UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Midwest Independent Transmission System Operator, Inc. — Docket No. EL03-35-002

ORDER ON REQUESTS FOR REHEARING
AND DIRECTING COMPLIANCE FILING

(Issued May 21, 2003)

1. In this order we address the requests for rehearing filed by the Public Service Commission of the Commonwealth of Kentucky (Kentucky Commission), the Midwest Transmission Dependent Utilities (Midwest TDUs), Cinergy Services, Inc. (Cinergy), Consumers Energy Company (Consumers Energy), and Reliant Resources, Inc. (Reliant)[1] of the Commission's order issued in this proceeding on February 24, 2003 (February 24 Order).[2] The February 24 Order affirmed the general direction of proposed Market Rules submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and provided guidance on certain critical issues. As discussed below, we will grant in part and deny in part the requests for rehearing, provide further clarification of our February 24 Order, and direct a compliance filing.

2. This order benefits customers by providing further guidance concerning the proposed Market Rules.

Background

3. On December 17, 2002, the Midwest ISO filed a petition for declaratory order (December 17 filing) seeking Commission approval of the general direction of the proposed Market Rules that would provide for: (1) a security-constrained, centralized bid-

[1] These parties shall be referred to collectively as Petitioners.

[2] Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 (2003).

based scheduling and dispatch system (i.e., Day-Ahead and Real-Time Market Rules); (2) Financial Transmission Rights (FTRs) for hedging congestion costs; and (3) Market Settlement Rules. In the February 24 Order, the Commission affirmed the general direction of the proposed Market Rules, but provided guidance on certain issues we determined to be critical to starting competitive bulk power markets in the Midwest. More specifically, the February 24 Order provided guidance on issues related to: congestion management, seams between control areas, resource adequacy, marginal losses, the initial allocation of FTRs and the later use of auctions to allocate FTRs.[3] Specific portions of the February 24 Order relevant to the requests for rehearing are discussed in further detail, by issue, below.

Timing of the December 17 Filing

The February 24 Order

4. In the February 24 Order, we recognized that the December 17 filing and the Commission's recently-issued notice of proposed rulemaking on Standard Market Design[4] (SMD NOPR) implicate many of the same issues, but we stated our belief that the pendency of the SMD Final Rule did not preclude our review of the proposed Market Rules. We found no substantial benefit to delaying the progress and momentum already in motion for establishing market rules that we believe will enhance competition and reliability in the very near term for the Midwest.[5]

5. We stated that any issue that we have not specifically approved prior to the issuance of the SMD Final Rule, including issues that are still being worked on by the Midwest ISO, may be subject to review for consistency with our findings in the SMD Final Rule. However, we stated that to the extent that we have approved any proposed Market Rules, and

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[3]Furthermore, we stated that we would take all appropriate steps at the final rule stage of the SMD rulemaking proceeding to ensure that, to the extent we have already approved or conditionally approved Regional Transmission Organization (RTO) elements, including general aspects of the proposed Market Rules, the approvals would remain intact. In addition, the February 24 Order provided the Midwest ISO with a reasonable time in which to change its market design if there are substantial changes in the Commission's Standard Market Design Final Rule.

[4]Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,563 (2002).

[5]February 24 Order, 102 FERC ¶ 61,196 at P 23.

to the extent that such proposals do not materially change in the documents that are ultimately filed, we do not intend to revisit these issues.[6]

6. We further rejected the approach suggested by Cinergy and other intervenors that the Commission delay implementation of the Midwest ISO Day-2 markets, to coincide with the operation of a joint and common market between the Midwest ISO and the Pennsylvania-New Jersey-Maryland Interconnection (PJM). We stated that implementation of the Energy and FTR markets will bring immediate improvements to the Midwest ISO's system. As we explained in the February 24 Order, the Midwest ISO markets represent a new undertaking that must be developed through incremental steps, and the Midwest ISO should first stand on its own with functioning energy and FTR markets prior to joining a common market with PJM.[7]

