

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Public Service Corp.
Upper Peninsula Power Co.
WPS Companies Energy Services, Inc.
WPS Companies Power Development, L.L.C.

Docket No. EL06-97-000

v.

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

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

Docket Nos. ER04-375-017
ER04-375-018
(not consolidated)

ORDER DISMISSING COMPLAINT AND TERMINATING REPORTING
REQUIREMENTS

(Issued February 8, 2007)

1. On August 15, 2006, pursuant to section 206 of the Federal Power Act (FPA)¹ and the Commission's order, *Wisconsin Public Service Corp. et al.*,² Wisconsin Public Service Corporation, Upper Peninsula Power Company, WPS Companies Energy Services, Inc., and WPS Companies Power Development, L.L.C. (collectively, WPS Companies) filed a complaint against two regional transmission organizations, Midwest

¹ 16 U.S.C §824e (2000).

² 115 FERC ¶ 61,185 at P 5 (2006) (May 16 Order).

Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) (collectively, the RTOs). The complaint requests that the Commission direct the RTOs to promptly institute joint unit commitment and single system dispatch as part of their obligation to create a functional joint and common market encompassing the entire Midwest ISO and PJM footprints. WPS Companies allege that the RTOs' production cost study, which was filed as part of a report to the Commission on the status of their implementation of the joint and common market,³ shows that the RTOs should be required to implement a single system dispatch system as part of their obligation to establish a joint and common market.

2. This order dismisses the complaint because the record provided does not establish that, at this time, the current tariffs and systems of the RTOs are unjust and unreasonable without implementation of a single-dispatch system. The RTOs have made many improvements to their systems to address seams issues and pricing disparities between their systems, and have committed to further analysis of possible future improvements. Given the potential cost of trying to establish a single system dispatch, we cannot find that such a system is necessary to resolve seams issues that may still remain. In addition, this order revisits the reporting requirements regarding the RTOs' joint and common market obligations and terminates those requirements.

I. Background

3. The Commission's requirement that Midwest ISO and PJM participate in a joint and common market originated in *Alliance*,⁴ where the Commission conditionally accepted the choices of certain utilities in the eastern portion of the Midwest to join Midwest ISO or PJM. Significantly, the operating companies of the American Electric Power Service Corporation (AEP)⁵ and Commonwealth Edison Company and

³ The status report was filed in Docket Nos. ER04-375-017 and ER04-375-018 on June 28, 2006 (the June 28 Report).

⁴ *Alliance Companies.*, 100 FERC ¶ 61,137 (2002) (*Alliance*), *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) (collectively, *Alliance Orders*).

⁵ Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

Commonwealth Edison Company of Indiana (ComEd)⁶ chose to join PJM. The Commission found that these choices 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, the choices of AEP and ComEd to join PJM would be consistent with the scope and configuration requirements of Order No. 2000.⁷ Accordingly, the Commission accepted the utilities' choices to join PJM, subject to, among other conditions, the requirement that Midwest ISO and PJM form a functional common market across the two organizations (referred herein as the joint and common market).⁸

4. The Commission did not specify the details of the joint and common market. In addition, the Commission said that, because details will be forthcoming, its determinations were preliminary and not intended to prejudge or bind the Commission to a particular outcome, other than to the extent stated therein.⁹

5. The RTOs then developed, and the Commission accepted, a Joint Operating Agreement, providing, among other things, for coordinated redispatch to manage congestion and loop flow across their systems. In an order issued March 3, 2005¹⁰ on the RTOs' proposed amendments to the JOA, the Commission directed the RTOs to consult with their stakeholders to identify individual elements of the joint and common market that are feasible and beneficial to implement, develop a concrete plan with a timeline for implementing those elements, and file it in their October 31, 2005 status report on the

⁶ ComEd is a wholly owned subsidiary of Exelon Corporation (Exelon). In 2001, ComEd withdrew from Midwest ISO. *See Illinois Power Co.*, 95 FERC ¶ 61,183, *reh'g denied*, 96 FERC ¶ 61,026 (2001).

⁷ *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).

⁸ *Alliance*, 100 FERC ¶ 61,137 at P 37-40.

⁹ *Alliance*, 100 FERC ¶ 61,137 at P 2.

