

103 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Companies

Docket No. EL02-65-009

Ameren Services Company
On behalf of:

Union Electric Company
Central Illinois Public Service Company

American Electric Power Service Corporation
On behalf of:

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Dayton Power and Light Company

Exelon Corporation
On behalf of:

Commonwealth Edison Company
Commonwealth Edison Company
of Indiana, Inc.

FirstEnergy Corporation
On behalf of:

American Transmission Systems, Inc.
Cleveland Electric Illuminating Power Company
Ohio Edison Company

Pennsylvania Power Company
Toledo Edison Company

Illinois Power Company

Northern Indiana Public Service Company

and

National Grid USA

Alliance Companies

Docket No. RT01-88-022

Ameren Services Company

On behalf of:

Union Electric Company
Central Illinois Public Service Company

American Electric Power Service Corporation

On behalf of:

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Consumers Energy Company and
Michigan Electric Transmission Company

Dayton Power and Light Company

Exelon Corporation

On behalf of:

Commonwealth Edison Company
Commonwealth Edison Company

of Indiana, Inc.

FirstEnergy Corporation

On behalf of:

American Transmission Systems, Inc.
Cleveland Electric Illuminating Power Company
Ohio Edison Company
Pennsylvania Power Company
Toledo Edison Company

Illinois Power Company

Northern Indiana Public Service Company

Virginia Electric and Power Company

Alliance Companies

Docket Nos. ER99-3144-021
and EC99-80-021

Ameren Services Company

On behalf of:

Union Electric Company
Central Illinois Public Service Company

American Electric Power Service Corporation

On behalf of:

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company

Ohio Power Company
Wheeling Power Company

Consumers Energy Company and the
Michigan Electric Transmission Company

Docket No. EL02-65-009, et al.

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Dayton Power and Light Company

Detroit Edison Company and
International Transmission Company

Exelon Corporation
On behalf of:

Docket No. ER01-2992-004

Commonwealth Edison Company
Commonwealth Edison Company
of Indiana, Inc.

FirstEnergy Corporation
On behalf of:

American Transmission Systems, Inc.
Cleveland Electric Illuminating Power Company
Ohio Edison Company
Pennsylvania Power Company
Toledo Edison Company

Illinois Power Company

Docket Nos. RT01-84-005, ER01-123-
009, and ER01-2999-004

Northern Indiana Public Service Company

Docket No. RT01-26-005

Virginia Electric and Power Company

Docket No. ER01-2993-004

Dayton Power and Light Company

Docket Nos. RT01-37-005 and ER01-
2997-004

American Electric Power Service Corporation
On behalf of:

Docket No. ER01-2995-004

Appalachian Power Company
Columbus Southern Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company

Docket No. EL02-65-009, et al.

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Midwest Independent System Operator

Docket No. EL02-111-001

PJM Interconnection, L.L.C.

And all Transmission Owners
(including the entities identified below)

Union Electric Company

Central Illinois Public Service Company

Appalachian Power Company

Columbus Southern Power Company

Indiana Michigan Power Company

Kentucky Power Company

Kingsport Power Company

Ohio Power Company

Wheeling Power Company

Michigan Electric Transmission Company

Dayton Power and Light Company

Commonwealth Edison Company

Commonwealth Edison Company
of Indiana, Inc.

American Transmission Systems, Inc.

Illinois Power Company

Northern Indiana Public Service Company

Virginia Electric and Power Company

IES Utilities, Inc.

Interstate Power Company

Aquila, Inc. (formerly UtiliCorp United, Inc.)

PSI Energy, Inc.

Union Light Heat & Power Company

Dairyland Power Cooperative

Great River Energy

Hoosier Energy Rural Electric Cooperative

Indiana Municipal Power Agency

Indianapolis Power & Light Company

Louisville Gas & Electric Company

Kentucky Utilities Company

Lincoln Electric (Neb.) System

Minnesota Power, Inc. and its subsidiary
Superior Water, Light & Power Company

Montana-Dakota Utilities

Northwestern Wisconsin Electric Company

Otter Tail Power Company

Southern Illinois Power Cooperative

Southern Indiana Gas & Electric Cooperative

Southern Minnesota Municipal Power Agency

Sunflower Electric Power Corporation

Wabash Valley Power Association, Inc.

