to consider WPS Companies' Response, which includes Exhibit No. WPS-11, an alternate analysis of the sizeable savings achievable under single system dispatch.

29. WPS Companies contend also that the Commission erred in relying on the initiatives that the RTOs are implementing because those measures are of little economic value and may never be implemented. WPS Companies object that the Commission accepted, without proof, the RTOs' claims that single system dispatch is technically infeasible. They object that the Commission improperly resolved questions of material fact without a trial type or other evidentiary hearing, which should be instituted to investigate the feasibility and the total benefits of establishing a single market. WPS Companies object that the Commission in the February 2007 Order wrongly assigned to WPS Companies the burden of proving that single system dispatch is just and reasonable. Even so, WPS Companies argue that they met their burden of persuasion and therefore the RTOs have the burden of demonstrating that their refusal to promptly implement single system dispatch complies with the Commission's prior orders. Lastly, WPS Companies contend that the Commission in the February 2007 Order wrongly terminated the RTOs' obligation to file periodic reports on their progress towards implementing the joint and common market.

Discussion

30. We will deny WPS Companies' request for rehearing. The request raises two principal issues: first, that the Commission required the two RTOs to institute single system dispatch; and second, that even if there was no explicit requirement to establish single system dispatch, under section 206 of the FPA, the RTOs' current tariffs are unjust and unreasonable, and the implementation of single system dispatch is necessary to create just and reasonable tariffs. We address these arguments in turn.

Prior Orders' Joint and Common Market Requirement

31. The consistent premise of WPS Companies' arguments, since the November 2005 Complaint, has been that Commission orders in 2002 and 2003 directed the two RTOs to form a single market.[42] While each RTO might be an independent organization, WPS Companies argue that the Commission directed that the RTOs have an actual unitary market between them, not two separate markets that are merely coordinated. WPS Companies state that the Commission required a single market because of the seams created by AEP's and ComEd's membership in PJM; without the single market, the configurations of Midwest ISO and PJM would not satisfy the requirements of Order No. 2000.[43] WPS Companies assert that single system dispatch and the three complementary measures are essential components of a single market. WPS Companies ask the Commission to grant rehearing and to enforce the previously-required single market for the two RTOs.

32. We examine first what the Commission required of Midwest ISO and PJM in its previous orders discussing the formation of a joint and common market. As the Commission found in the 2006 Dismissal Order and the February 2007 Order, and as we continue to find, the Commission's previous orders did not require the RTOs to establish a single market with single system dispatch.

33. On July 31, 2002, when conditionally accepting the Alliance Companies' compliance filings that included their RTO choices, the Commission described its goal as "moving quickly to establish a joint and common market spanning both the Midwest ISO and PJM." Significantly, it added the caveat that, "because such orders are preliminary in nature, and details are forthcoming, our actions are not intended to prejudge the outcome

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[42] WPS Companies cite the *Alliance* Orders, specifically, 100 FERC ¶ 61,137 at P 35-38, P 53, 102 FERC ¶ 61,214 at P 7, 103 FERC ¶ 61,274 at P 20-21, P 24, P 26, P 43.

[43] *See* Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,082-85.

or bind the Commission to a particular outcome other than to the extent stated herein."[44] The Commission stated its "belief that a common market will minimize any seams issues and will allow parties to manage seams more efficiently." The Commission spoke of the substantial cost savings associated with having a common market across both regions, and its desire to hasten the benefits and ensure as short a transition period as possible. It "require[d] Midwest ISO and PJM to form a functional common market across the two organizations by October 1, 2004."[45]

34. The July 31, 2002 order also directed ComEd and AEP, who had elected to join PJM, to propose a solution that effectively holds harmless utilities in Wisconsin and Michigan from any loop flows or congestion that result from their RTO choices. In addition, the order directed Midwest ISO and PJM to file statements indicating their agreement to the conditions stated in the order.[46] On August 15, 2002, the RTOs stated, in separate responsive filings and in nearly identical language, that their initial plan, following establishment of the functional common market, was to establish a single unit commitment process and single system dispatch across the markets.[47]

35. Contrary to WPS Companies' assertion, however, the Commission's subsequent orders in the *Alliance Companies* proceedings or in other proceedings did not act on these August 15, 2002 statements by the RTOs, nor did the Commission require that the RTOs carry through on their initial proposal to establish single system dispatch, or indicate that the RTOs could not re-evaluate the need for, timing, and implementation of single system dispatch.[48] The Commission did not require "an actual unitary market."[49] At an early stage, the RTOs discussed the possibility of forming a single market with single system dispatch, and while such a voluntary agreement among transmission owners is certainly permissible, the Commission did not accept it nor impose it as a condition.

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[44] *Alliance* Orders, 100 FERC ¶ 61,137 at P 2.

[45] *Id*. P 40.

[46] *Id.* P 53 and Ordering Paragraph (C).

[47] Midwest ISO's and PJM's August 15, 2005 filings, in Docket No. EL02-65-000, at 2 & n.3, and 2 & n.2, respectively.

[48] As the RTOs explained in their filings, while their stakeholders currently do not support single system dispatch, the RTOs do not seek to rule it out if it is cost justified and technically feasible in the future. September 15 Answer at 7.

[49] Rehearing Request at 13.

36. While the Commission recognized that the proposed configuration of PJM and Midwest ISO would raise issues relating to loop flow, effective management of congestion, and enhanced reliability and efficiency, it sought to address these problems by establishing conditions for the former Alliance Companies to join PJM. The conditions "allow the RTOs to manage congestion and loop flow (through, for example, the common market and NERC-approved Reliability Plans), provide one-stop shopping through the common market, provide access to a wide region at non-pancaked rates, and otherwise mitigate the seams resulting from the proposed configuration."[50] Contrary to WPS Companies' insistence, the Commission did not require the implementation of single system dispatch. Significantly, the Commission stated, "Order No. 2000 does not require RTOs to join with other RTOs to form common markets in order to be deemed appropriately configured," and "coordination arrangements such as a common market can mitigate an otherwise inappropriate scope and configuration for an RTO."[51]

37. The RTOs cited resolution of seams issues as one of the purposes of the JOA that they proposed on December 31, 2003.[52] The RTOs would do this by coordinating the management of loop flow, flowgates, generation dispatch, planned outages, emergencies, long-term transmission planning, and interconnection of new facilities having cross-border impacts. When the Commission conditionally accepted Phase 1 of the JOA, on March 18, 2004, it stated that the JOA provided a strong framework for an unprecedented level of cooperation between two RTOs who were continuing to examine additional issues.[53] On October 28, 2004, in a related proceeding that permitted ComEd to integrate into PJM, the Commission stated, "PJM and Midwest ISO are still required to implement a joint and common market . . . [and] the parties are making satisfactory progress toward that goal, as evidenced by the coordination achieved in the JOA."[54]

38. On March 3, 2005, in the context of addressing how the two RTOs would coordinate their energy markets, the Commission addressed the subject of single system dispatch. It stated, "Nor do we believe that the RTOs need to use identical software or a single dispatch system in order to provide for fair allocation of congestion costs across the RTO areas. The JOA process is . . . designed to reduce the costs of congestion in

[50] *Alliance* Orders, 103 FERC ¶ 61,274 at P 31.

[51] *Id*.

[52] Phase 1 JOA Orders, 106 FERC ¶ 61,251 at P 7.

[53] *Id.* P 23.

