

106 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

PJM Interconnection, L.L.C.

Docket No. RT01-2-013

Midwest Independent
Transmission System Operator, Inc.

Docket No. RT01-87-009

ORDER CLARIFYING AUDIT REQUIREMENT

(Issued February 18, 2004)

1. In this order, we clarify that the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) will not be required to undertake the compliance audit of its independence from market participants as required of Regional Transmission Organizations (RTOs) in the Commission's regulations. The Commission is currently performing an audit addressing many aspects of RTO independence, and any such audit on the part of Midwest ISO and PJM would be duplicative of the Commission's current audit.

Background

2. In Order No. 2000, the Commission stated that, at a minimum, an RTO must have four characteristics: (1) independence from market participants; (2) appropriate scope and configuration; (3) operational authority over transmission facilities within the region; and (4) exclusive authority to maintain short-term reliability.¹ In that order, the Commission further provided that:

¹ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

The [RTO] must be independent of any market participant. The [RTO] must include, as part of its demonstration of independence, a demonstration that it meets the following: (i) The [RTO], its employees, and any non-stakeholder directors must not have financial interests in any market participant. (ii) The [RTO] must have a decisionmaking process that is independent of control by any market participant or class of participants. (iii) The [RTO] must have exclusive and independent authority under Section 205 of the Federal Power Act . . . to propose rates, terms and conditions of transmission service. . . .²

3. Order No. 2000 further stated that the Commission would require a system of independent auditing to insure an RTO's independence from market participants if market participants either have an ownership interest in the RTO or play a role in the RTO's decisionmaking process.³ It provided that an RTO should perform a compliance audit two years after approval of the RTO both for RTOs in which market participants have an ownership interest and those in which market participants have a role in the RTO's decision making process, but do not have an ownership interest.

4. The Commission has granted RTO status to both the Midwest ISO⁴ and PJM.⁵ In the Midwest ISO Order, the Commission, citing the Commission regulations, noted that Midwest ISO would be required to perform a compliance audit pursuant to the Commission's regulations. In an Order Provisionally Granting RTO Status, PJM committed to conduct a compliance audit of the independence of its decision-making process within two years of approval.⁶

² See Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,061-76; 18 C.F.R. § 35.34(j)(1) (2003).

³ See Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at 31,367-68; 18 C.F.R. § 35.34(j)(1)(iv)(A) (2003).

⁴ Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001) (Midwest ISO Order).

⁵ PJM Interconnection, L.L.C., 101 FERC ¶ 61,345 (2002).

⁶ PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 at 61,228 (2002).

Discussion

5. The Commission is currently performing an audit that addresses many aspects of the independence of both PJM and Midwest ISO. In light of this audit, the Commission finds that there is no need for PJM and Midwest ISO to perform the compliance audit of the independence of their decisionmaking process required by the Commission's regulations. Individual audits on the part of PJM and Midwest ISO would be duplicative of the Commission's current audit, and are, therefore, unnecessary.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.