Wolverine Power Supply Cooperative

International Transmission Company

Alliant Energy West

Xcel Energy Services, Inc.

MidAmerican Energy Company

Corn Belt Power Corporation

Allegheny Electric Cooperative, Inc.

Atlantic City Electric Company

Baltimore Gas & Electric Company

Delmarva Power & Light Company

Jersey Central Power & Light Company

Metropolitan Edison Company

PECO Energy Company

Pennsylvania Electric Company

PPL Electric Utilities Corporation

Potomac Electric Power Company

UGI Utilities, Inc.

Allegheny Power

Carolina Power & Light Company

Central Power & Light Company

Conectiv

Detroit Edison Company

Duke Power Company

Florida Power & Light Company

GPU Energy

Northeast Utilities Service Company

Ohio Power Company

Old Dominion Electric Cooperative

PECO Energy Company

Public Service Company of Colorado

Public Service Electric & Gas Company

Public Service Company of Oklahoma

Rockland Electric Company

South Carolina Electric & Gas Company

Southwestern Electric Power Company

Cincinnati Gas & Electric Company

Missouri Public Service

WestPlains Energy

Cleco Corporation

Kansas Power & Light Company

OG+E Electric Services

Southwestern Public Service Company

Empire District Electric Company

Western Resources

Kansas Gas & Electric

ORDER ON REHEARING AND PROVIDING CLARIFICATION

(Issued June 4, 2003)

1. This order denies requests for rehearing of, and clarifies, the Commission's order issued on July 31, 2002 in these proceedings, in which the Commission conditionally accepted the Alliance Companies' proposals to join either the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) or PJM Interconnection, L.L.C. (PJM), and instituted, under Section 206 of the Federal Power Act (FPA),¹ an investigation of inter-RTO rates.²

2. This order serves the interests of customers in the Midwest and PJM regions because it provides further guidance regarding RTO operation in these regions. Additionally, the order clarifies and reiterates our expectation that certain conditions must be met in order for the various choices made for RTO membership in PJM to be just and reasonable.

I. Background

3. On April 25, 2002, in Alliance Companies, et al., 99 FERC ¶ 61,105 (2002) (April 25 Order), the Commission directed the Alliance Companies to file compliance filings within 30 days from the date of the order, describing which regional transmission organization (RTO) they planned to join and whether such participation would be collective or individual. The Commission also stated that, should the Alliance Companies decide to join Midwest ISO, they must in the compliance filing detail their plans for the timing of such filing under Appendix I of the Midwest ISO Agreement taking into

¹16 U.S.C. § 824e (2000).

²Alliance Companies, et al., 100 FERC ¶ 61,137 (2002) (July 31 Order).

consideration the guidance in that order and the companion TRANSLink order (see TRANSLink Transmission Company, LLC, et al., 99 FERC ¶ 61,106 (2002) (TRANSLink Order)). Id. at 61,430, 61,450.

4. In the July 31 Order, the Commission conditionally accepted the Alliance Companies' compliance filings indicating which RTO (PJM or Midwest ISO) they chose to join, subject to satisfactory compliance with certain conditions, summarized as follows: (1) that a single market across the two RTOs must be implemented by October 1, 2004; (2) that National Grid USA (National Grid) participates in both Midwest ISO as GridAmerica LLC (GridAmerica) and in PJM, and performs the same functions, consistent with the allocation of functions to independent transmission companies (ITCs) provided in the April 25 Order and the Translink Order, in both RTOs for Day One operations; (3) that there be pro forma agreements under the respective tariffs of Midwest ISO and PJM that provide for participation of ITCs consistent with the delegation of functions provided for in the April 25 Order and the TRANSLink Order; (4) that the agreement to form an ITC between National Grid, AEP, ComEd, DP&L and PJM must be filed within 30 days of the date of the July 31 Order; (5) that NERC must approve the Reliability Plans pursuant to which PJM and Midwest ISO will coordinate their operations under the new configuration; (6) that a solution addressing the "through and out" rates between Midwest ISO and PJM must be developed; (7) that the Alliance Companies seeking to join PJM, along with PJM and Midwest ISO, provide a solution which will effectively hold utilities in Wisconsin and Michigan harmless from any loop flows or congestion that results from the proposed configuration; (8) that PJM and Midwest ISO must each file a statement agreeing to the conditions within 15 days of the July 31 Order, an implementation plan for achieving a common market by October 1, 2004 within 45 days, and frequent progress reports thereafter; and (9) that Commission Staff participate in the process.³