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

each region by allowing the RTOs to resolve the congestion in the cheapest manner available from the two dispatching systems."[55]

39. When the Commission required the RTOs to report, by October 31, 2005, on their progress towards establishing the joint and common market, it directed them "to identify and provide narrative description of each specific element of a joint and common market, and the tasks necessary for them to complete, the impediments for them to overcome, and the resulting changes necessary to their tariffs, rules, systems, and procedures to accomplish the . . . elements necessary to commencement of common market operations and ultimately a joint and common market. The RTOs are to provide for each element . . . an evaluation of the expected costs and benefits associated with achieving the element."[56]

40. In the 2006 Dismissal Order addressing WPS Companies' November and January Complaints, the Commission reviewed the statements it made in previous orders. The Commission concluded, "In its initial orders, the Commission did not identify the elements of a joint and common market that must be implemented, but left that determination to the RTOs and their stakeholders. All parties recognize, and we agree, that implementation of additional elements of a joint and common market should be undertaken only if the benefits of those changes to the market exceed the costs of implementing the changes."[57]

41. At WPS Companies' insistence, the Commission revisited this matter in the February 2007 Order. There, it stated that WPS Companies are incorrect in their belief that the RTOs' failure to establish single system dispatch is inconsistent with prior Commission orders. While the Commission required establishment of a joint and common market, it did not identify the required elements of such a market but left that determination to the RTOs and their stakeholders. Moreover, single system dispatch across both RTOs is not the only method for achieving the requirements of the Commission's prior orders. The RTOs should not implement every element that might be included in a joint and common market without considering the costs and benefits associated with that element.[58]

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[55] March 2005 Order, 110 FERC ¶ 61,226 at P 48.

[56] *Id.* P 76.

[57] 2006 Dismissal Order, 114 FERC ¶ 61,277 at P 25.

[58] February 2007 Order, 118 FERC ¶ 61,089 at P 33.

42. Our conclusion, upon once again reviewing the Commission's prior orders, is that these orders do not require Midwest ISO and PJM to form one single market by adopting, without regard to the accompanying costs and benefits, single system dispatch and the complementary measures urged by WPS Companies (i.e., a single market for ancillary services, a single FTR allocation process, and a single market portal). These orders obliged the RTOs to establish a functional joint and common market, which they have accomplished by significantly increasing coordination of their separate markets. The Commission clearly left to the RTOs and their stakeholders the determination of the further elements of a joint and common market to be implemented.

43. WPS Companies object also that, in the February 2007 Order, the Commission relieved the RTOs of their obligation, imposed when permitting ComEd and AEP to join PJM, to move towards a single market that internalizes congestion and loop flow effects. They argue that the February 2007 Order instead permits the RTOs to coordinate only to the degree that Order No. 2000 requires RTOs to coordinate generally, with Midwest ISO and PJM having less appropriate seams than the other RTOs.[59]

44. As the Commission stated in the February 2007 Order, single system dispatch is not the only method by which the RTOs can internalize congestion and loop flow. Through the JOA, the RTOs have achieved levels of coordination unequaled by other RTOs. Under the JOA, the RTOs have instituted a process to coordinate dispatch on their systems with the objective of managing loop flow and congestion in the most cost-effective manner. Specifically, the JOA provides for coordinated redispatch between the two RTOs on a least-cost basis, with financial settlements through which each RTO is compensated for the redispatch that it provides to the other RTO. WPS Companies argue that without single system dispatch, the conditions the Commission imposed are no more that what is required of any RTO, but, notably, WPS Companies do not point to any other coordination arrangements that rival the type and scope of coordination that occurs between Midwest ISO and PJM.

Further Section 206 Investigation is Not Warranted

45. In filing a complaint, WPS Companies have the burden to demonstrate under section 206 of the FPA that the existing tariffs of PJM and Midwest ISO are unjust and unreasonable and that the single system dispatch they advocate is a just and reasonable replacement. As the Commission found in the February 2007 Order, in the circumstances presented here, WPS Companies did not meet that burden nor did they provide information sufficient to warrant further investigation of the need for single system dispatch.

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[59] Rehearing Request at 24-25.

46. WPS Companies did not identify any specific transmission or electricity rate that they consider unjust and unreasonable. While they point out differences in shadow prices and proxy bus prices, they do not explain how any of these differences affect their rates. Even if such differences result in increased congestion costs, for example, WPS Companies do not explain whether they have received FTRs that would offset such costs. In addition, since the time that the Commission conditionally accepted AEP's and ComEd's RTO choices, rate pancaking for transmission service between Midwest ISO and PJM has been eliminated, allowing WPS Companies to participate in both markets by paying only a single transmission rate.

47. While WPS Companies cite to a variety of information on differences in shadow prices and proxy bus prices, the most comprehensive analysis on which they rely to conclude that the current rates generally are unjust and unreasonable is the Production Cost Study performed by the RTOs. As the Commission found in the February 2007 Order, this study does not show that the RTOs' existing separate but coordinated systems are unjust and unreasonable nor does it show that single system dispatch is the only or even the most efficient means of improving the coordination of the two systems. The Production Cost Study estimates a range of possible benefits for single system dispatch of between \$15 million and \$99 million, depending on the underlying assumptions used in each scenario regarding fuel prices, initial base case hurdle rates, and the methodology used to account for off-system sales. This study was done in the early stages of Midwest ISO's market operations and prior to the implementation of many of the RTO joint and common market initiatives. It estimated the cost of implementing single system dispatch to be at least \$105 million in capital costs plus an ongoing expenditure of \$7 million in operating costs per year. As the Commission found in the February 2007 Order:

> Given the wide range of savings produced by the study, the lack of a sufficient baseline to include a full year of Midwest ISO's energy markets, and the impossibility to net out savings to be achieved through other elements of the joint and common market, the RTOs and a majority of stakeholders concluded that the study results were not persuasive enough to justify the known costs of implementing a single system dispatch. We conclude that, under these circumstances, WPS Companies have not justified imposing the significant costs of single dispatch on the stakeholders who do not agree that such action is cost justified.[60]

48. Additionally, the benefits that could accrue from single system dispatch do not appear to be evenly distributed among the RTO stakeholders. The Production Cost Study found that production cost savings accrue in zones closest to the operating seam compared to savings in zones electrically distant from the operating seam; under some

[60] February 2007 Order, 118 FERC ¶ 61,089 at P 37.

simulations, the Midwest ISO region would receive no benefit from the single system dispatch.[61] In light of the apparently unequal distribution of benefits associated with such a system, we cannot find at this time that the decision of the RTOs and the majority of their stakeholders declining to implement single system dispatch is unjust and unreasonable.[62]

49. Moreover, WPS Companies are asking the Commission to order the two RTOs to create, in effect, a single system. We must consider carefully the implications of such a drastic action. Before taking the unprecedented action of mandating a costly single system dispatch, the Commission needs substantial and convincing evidence that the existing dispatch creates unjust and unreasonable rates, that single system dispatch is necessary to achieve just and reasonable rates, and that such rates cannot be achieved through less costly means.

50. The evidence put forward here is insufficient to show that the cost and expense of single system dispatch is warranted now or that less costly alternatives will not address WPS Companies' concerns, such as an acceptable level of price convergence at the Midwest ISO-PJM seam. The cooperation and coordination undertaken under the JOA, and the elimination of pancaked transmission rates, have already helped to create greater price convergence at the borders of the RTOs. WPS Companies have not shown that the further initiatives, which were not reflected in the Production Cost Study, nor the initiatives that the RTOs are planning, will not produce reasonable price convergence.

51. In regard to loop flows, the Commission's policy is for transmission owners themselves to work out "mutually acceptable operating practices."[63] Indeed, PJM and Midwest ISO have achieved far more than other RTOs in addressing inter-RTO seams and loop flow issues. We cannot find that we should impose on Midwest ISO, PJM, and their respective stakeholders a single system dispatch that we require of no other RTOs or utilities. It may be true that, as a theoretical proposition, single system dispatch with one single computer system across multiple transmission systems would produce the most efficient generation dispatch. But we cannot ignore the current reality where each RTO

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[61] Adams Affidavit, Ex. RTO-2 at P 11.

[62] The RTOs concluded that the benefits of implementing single system dispatch would be unequally distributed between the RTOs and among each RTO's customers, while the associated costs would be socialized across the RTOs' members. September 15 Answer at 8-9.