Rehearing Requests

7. On rehearing, Kentucky Commission, Cinergy, and Consumers Energy reassert concerns regarding the timing of the December 17 filing. These Petitioners argue that the Commission's approval of the general direction of the Market Rules without analysis of certain specific details deprives ratepayers of an opportunity for future relief from the expenses the Midwest ISO will incur in implementing the Market Rules. Kentucky Commission states that the Midwest ISO recently announced its placement of $100 million in long-term financing, and that these funds and others will be spent on developing the Market Rules. Kentucky Commission states that, absent a Commission finding that the Market Rules are just and reasonable under Section 205 of the Federal Power Act,[8] ratepayers cannot legally be burdened with these expenses.

8. Similarly, Cinergy reiterates its argument that the benefits of establishing the Midwest ISO's Day-2 market will be more than offset by an enormous expenditure of resources to develop and implement the interim, stand-alone market design that, in any case, will be superseded by a permanent, common market design with PJM. Cinergy states that, if the Commission does not reverse its finding that the Midwest ISO should proceed with its stand-alone market design, the Commission should issue two clarifications. First, Cinergy seeks Commission clarification that the Midwest ISO, or any market participant, may petition for a reasonable delay in the Day-2 implementation schedule, if it becomes apparent that more time is needed to implement the system properly. Second, Cinergy

[6] Id. at P 2 n.7.

[7] Id. at P 24.

[8] 16 U.S.C. § 824d (2000).

requests Commission clarification regarding its statement in the February 24 Order that the Commission will not revisit certain issues addressed in that order.[9] Cinergy contends that the statement implies that parties will not have a meaningful opportunity to comment on the tariff sheets and market rules that must be filed under Section 205.

9. Likewise, with particular regard to the initial allocation of FTRs under the Market Rules, Consumers Energy expresses concern that, if the Commission refuses to revisit certain issues regarding the initial FTR allocation,[10] customers will be forced to fund the Midwest ISO's expenses in implementing the proposed Market Rules, without having been given the opportunity to be heard on all initial FTR allocation issues.

Commission Response

10. With regard to timing issues, we explained in the February 24 Order that it is not our intent to overturn, in the SMD Final Rule, prior decisions that are made in this docket. Our intent is to foster certainty in future business decisions, and we remain convinced that our approach is practical, builds on the substantial work that parties have put into developing the Midwest ISO, and should achieve the same efficient, competitive, and non-discriminatory market outcomes we envision under the SMD rulemaking proceeding, while respecting important regional differences.[11] We believe that providing such certainty minimizes the development costs of the proposed markets. While we deny the rehearing requests on this issue, we will provide the requested clarifications.

11. In addition, we stated in the February 24 Order, and remain convinced, that the Midwest ISO should first stand on its own with functioning energy and FTR markets prior to joining the common market with PJM. The Midwest ISO and its stakeholders are undertaking a monumental task in creating and coordinating energy markets across an area that is larger and more diverse than any other RTO or ISO created to date. PJM and the ISOs in the Northeast differ from the Midwest ISO in that they developed gradually over many years, forming a tight power pool with centralized dispatch functions well before development of LMP-based energy markets. Given the tasks before the Midwest ISO and its relatively short development timeline as compared with these other RTOs and ISOs in the Eastern Interconnection, we believe it is both necessary and prudent for the Midwest

[9] See February 24 Order, 102 FERC ¶ 61,196 at P 2 n.7.

[10] Consumers Energy states that the Commission did not make clear in the February 24 Order whether it approved, and therefore, will not be revisiting, certain aspects of the Midwest ISO's proposed initial FTR allocation method.

[11] See February 24 Order, 102 FERC ¶ 61,196 at P 2 n.6 & n.7.

ISO to take incremental steps before joining in a common market with PJM. Accordingly, we will not delay implementation of the Midwest ISO's Day-2 markets to coincide with the operation of the Midwest ISO/PJM common market.