5. The Commission explained that the Alliance Companies' choices, standing alone, appeared to produce unjust and unreasonable rates, terms and conditions for transmission services, but that these conditions would ensure just and reasonable rates, terms, and conditions for transmission services.⁴ The July 31 Order also noted that these conditions reflected areas which NERC concluded needed to be addressed, as well as commitments made by the parties in order to further the goal of reaching a region-wide common market as soon as possible. The Commission further noted that these conditions should be part of

³See July 31 Order at P 35-57.

⁴Id. at P 35.

any Section 203 or Section 205 authorization needed by the Alliance Companies to transfer control of jurisdictional facilities to either Midwest ISO or PJM.⁵

II. Filings

6. On August 29, 2002, Soyland Power Cooperative (Soyland) filed a request for rehearing of the July 31 Order. On August 30, 2002, American Electric Power Service Corporation (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (ComEd) and Dayton Power and Light Co. (DP&L) (collectively, New PJM Companies); DTE Energy Company (DTE); and Illinois Power Company (Illinois Power) filed requests for rehearing of the July 31 Order.

7. On August 15, 2002, Midwest ISO and PJM submitted statements in which they agreed to the conditions set forth in the July 31 Order.

8. On August 30, 2002, New PJM Companies and National Grid filed a letter of intent and term sheet setting forth the provisions to be contained in an LLC Agreement and other agreements related to the formation and operation of an ITC within PJM, as directed by the July 31 Order.⁶ They asked that the Commission not take action with respect to this filing. They stated that they intended to file definitive agreements for the establishment of Gridco East by September 30, 2002, and would seek Commission acceptance at that time. However, no application to form GridCo East has been presented to the Commission.⁷

⁵Id. at P 36.

⁶On June 25, 2002, PJM entered into a Memorandum of Understanding with National Grid, AEP, ComEd, DP&L, Illinois Power, and DVP that AEP, ComEd, DP&L, Illinois Power, and DVP would join PJM either directly or through an ITC arrangement with National Grid as the managing member. This ITC, if it is formed, would be known as GridCo East.

⁷We note that in Ameren Services Company, et al., 100 FERC ¶ 61,135 (2002), the Commission conditionally accepted initial agreements providing for the formation of GridAmerica as an ITC within Midwest ISO but noted that many aspects of the filings, such as cost-related concerns, would be more closely examined in the compliance filing being directed therein. On December 19, 2002, in Ameren Services Company, et al., 101 FERC ¶ 61,320 (2002), the Commission conditionally accepted the compliance filing directed earlier, including four agreements and related documents intended to facilitate the formation and operation of GridAmerica, and required a further compliance filing.

(continued...)

9. On January 10, 2003, PJM filed, and on March 14, 2003, the Commission accepted, with modifications, amendments to PJM's OATT that provide standard terms and conditions for ITCs to operate within PJM. See PJM Interconnection, LLC, 102 FERC ¶ 61,296 (2003).⁸

10. On October 9, 2002, New York State Electric and Gas Corporation (NYSEG), Niagara Mohawk Power Corporation (NIMO) and Central Hudson Gas and Electric Corporation (Central Hudson) jointly moved to dismiss the Section 206 investigation initiated by the Commission in the July 31 Order as to them. They contend that the July 31 Order does not relate to the New York Independent System Operator, Inc. (NYISO), which was not named as a respondent in the Section 206 investigation. They state that they have never been transmission owners with respect to Midwest ISO or PJM. They further assert that they are not Alliance Companies and did not submit compliance filings in response to the Commission's April 25 Order. They also state that they did not intervene in any of the proceedings underlying the July 31 Order.