[63] *See, e.g., Northern Indiana Pub. Serv. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,006 (2006), *citing American Elec. Power Serv. Corp.,* 49 FERC ¶61,377, at p. 62,381 (1989), *reh'g denied* , 50 FERC ¶61,192 (1990).

already operates its own well-functioning competitive market and has voluntarily created a structure that must be honored.[64] Implementation of single system dispatch across the RTOs would be expensive, complex, and perhaps difficult to implement, and the RTOs are actively exploring less expensive and less complex alternatives to single system dispatch. Accordingly, we cannot find that the existing systems of the RTOs are unjust and unreasonable or that the only reasonable solution is to merge those systems into a single entity against the will of virtually all of the stakeholders.

<u>Use of the Production Cost Study</u>

<u>WPS Companies' Arguments</u>

52. WPS Companies argue that the Commission should not have ignored wider benefits when it considered WPS Companies' advocacy of single system dispatch and the three complementary measures. WPS Companies state that, according to their experts' analyses, the Production Cost Study substantially understates the benefits of single system dispatch.[65] WPS Companies argue that even without considering these additional benefits, the Commission should have directed the RTOs to implement single system dispatch because the Production Cost Study shows that single system dispatch will result in production cost savings ranging from $53 million to $66 million annually, and approximately $350 million in present value savings over a ten-year period.

53. WPS Companies argue also that the Commission was arbitrary and unreasonable in its analysis of the Production Cost Study because the Commission relied on shortcomings that the RTOs point out when the RTOs themselves are the entities that designed the Production Cost Study. WPS Companies argue that the Commission should have either used the data in the Production Cost Study to order single system dispatch or required the RTOs to submit a new independent study; the Commission should not have relied on a defective study to conclude that the benefits of single system dispatch do not justify its implementation.

54. Moreover, WPS Companies contend that the Production Cost Study heavily understates the benefits of single system dispatch, which are greater than the study's estimated annual $56 million and ten-year $350 million savings values. WPS Companies note that a study of production costs does not consider savings from enhanced

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[64] *See Fort Pierce Utilities v. FERC*, 730 F.2d 778, 785 (D.C. Cir. 1984) (finding that utility corporate boundaries should be given functional significance in rate determinations).

[65] Affidavits of Johannes P. Pfeifenberger, Ex. WPS-1, and John Budde, Ex. WPS-3, in August 15 Complaint (Pfeifenberger Affidavit and Budde Affidavit, respectively).

competition or reductions in fixed costs, risk management costs, RTO administrative costs, and market participant administrative costs. WPS Companies claim that a recent independent assessment of Midwest ISO benefits that states that production cost studies do not capture additional benefits that would become available through elimination of the Midwest ISO-PJM seam-related barriers, including: reductions in planning reserve margins for generating capacity due to increased reliability from inter-RTO coordination; improved long-term generation investment efficiency; improved visibility of congestion; increased price transparency; improved transmission access; expanded markets and reduced barriers to trade; improved reliability through regional power flow visibility and dispatch; and improved generator availability and efficiency in peak price periods.[66]

55. WPS Companies criticize the Production Cost Study further for its assumption that market conditions will always be normal and periods of unusual or extreme market conditions will never occur. They state that the savings from single system dispatch, while large during normal system conditions, are much greater during stressed operations (*e.g.*, high ambient temperatures, inclement weather, and forced transmission or generation outages). WPS Companies state also that the Production Cost Study did not consider the value of eliminating significant existing inefficiencies in the RTOs' current operation under the JOA market protocols, such as the RTOs' management of loop flows through split but coordinated allocation of flowgate capacity. WPS Companies state that this inefficiency is shown by the significant lack of convergence in the two RTOs' shadow prices on some of the coordinated flow gates. WPS Companies state that the ICF Study, unlike the Production Cost Study, recognizes that a primary benefit of single system dispatch is improved utilization of transmission assets.[67]

56. Lastly, WPS Companies fault the Commission for describing the benefits of competition that single system dispatch would bring as difficult to quantify and speculative.[68] WPS Companies argue that this treatment of competition is incorrectly based on a truncated view of competitive benefits. For example, during extreme market conditions or when treating the constrained areas that straddle the Midwest ISO-PJM boundary, the potential for exercising market power is heightened. Availability of resources on both sides of the RTO boundary can mitigate the exercise of market power. WPS Companies cite the Commission's objective over the last eleven years to protect

[66] Rehearing Request at 37-38, *citing* ICF International, *Independent Assessment of MISO Operational Benefits*, February 28, 2007 at 9-10 (ICF Study).

[67] *Id*. at 9.

[68] February 2007 Order, 118 FERC ¶ 61,089 at P 42.

and promote competition, and state that the Commission should not ignore the benefits of competition simply because the Production Cost Study was unable to measure them or because they are difficult to quantify.

Commission Response

57. We continue to find that the Production Cost Study does not demonstrate that the RTOs' existing tariffs are unjust and unreasonable, or that single system dispatch is the only, or even the preferred, method to reach a just and reasonable rate. As the Commission pointed out in the February 2007 Order, the Production Cost Study was based on market data from early operation of the Midwest ISO markets and from time periods prior to the implementation of some of the RTOs' current joint and common market initiatives.

58. The data used in the Production Cost Study applied to the period immediately after Midwest ISO transitioned to a market using locational marginal prices. Thus, these data may not reflect improvements that occurred as participants gained experience in the Midwest ISO market and with the inter-market coordination under the JOA. In addition, the data in the Production Cost Study does not reflect other initiatives that the RTOs implemented (and plan to implement) and that are designed to improve market performance. For example, PJM has implemented marginal losses so that both RTOs now include the impact of marginal losses in their dispatch of energy and LMP calculations (the different treatment of losses may have increased the level of price separation at the RTOs' borders). In addition, market participants that own part of a jointly-owned unit now have the ability to sell generation from their share into either RTO's day-ahead or real-time market (so they can take advantage of any price differential that may exist at these units' busses and thus help border prices converge). The RTOs have also made changes that allow market participants to more easily participate in either market, such as treating existing dynamically scheduled generating units identically in both RTOs.[69]

59. As discussed further below, the RTOs have also committed to implement an initiative in spring 2008 that is intended to bring further convergence to shadow prices, which is one of WPS Companies' major concerns. Furthermore, the RTOs committed to review the results of these and other initiatives and consider whether further adjustments or changes are needed to improve market performance. In light of the changes that have

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[69] *See* Monthly Milestone and Stoplight Reports, *available at* http://www.jointandcommon.com/documents/documents.html. These monthly reports also list other completed initiatives and initiatives that are being evaluated.

occurred after the data included in the Production Cost Study, we cannot find that this study establishes that the existing market structure is unjust and unreasonable or that the cost of implementing single dispatch is needed to establish just and reasonable prices.

60. In addition, WPS Companies did not support their claim that single system dispatch would provide meaningful non-production cost savings. Mr. Pfeifenberger made only general statements in support of the potential non-production cost savings that WPS Companies claim the Commission should have considered. For example, he stated that because the Production Cost Study considered only short-run variable costs of generating energy, the study "will understate seam-related inefficiencies because it ignores any fixed costs incurred by market participants over time, such as fixed costs associated with generation investment decisions, hedging costs, and the capacity payments of long-term contracts."[70] However, Mr. Pfeifenberger did not provide any evidence or analysis to quantify the potential fixed-cost savings that he argues are associated with single system dispatch. Also, without any supporting documentation or analysis, he concluded that "[w]ith a more integrated market, the opportunity to choose the best practices and to eliminate redundant hardware and software systems may result in reduced overall RTO administrative costs" and that "[a]dditional [joint and common market]-related savings would include savings in considerable costs market participants currently incur in learning, keeping up, and dealing with different tariffs, processes, procedures, and technologies used by [Midwest ISO] and PJM."[71]

61. Mr. Pfeifenberger argued also that the Production Cost Study underestimated cost savings because it is based on "normal" market conditions expected for 2006. He argued that to capture the potential disproportional benefits that single system dispatch would provide under challenging or extreme market conditions, a study would have to simulate scenarios that better reflect the full range of anticipated market conditions.[72] Notably, however, although the burden is on WPS Companies to establish that the existing rate is unjust and unreasonable, Mr. Pfeifenberger did not perform any such analysis. In addition, as the RTOs note in their answer, if the Production Cost Study were to assume imperfect (i.e., not normal) dispatch in the base case, it would also have to assume an imperfect dispatch in the change case (i.e., under single system dispatch), with the resulting difference being minimal.[73]

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[70] Pfeifenberger Affidavit, Ex. WPS-1 at P 61.