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,226 at P 73-76 (2005) (March 3 Order).

joint and common market.¹¹ On October 31, 2005, Midwest ISO and PJM made the requisite filing (October 2005 Report).¹²

6. In the October 2005 Report, the RTOs stated that the need for a single market to address seams issues and Order No. 2000 scope and configuration requirements had been overtaken by the benefits already achieved through interregional coordination in their individual markets, *i.e.*, the JOA.¹³ According to the RTOs, they held stakeholder meetings and committee meetings and conducted a stakeholder survey to define the objectives of the joint and common market, to identify the additional initiatives that could achieve these objectives, and to determine for each initiative the cost to implement versus the benefit to be achieved. As a result of these meetings, the RTOs, together with their consultants, quantified the benefits of each initiative and approximated the costs of implementing each initiative.¹⁴ Pursuant to 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.

7. WPS Companies filed a protest and a complaint objecting to the October 2005 Report. Generally, WPS Companies claimed that the proposals would not address the seams issues. They argued that a joint and common market must include certain elements, including a: (1) single day-ahead and real-time markets with joint security constrained, economic dispatch, (2) a single market portal for data entry and retrieval ; (3) elimination of pancaked rates for scheduling or ancillary services; and (4) common Financial Transmission Rights (FTR) allocation processes.

¹¹ The RTOs were required to file an informational report on their progress toward a joint and common market every 60 days. *See, Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251 at P 103, *order on reh'g and clarification*, 108 FERC ¶ 61,143, *order on clarification and denying reh'g*, 109 FERC ¶ 61,166 (2004). The Commission subsequently extended the time between reports to every 120 days. *See, Wisconsin Public Service Corporation*, 114 FERC ¶ 61,277 at P 30 (2006).

¹² The October 2005 Report was filed in Docket Nos. ER04-375-017 and ER04-375-018.

¹³ October 2005 Report at 9.

¹⁴ October 2005 Report at 17.

8. In the March 16 Order, the Commission denied the protest and complaint filed by WPS Companies.¹⁵ The Commission, among other things, dismissed WPS Companies' complaints as premature, without prejudice to future filing, and found that the October 2005 Report complied with the requirement that the RTOs file their plan for development of a joint and common market. The Commission stated that it 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 joint and common market initiatives should not be pursued if they are not shown to produce net benefits. The Commission therefore found it appropriate that the RTOs and their stakeholders await the outcome of further study, which the RTOs have committed to perform, before committing to any additional elements for their joint and common market.¹⁶

II. June 28 Report

9. In their June 28, 2006 status report (June 28 Report), the RTOs indicated the results of an updated production cost study of potential savings due to the implementation of a single unit commitment and dispatch across their combined region (single system dispatch). The RTOs stated that the production cost study reflects a comprehensive analysis of the expected annual production cost savings of a single system dispatch over the combined Midwest ISO and PJM market footprint. According to the RTOs, the production cost savings analysis used commercially available energy market simulation tools and the same approach and methodologies as those used for all other production costs studies performed by the RTOs. The RTOs performed market simulations in the production cost study using operating conditions that were similar to current operating conditions that each RTO uses to meet the market area demand and reserve requirements.

10. 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 simulations and could further enhance the convergence of the two markets, but at substantially less cost than a 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 as Phase 2 of the JOA.

¹⁵ *Wisconsin Public Service Corporation, et al.*, 114 FERC ¶ 61,277 (2006) (March 16 Order). In the May 16 Order, the Commission granted WPS Companies' request for clarification of the March 16 Order.

¹⁶ March 16 Order, 114 FERC ¶ 61,277 at P 25-29.

11. The RTOs state 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 a single 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 a single dispatch. The RTOs added that they have serious doubts that current technology could accommodate a single dispatch of the entire region.

III. WPS Companies' Complaint

12. On August 15, 2006, WPS Companies filed the instant complaint in response to the June 28 Report. Generally, the Complaint asserts that the Commission should direct the RTOs to promptly implement single system dispatch, which they state is the most important element of a functional joint and common market.¹⁷ They argue that the June 28 Report shows that single system dispatch is cost effective, will pay for itself in less than three years, and will also provide significant savings to customers. In addition, WPS Companies challenge the RTOs' assertion that significant benefits of a single system dispatch have already been achieved 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.