⁷(...continued)

On May 14, 2003, in Ameren Services Company, et al., 103 FERC ¶ 61,178 (2003), the Commission, among other things, conditionally accepted this compliance filing.

⁸ We note that on December 11, 2002, in Docket No. ER03-262-000, New PJM Companies and PJM filed an application under Section 205 of the FPA to include New PJM Companies as transmission owners within PJM. On April 1, 2003, the Commission accepted the filing relating to ComEd's and AEP's joining PJM, effective as of the date of the transfer of control of AEP's and ComEd's facilities to PJM, and authorized that transfer pursuant to Section 203 of the FPA. See American Electric Power Service Corporation, et al., 103 FERC ¶ 61,008 (2003). See also American Electric Power Service Corporation, 103 FERC ¶ 61,009 (2003), where the Commission, in Docket No. ER03-242-000, accepted AEP's proposed transmission rates for joining PJM, subject to modification. However, we note that on April 30, 2003, AEP filed a request to withdraw the filing it submitted in Docket No. ER03-242-000. We also note that the Virginia Legislature recently passed a bill that prohibits Virginia utilities from joining an RTO before July 1, 2004, and requires them to obtain prior approval from the Virginia State Corporation Commission. On March 14, 2003, the Pennsylvania Public Utility Commission, the Michigan Public Service Commission, and the Ohio Public Utilities Commission filed a motion in Docket No. EC98-40-000, et al., requesting, among other things, that the Commission direct AEP to join an established RTO, as earlier required in that proceeding.

11. On October 8, 2002, the Michigan-Wisconsin Parties⁹ filed a response to New PJM Companies' request for rehearing; they respond to New PJM Companies' request for rehearing of the hold harmless condition set forth in the July 31 Order and seek clarification of the July 31 Order as it pertains to the hold harmless condition. On October 10, 2002, the Michigan Public Service Commission filed comments supporting the Michigan-Wisconsin Parties' comments. On October 23, 2002, New PJM Companies filed an answer opposing the Michigan-Wisconsin Parties' October 8, 2002 response. On October 23 and 24, 2002, Public Service Commission of Wisconsin and Wolverine Power Supply Cooperative, Inc. (Wolverine), respectively, filed comments in support of the Michigan-Wisconsin Parties.

III. Discussion

A. Procedural Matters

12. Under Rules 713(d) and 213(a) of the Commission's Rules of Practice and Procedure,¹⁰ a party may not file an answer to a request for rehearing, and may not file an answer to an answer unless allowed by the decisional authority. We will not allow Michigan-Wisconsin Parties' response to New PJM Companies' request for rehearing and we likewise will not allow New PJM Companies' answer or the responses of Public Service Commission of Wisconsin, Michigan Public Service Commission or Wolverine to Michigan Parties' response.

⁹Association of Businesses Advocating Tariff Equity (AVTco, Atofina Chemicals, Inc., BASF Corp., The Budd Co., Cargill, Daimler Chrysler Corp., Delphi Automotive Systems, Eaton Corp., Edward C. Levy Co., Ford Motor Co., General Motors Corp., Martin Marietta Magnesia Specialties Inc., Mead Westvaco Corp., National Steel Corp.- Great Lakes Division, Phamacia & Upjohn Company, Quanex Corp., and Steelcase, Inc.); DTE Energy Co. (on behalf of its public utility subsidiaries, The Detroit Edison Co. and International Transmission Co.); Consumer Energy Co.; Michigan Electric Transmission Co., LLC; Nordic Marketing, LLC; Wabash Valley Power Assoc.; the Michigan Public Power Agency; the Michigan South Central Power Agency; Alliant Energy Corporate Service, Inc. (on behalf of its public utility affiliate, Wisconsin Power and Light Co.); American Transmission Co., LLC; Madison Gas & Electric Co.; Wisconsin Electric Power Co.; and WPS Resources Corp. (on behalf of its public utility subsidiaries, Wisconsin Public Service Corp. and Upper Peninsula Power Co.).