[71] *Id.* P 64.

[72] *Id.* P 66.

[73] Affidavit of Frederick S. Bressler, III (Bressler Affidavit) at P 14, Ex. RTO-1 in September 15 Answer.

62. Similarly, Mr. Budde, in his affidavit, claimed that it typically takes a minimum of 15 times longer (29 minutes instead of 2 minutes) to schedule a cross-border transaction as compared to a transaction that is wholly within a single market.[74] However, this conclusion is based solely on Mr. Budde's undocumented estimates of the time it takes for a market participant to perform certain specific tasks, and assumes a worst case scenario.[75] Mr. Budde also stated that "the restrictions and delays in entering and processing schedule requests associated with next-hour cross-border transactions all but prohibit even experienced market participants from engaging in those transactions."[76] However, as the RTOs point out, the hurdles claimed by Mr. Budde do not present a major barrier to inter-RTO trades, because if they did, there would not be the intensive hourly cross-border activity that is occurring between Midwest ISO and PJM.[77]

63. In addition, WPS Companies argue that the Production Cost Study understates the cost savings associated with single system dispatch because it does not recognize actual inefficiency of flowgate allocation under the JOA, as demonstrated by the lack of convergence in the two RTO's shadow prices on coordinated flowgates and proxy bus prices.[78] WPS Companies claim that, for example, discrepancies in shadow prices for eight selected flowgates indicate poor economic coordination of flowgate capacity because they show that one RTO is doing too little to help relieve a constraint while the other RTO is redispatching at a high cost.[79] However, this is the same information that was considered more comprehensively over the entirety of the Midwest ISO and PJM markets in the Production Cost Study.[80] Some of this lack of convergence is caused by peculiarities in the way shadow prices are developed, and not by inefficient coordination.

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[74] Budde Affidavit, Ex. WPS-3 at P 10.

[75] For example, if an RTO has 30 minutes to approve a particular transaction or if Mr. Budde estimates a market participant may take 3-5 minutes to complete a task, he assumes the RTO or market participant take the longest time possible. Budde Affidavit, Ex. WPS-3 at P 8, Steps 1-2.

[76] Budde Affidavit, Ex. WPS-3 at P 12.

[77] Bressler Affidavit, Ex. RTO-1 at P 25.

[78] Rehearing Request at 39.

[79] *Id.* at 29.

[80] Although WPS Companies' data cover a slightly longer period than the Production Cost Study (the figures in the Pfeifenberger Affidavit present data through June 30, 2006), WPS Companies do not attempt to segregate differences produced by the

(continued…)

64. As the RTOs explained in their September 15 Answer, shadow prices may not always accurately measure the price at which an RTO can redispatch its system to help resolve congestion on a particular flowgate. Thus, differences in shadow prices at a particular flowgate may not indicate that the RTO with the lower shadow price could have helped resolve a constraint at a lower cost. Differences in shadow prices suggest that the cost of resolving a particular constraint can be reduced by having the RTO with the lower shadow price undertake more redispatch. In some cases, however, such as the Eau Claire-Arpin flowgate referenced by WPS Companies, the RTO that reported the lower shadow price did not always have generation capacity that could be redispatched at that lower price. That is because the shadow price that each RTO reports is based on the cost at which it last provided redispatch.[81] Even when the RTO with the lower shadow price has run out of generation that it can redispatch to effectively resolve a constraint, the RTO continues to report the lower shadow price, despite its inability to provide the needed redispatch at this lower price. According to the RTOs, this happens at the Eau Claire-Arpin flowgate, and therefore, the difference in the reported shadow prices does not indicate inefficient coordination because the RTO with the lower shadow price did not actually have any additional generation available to redispatch at this lower price.

65. Also, the data on which WPS Companies rely do not isolate the effects on a constrained flowgate of loop flow that is external to both the Midwest ISO and PJM systems. Single system dispatch will not resolve problems associated with this external loop flow. In addition, WPS Companies do not evaluate whether options other than single system dispatch may address the differences in shadow prices at lower cost, despite their expert's acknowledgement that market-to-market coordination theoretically could resolve the shadow price differentials by transferring flowgate capacity until the two RTOs shadow prices are equalized. As Mr. Pfeifenberger notes, "Perfectly equalized shadow prices would imply that the two RTOs are each managing loop flows from the other RTO efficiently, just as if the two RTOs were operated as one."[82]

66. While we recognize that the data put forward by WPS Companies indicate that the RTOs still have issues to resolve, we cannot find that implementing single system

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joint and common market initiatives, some of which would have been in effect for three months of the period studies**.** Thus, the selected information is no better than the Production Cost Study in analyzing the effect of these initiatives.

[81] Bressler Affidavit, Ex. RTO-1 at P 16 ("for some constraints, cost-effective generators to dispatch may not be available in both markets").

[82] Pfeifenberger Affidavit, Ex. WPS-1 at P 33.

dispatch is the only reasonable solution to these issues.[83] As the Commission explained in the February 2007 Order, for example, the RTOs recognize that the efficiency with which shadow prices are established could be improved and have committed to implement an initiative whereby one RTO will adopt the shadow price of the other RTO in certain instances.[84] They have committed to implement this initiative in spring 2008.[85] While WPS Companies dismiss the potential benefits of initiatives such as this one, it would be inappropriate for the Commission to ignore the improvements that the RTOs continue to pursue in the on-going joint and common market process and instead order them to abandon these efforts and proceed directly to the complex and costly single system dispatch.

67. Indeed, the Independent Market Monitors (Market Monitors) for both RTOs have analyzed price convergence between the RTOs and concluded that while some improvement is needed, the JOA is operating well. The PJM Market Monitor analyzed

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[83] The Commission need not find that the RTOs' existing tariffs and JOA provide the optimum solution, only a reasonable one. *See Petal Gas Storage v. FERC*, No. 06-1064, 2007 U.S. App. LEXIS 18656 (D.C. Cir., August 7, 2007) (The Commission is not required to choose the best solution, only a reasonable one); *Wisconsin Public Power v. FERC*, No. 04-1414, 2007 U.S. App. LEXIS 17257, (D.C. Cir. July 20, 2007) (merely because petitioners can conceive of a refund allocation method that they believe would be superior to the one the Commission approved does not mean that the Commission erred in concluding the latter was just and reasonable); *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 955 (D.C. Cir. 2007) (We need not decide whether the Commission has adopted the best possible policy as long as the agency has acted within the scope of its discretion and reasonably explained its actions).

[84] February 2007 Order, 118 FERC ¶ 61,089 at P 39. We note that the Midwest ISO Independent Market Monitor recommends that "Midwest ISO LMPs be based on the PJM shadow price when the requested relief cannot be provided at a lower marginal cost. This will substantially improve the convergence of the prices affected by the market-to-market constraints." Independent Market Monitor for the Midwest ISO, "*2006 State of the Market Report; the Midwest ISO*" at 118 (July 2007), filing of July 26, 2007 in Docket No. ZZ07-4-000 (Midwest ISO 2006 Market Report).