12. We will, however, take this opportunity to direct a joint filing by the market monitors of PJM and the Midwest ISO to address the specific problems raised by the Midwest ISO's IMM, Dr. David Patton, in his April 30, 2003 report to the Commission. The problem raised is that generation located within and dispatched by one RTO will have a substantial effect on flowgates that are located within the other RTO. The potential effects of this include inefficient prices and dispatch decisions, as well as excessive uplift payments. In addition, generators in one RTO could strategically dispatch to cause congestion in the other RTO and then offer transactions to relieve that congestion. These problems can be mitigated by an appropriate amount of coordination between RTOs and more seamless trading methods. The joint filing, to be filed within 60 days of the date of this order, should explain the seams issues, how and when they are expected to be resolved, and who is taking leadership of the seams process.

13. We agree with the Kentucky Commission that absent a Commission finding under a Section 205 filing of the Market Rules, ratepayers cannot be required to fund expenses associated with the Market Rules. Under the Midwest ISO's proposal for cost recovery, in fact, customers will not pay such costs until the Midwest ISO submits, and we accept, final Market Rules under Section 205.[12]

14. We note that, in the December 17 filing, the Midwest ISO indicated that it expects to implement the Market Rules in December 2003. Recently, the Midwest ISO announced a new target date for the start of market operations of March 2004.[13] The Midwest ISO will need to request an effective date for the Market Rules when it makes its Section 205 filing and justify the change in the targeted effective date from December 2003; any extension of the targeted effective date beyond 2003 should be the subject of a filing identifying and explaining the justification for such a change. Thus, with regard to Cinergy's requests for

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[12] See Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,221 (2002), order on rehearing and clarification, 103 FERC ¶ 61,035 (2003) (approving Schedules 16 and 17, which contain mechanisms to permit the Midwest ISO to recover its reasonable and prudently incurred costs associated with the establishment and administration of Financial Transmission Rights (FTR) and the development and operation of energy markets once service commences.)

[13] http://www.midwestiso.org/ (visited May 9, 2003) (April 18 press release indicating that the Midwest ISO Board of Directors approved a March 31, 2004 launch date for the new markets).

clarification, we clarify that the Midwest ISO may propose, with appropriate justification, a reasonable delay in the Day-2 implementation schedule, if it becomes apparent that more time is needed to implement the Day-2 operations.

15. With regard to Cinergy's and Consumer Energy's concern that interested parties have been deprived of a meaningful opportunity to comment on the proposed Market Rules, parties will have an opportunity to comment on any Market Rules when they are filed under Section 205. In this regard, we reiterate our statement in the February 24 Order:

> [W]e recognize that the Market Rules must be filed in final form. Therefore, we will not rule at this time on any specific provisions. As further details are submitted to the Commission for review, we will afford interested parties an opportunity to comment. We will address any such filings in subsequent orders.[14]

In short, interested parties will have a meaningful opportunity to comment when the Midwest ISO files its Market Rules under Section 205. Moreover, the Midwest ISO recently stated its intention to make two separate Section 205 filings of the Market Rules.[15] Given this stated intention, we expect that there will be ample opportunity for customers and their state commission representatives to provide input on the Market Rules.

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[14] February 24 Order, 102 FERC ¶ 61,196 at P 26.

[15] See Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,338 (2003) (granting clarification that the Midwest ISO may submit information regarding its initial allocation of FTRs with its initial Market Rules, prior to filing its final Market Rules under Section 205).