¹⁰See 18 C.F.R. § 385.213(a)(2), 713(d) (2002).

13. Further, Section 313(a) of the FPA requires that requests for rehearing must be filed within 30 days, and does not grant the Commission any authority to waive that prescribed time period.¹¹ The Michigan-Wisconsin Parties' October 8, 2002 response was filed more than 30 days after the July 31 Order. Thus, to the extent that the Michigan-Wisconsin Parties' pleading is a request for rehearing of the July 31 Order, we must reject their pleading as untimely filed.

14. For good cause shown, we will grant NYSEG, NIMO, and Central Hudson's joint motion to dismiss the proceeding in Docket No. EL02-111-000 as to them.¹²

B. General Objections to the July 31 Order's Conditions

15. New PJM Companies and Illinois Power essentially object to the Commission's placing conditions on its acceptance of their choice to join PJM, which the Commission found, without conditions, would result in inadequate RTO scope and configuration. New PJM Companies state that a number of unsupported findings are made in the July 31 Order, and that, without clarification, the conditions cause significant uncertainty for themselves and for their customers. New PJM Companies and Illinois Power seek clarification that the Commission's acceptance of their participation in PJM will depend only upon their good faith efforts to satisfy the July 31 Order's conditions, i.e., that their good faith efforts would ensure that the Commission's acceptance of their integration into PJM will not be revoked and they would not be penalized due to other parties' actions or inactions.¹³ They also seek clarification that the costs that they incur for their integration into PJM and in the course of their good faith efforts to comply with the July 31 Order may be recovered in jurisdictional rates. To the extent the Commission does not provide the requested clarification, New PJM Companies and Illinois Power ask the Commission to reconsider its decision.

16. New PJM Companies also seek rehearing of the Commission's finding that, absent the conditions, their participation in PJM would result in significant adverse operational

¹¹See 16 U.S.C. § 8251 (2000).

¹²On October 9, 2002, the presiding administrative law judge in Docket No. EL02-111-000 issued an order that set a procedural schedule and removed NYSEG, NIMO, and Central Hudson from the caption and the proceeding, and also admitted other intervenors.

¹³In support, Illinois Power cites Moraine Pipeline Co. v. FERC, 906 F.2d 5 (D.C. Cir. 1990) (Moraine Pipeline), and Ozark Gas Transmission System v. FERC, 897 F.2d 548 (D.C. Cir. 1990) (Ozark Gas).

and reliability effects. They claim that this finding should be reversed on rehearing as the Commission's finding is unsupported, and PJM and Midwest ISO are working voluntarily with NERC to ensure reliability of the new configuration.

17. New PJM Companies also request a finding that PJM's RTO status is not contingent upon the creation of a common market with Midwest ISO by October 1, 2004. While New PJM Companies state that they support voluntary and expeditious formation of this market, they claim that the Commission erred in concluding that, absent a single common market over the entire Midwest ISO/PJM region, PJM is no longer an appropriately configured RTO as a result of incorporating New PJM Companies. They argue that this finding is unsupported by substantial evidence in the record and is also inconsistent with Order No. 2000¹⁴ and other Commission precedent.¹⁵

18. Illinois Power requests clarification that the Commission has accepted its proposal to join PJM and that the Commission does not intend that Illinois Power defer further action effectuating that proposal until all conditions imposed by the Commission have been met. Illinois Power states that all market participants will jointly benefit from the costs incurred by PJM and Midwest ISO to develop a common market and that Illinois

¹⁴They state that the order reflects a predilection for a specific regional boundary for PJM that is inconsistent with the Commission's decision in Order No. 2000 to not establish fixed or specific boundaries for RTOs and to provide flexibility to industry participants in structuring RTOs that meet the minimum characteristics and functions. See Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 at 31,994 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), affirmed sub nom. Public Utility District No. 1 Snohomish County Washington, et al. v. FERC, 272 F.3d 607 (D.C. Cir. 2002) (Order No. 2000).