[85] This RTOs identify this initiative as the "Relaxation of Constraints" initiative. *See* the joint and common market monthly progress reports, *available at* http://www.jointandcommon.com/documents/documents.html.

price differences between the RTOs and found that the hourly absolute LMP differences of PJM and Midwest ISO border prices were lower in 2006 than in 2005.[86] In addition, the PJM Market Monitor concluded:

> The simple average interface price difference suggests that competitive forces prevent price deviations from persisting, an observation further supported by the frequency with which price differential switches between positive and negative. In addition, there is a significant correlation between monthly average hourly PJM and Midwest ISO interface prices during the 2006 period.[87]

68. The Midwest ISO Market Monitor reached similar conclusions, finding that prices at the border are "relatively well arbitraged," but also concluding that the RTOs can implement other procedures to improve the performance of the markets:

> Our analysis of the interaction between the Midwest ISO and adjacent markets shows that the prices at the border between the markets are relatively well arbitraged. Like other markets, however, the Midwest ISO relies on participants to increase or decrease their net imports to cause prices to converge between the Midwest ISO and adjacent markets. Given the uncertainty regarding the difference in prices (because the transactions are scheduled in advance), one cannot expect perfect convergence. There were a number of hours exhibiting large price differences between the Midwest ISO and adjacent markets that were accompanied by sub-optimal interchange between the markets. In fact, the flows in a number of these hours were scheduled from the high-priced market to the lower-priced market. To achieve better price convergence, we recommend that the RTO's consider expanding the [JOA] to optimize the net interchange between PJM and the Midwest ISO.
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> [Our] report also evaluates the market-to-market coordination under the JOA that the Midwest ISO and PJM use to jointly manage transmission congestion caused by generation in both areas. This process has delivered significant benefits by allowing the two RTOs to work cooperatively to manage congestion. The report recommends a number of refinements and additions to this process that will deliver most of the efficiency benefits of

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[86] *See* PJM Market Monitoring Unit, "*2006 State of the Market Report*" at 200-201 (March 8, 2007), filing of April 27, 2007 in Docket No. ZZ07-4-000 (PJM 2006 Market Report).

[87] *Id.* at 185.

> performing a joint dispatch with PJM without the substantial costs of doing so. A number of these recommendations are being actively reviewed by Midwest ISO and PJM working groups. These refinements include optimizing the relief requested by each RTO and changing the calculation of LMPs affected by the market-to-market constraints.[88]

69. The Midwest ISO Market Monitor also addresses WPS Companies' specific concern about congestion on the Eau Claire-Arpin flowgate, stating that congestion on this flowgate decreased markedly in 2006, but remained a frequently called[89] market-to-market constraint. Because the market-to-market process did not always operate well for constraints such as on the Eau Claire-Arpin flowgate, the Midwest ISO Market Monitor recommends that the Midwest ISO LMPs be based on the PJM shadow price when the requested relief cannot be provided at a lower marginal cost, and believes that this action will substantially improve the convergence of the prices affected by the market-to-market constraints.[90] He recommends also that the RTOs monitor the market-to-market process more closely, increase their automation, and make other specific changes to the process, such as optimizing the quantity of relief requested based on the relative shadow prices.[91] We expect the RTOs to consider and evaluate measures such as these as part of their on-going joint and common market process.

70. Given the shortcomings of WPS Companies' analysis, the opposition of the majority of both RTOs' stakeholders, and the on-going implementation and evaluation of initiatives less expensive than single system dispatch, we affirm the finding of the February 2007 Order that there is insufficient evidence to find, under section 206 of the FPA, that the RTOs' existing tariffs are unjust and unreasonable or to adopt single system dispatch as the just and reasonable replacement.

71. We also reject WPS Companies' request that the Commission require the RTOs to arrange for an independent study of the costs and benefits, including the competitive benefits, and technical feasibility associated with establishment of single system dispatch.[92] The Commission-approved joint and common market already includes a

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[88] Midwest ISO 2006 Market Report at xii.

[89] To "call" a constraint means that one RTO requests assistance from the other RTO to relieve the constraint.

[90] The RTOs have committed to implement this initiative. *See* note 85, *supra*.

[91] Midwest ISO 2006 Market Report at 118-119.

[92] Rehearing Request at 2.

process for such on-going evaluation. The Commission's termination of the requirement that the RTOs' report periodically on their progress in developing and implementing the joint and common market, in the February 2007 Order, was predicated on the RTOs' obligation to maintain an on-going stakeholder process whereby stakeholders can propose and participate in the evaluation of joint and common market initiatives.[93]

72. Finally, we reject WPS Companies' assertion that the February 2007 Order conflicts with Commission policies and duties to promote competition. As stated above, WPS Companies have the burden, in this complaint proceeding, of showing that the potential benefits of competitive forces under single system dispatch across both RTOs suffice for the Commission to find the existing RTO tariffs to be unjust and unreasonable or unduly discriminatory. The Commission's finding that WPS Companies have not met their burden does not denigrate the Commission's general support and belief in the benefits of competitive, efficient markets. Midwest ISO and PJM already operate two well-functioning competitive markets and closely coordinate those competitive markets under the JOA. These RTOs coordinate their competitive markets to a greater extent than they do with other RTOs or than those other RTOs coordinate among each other. This coordination can be improved, with such improvement increasing the benefits of the RTOs' existing competitive markets, and the RTOs have committed to continue making such improvements. This does not conflict with the Commission's general support for competitive markets.

Commission's Reliance on Initiatives

WPS Companies' Arguments

73. WPS Companies criticize the Commission for relying on market coordination initiatives as a substitute for single system dispatch on the ground that, even if the RTOs implemented these initiatives, they would not produce a single market. They state also that the Commission failed to acknowledge that the RTOs' own quantification of most of these initiatives show that they account for only a small fraction of total savings in the Production Cost Study. Moreover, they continue, the Commission relied on new initiatives that lack supporting cost/benefit analysis, are not RTO commitments, and may never be implemented.

74. In support of their doubts that the RTOs will implement the proposed initiatives, WPS Companies point to the RTOs' putting on hold the initiative to evaluate Alternative Border Pricing Point Calculations and also the initiative to implement the Independent Market Monitor's recommendations of Dynamic Dispatchable Schedules and Dynamic Dispatchable Transactions. This latter initiative, for instance, was put on hold pending

[93] February 2007 Order, 118 FERC ¶ 61,089 at P 49.

completion of a proxy bus pricing analysis that, in turn, is on hold until PJM marginal losses and the RTOs' constraint relaxation initiatives are fully evaluated and implemented. WPS Companies continue that these additional coordination initiatives are "not a recipe for creating a single market" and are not a justification for failing to create "the required single market.[94]"

Commission Response

75. The Commission did not claim in the February 2007 Order that any initiative or set of initiatives would be equivalent to single system dispatch.[95] Rather, the Commission noted that the Production Cost Study, on which WPS Companies rely to argue for single system dispatch, cannot net out savings to be achieved through proposed and possible future joint and common market initiatives.[96] WPS Companies acknowledge that certain initiatives proposed by the RTOs may "somewhat improve convergence of pricing at the [Midwest ISO]-PJM Seam."[97] While WPS Companies claim that the extent of this improvement would be limited, we find that it makes little sense to direct the RTOs to implement immediately a costly and complex single system dispatch before they try other, less dramatic measures that may achieve some or many of the same benefits. That a specific initiative may ultimately not be implemented after being vetted through the on-going joint and common market stakeholder process is insufficient reason for us to find that the RTOs should abandon study and implementation of all joint and common market initiatives and proceed directly to single system dispatch. Furthermore, we cannot find that the RTOs' existing tariffs are unjust and unreasonable simply because WPS Companies believe that the initiatives will not produce as many benefits as they would like.

76. We disagree with WPS Companies' conclusion that when the RTOs place certain initiatives on hold, pending completion of a necessary prerequisite step, this means that the RTOs intend those initiatives to fall by the wayside without being fully evaluated or implemented. Rather, we find that this means that the RTOs and their stakeholders are following an orderly process of implementing interdependent initiatives, not abandoning the initiatives. Although WPS Companies cite Alternative Border Pricing Point

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[94] Rehearing Request at 45-47.