13. WPS Companies state that there remain major disconnects between prices on each side of the seam and between each RTO's shadow prices for relieving congestion of flowgates subject to coordinated congestion management under the JOA. According to WPS Companies, the benefits from other initiatives have been quantified and would produce only a very small fraction of the estimated benefits. Furthermore, they argue that the remaining initiatives are offered 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. Finally, WPS Companies argue that the production cost study does not fully capture the inefficiencies created by poorly coordinated congestion and loop flow management across the seam. WPS Companies argue that without single system dispatch, the benefits projected by the production cost study will not occur.

¹⁷ WPS Companies also request that the Commission require three additional initiatives to complement such a single system dispatch: (1) a single integrated FTR allocation process; (2) a single market portal to allow one-stop shopping; and (3) depancaking of rates for ancillary services.

14. WPS Companies conclude that the Commission's requirements that the RTOs form a functional joint and common market that internalizes congestion and loop flows cannot be achieved without single system dispatch.

IV. Notice of Complaint

15. Notice of WPS Companies' Complaint was published in the Federal Register, 71 Fed. Reg. 51,598 (2006), with answers, motions to intervene, and comments and protests due on or before September 5, 2006.¹⁸ Pursuant to rule 214, 18 C.F.R § 385.214, all notices of intervention and all timely filed motions to intervene serve to make the entities that filed them parties. Any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties.

16. Timely motions to intervene and comments opposing the complaint were filed by Delaware Municipal Electric Corporation, Inc (Delaware Municipal); Dominion Resources Services, Inc., Armstrong Energy Limited Partnership, LLP, Dominion Energy Kewaunee, Inc., Dominion Energy Marketing, Inc., Dominion Retail, Inc., Dresden Energy, LLC, Elwood Energy LLC, Fairless Energy, LLC, Kinkaid Generation, LLC, Pleasants Energy, LLC, State Line Energy, LLC, Troy Energy, LLC, and Virginia Electric and Power Company d/b/a Dominion Virginia Power (collectively, Dominion); and Xcel Energy Services, Inc. (XES) on behalf of Northern States Power Company and Northern States Power Company-Wisconsin. Illinois Municipal Electric Agency filed an untimely motion to intervene, without substantive comment.

17. Notices of intervention and joint comments in support of the complaint were filed by the Illinois Commerce Commission, the Michigan Public Service Commission, the Pennsylvania Public Utility Commission, and the Public Service Commission of Wisconsin (collectively, Joint State Commissions). Great Lakes Utilities, Indiana Municipal Power Agency, Madison Gas and Electric Co., and Wisconsin Public Power Inc. (collectively, Wisconsin-Indiana Seam Entities) jointly filed a timely motion to intervene with comments in support of the complaint.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will reject both of WPS Companies' responses as well as the RTOs' reply to the rejected response.

¹⁸ On September 5, 2006, the Commission granted the RTOs' motion to extend the comment date to September 15, 2006.

V. Answer and Comments on the Complaint

A. Answer

19. In their answer, the RTOs state that WPS Companies have failed to prove that the existing joint and common market design is not just and reasonable. First, they point out that the production cost study shows that instituting joint dispatch at this time would not be cost-justified. The RTOs argue that WPS Companies' formulation of estimated savings is flawed because those estimates reflect their witness' baseless, arbitrary assumptions¹⁹ that rely on data that is not part of the production cost study. The RTOs challenge as baseless WPS Companies' unsupported assertions that the production cost study understates joint dispatch savings, inflates the benefits of the proposed alternative initiatives, and fails to reflect the benefits of competition. The RTOs state that WPS Companies also overlook the enormous progress the RTOs have achieved.

20. The RTOs dispute WPS Companies' assertion that the production cost study underestimates the benefits of joint dispatch by not contemplating extreme market conditions is misleading, explaining that reactions to extreme conditions are impossible to anticipate over the long term. The RTOs assert that the production cost study correctly calculated production cost savings over the normal range of peak load conditions on an annualized basis. The RTOs challenge WPS Companies' conclusion that, because the production cost study assumes perfect dispatch both in the base case and the change case, the savings of a joint dispatch are understated because they do not capture inefficiencies created by poorly coordinated congestion and loop flow. The RTOs state that if the production cost study were to assume imperfect dispatch in the base case, then it would also have to assume an imperfect dispatch in the change case, with the resulting difference likely to be minimal.