Resource Adequacy

February 24 Order

16. Although the December 17 filing lacked a Resource Adequacy requirement, in the February 24 Order, the Commission accepted the Midwest ISO's commitment to develop one in the future. We stated:

> We recognize that the Midwest ISO is taking an incremental approach to implementing markets and we applaud this thoughtful approach. However, we do not wish to see the long run viability of the markets hamstrung by the desire to ensure a smooth short run transition. Therefore, we will accept Midwest ISO's commitment to develop a resource adequacy requirement and we will direct Midwest ISO to file information on how resource adequacy will be achieved with their tariff filing. Midwest ISO's tariff should at a minimum include an express date by which Resource Adequacy provisions will be adopted.[16]

Rehearing Requests

17. On rehearing, Kentucky Commission argues that the Resource Adequacy issue is wholly outside of the Commission's purview. Kentucky Commission states that, while it recognizes the Commission's authority over transmission access, the Commission has no authority over adequacy of generation. Accordingly, Kentucky Commission maintains that by accepting the Midwest ISO's commitment to develop a Resource Adequacy requirement and directing the Midwest ISO to file information on achieving such adequacy, the Commission acted outside of its authority in the February 24 Order. Kentucky Commission adds that the supply problems of other states should not be solved with money from states like Kentucky, whose ratepayers have previously paid, and continue to pay, enough money into their systems to ensure system adequacy. In any case, Kentucky Commission contends that the Resource Adequacy requirement envisioned by the Midwest ISO and the Commission may be likened to an insurance policy for independent power producers (IPPs), which will be underwritten by retail ratepayers.

Commission Response

[16] February 24 Order, 102 FERC ¶ 61,196 at P 50.

18. We find nothing in the February 24 Order that is inconsistent with the Kentucky Commission's concerns regarding Resource Adequacy. As the above-quoted language from the February 24 Order makes clear, we did not order the Midwest ISO to file a Resource Adequacy requirement; rather, we accepted the Midwest ISO's commitment to develop such a requirement and we requested an informational filing describing how it will be achieved. In doing so, our express intent was not to usurp state authority. Indeed, we stated our agreement with the Midwest ISO that "participation and direction from state agencies responsible for overseeing supply adequacy is vital before establishing a set of guidelines on supply adequacy."[17]

19. Further, we did not intend our acceptance of the Midwest ISO's commitment to imply that we expect the Midwest ISO to administer any particular Resource Adequacy requirement or even that we expect the Midwest ISO to develop any particular mechanism for ensuring resource adequacy. Instead, we offer as clarification, that the Commission's role with regard to resource adequacy is a supporting one and that state and local governments must take the lead. Thus, we require only that the Midwest ISO provide information on the mechanism(s) being considered for ensuring resource adequacy, and indicate who is being considered as the responsible body for administering the mechanism(s), as well as an express date for implementation of the mechanism(s).

20. We recognize that states have historically taken the lead in assuring that customers have reliable service by requiring utilities to plan for and procure resources in advance of customers' needs. Rather than being an insurance policy for IPPs we believe that resource adequacy serves as insurance against reliability problems for all customers, including retail ratepayers. Nothing in our order changes the role of states or causes customers in states that have assured resource adequacy to pay for the supply problems of other states.

21. In this regard, we note that in a recently-issued order regarding the Midwest ISO's proposed Market Mitigation Measures,[18] we recognized the interaction between the proposed Market Mitigation Measures and proposals for resource adequacy, safety-net bid caps and demand response. We noted the importance of addressing these issues prior to the startup of the Midwest ISO's markets and the necessity for state involvement. We reiterate our belief that resource adequacy and market mitigation go hand in hand. Without assured resource adequacy, mitigation measures could lead to under-supply in the market and reliability problems. Moreover, we realize that the better informed we are regarding these issues, the better enabled we are to make decisions about the propriety and

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[17] Id. at P 48 (emphasis added).

[18] Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,280 (2003).

effectiveness of specific mitigation measures. In this regard, we do recognize, and have previously emphasized, the role of states in issues involving resource adequacy and demand response, and we have established a forum to discuss state and federal coordination on these and other issues necessary for developing and designing an appropriate set of market rules for the Midwest ISO.[19] Therefore, while we agree with the Kentucky Commission that resource adequacy programs, in particular, are the responsibility of the states, concrete proposals on resource adequacy are necessary for the proper evaluation of the Midwest ISO's proposed Market Mitigation measures and establishment of viable long-term markets.