[95] As discussed above, single system dispatch is not a mandatory element of the joint and common market required by the *Alliance* Orders. Thus no "substitute" for single system dispatch is needed.

[96] *See* February 2007 Order, 118 FERC ¶ 61,089 at P 37.

[97] Pfeifenberger Affidavit, Ex. WPS-1 at P 74.

Calculations and Dynamic Dispatchable Schedules/Transactions as initiatives that the RTOs have put on hold pending further evaluation and implementation of other initiatives,[98] WPS Companies do not assert that the delay was unjustified. Even if certain initiatives are ultimately found not to be cost justified, or if some initiatives are replaced with other initiatives, this would not demonstrate that immediate implementation of single system dispatch is needed.[99]

77. Furthermore, the RTOs' obligation to maintain the on-going stakeholder process, where stakeholders (including WPS Companies) can propose and participate in the evaluation of initiatives related to the joint and common market, is an ongoing requirement that did not terminate when the Commission, in the February 8 Order, terminated the requirement that the RTOs file informational reports every 120 days on their progress towards a joint and common market.[100] The RTOs continue to follow-through with their process to implement, evaluate, and propose new initiatives.[101] Accordingly, WPS Companies will have opportunity in the on-going stakeholder process to raise any concerns about which initiatives the RTOs pursue and when these initiatives are implemented.[102]

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[98] Rehearing Request at 46.

[99] For example, for the Alternative Border Pricing Point Calculations initiative, the RTOs first performed an analysis of proxy bus prices. This was appropriate since the RTOs and their stakeholders need to understand existing border pricing (i.e., proxy bus pricing) before making changes to it. As a result of this analysis, as reported at the June 1, 2007 joint and common market stakeholder meeting, the RTOs recommended that no further action be taken on the alternative border pricing. However, although they do not plan to implement that initiative, the RTOs recommended changing the focus from alternate ways to calculate border prices to ways to improve the ability of participants to optimize trades between markets in response to border prices. *See Proxy Bus Price Analysis*, (May 2007), *available at* http://www.jointandcommon.com/working-groups/joint-and-common/joint-and-common-wg.html.

[100] *See* February 2007 Order, 118 FERC ¶ 61,089 at P 49-50.

[101] *See, e.g.*, P 58, *supra*.

[102] The RTOs maintain a calendar for upcoming joint and common market stakeholder meetings along with monthly progress reports and other documents at http://www.miso-pjm.com/.

Feasibility of Implementing Single System Dispatch

WPS Companies' Arguments

78. WPS Companies argue that the February 2007 Order erred by placing improper reliance on the RTOs' claim that single system dispatch over a combined region is technically infeasible when that claim was supported only by the RTOs' uncertainty that current hardware and software technical capabilities could successfully dispatch more than 280,000 MW of generating capacity in the two regions.

79. WPS Companies point to the RTOs' commitments in 2002[103] to explore single system dispatch and argue that now, five years later, the RTOs are unjustified in professing uncertainty as to the technical feasibility of implementing single system dispatch without documenting their investigations with vendors and software providers to ascertain the feasibility. WPS Companies cite the Joint Board on Security Constrained Economic Dispatch (Joint Board) as finding that the RTOs did not support their claims that single system dispatch is technologically infeasible, and noted that the RTOs did not respond specifically to the Joint Board's inquiry of what additional capability would be needed for existing modeling and dispatch systems to handle additional generation and load.[104]

80. WPS Companies state that existing evidence shows that single system dispatch is technologically achievable. WPS Companies cite first the RTOs' statements in 2002. They cite next the RTOs' estimate, in the October 2005 Report, of initial costs of $105 million and annual costs of $7 million to implement a single market, and state that this shows that the RTOs must have reviewed the steps needed for single system dispatch.[105]

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[103] *See* note 47, *supra*.

[104] Rehearing Request at 51. WPS Companies cite the May 25 filing in Docket No. AD05-13-000, of the May 24, 2006 "Report on Security Constrained Dispatch on behalf of the Joint Board on Economic Dispatch for the PJM-MISO Region" at 38-40 (Joint Board Report). In actuality, the RTOs answered that their systems could handle a 1,000 MW increase with no upgrades, that a 50,000 MW increase of load and generation would require upgrades in computing capability and data storage, and declined to speculate on the technological feasibility of managing increases of 100,000 MW to 150,000 MW without more thorough technical evaluation. *Id.* at 24-25.

[105] WPS Companies cite the October 2005 Report at 49. That filing states also that the incremental benefits of a single market are overwhelmingly outweighed by those costs, and that the technological feasibility of implementing the entire package of applications to support a 247,000 MW market is unproven.

WPS Companies cite PJM's ability to incorporate AEP, ComEd, and several other large utilities. They cite a statement by PJM's chief executive officer that PJM's latest software advances may give it the ability to model, monitor, and solve a dispatch for the entire Eastern Interconnection.[106] WPS Companies cite the RTOs' December 30, 2004 status report on the joint and common market as showing their belief that single dispatch is feasible and manageable.[107]

81. Concerning the cost of implementing single system dispatch, WPS Companies cite Midwest ISO's intention to completely revamp its dispatch software system at a cost of over $100 million to incorporate optimized ancillary service markets. WPS Companies suggest that this investment could be expanded at nominal cost to include single system dispatch. WPS Companies point out that because the RTOs have stated that the real-time and day-ahead software used for their unit dispatch systems stay viable for about three years, the RTOs are due for development of new software and associated hardware. Were they to undertake this effort jointly, WPS Companies argue that the capital and operating costs would be reduced as compared to the two systems each making the same efforts.

<u>**Commission Response**</u>

82. The Commission did not find, as WPS Companies suggest, that single system dispatch was necessarily technically infeasible. Rather, the Commission considered, as part of its overall balancing of cost and benefits, that the RTOs, who would have to build and operate the system, had concerns about the feasibility of implementing such a system across a combined 280,000 MW system. Even if such a system is technically feasible, it would be unreasonable to ignore the obvious complexities, such as the need for extensive testing to ensure reliability and for the extensive backup systems that would be involved were we to mandate implementation of single system dispatch. As the RTOs point out, dispatch engines are not "off-the-shelf" spreadsheets but highly customized software programs that require years of effort to eliminate programming errors, unanticipated actions by market participants, and other problems that cannot be anticipated in the development phase.[108] These factors should be considered as part of the costs of requiring the implementation of such a crucial and important system.

83. WPS Companies also overstate the feasibility finding of the Joint Board. While the Joint Board observed that advances in hardware and software now make it

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[106] Rehearing Request at 52 & n.83.

[107] *Citing* the RTOs' December 30, 2004 informational filing at 21.

[108] September 15 Answer at 29.

technologically feasible to undertake security constrained economic dispatch over very large regions and encouraged the RTOs to analyze the possibility of consolidating, either in whole or in part, their separate dispatch areas, the Joint Board also recognized the difficulty in implementing a consolidated system of the two RTO regions, citing cost and technical feasibility. The Joint Board stated that actions to expand the geographic scope of Midwest ISO or PJM should be cost effective and subject to relevant state law. It referred to the disadvantages of increasing the geographic scope described by AEP. It then noted Midwest ISO's opinion that further coordination could theoretically produce a result that would, in effect, equate to a combined, single dispatch for the combined systems, and that such an "approach is a possible alternative to more formal consolidation of the two dispatches and does not present the kinds of dispatch expansion problems described above if either PJM or M[idwest] ISO (or some combined entity) were asked to dispatch the combined system". The Joint Board encouraged further exploration of this idea of additional dispatch coordination.[109]

84. The four regional joint boards that studied security constrained economic dispatch for their regions (the Northeast Joint Board; the PJM-MISO Joint Board; the South Joint Board; and the West Joint Board) reported that broadening the scope of dispatch was a common point of discussion in all regions. In a July 31, 2006 report to Congress, the Commission stated, "Although many board members agree, in theory, with the principle that dispatch over a wider geographic range of resources should result in lower costs to produce power, there is also recognition of the practical impediments to achieving this objective, and there are no consensus recommendations across regions on how to proceed."[110]

<u>Need for Trial-Type Hearing</u>

<u>WPS Companies' Arguments</u>

85. WPS Companies object that the February 2007 Order resolves disputed material facts concerning implementation of single system dispatch in favor of the RTOs without affording WPS Companies due process. WPS Companies cite as such disputed material facts: the accuracy of the RTOs' determination of production cost benefits; shortcomings of the Production Cost Study and whether the study overstates or understates consumer benefits; the benefits shown by the expert analysis in the rejected Exhibit No. WPS-11;

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[109] Joint Board Report at 7, 24, 39-40.