21. Finally, the RTOs argue that WPS Companies' assertion that their current initiatives provide only a fraction of joint system benefits and do not achieve a functional joint and common market is baseless and ignores the carefully studied stakeholder process that approved these initiatives. The RTOs also state that these initiatives will have tangible benefits, and they are obligated to implement the approved initiatives and gauge any further benefits to be achieved from a single unit commitment and dispatch based on the result.

22. The RTOs assert that they have complied with all applicable Commission directives and have achieved great progress in creating a functional joint and common market. They state that earlier Commission orders, such as the March 16 Order, do not

¹⁹ The RTOs state that the \$55.6 million in administrative savings that WPS Companies used is an example of this flawed assumption with no supporting data.

require single system dispatch for their joint and common market and did not define the term “joint and common market” as consisting only of a single energy market operating under a single day-ahead unit commitment and a single real-time dispatch engine. Rather, they argue, the Commission and the RTOs have discussed and defined the “joint and common market” in the context of the objectives to be achieved, designed by stakeholders from the bottom up, rather than a preconceived structure imposed from the top down. Furthermore, the RTOs state that the Commission has repeatedly held that coordination arrangements between RTOs, such as the JOA, meet the Order No. 2000 mandate.

23. The RTOs assert that the production cost study demonstrates that the benefits of joint dispatch for a joint and common market have not been shown to outweigh costs. Further, they argue that the decision to postpone single system dispatch implementation is consistent with the letter and spirit of the Commission’s joint and common market orders.

24. The RTOs also contend that WPS Companies’ argument that the divergence of prices at the seams and the RTOs’ lack of success in internalizing or adequately managing loop flows demonstrate failure to achieve integration of the Midwest ISO and PJM markets is not credible. The RTOs explain that the identified differences in shadow prices are due to external influences not relevant to single system dispatch, or reflect that one RTO may have no generators available to dispatch to cost-effectively manage the constraint. Moreover, they explain, they are examining the impacts of the shadow price differences on pricing in the two markets and plan to implement changes to the market-to-market processes that will improve the efficiency with which prices are established.

25. The RTOs also state that WPS Companies’ claims of operational and financial hurdles are either non-existent or exaggerated and do not present a major barrier to inter-RTO trades and are nowhere close to justifying the imposition of a single dispatch. The RTOs assert that additional initiatives – including de-pancaking of ancillary services rates, a single, integrated FTR allocation process, and a single market portal – requested by the Complaint have been appropriately addressed through the stakeholder process. The RTOs also point out that WPS Companies’ complaint ignores the significant decrease in the transaction prices between markets over the past 11 months, an indication that the RTOs minimized the financial hurdles to inter-RTO trading.²⁰ Thus, the RTOs argue that the needed pricing improvements can be made with much simpler and less costly changes than implementation of single system dispatch.

²⁰ Exh. No. RTO-1 at 13.

26. Finally, the RTOs state that WPS Companies' single system dispatch proposal contravenes Commission RTO policy and is not just and reasonable. They contend that this proposal disregards the voluntary foundations of the RTOs and would by administrative fiat, impose a costly and potentially disruptive change on the RTOs and their stakeholders. The RTOs also argue that WPS Companies' proposal is not consistent with the Commission's cost causation principles because it assumes that the cost of implementing a single dispatch would be socialized across their footprints. The RTOs claim that the WPS Companies ignore the complex issues surrounding the technical feasibility of combining dispatch for the two largest RTOs. They state that they are not confident that current hardware and software technology can successfully dispatch more than 280,000 MW of generating capacity in the two regions particularly when a single economic dispatch requires the day-ahead Reliability Assessment Commitment (RAC) and FTRs in each RTO to coordinate perfectly.