¹⁵They state that the July 31 Order's conclusion that New PJM Companies' joining PJM would result in inappropriate configuration contradicts past Commission orders. In support, they cite to the Commission's July 12, 2001 order on PJM's Order No. 2000 compliance filing in which they state the Commission concluded that PJM should continue to expand in the region, including expansion to the west, in order to enhance its scope and configuration. See PJM Interconnection, LLC, et al., 96 FERC ¶ 61,061 (2001), (PJM RTO Order), order on reh'g, 101 FERC ¶ 61,345 (2002). They also cite to the April 25 Order, in which they state the Commission emphasized that the guidance provided therein regarding rate design and delegation of functions was intended to apply to the petitioners regardless of whether they join PJM, Midwest ISO or another RTO. See April 25 Order, 99 FERC ¶ 61,105 at 61,430.

Power should not bear any disproportionate share of these costs or expenses. Otherwise, it requests that the condition be removed on rehearing and seeks rehearing to the extent that the order provides that Illinois Power will pay a disproportionate share of the costs of developing the common market.

19. Soyland requests rehearing to extent that the July 31 Order does not require resolution of seams issues, including rate issues, prior to the new configuration taking effect. Soyland states that the July 31 Order delayed the timely resolution of seams issues between Midwest ISO and PJM that arose from the decisions of Illinois Power and Ameren to join PJM and Midwest ISO, respectively. Soyland explains that having the utilities in different RTOs will create a seam in Illinois that would make it more difficult to manage congestion and address loop flows in and around Illinois, and could increase rate pancaking, distort markets and raise reliability concerns.¹⁶ Soyland asserts that in order to protect customers, markets and reliability, these seams issues, including rate issues, must be addressed before the common market is in place by October 1, 2004.

Commission Response

20. We will deny rehearing of the Commission's findings that the former Alliance Companies' RTO choices could not be accepted without the conditions set forth in the July 31 Order. In the July 31 Order, the Commission was presented with only two practical options: conditionally accepting their RTO choices; or rejecting at least some choices and having two more appropriately configured RTOs with more appropriate and more geographically contiguous boundaries. Given the record in this proceeding, we concluded that, without the conditions we ordered, the choices of some of the former Alliance Companies to join PJM would result in inappropriate RTO configurations.

21. As described in more detail below, given the locations of the Alliance Companies and their links with other neighboring utilities, outright acceptance of their RTO choices, without any conditions, would not have been just and reasonable. That is, for example, given the locations of New PJM Companies in the heart of, indeed, throughout, the Midwest ISO region and the tight links between these companies and their neighboring utilities in the Midwest ISO region (companies, we add, that had opted to join Midwest ISO), we could not accept their joining PJM as just and reasonable without the conditions we adopted.

¹⁶Soyland argues that the July 31 Order ignored protests and comments filed in this proceeding that load serving entities like Soyland face a so-called "through and out" rate barrier to moving their owned or contracted generation resources from the RTO where generation is sited to load located in the other RTO.

22. Before further discussing the rehearing requests, however, we believe it is important to provide some context to the situation we are in today. Since the July 31 Order, PJM and Midwest ISO have made progress toward the operation of a Day 2 market within their respective territories and the common market between Midwest ISO and PJM. While certain implementation dates for these milestones have been revised, we continue to be heartened at the progress made to date for what will ultimately lead to a common market from New Jersey in the east to the Rocky Mountains in the west. Likewise, we are encouraged by Midwest ISO's, and their stakeholders', continued efforts at developing the Midwest ISO's Day 2 market by March 31, 2004, prior to the summer season.¹⁷

23. While there remain operational and seams issues to be resolved between PJM and Midwest ISO, we are encouraged that parties are continuing to work on these issues. Therefore, we expect that Midwest ISO and PJM will file a joint operating agreement governing their relationships, and adequately resolving potential seams issues between the two organizations, in sufficient time to allow for the full integration of ComEd into PJM by October 1, 2003, as planned.