[110] *Security Constrained Economic Dispatch: Definition, Practices, Issues and Recommendations; A Report to Congress Regarding the Recommendations of Regional Joint Boards For the Study of Economic Dispatch* at 11, July 31, 2006 filing in Docket No. AD05-13-000.

the benefits from enhanced competition; the economic barriers to competition caused by the existing two-market system; the feasibility or infeasibility of implementing single system dispatch; the size of the economic benefits to be attained from implementation of the RTOs' initiatives and the likelihood that the initiatives will be implemented; and the lack of convergence and increasing separation of the Midwest ISO and PJM markets. WPS Companies object that the Commission failed to conduct a paper hearing to determine these material facts. They ask the Commission to set these issues for a trial-type hearing.

Commission Response

86. We continue to find that there are not sufficient issues here that require the establishment of a trial-type hearing. In finding that there was insufficient basis to find that the RTOs' existing tariffs are unjust and unreasonable, the Commission considered all the arguments of the parties, and we believe that the parties already provided the relevant information and analysis. This is not a case where a trial-type hearing may be needed because "motive, intent, or credibility are at issue or there is a dispute over a past event."[111] The issues here are related to Commission policy, balancing, for example, the allocation of costs where benefits are unequally divided and whether predictive analyses of potential benefits suffice to justify the significant costs of requiring single system dispatch. A trial-type hearing is best suited to discovering past facts through discovery, not making policy and predictions. For example, while parties can discover past events at a hearing, they cannot compel the creation of economic studies and analyses like the Production Cost Study.[112] Given the issues raised here, we find that a trial type hearing is unlikely to provide significantly better information and, therefore, does not warrant the commitment of the Commission's or the parties' resources to such hearing.[113]

Burdens of Proof and Going Forward

WPS Companies' Argument

87. WPS Companies argue that, in the February 2007 Order, the Commission erroneously determined that this complaint proceeding falls under section 206 of the FPA

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[111] *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997).

[112] *See Central Maine Power Co. v. FERC*., 252 F.3d 34, 46 (1st Cir. 2001) (the use of a paper hearing is reasonable where forward-looking industry-wide regulation is at issue and any genuine issues of material fact can be adequately resolved on the written record).

[113] *Ohio Power Co. v. FERC*, 744 F.2d. 162, 170 (D.C. Cir. 1984).

and therefore erroneously assigned to them the double burden of demonstrating that the RTOs' existing tariffs, including the JOA and the already implemented initiatives, are unjust, unreasonable, or unduly discriminatory, and that implementation of single system dispatch is a just and reasonable replacement.[114] WPS Companies argue that their complaint falls under section 205 of the FPA[115] because approval of AEP's and ComEd's membership in PJM is analogous to a utility being permitted to charge a rate on an interim basis while the justness and reasonableness of the rate is being investigated, and that burden remains with the utility. Similarly, WPS Companies continue, the RTOs have the continuing burden of demonstrating that the steps they are taking to achieve the joint and common market comply with the Commission's requirements in the *Alliance* Orders. Because WPS Companies have alleged that failure to establish single system dispatch causes consumers to incur losses of at least $56.5 million annually, as shown in the Pfeifenberger Affidavit,[116] the RTOs have the burden of showing that their refusal to implement single system dispatch is just and reasonable.

88. WPS Companies argue secondly that the RTOs bear the burden of proof that their existing tariffs are just and reasonable because the Commission directed them to institute an effective joint and common market. The June 2006 Report is a compliance filing in which the RTOs attempt to show their compliance with this directive, and the RTOs have the burden of showing that their filing satisfies the Commission's directive.

89. WPS Companies argue also that the RTOs, as authors of the Production Cost Study, have the burden of proof with respect to that study and its findings. They argue that, similarly, the burden of showing that single system dispatch over the combined Midwest ISO-PJM footprint is technologically infeasible rests with the RTOs because they assumed this obligation in their filings of August 15, 2002.[117]

90. WPS Companies argue lastly that because the Production Cost Study provides undisputed evidence that single system dispatch will save $56 million annually, they have met their burden of a *prima facie* case demonstrating that the RTOs' current coordinated operations fail to comply with the Commission's *Alliance* Orders requirements, and that single system dispatch and the three complementary measures would therefore be just and reasonable. Thus, the burden has shifted to the RTOs to defend their current coordinated operations.

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[114] February 2007 Order, 118 FERC ¶ 61,089 at P 35.

[115] 16 U.S.C. § 824d (2000).

[116] Pfeifenberger Affidavit, Ex. WPS-1 at P 52.

[117] *See* P 34, *supra.*

Commission Response

91. As discussed earlier, the Commission found that single system dispatch is not a mandatory requirement imposed on the RTOs. Therefore, the Commission found no violation of any prior order by the RTOs, and that WPS Companies' request to change the existing tariffs of the RTOs must fall under section 206 of the FPA. The courts have made clear that "FERC should bear the burden under § 5 [§206] whenever it moves beyond rejection of a proposed rate to the task of redesigning it."[118] In any event, the Commission imposed the requirement that the RTOs create a joint and common market in the context of the Commission approval of Midwest ISO's and PJM's status as RTOs. Therefore, any violation of that requirement could result only in the withdrawal of RTO status, not in the imposition of a single dispatch system.

92. While WPS Companies correctly state that, were this a proceeding brought under section 205 of the FPA, they would have only the burden assumed by a party that protests a filing by a public utility,[119] this proceeding is not under section 205 of the FPA. Neither RTO has made a section 205 filing proposing any changes in its tariff. To the contrary, WPS Companies are the ones requesting a tariff change. The RTOs' June 2006 Report, to whose conclusions WPS Companies object, is merely an informational report, not a section 205 filing.

WPS Companies' Reliance when Settling Hold Harmless Claims

WPS Companies' Arguments

93. WPS Companies state that they relied on the *Alliance* Orders' assurances of a single market between the two RTOs that would eliminate all loop flow effects and pancaked costs caused by the Midwest ISO's and PJM's configurations when, in 2005, they settled the "hold harmless" litigation with ComEd and AEP. WPS Companies add

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[118] *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993) (Cases under the Natural Gas Act and the Federal Power Act are read *in pari materia*. *FPC v. Sierra Pacific Power Co,* 350 U.S. 348, 353 (1956)). *See Michigan Electric Transmission Co., LLC,* 116 FERC ¶ 61,164, P 12 (2006) (proponents of change in rates bear the burden under section 206 of the FPA to show that the existing rate is unjust and unreasonable and that a specific replacement rate is just and reasonable). *See also Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 184 (D.C. Cir. 1986); *Tennessee Gas Pipeline Co. v. FERC*, 860 F.2d 446, 456 (D.C. Cir. 1986). This principle applies equally to gas and electric rate cases. *Pub. Serv. Co. of New Mexico v. FERC,* 832 F.2d 1201, 1208 (10th Cir. 1987).

