125 FERC ¶ 61,361
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C. and Southwest Power Pool, Inc. — Docket No. ER09-160-000

ORDER ACCEPTING REVISONS TO JOINT OPERATING AGREEMENTS

(Issued December 23, 2008)

1. Midwest Independent Transmission System Operator, Inc. (Midwest ISO), PJM Interconnection, L.L.C. (PJM), and Southwest Power Pool, Inc. (SPP) (collectively, regional transmission organizations (RTOs) or Applicants) submitted revisions to the Congestion Management Process in their Joint Operating Agreements. The RTOs propose to extend by one year the market flow threshold field test until October 31, 2009. In addition, the RTOs propose to revise certain sections of their Joint Operating Agreements to accurately reflect the market flow threshold calculation as five percent rather than three percent. In this order, we will accept the proposed extension and other minor revisions, effective October 31, 2008.

I. Background

2. In Order No. 693,[1] the Commission approved 83 of 107 proposed mandatory reliability standards under section 215 of the Federal Power Act,[2] including Reliability Standard IRO-006-3, which reflects North American Electric Reliability Corporation's (NERC) Transmission Loading Relief procedures. Under these procedures, NERC requires curtailment of interchange transactions that have a generation-to-load distribution factor on a constraint above a five percent threshold and does not require

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

[2] 16 U.S.C. § 824o(e)(3) (2006).

curtailment of internal generation-to-load transactions for their impacts off the contract path. However, Reliability Standard IRO-006-3 also includes a "regional difference" for Midwest ISO, PJM and SPP. Under that regional difference, the market flows from these RTO systems with a generation-to-load distribution factor on a constraint down to zero percent (instead of five percent) were subject to curtailment. This zero percent threshold was reflected in the Congestion Management Process of the Joint Operating Agreements.[3]

3. While the NERC Transmission Loading Relief procedures contained the regional difference for the RTOs prior to the adoption of mandatory reliability standards under section 215, throughout the reliability standard proceedings, the RTOs raised concerns about their ability to consistently meet their relief obligations at the zero percent level in light of the possibility of civil penalties for non-compliance if the regional difference was approved as a mandatory reliability standard. In response to those concerns, the NERC Operating Reliability Subcommittee recommended that the market flow threshold used by the NERC Interchange Distribution Calculator, which is used to assign relief obligations to the RTOs, be changed from zero to three percent for a 12-month field test. During this interim period, the NERC Operating Reliability Subcommittee would investigate all situations in which the RTOs were unable to meet their relief assignments to determine whether the cause was the market flow threshold or some other factor. The results of the 12-month test will be used to decide whether to recommend a permanent change to the market flow threshold from zero to three percent, or to suggest a change to some other value.[4] In Order No. 693, the Commission recognized the RTOs' concerns and decided to neither approve nor remand the regional difference for Reliability Standard IRO-006-3 while the 12-month test was being conducted, and stated that it would reconsider approval of the regional difference or waiver as a mandatory and enforceable reliability standard upon completion of the 12-month period.[5]

4. On May 25, 2007, Midwest ISO and PJM submitted proposed revisions to the Congestion Management Process of their Joint Operating Agreement to incorporate the NERC-approved field test threshold. The Commission conditionally accepted the proposed changes and directed Midwest ISO and PJM to make a compliance filing explicitly stating the three percent market flow threshold approved by NERC, the other terms and conditions of the 12-month field test, and the effective date on which Midwest ISO and PJM planned to begin and end implementation of the field test, if known. Finally, the Commission directed Midwest ISO and PJM to file for informational

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[3] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 966.

[4] *See id.* P 976; Comments of Midwest ISO and PJM in Docket No. RM06-16-000 at page 31 (January 3, 2007).

[5] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 989-990.

purposes, within 60 days of the completion of the field test, a report of NERC's findings related to the market flow test.[6] Midwest ISO and PJM later indicated that they would end the field test on October 31, 2008, regardless of when each test began.[7]

5. On November 27, 2007, Midwest ISO and SPP proposed revisions to the Congestion Management Process of their Joint Operating Agreement. The revisions, among other things, added language referring to the 12-month field test and increased the market flow threshold from zero to three percent. The Commission conditionally accepted Midwest ISO and SPP's proposed revisions.[8]

6. On May 2, 2008, the RTOs filed revisions to section 4.1 (Market Flow Determination) and 4.4 (Firm Market Flow Calculation Rules) of the Congestion Management Process in their Joint Operating Agreements to set the market flow threshold at five percent, effective June 1, 2008, for the remaining period of the field test. The RTOs also proposed language that allowed them, during the remaining period of the field test, to consider effects below the five percent threshold at the direction of NERC if unanticipated reliability problems were observed as a result of threshold limits. The Commission accepted these proposed revisions.[9]

II. <u>Proposed Revisions</u>

7. The RTOs again have filed proposed revisions to the Congestion Management Process in their Joint Operating Agreements. Under Appendix H of the Congestion Management Process (Market Flow Threshold Field Terms and Conditions), the RTOs propose to extend the market flow threshold field test at the current five percent threshold for another year, from October 31, 2008, to October 31, 2009. They state that since June 1, 2008, there have been few Transmission Loading Relief events where the effect of increasing to a five percent threshold could be measured. In addition, the RTOs point out that the NERC Operating Reliability Subcommittee and the Executive Committee of the NERC Standards Committee have already authorized extending the market flow threshold field test for an additional year.