B. Comments

27. The Joint State Commissions support WPS Companies' Complaint and urge the Commission to direct the RTOs to promptly institute joint unit commitment and dispatch, if such implementation is technically feasible. They argue that the RTOs' proposal for limited incremental steps in market-to-market coordination, instead of a comprehensive joint and common market development, is inconsistent with prior Commission orders and the RTOs' prior commitments, dating back to August 2002. The Joint State Commissions also claim that the RTOs have failed to support their statement that "the cost of implementing a single dispatch could outweigh the achievable level of associated savings." They argue instead that evidence in the June 28 Report and the affidavit of WPS Companies' witness Pfiefenberger strongly indicates that the benefits of single system dispatch will outweigh the associated implementation costs, and that the production cost study indicates instead that single system dispatch would pay for itself in just over four years. Additionally, the Joint State Commissions point out that the June 28 Report fails to support the RTOs' assertion that implementation of coordination initiatives will provide market convergence or benefits equivalent to single system dispatch. The Joint State Commissions also challenge the RTOs' assertion that the June 28 Report shows that single system dispatch may not be technically feasible. Finally, the Joint State Commissions contend that PJM's and Midwest ISO's efforts to integrate portions of their markets through coordination initiatives have been ineffective, as is evidenced by a lack of price convergence between the RTOs.

28. XES urges the Commission to dismiss the complaint. It generally supports the steps that the RTOs have taken under the JOA in furtherance of an integrated joint and common market. XES states that the JOA process is moving forward as it should, carefully, with a weighing of technical requirements, costs and benefits, and with stakeholder input. XES agrees that joint system dispatch could in theory, provide market benefits; however, it supports the notion that each initiative in the process be assessed in

a cost/benefit analysis and for technical feasibility, and the results reported to stakeholders for an implementation decision. XES asserts that the Commission should not order Midwest ISO and PJM to incur the costs to establish single system dispatch, and in effect order the RTO market participants to incur additional costs to operate within the new dispatch regime simply because one Midwest ISO market participant files complaints asking the Commission to intervene and overrule the stakeholder process. The costs to achieve the Midwest ISO Day 2 market to date compared to initial estimates and the steep “learning curve” within Midwest ISO and among Midwest ISO market participants in the first 18 months of Day 2 market operations, coupled with the additional costs and technological advancements necessary to implement a single system dispatch, are reasons XES supports the Commission taking a cautious approach. XES maintains that it is critically important that Midwest ISO focus on continuing to resolve issues with its current Day 2 market design and operations before pursuing an aggressive, complicated and costly single system dispatch initiative with PJM.

29. Dominion claims that the WPS Companies’ allegation that the production cost study supports immediate implementation of single system dispatch is erroneous because the June 28 Report demonstrates that the costs of single system dispatch likely outweigh the expected benefits when compared to less costly mechanisms available to achieve similar market and economic efficiencies. Dominion states that it supports the RTOs’ proposal to complete the implementation of these joint and common market initiatives and subsequently make an informed determination of whether additional savings can still be realized from the more costly development of a single system dispatch. Dominion argues that, absent clearly defined benefits of a single system dispatch, increasing market participants’ cost of participation in PJM and Midwest ISO is not justified.

30. The Wisconsin-Indiana Seam Entities state that they are extremely concerned about the overall costs and benefits of Midwest ISO’s markets. The Wisconsin-Indiana Seam Entities recommend that the Commission determine whether a joint and common market is in the public interest and whether the RTOs have complied with the Commission’s prior orders calling for a unified market.

31. ~~AE~~Delaware Municipal recommends that the Commission reject WPS Companies’ complaint, and while it is not opposed to the concept of a development of a broader market, it states that premature implementation of a joint and common market with single system dispatch could create confusion and raise the costs to Midwest ISO loads. Delaware Municipal recognizes that the production cost study shows annual production cost savings from the single system dispatch; however, Delaware Municipal notes that the RTOs expressed doubts about the ability of current technology to accommodate a single dispatch for the entire region. Additionally, Delaware Municipal echoes the RTOs’ assertion that the costs are more certain than the estimated savings.

VI. Discussion

A. Complaint

32. The Commission dismisses the complaint. WPS Companies maintain the Commission should exercise its authority under section 206 of the FPA and direct Midwest ISO and PJM to promptly institute a single system dispatch across both of their systems, and to adopt three additional initiatives to complement such a single system dispatch. WPS Companies argue that the RTOs' failure to adopt such a single system dispatch is unjust and unreasonable under the FPA and does not comply with prior Commission orders requiring Midwest ISO and PJM to establish a joint and common market.