[119] Rehearing Request at 56.

that they might not have been willing to settle or that they would have settled differently had they thought that the problems resulting from ComEd's and AEP's membership in PJM would not soon be definitively resolved by a single Midwest ISO-PJM market and would continue indefinitely.[120]

Commission Response

94. As noted above, the settlements that WPS Companies cite were filed between October 25 and November 2, 2004, with ComEd, and on December 27, 2004, with AEP.[121] WPS Companies cite to no statement by the Commission prior to the settlements stating that single system dispatch, regardless of cost, would be mandated. Indeed, in the last *Alliance* Order, issued on June 4, 2003, the Commission stated, "Coordination arrangements such as a common market can mitigate an otherwise inappropriate scope and configuration for an RTO."[122] Thus, WPS Companies had no basis to conclude that establishing single system dispatch would be a requirement of maintaining RTO status.

95. Moreover, the last *Alliance* Order noted that, in a different proceeding, the Commission had directed the market monitors of Midwest ISO and PJM to explain the seams issues and how and when these issues are expected to be resolved.[123] The market monitors' Seams Assessment[124] included a draft document describing the proposed market-to-market coordination process that the RTOs planned to implement concurrently with implementation of side-by-side LMP-based energy markets.[125] This document stated that joint management of transmission constraints near market borders will provide the most efficient and least costly transmission congestion management and will also provide coordinated pricing at the market boundaries. It stated also that the interregional markets could evolve into a single day-ahead energy market and a single real-time energy market across the entire footprints of both markets, but that these steps would require

[120] *Id.* at 27.

[121] *See* note 16, *supra*.

[122] *Alliance* Orders, 103 FERC ¶ 61,274 at P 31.

[123] *Id.* P 36 n.32, *citing Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,210 (2003).

[124] *Market Monitors' Assessment of Seams Issues*, filed on July 29, 2003 in Docket No. EL03-35-002.

[125] *Draft MISO and PJM Market-to-Market Interregional Coordination Process,* Market Monitors' Seams Assessment at Attachment 3.

substantial software development, and that evaluation of the benefits and feasibility of these steps need to be performed to determine how to proceed.[126] WPS Companies were or should have been aware of this document when they negotiated their hold harmless settlements.

96. As stated above, the Commission has already concluded that Midwest ISO and PJM have met the requirement that they form a joint and common market. We do not find, in the *Alliance* Orders, Commission assurance that single system dispatch would be required. In negotiating the settlements, all parties had to take into account the risks of possible future action by the Commission.[127] That WPS Companies now believe that they may have fared better had they negotiated differently is not at issue. Even if WPS Companies have made improvident bargains, they are not entitled to rely on their bargains as reasons requiring specific Commission action.[128] The Commission's obligation under section 206 of the FPA to ensure that rates are not unjust, unreasonable, unduly discriminatory, or preferential, is to protect the public at large, not individual companies.[129]

Additional Issues

Elimination of Periodic Reports

97. WPS Companies ask the Commission to reinstate the requirement that the RTOs continue to report on the status of their joint and common market implementation efforts,[130] but do not give reasons for objecting to the Commission's termination of this requirement in the February 2007 Order.

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[126] *Id.* at 2, 7.

[127] *See, e.g.*, *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157 (D.C. Cir. 1997) (companies negotiating contracts take the risk of a potential Commission change in policy), *citing Wyoming-California Pipeline Co.*, 45 FERC ¶ 61,234, at 61,678 (1988), *reh'g denied*, 46 FERC ¶ 61,310 (1989).

[128] *See, e.g.*, *Mojave Pipeline Co.*, 64 FERC ¶ 61,047, at 61,382 (1993), *aff'd sub nom. Texaco Inc. v. FERC*, 148 F.3d 1091 (1998) (private contracts do not necessarily bind the Commission).

[129] *See Williston Basin Interstate Pipeline Co.*, 115 FERC ¶ 61,081, at n.7, *citing Papago Tribal Utility Authority v. FERC*, 723 F.2d 950, 954 (D.C. Cir. 1983), *cert. denied*, 467 U.S. 1241 (1984).

[130] Rehearing Request at 2.

98. We will not disturb the finding, in the February 2007 Order, that the RTOs have complied with the joint and common market condition established in the *Alliance* Orders, so that further status reports are no longer needed. We are satisfied that the RTOs' have made a genuine commitment to an on-going stakeholder process to study and implement further cost-beneficial proposals or initiatives that will continue to coordinate operations of their two markets and bring them into closer convergence. WPS Companies' statement that superior coordination with greater consumer benefits are achievable is insufficient reason for us to continue to burden the RTOs with the reporting requirement. Furthermore, the RTOs post monthly progress reports, as well as other studies and related documentation, on the joint website they maintain as part of their on-going joint and common market stakeholder process.[131]

Rejection of WPS Companies' Response

99. WPS Companies argue that the Commission erred when, in the February 2007 Order, it rejected WPS Companies' Response, pursuant to Rule 213 of the Commission's Rules of Practice and Procedure (Rule 213).[132] WPS Companies argue that the Commission should have exercised its discretion and accepted WPS Companies' Response because this filing includes Exhibit WPS-11 wherein WPS Companies' expert presents an alternative method to measure the savings that would occur from the RTOs' establishment of single system dispatch. WPS Companies argue that it would have been appropriate to accept this exhibit because the February 2007 Order found that the Production Cost Study was inadequate to measure the benefits of single system dispatch, benefits that the study was intended to measure.

100. Rule 213 provides that an answer may not be made to an answer unless permitted by the Commission. The February 2007 Order rejected not only WPS Companies' Response, but also the RTOs' Reply, which rebutted the arguments and conclusions in Exhibit WPS-11, and the subsequent WPS Companies' Answer objecting to the RTOs' Reply. These three filings, reacting in turn to the other party's filing, illustrate the rationale behind Rule 213 and its interplay with Rule 206(b)(8) of the Commission's Rules of Practice and Procedure (Rule 206).[133] If parties can continually file answers, rebuttals, and surrebuttals, records become complex and no party has the incentive to

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[131] *See* note 102, *supra*

[132] 18 C.F.R. ¶ 385.213(a)(2) (2007). "An answer may not be made to . . . an answer . . . unless otherwise ordered by the decisional authority."

[133] 18 C.F.R. ¶ 385.106(b)(8) (2007). "A complaint must include all documents that support the facts in the complaint in the possession of, or otherwise attainable by, the complainant."

present its case in chief completely and cogently the first time. Although in some cases the Commission does grant exceptions to the rule, parties cannot simply assume that they will be provided with a stream of opportunities to rebut their adversaries.

101. Here, we find that WPS Companies were not under time constraint when they reviewed the Production Cost Study with a view towards filing the August 15 Complaint, their third complaint in this series. If WPS Companies wanted to offer alternative methods of interpreting the data in the Production Cost Study, they should have done so in that complaint. Exhibit WPS-11 does not discuss information presented by the RTOs in their September 15 Answer. Rather, Exhibit WPS-11 discusses data from the Production Cost Study.

102. Even if the Commission had accepted WPS Companies' Response, with Exhibit WPS-11, such analysis would not have changed the Commission's ultimate finding in the February 2007 Order that WPS Companies had not justified imposing the significant cost of single system dispatch on the majority of RTO stakeholders who disagree that such action is cost justified.[134] In the rejected Exhibit WPS-11, Mr. Pfeifenberger states that his alternative analysis shows that by relying on *less* conservative measures than the measure used by the RTOs in the Production Cost Study, single system dispatch could result in even greater benefits, ranging from $200 million to over $500 million per year. However, like the Production Cost Study, this alternative analysis produces a wide range of potential savings, lacks a sufficient baseline to include a full year of Midwest ISO's energy markets, and cannot net out savings to be achieved through other joint and common market initiatives. As WPS Companies' themselves state, Mr. Pfeifenberger's alternative analysis results in potential cost savings higher than those in the Production Cost Study not because of some inherent flaw in the Production Cost Study, but only because the alternative analysis relies on less conservative measures.[135] That WPS Companies can use less conservative measures to reach a result showing higher potential cost savings is both unsurprising and unconvincing.

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[134] February 2007 Order, 118 FERC ¶ 61,089 at P 37.

[135] Rehearing Request at 43-44.

The Commission orders:

WPS Companies' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Kimberly D. Bose,
Secretary.