FTR Auction

February 24 Order

22. In the February 24 Order, the Commission found to be appropriate the Midwest ISO's proposal to use an auction to allocate FTRs after a transition period. However, we made no finding on whether this auction must be either mandatory or voluntary in the future. We determined that this issue is not germane to the December 2003 implementation of energy markets.[20]

Rehearing Requests

23. On rehearing, Reliant argues that the Commission should reconsider its deferral of a decision as to whether FTR auctions should be voluntary or mandatory. Reliant reiterates its position, set forth in its protest to the December 17 filing that, as long as there is no assurance that FTRs will be sold through mandatory auctions, the Midwest ISO stakeholders will be divided into two camps: those who receive an initial allocation of FTRs and those who do not. Reliant asserts that such a division will make stakeholder consensus impossible. Moreover, Reliant states that, in the absence of a mandatory FTR auction, some market participants will have no means by which to hedge congestion costs, and the ability to use the transmission grid in the most efficient manner will be unnecessarily restricted.

Commission Response

24. We will deny Reliant's request for rehearing concerning a mandatory FTR auction. We found in the February 24 Order, and remain convinced, that the Midwest ISO already faces a number of difficult issues in assigning FTRs, and therefore we will not require that

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[19] 68 FR 25874 (2003).

[20] Id. at P 74.

the Midwest ISO develop a plan for converting the direct assignment method to a mandatory auction method. Moreover, we note that, in the February 24 Order, we directed the Midwest ISO to continue working closely with state regulators and affected stakeholders to address availability of FTRs.[21] In any case, we will address this issue when the Market Rules are before us in a Section 205 filing.

Locational Marginal Pricing (LMP)

February 24 Order

25. In the February 24 Order, we found that the Midwest ISO's proposal to adopt a congestion management system and imbalance market based on LMP[22] and bid-based markets is consistent with Commission direction and principles laid out in the SMD NOPR.[23]

Rehearing Requests

26. On rehearing, Kentucky Commission argues that the February 24 Order's approval of LMP is premature. Kentucky Commission states that LMP is expensive to implement and has not been shown to encourage the construction of transmission. Accordingly, Kentucky Commission states that ratepayers should not be forced to fund LMP, without a close examination of how the method will work. Kentucky Commission contends that, while LMP might result in the cheapest prices in a competitive market, it is unlikely to result in lower prices than those produced by cost-of-service rates.

Commission Response

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[21] Id. at P 74.

[22] LMP requires that the clearing price at each location (typically defined as each bus connecting generation and/or load to the high-voltage network, but also applicable to aggregations of buses) is the price of delivering or consuming an incremental MW of power to that location. The locational prices are calculated on the basis of bids into the spot market by supply and demand. The congestion charge for a bilateral transaction between any two locations is calculated as the difference in the LMPs at those locations. Point-to-point financial transmission rights hedge congestion charges between the location designated as the point of injection and the location designated as the point of withdrawal.

[23] February 24 Order, 102 FERC ¶ 61,196 at P 30.

27. We will deny Kentucky Commission's request for rehearing regarding LMP. As an initial matter, as we noted in the February 24 Order, the Midwest ISO has worked with stakeholders to develop its Day-2 congestion management approach and has indicated the region's preference for LMP. We further note that the majority of intervenors in this proceeding fully supported the adoption of LMP.[24]

28. In addition, we remain convinced that a LMP-based system will simplify transition to a common Midwest ISO/PJM market, since PJM already has that type of system in place. Moreover, as we explained in the February 24 Order, LMP makes transparent to transmission customers the true marginal cost of congestion and marginal losses at each location. All other proposed price-based methods suppress that price signal, thus distorting the price signal and market participants' decisions concerning location of new generation and transmission assets (albeit LMPs are only one element in such siting decisions). All non-price based methods, such as the transmission line-loading relief methods now used extensively in the Midwest, in contrast, make congestion management decisions on administrative grounds that do not minimize the redispatch costs customers must pay. This is because when there is congestion in a system that uses TLRs to manage that congestion, the system operator curtails non-firm transactions without respect to price. Hence, the generators being curtailed may or may not be the cheapest redispatch of the system.