24. Turning back to the requests for rehearing, we disagree with the parties' contention that evidence in the record does not support the July 31 Order's conditions, which are, we add, consistent with Order No. 2000. In order to accept the RTO choices proposed by each of the former Alliance Companies, the Commission must evaluate the proposed organizations to see if they will be able to meet Order No. 2000's required functions and characteristics for an organization to qualify as an RTO. Order No. 2000 specifically requires, for example, that an RTO be of adequate scope and configuration to perform its functions effectively. It also sets out factors that the Commission would consider in determining whether a proposed RTO reflects adequate scope and configuration. These factors include, among others, the ability to: (1) resolve loop flow issues by internalizing loop flows and addressing loop flow problems over a larger region; (2) effectively manage transmission congestion; (3) offer transmission service at non-pancaked rates within the largest possible energy trading area; (4) maintain and enhance reliability; and (5) promote overall operational efficiency.¹⁸ In addition, in evaluating RTO boundaries, Order No. 2000 states that the Commission will consider the extent to which proposed

¹⁷While we would have preferred the Day 2 market to have been established in December 2003, we believe that the additional time will allow for more focused stakeholder input and customer training, which will facilitate the successful implementation of the Day 2 market.

¹⁸See Order No. 2000 at 31,082.

boundaries encompass one contiguous geographic area, encompass a highly interconnected portion of the grid, and recognize trading patterns.¹⁹

25. While New PJM Companies are correct that the factors set forth in Order No. 2000 provide flexibility in application,²⁰ this flexibility was not intended to discount the importance of scope and configuration in evaluating RTO proposals.²¹

26. The evidence presented in this proceeding indicated that the RTO choices, as proposed, and as accepted (albeit with conditions), were frankly problematic when considered in light of Order No. 2000. For instance, the record indicates that Midwest ISO and New PJM Companies/Illinois Power are highly interconnected and that there are significant loop flows between Midwest ISO and New PJM Companies/Illinois Power,²²

¹⁹See Order No. 2000 at 31,083-84.

²⁰See Order No. 2000 at 30,993, 31,082-85. The July 31 Order is entirely consistent with our precedent. The July 31 Order did not discount a case-by-case approach to evaluating proposals for participation in an RTO. To the contrary, as also discussed below, see infra Paragraph 31, not outright rejecting New PJM Companies' choices, but instead acknowledging that, with conditions, they would be acceptable, reflected our willingness to consider flexible and innovative ways to address, for example, seams issues, consistent with Order No. 2000, as discussed below.

²¹Neither is the Commission's voluntary approach to RTO participation intended to discount the importance of the characteristics and functions of RTOs established in Order No. 2000, and contained in our regulations, 18 C.F.R. § 35.34 (2003). Entities, such as New PJM Companies and Illinois Power, advocating the Commission's continued approval of RTO status for the regional organizations that they seek to join, must demonstrate that the regional organizations meet the characteristics (including scope and configuration) and functions of RTOs.

²²We note that, in an application pending before the Commission in Docket No. EC03-30-000, et al., Illinois Power has proposed to transfer its transmission system to Illinois Electric Transmission Company, LLC (IETC), an indirect subsidiary of Trans-Elect, Inc. As part of that proposed transaction, IETC commits to make all of the necessary filings with the Commission to facilitate transfer of functional control of the transmission system to Midwest ISO. Since such commitment of the Illinois Power transmission system to Midwest ISO is contingent on the sale to IETC, which has yet to be authorized by the Commission or consummated, and Illinois Power has not otherwise withdrawn or amended the proposal to join PJM made in the instant proceeding, we will
(continued...)

and so the proposed RTO boundary would split a highly interconnected portion of the transmission grid.²³ Parties to the proceeding with operational and reliability responsibilities with respect to the affected systems likewise indicated that the proposed RTO boundary was unnecessarily complex and that this complexity would present significant operational challenges.²⁴ The Commission thus found that the RTO configuration, as proposed, and without conditions, would frustrate the realization of the goals that Order No. 2000 found that RTO formation should promote, such as resolution of loop flow issues, effective management of congestion, and enhanced reliability and efficiency.