33. As an initial matter, WPS Companies incorrectly argue that the failure to establish a single dispatch is inconsistent with prior Commission orders requiring the RTOs to establish a joint and common market. The Commission did not identify the required elements of a joint and common market in these orders, but left the determination of the elements necessary to establish such a market to the RTOs and their stakeholders.²¹ A single system dispatch across both RTOs is not the only method for achieving the requirements the Commission set out in prior orders. The Commission has stated also that the RTOs should not implement every element that might be included in a joint and common market absent a consideration of the costs and benefits associated with specific elements.²²

34. Furthermore, the Commission has found that the RTOs are in compliance with their obligation to develop of a joint and common market through the actions they have taken to date, including establishment of the JOA, which includes, among other things, provisions for coordinated dispatch to manage congestion and loop flows between their systems in the most cost-effective manner, and through their efforts to analyze potential additional joint and common market initiatives, develop a timeline for implementing

²¹ March 16 Order, 114 FERC ¶ 61,277 at P 25.

²² *See, e.g.*, March 3 Order, 110 FERC ¶ 61,226 at P76 (2005) (“The RTOs are urged to identify and proceed with development and implementation of individual elements of the joint and common market that are feasible and beneficial to implement on an individual basis as quickly as possible.”), March 16 Order, 114 FERC ¶ 61,277 at P 25 (“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.”).

initiatives shown to be beneficial and cost-effective, and establish a process for continued evaluation of the joint and common market to identify potential future improvements.²³

35. In order to grant WPS Companies' complaint, WPS Companies have the burden to show that the RTOs' existing tariffs, including their already-implemented initiatives regarding a joint and common market, are unjust, unreasonable or unduly discriminatory, and that implementation of a single dispatch system is a just and reasonable replacement.²⁴ We do not find that WPS Companies have met this burden.

36. WPS Companies support their request by asserting that the production cost study shows that a single system dispatch will lead to annual production cost savings of at least \$55.6 million. These potential savings are the basis for WPS' claims that without a single system dispatch, consumers will pay unnecessarily high prices for electricity. However, the production cost study does not provide a sufficient basis for the Commission to find the RTOs' existing tariff processes for dealing with seams are unjust or unreasonable. Nor can we find that the cost and expense of implementing a single dispatch system to dispatch 280,000 MW of generation across the two RTOs' footprints is just and reasonable.

37. The production cost study estimated production cost savings over a number of scenarios, and the analysis shows total annual production cost savings ranging 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, compared with an estimated \$105 million in capital costs and \$7 million dollars of increased annual operating costs, to implement a single system dispatch. However, the production cost study was based on market data that included early operation of the market and periods prior to the implementation of many of the RTOs current joint and common market initiatives. Therefore, the production cost study did not consider the incremental benefits that can or will be achieved from each of the joint and common market initiatives that the RTOs commit to implement and may implement in the future as a result of their stakeholder process. 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

²³ March 16 Order, 114 FERC ¶ 61,277 at P 29.

²⁴ The burden of proof in a section 206 proceeding is on the complainant. *See, e.g., Wholesale Customers of Ohio Edison Co. v. Ohio Edison Co.*, 22 FERC ¶ 61,314 (1983); *Robin Pipeline Co. v. FERC*, 795 F.2d 182, 184 (D.C. Cir. 1986). The burden consists of coming forward with a *prima facie* case and once this initial burden is met the burden shifts to the respondent to make an affirmative defense.

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.²⁵ 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.

38. While WPS Companies claim that the incremental benefits associated with these initiatives are small when compared to a single system dispatch, they do not dispute that there are potential benefits associated with these initiatives. It is notable that many of the initiatives that are included in the RTOs' current process are designed to address the specific concerns raised by WPS, but in a way that is much simpler and less expensive than a single system dispatch.