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[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083 (2007) (July 24 Order). The Commission accepted Midwest ISO and PJM's compliance filing. *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,148 (2008) (May 15 Order).

[7] *See* Midwest ISO and PJM's May 22, 2008 Letter in Docket No. ER07-940-002.

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

[9] *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,001 (2008) (July 1 Order).

8. The RTOs also propose to revise section 4.4 (Firm Market Flow Calculation Rules) and section 5.5 (Market-Based Operating Entity Real-time Actions) of the Congestion Management Process to reflect the previously approved market flow threshold of five percent.

9. The RTOs request waiver of the Commission's prior notice requirements to permit an effective date of October 31, 2008, allowing for the continuation of the existing market flow thresholds and field test protocols without interruption.

III. Notice of Filing and Responsive Pleadings

10. Notice of the filing was published in the *Federal Register*, 73 Fed. Reg. 69,628 (2008), with interventions, comments and protests due on or before November 19, 2008. Timely motions to intervene were filed by Consumers Energy Company, Exelon Corporation and Xcel Energy Services, Inc.

11. Basin Electric Power Cooperative (Basin Electric) and Western Area Power Administration (WAPA) filed separate motions to intervene and protest. The RTOs filed an answer to these protests and, in turn, Basin Electric filed an answer to the RTOs' answer.

12. The Electric Power Supply Association filed an untimely motion to intervene on December 19, 2008.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[10] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We also grant the untimely, unopposed intervention by the Electric Power Supply Association given its interest in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay caused by the filing.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[11] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the RTOs' answer because it provides information that assisted us in our decision-making process. We are not persuaded to accept Basin Electric's answer to the RTOs' answer and therefore reject it.

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[10] 18 C.F.R. § 385.214 (2008).

[11] 18 C.F.R. § 385.213(a)(2) (2008),

B. Continuation of the Market Flow Threshold Field Test

1. WAPA's Protest

15. WAPA argues that the parties should not be required to wait another year before being able to see a report that explains the effects of the increased threshold. WAPA argues that absent more detailed information from the RTOs regarding the impact of these higher thresholds on non-market entities and how they responded during the Transmission Loading Relief events, WAPA is unable to fully understand the additional burden placed on non-market entities caused by the field test. WAPA requests that the Commission either require the RTOs to file an interim report or suspend the requested extension until such a report is filed.

2. Basin Electric's Protest

16. Similar to WAPA, Basin Electric requests that the Commission either deny the RTOs' request to extend the field test or grant the extension conditioned upon the RTOs filing an interim report. In support, Basin Electric argues that the market flow field test causes certain entities to bear a larger share of the responsibility for the relief of transmission constraints. Ignoring RTO generators with a flow on a constrained interface of less than five percent means that the flows of those generators will not have to be reduced to relieve the constraint. This makes it necessary to assign an even larger constraint relief obligation to the other flows on the interface.

17. Basin Electric also asserts that the reason for the RTOs' request for extension is that the RTOs cannot meet the relief obligation assigned to them by NERC. It asserts that the RTOs should be required to modify their practices in order to meet reliability standards. Basin Electric argues that the RTOs are seeking to raise the market flow threshold to a level that allows them to reach constraint obligations without having to change their practices.

18. Basin Electric also expresses concern that the five percent threshold results in discrimination against other entities in favor of RTO entities, because the threshold is applied to the RTO entities differently than it is applied to non-RTO entities, which results in constraint relief obligations of the RTOs being less than the obligation of the non-RTO entities. Basin Electric explains that the five percent threshold is applied to non-RTO entities based on the entire tagged control area-to-control area transaction. Consequently, according to Basin Electric, if a non-RTO entity takes transmission service, the five percent threshold across an interface is applied to the entire transaction, even if the transaction consists of several different generators. In contrast, Basin explains, since RTO transactions are no longer tagged, the five percent threshold is applied on a generator-by-generator basis. This means that if both the RTO and the non-RTO entity are engaging in similar transactions (control area-to-control area for one, generator in one "zone" to load in another "zone" for the other) that involve generators

that individually have less than a five percent flow on an interface but that aggregate to more than a five percent flow, the flow caused by the non-RTO entity would be treated as exceeding the five percent threshold but the flow caused by the RTO would be treated as not exceeding the five percent threshold. Basin Electric states that this discriminatory result will continue for another year with little or no oversight of its impact on non-RTO entities if the RTOs' proposed extension of the market flow threshold field test is approved.