29. With regard to LMP and uniform pricing, as we also explained in the February 24 Order, this method leads to least-cost dispatch (based on market bids) and the lowest possible prices while fairly compensating suppliers. A single price auction, where suppliers are paid the market clearing price rather than their individual bids, generally includes generators who submit bids that allow the market operator to schedule and then dispatch the most efficient units for spot or balancing energy (that is, those units that are not already committed under long-term contracts).[25] We stress, however, that market participants do not have to buy or sell in LMP-based markets, except as necessary to resolve imbalances.

30. If Kentucky Commission believes that cost-of-service rates result in lower prices than the competitive prices in a LMP-based market, nothing in our order or in the Midwest ISO's proposed Market Rules would prevent Kentucky Commission from continuing to regulate generation that serves retail load on a cost-of-service basis. In this regard,

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[24] Id. at P 30.

[25] Id. at P 32.

Kentucky Commission may choose to provide guidance or impose requirements on public utilities to rely on long-term supplies to meet forecast retail load needs.[26]

31. Furthermore, as stated in the February 24 Order, we expect that, after the initial allocation of FTRs, existing transmission customers will be kept whole, to the extent possible, with respect to congestion-related charges under MISO Day-2 operation. In addition, we are interested in the recommendations of regional state committees, such as the Midwest Multi-State Organization currently under formation in the Midwest, as to how such rights should be allocated to current customers based on current uses of the grid.

Regulation and Reserves

February 24 Order

32. In the February 24 Order, the Commission approved the Midwest ISO's proposal to establish its Energy and FTR markets prior to implementing its markets for Regulation and Reserves. However, we expressed our concern that the efficiency of the multi-Control Area market for energy could be compromised if the 40 individual control areas within the Midwest ISO make inefficient reserve capacity decisions or unnecessarily withhold capacity from energy markets on reliability grounds. Accordingly, we directed the Midwest ISO to provide sufficient explanation, in its Section 205 filing of the Market Rules, regarding how it will ensure the transparency and efficiency of control area regulation and operating reserve scheduling and dispatch, and to better define the obligations and requirements of the individual control areas.[27]

Rehearing Requests

33. On rehearing, Reliant argues that the Commission should establish a firm date by which the Midwest ISO should implement its regulation and reserves markets. Reliant suggests that establishing these markets is important, because as long as the 40 individual control areas within the Midwest ISO remain responsible for payment of regulation and reserves, the possibility of continued discrimination exists. Reliant suggests that the market rules for regulation and reserves should be implemented no later than twelve months after the open of the energy markets.

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[26] See generally, e.g., Universal Studios, Inc. v. Southern California Edison, 96 FERC ¶ 61,043 at 61,108-09 (2001); Central Vermont Public Service Corporation, 84 FERC ¶ 61,194 at 61,973-75 (1998).

[27] February 24 Order, 102 FERC ¶ 61,196 at P 38-43.

Commission Response

34. We agree with Reliant that the Midwest ISO should develop its markets for regulation and reserves with some urgency. As we emphasized in the February 24 Order, regulation and reserve markets are critical to ensuring the efficiency of the multi-Control Area energy market.[28] Although, as noted in the February 24 Order, the Midwest ISO has committed to begin designing regulation and operating reserves markets six months after the start of the Day-2 Markets,[29] we agree with Reliant that a firm date for implementation of these markets is appropriate. Accordingly, we will grant Reliant's rehearing request to the extent of directing the Midwest ISO to include in its filing of the initial Market Rules an expected timeframe for implementation of markets for regulation and reserves.