39. For instance, the RTOs are taking steps to address differences between shadow prices²⁶ used for coordinated management of congestion and loop flows under the JOA, which is one of WPS Companies' major concerns. The RTOs' congestion management process under the JOA is an unprecedented achievement on this front. Under the JOA, the RTOs have instituted a process to coordinate dispatch on their systems with the objective to manage loop flow and congestion in the most cost-effective manner. In their answer, the RTOs note that the difference in shadow prices merely reflects the cost-effectiveness of the generators available to dispatch in each market to relieve the constraint and is unrelated to the lack of a single system dispatch. However, the RTOs state that they recognize that the efficiency with which these prices are established could be improved and plan to start implementing changes to achieve the needed pricing improvements in spring of 2007. Specifically, the RTOs will make changes so that one RTO will adopt the shadow price of the other RTO in certain instances.²⁷ This initiative was reported for the first time in the June 28 Report as requiring further study and the RTOs report in their October 26, 2006 status report (October 26 Report) that as a result of their stakeholder meeting, it is now a committed initiative.²⁸ This shows that the RTOs' procedures for proposing and evaluating through the stakeholder process improvements to the joint and common market is working.

²⁵ See Exhibit RTO-2 at P 14.

²⁶ A shadow price is the economic value an RTO places on a constraint on a particular flowgate.

²⁷ Answer at 21.

²⁸ October 26 Report at 24-25. The October 26 Report was filed in Docket Nos. ER04-375-017 and ER04-375-018.

40. WPS Companies are also concerned about the convergence of prices at the border between Midwest ISO and PJM. However, as the RTOs explain, when there is congestion on the RTOs systems, there will be normal, expected and in fact intended differences between each RTO's price at the border. The price each RTO uses at the border is calculated using an average of the prices at a specific set of generator busses in the other RTO that are close to the border (the proxy price). If there is congestion on the two RTOs' systems, the two proxy prices will not be the same. Because each RTO's proxy price is based on a different set of generator busses, even a single system dispatch will not necessarily eliminate all price differences at the RTOs' border.

41. Furthermore, WPS Companies themselves point out that the RTOs have proposed and are studying initiatives to improve convergence in prices at the border.²⁹ Although WPS Companies cite these initiatives as reasons why single system dispatch should be implemented immediately, we find that evidence that such measures may improve the process is reason for not immediately requiring an expensive and potentially difficult to implement single dispatch system across the entire footprint of both RTOs. It is proper for the RTOs to propose and evaluate changes such as these first, which are much simpler and less costly than implementation of a single system dispatch, and which are designed to alleviate the very concerns WPS Companies is raising in their complaint.

42. WPS Companies also claim that the RTOs ignore the potential benefits of competitive forces in a single system dispatch and potential for heightened benefits under extreme market conditions. However, these types of benefits are difficult to quantify and are speculative. As WPS Companies admit, competitive benefits are difficult to measure and seam related competitive impacts are likely to vary greatly with market conditions.³⁰ In addition, such competitive benefits may accrue because of the joint and common market initiatives the RTOs have and currently plan to implement.

43. The RTOs' ongoing process to study and propose new joint and common market initiatives is also consistent with the provisions of the JOA, which is intended to increase coordination between the RTOs to enhance system reliability and efficient operation of their markets and which explicitly requires periodic study and improvement.³¹ The

²⁹ See Exhibit WPS-1 at P 30, *citing* the June 28 Report at 7.

³⁰ Exhibit WPS -1 P 60.

³¹ Section 3.1 of the JOA states:

The Parties agree that the objectives of this Agreement can be fulfilled efficiently and economically only if the Parties, from time to time, review and as appropriate revise the requirements stated herein in response to such

(*continued...*)

RTOs' past actions show that they and their respective stakeholders take this obligation seriously. For example, the JOA does not have a process for the RTOs to share with each other unused portions of their designated flowgate capacity. The RTOs and their stakeholders realized that such a process was needed and the RTOs worked together to create a process to share flowgate capacity that might otherwise go unused.³²

44. The RTOs' record over the past several years clearly demonstrates that they are proceeding with regular and significant improvements to their joint and common market initiative. Most if not all of WPS Companies' concerns may be able to be addressed through initiatives that are implemented through the RTOs' current joint and common market process and procedures. We agree with the RTOs that many of the potential benefits associated with a single system dispatch may be achieved through less-costly incremental steps. The RTOs are obligated to continue the stakeholder process that the Commission found to be in compliance with directives regarding the implementation of a joint and common market. The RTOs will continue to evaluate the effectiveness of their coordination efforts and will propose new initiatives in order to continue to improve that coordination. Midwest ISO, PJM and the stakeholders will judge the new and existing proposals on their merits. The RTOs also confirm that they are obligated to allow all of the committed initiatives to take effect and gauge any further benefits to be achieved from a single system dispatch based on the result.³³ As the RTOs make further changes and gain experience in how their markets interact under these new initiatives, other, less costly and dramatic steps might produce similar benefits to single system dispatch.