19. Finally, Basin Electric argues that the RTOs have continued to use the five percent market flow threshold after the October 31, 2008 termination date without the Commission's approval. The RTOs have no authority to use a market flow threshold above zero after October 31, 2008, and should be complying with their curtailment obligations unless the Commission authorizes a resumption of the test.

3. Commission Determination

20. We find that RTOs have shown that their proposed revisions to Appendix H of the Congestion Management Process of their Joint Operating Agreements, to extend the NERC-approved termination date for the market flow threshold field test from October 31, 2008 to October 31, 2009, is just and reasonable. As the Commission previously explained, the field test is important to address reliability and equity issues associated with the treatment of the RTOs' market flows under the Transmission Loading Relief procedures.[12] In addition, the field test will help the parties to seams agreements, NERC, and the Commission to evaluate the effectiveness of the Congestion Management Process in the Joint Operating Agreements and to determine what, if any, permanent modifications may be necessary for these agreements or the NERC Transmission Loading Relief procedures.[13] While the Commission recognizes that the continuation of this field test will permit some difference in the treatment of these RTOs, we find that tolerance of these differences is necessary to meet the objectives of NERC and the Commission in fulfilling the purpose of the field test. Accordingly, the Commission will allow the field test to continue through October 31, 2009, to provide time for the test to yield the data needed to serve its intended purpose.[14]

21. Nor do we agree with Basin Electric's argument that an extension of the field test results in discriminatory treatment that unduly disadvantages non-RTO entities. While

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[12] May 15 Order, 123 FERC ¶ 61,148 at P 21.

[13] July 24 Order, 120 FERC ¶ 61,083 at P 25.

[14] May 15 Order, 123 FERC ¶ 61,148 at P 18 (deferring to NERC's judgment as to how long the field test should continue and when the parties have collected sufficient data to serve its purposes).

Basin Electric cites to certain examples of how the threshold is applied to the RTO entities differently than it is applied to non-RTO entities that can result in constraint relief obligations of the RTOs being less than the obligation of the non-RTO entities, there are other differences in treatment between RTO and non-RTO entities that have the opposite effect. For instance, under the Transmission Loading Relief procedures, NERC only requires curtailment of interchange transactions with a generation-to-load distribution factor on a constraint above a five percent threshold and does not require curtailment on internal generation-to-load transactions of non-RTO entities for their impacts off the contract path. However, before the field test commenced, all market flows from the RTOs' internal generation-to-load dispatch with a distribution factor above the zero percent threshold on a constraint were subject to curtailment. In Order No. 693, the Commission acknowledged the RTOs' concerns that the current provisions of the Congestion Management Process may place an undue burden on the RTO regions, and that the seams agreements and reliability standards could conflict if the seams agreements do not allow for reliable outcomes where parties can achieve the relief assigned. Accordingly, the Commission directed the RTOs to continue work with the non-market regions to allow for equitable and feasible treatment of market flows during the Transmission Loading Relief process.[15]

22. In addition, WAPA and Basin Electric argue that the RTOs have continued the field test beyond the initial extension period without the Commission's approval. However, as stated by the RTOs, the NERC committees authorized extending the field test on October 24, 2008, and the RTOs filed the extension with the Commission promptly on October 29, 2008, before the requested effective date. In these circumstances, we find good cause to grant waiver of the Commission's notice requirements to allow continuation of the field test through October 31, 2009, without interruption.

23. Contrary to Basin Electric and WAPA's request, we will not require the RTOs to submit a report to the Commission covering the first year of operation of the field test; nor will we suspend the field test until such report is filed. The July 24 Order already directed the Midwest ISO and PJM to submit an informational filing within 60 days of the completion of the field test, which includes a NERC report regarding all instances where the RTOs are unable to meet their Transmission Loading Relief assignments.[16] In addition, as the RTOs point out, they have been providing periodic reports on the field test to NERC that have been posted on the NERC and North American Energy Standards Board websites.[17] We believe that this is the type of information being requested by

[15] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 990.

[16] July 24 Order, 120 FERC ¶ 61,083 at P 24.

[17] July 1 Order, 124 FERC ¶ 61,001 at P 17.

Basin Electric and WAPA and find that it is sufficient for them to analyze the first year of operation of the field test.

24. Finally, we will accept the proposed revisions to sections 4.4 and 5.5 of the Congestion Management Process of the Joint Operating Agreements. The revisions correct the tariff sheets to accurately reflect the new market flow threshold of five percent.

The Commission orders:

(A) The proposed extension to the market flow threshold field test until October 31, 2009, and the other minor revisions to the Applicants' Joint Operating Agreements are hereby granted, effective October 31, 2008, as discussed in the body of this order.

(B) Waiver of the 60 day prior-notice requirement is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.