18-Month Assessment Report

February 24 Order

35. In the February 24 Order, we directed the Midwest ISO to file, within one year of the start of Day-2 operations, an assessment of any efficiency and independence issues created by the continuation of the 40 Control Area structure, an analysis of merging control area functions in part or all of the Midwest ISO, a recommendation for consolidating Control Areas, and the timeframe for such operational integration, should the analysis support such an outcome. In issuing this directive, we waived the requirement set forth in an order issued September 16, 1998, regarding the Midwest ISO's RTO status (September 16 Order),[30] that the Midwest ISO file a 18-month assessment regarding the relationship between control areas and the Midwest ISO, and the Midwest ISO's ability to provide reliable, non-discriminatory transmission service (18-month assessment report).[31]

Rehearing Requests

36. Reliant and the Midwest TDUs argue that the Commission should reconsider its decision to waive the 18-month assessment report. Reliant notes that the February 24 Order requires the Midwest ISO to file an assessment within one year of the Day-2

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[28] Id. at P 39-42.

[29] Id. at P 19.

[30] Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,160 (1998).

[31] February 24 Order, 102 FERC ¶ 61,196 at P 42 n.25.

operations, or prior to December 2004, while the September 16 Order would have required the assessment within 18 months of the Midwest ISO's start-up, or on or about August 2003. Reliant states that the earlier interim report is important, since it could be a valuable barometer for assessing the strength of the bulk power market in the Midwest and would also afford an opportunity for corrections to be made prior to implementation of the energy markets.

37. The Midwest TDUs contend that the 18-month assessment report is provided for in the Midwest ISO Agreement, Article Eight, Section B, which the Commission accepted for filing in the September 16 Order, along with the Midwest ISO OATT. Accordingly, the Midwest TDUs argue that the Midwest ISO Agreement, including its provision for the 18-month assessment report is protected under the Mobile-Sierra[32] doctrine, and that the Commission cannot legally waive the 18-month assessment report without initiating a Section 206 proceeding.

Commission Response

38. We will grant the Midwest TDUs' and Reliant's requests regarding the 18-month assessment report on control area relationships and other matters specified in the Midwest ISO Agreement. We waived the assessment filing based upon our belief that the report, in assessing aspects of Day-1 operations, would be outdated before it was even issued. Because the Midwest ISO has proposed new approaches for its Day-2 operations, we believed that the report would provide little valuable information. However, since the parties believe the report would be beneficial, we will direct the Midwest ISO to file the 18-month assessment report, as specified in Article Eight, Section B of the Midwest ISO Agreement.[33] We expect the Midwest ISO to update its information in the later report, in which they will file, within one year of the start of Day-2 operations, an assessment of any efficiency and independence issues created by the continuation of the 40 Control Area structure, an analysis of merging control area functions in part or all of the Midwest ISO, a

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[32] See United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[33] Article 8, Section B, titled Midwest ISO Assessment, among other things, requires the report to assess: (1) the relationship between existing generation control areas and the Midwest ISO; (2) whether the Midwest ISO's approach to managing congestion needs to be revised; (3) the effectiveness of the system of functional control together with the penalties and sanctions provisions; (4) the need for generation redispatch to provide non-firm transmission service; and (5) whether the Midwest ISO requires other changes to better carry out its responsibilities.

recommendation for consolidating Control Areas, and the timeframe for such operational integration, should the analysis support such an outcome.[34]

The Commission orders:

(A) Kentucky Commission's, Cinergy's and Consumer Energy's requests for rehearing are hereby denied, as discussed in the body of this order.

(B) Reliant's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(C) The Midwest ISO is hereby directed to include in its filing of the initial Market Rules an expected timeframe for implementation of markets for regulation and operating reserves, as discussed in the body of this order.

[34] February 24 Order, 102 FERC ¶ 61,196 at P 42.

(D) The Midwest ISO and PJM are hereby directed to file, within 60 days of the date of this order, a joint compliance filing addressing the specific problems raised by the Midwest ISO's IMM, Dr. David Patton, in his April 30, 2003 report to the Commission, and explaining the seams issues implicated by the separate RTOs, how and when they are expected to be resolved, and who is taking leadership of the seams process, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.