45. Therefore, we will not direct the RTOs to create immediately a single system dispatch based on benefits that are speculative and that might be achievable in simpler, less-costly ways. WPS Companies have not met their burden to show that the RTOs existing tariff structure, including their existing collaborative process to evaluate and implement joint and common market initiatives, is unjust and unreasonable. In fact, we are encouraged by the level of coordination and cooperation between Midwest ISO and PJM. The RTOs' on-going joint and common market process and the progress achieved to date demonstrates that the Commission's requirement for the RTOs to create a joint and common market has produced important and tangible results.

changes, including deleting, adding, or revising requirements and protocols. Each Party will negotiate in good faith in response to such revisions the other Party may propose from time to time.

³² See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,166 at P 26 (2004).

³³ Answer at 14.

46. WPS Companies have also not shown that their replacement for the current process, the immediate implementation of all the elements of a single system dispatch without regard to the potential costs and benefits of each of the elements, is just and reasonable. Given the wide range of savings indicated by the study, and the fact that the study did not net out savings due to the maturity of Midwest ISO's energy markets or the savings to be achieved through other elements of the joint and common market, we agree with the RTOs and the majority of their stakeholders that the production cost study results are not persuasive enough to justify our taking action at this time to require the adoption of a single system dispatch on a scale that is unprecedented and which has not been demonstrated to be technically feasible. We support the RTOs' efforts to be cost conscious, as all regulated utilities should be mindful of the costs they incur when deciding whether to pursue changes in the services they provide.

47. We note that the RTOs' current process does not preclude the eventual implementation of a single system dispatch. However, we agree with the RTOs and find that they should continue with their Commission-accepted process to implement joint and common market initiatives to which they have committed and allow the initiatives to be effective for a sufficient time period in order to judge the actual achievable level of benefits still available through the much more costly and risky development of a single system dispatch.

B. Termination of 120-Day Reports

48. The RTOs are required to file informational reports on their progress toward a joint and common market every 120 days. In brief comments filed in response to the RTOs' latest informational report, the October 26 Report, WPS Companies filed a protest noting that the same concerns that are addressed in more detail in the instant complaint.

49. Given the progress of the RTOs in developing and implementing the joint and common market, as well as their on-going commitment to maintain a process for considering the need for further changes, we find that the RTOs have complied with the joint and common market condition established in the Alliance Orders and we find that it is no longer necessary to continue a reporting requirement. The Commission previously accepted the RTOs' proposal to comply with the Commission's joint and common market directive through their formal plan to implement and study joint and common market proposals.³⁴ This proposal includes an on-going stakeholder process, where stakeholders can propose and participate in the evaluation of joint and common market initiatives. In addition, the RTOs have committed to implement certain specific initiatives, and they are obligated to follow through with those commitments, subject to any necessary

³⁴ See March 16 Order, 114 FERC ¶ 61,277 at P 29.

Commission approval. They will also continue to study existing and future proposals and the potential for the proposals to provide joint and common market improvements. When particular initiatives are found through the stakeholder process to merit implementation or further study, the RTOs will provide stakeholders with specific action plans and periodic updates as to whether the plans are on schedule. As joint and common market initiatives take effect, the RTOs will gauge further benefits that may be achieved from other initiatives. The RTOs will also continue to maintain a joint and common market website that provides up-to-date information about the joint and common market and their progress, as well as documents regarding their joint and common market initiatives and schedules for upcoming stakeholder meetings.

50. In light of these developments and the RTOs formal process for continuing to work on their joint and common market, we conclude there is no longer a need for Midwest ISO and PJM to file periodic informational reports to the Commission. We will therefore relieve the RTOs of this reporting burden.

The Commission Orders:

(A) WPS Companies' Complaint is hereby dismissed.

(B) Midwest ISO and PJM are hereby relieved of their obligation to make certain periodic informational reports to the Commission, as discussed herein.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.