27. Indeed, Midwest ISO presented evidence that, during the one-year period commencing June 1, 2001, AEP received 4,400 requests for transmission service into the Midwest ISO footprint for a total of 48,800 MW-years of transmission service, while AEP received only 1,500 requests for transmission service into PJM for a total of 12,500 MW-years of transmission service.²⁵ This, likewise, indicated, among other things, not only the close links and significant energy trading taking place between the systems of certain of the former Alliance Companies and Midwest ISO, but also, that the acceptance of the former Alliance Companies' RTO choices would result in fewer benefits from one-stop shopping or the elimination of rate pancaking than if, for example, AEP joined Midwest ISO.

28. As noted in the July 31 Order, the record also indicated that the configuration that would result from the former Alliance Companies' choices would leave Wisconsin and Upper Michigan only tenuously connected to the rest of Midwest ISO, which would impede the management of loop flows and congestion and potentially leave the utilities in

²²(...continued)

assume that Illinois Power's proposal to join PJM is still valid for the purpose of this order.

²³See Midwest ISO July 10, 2002 data request response at 3 and Attachments A and B; Exelon July 10, 2002 data request response at 8-10; Illinois Power July 10, 2002 data request response at 4; Affidavit of Ronald R. Jackups on behalf of Midwest ISO TO's at 4-5 (filed July 9, 2002).

²⁴See NERC July 15, 2002 response to data request at 3-5. See also Midwest ISO July 10, 2002 data request response at 2-3.

²⁵See Midwest ISO July 10, 2002 response to data request, Attachment A, "Requests for Transmission Service" slide.

Wisconsin and Michigan dependent on PJM transmission service, at pancaked inter-RTO rates, in order to reach other areas of Midwest ISO.²⁶

29. New PJM Companies and Illinois Power support their choices based only on the strength of the interconnections and trading patterns among their systems and PJM. As suggested by our discussion above, we find that their focus is too narrow. They fail to recognize that the strength of their collective ties with Midwest ISO are greater than their ties with PJM.²⁷ In addition, their analysis of trading patterns fails to consider whether their systems are part of a larger regional trading area, which, as discussed above, the record indicates that they are. In any event, we must be careful about establishing RTO boundaries based on historical trading patterns where those trading patterns were constrained by the market imperfections (e.g., rate pancaking) that RTOs are intended to eliminate.²⁸

30. In short, the evidence in the record demonstrated that New PJM Companies, Illinois Power and Midwest ISO are highly interconnected, integrated and interdependent and should not be divided into separate RTOs -- absent adequate provisions to address seams issues. So, in ultimately accepting the former Alliance Companies' choices of which RTO they wanted to join, we also had to recognize the need for conditions – which we did.

31. In Order No. 2000, the Commission remained receptive to flexible and innovative ways for an RTO to achieve sufficient scope and configuration, such as the use of inter-

²⁶See July 31 Order at P 53. See also June 17, 2002 Protest of Wisconsin Electric Power Company in Docket Nos. EL02-65-003 and RT01-88-020 at 3; Affidavit of Ronald R. Jackups on behalf of Midwest ISO TO's at 3 (filed July 9, 2002).

²⁷See Midwest ISO July 10, 2002 response to data request, Attachment A, "Transfer Capability Between Market" slide (showing 10,700 MVA of transfer capability between Midwest ISO and New PJM Companies/Illinois Power and 3,300 MVA of transfer capability between New PJM Companies and PJM, and "Tie Line Capacity Between Markets" slide (showing 66,500 MVA of tie line capacity between Midwest ISO and New PJM Companies/Illinois Power and 6,000 MVA of tie line capacity between New PJM Companies/Illinois Power and PJM).

²⁸ See June 26, 2002 Commission Meeting, Tr. at 241-42 (indicating that, under pancaked rates, trading activities were primarily through direct interconnections, and wheeling over two or more systems generally did not take place).

RTO coordination to eliminate seams issues.²⁹ The Commission exercised this flexibility in establishing the conditions for New PJM Companies' participation in PJM. The conditions allow the RTOs to manage congestion and loop flow (through, for example, the common market and NERC-approved Reliability Plans), provide one-stop shopping through the common market, provide access to a wide region at non-pancaked rates, and otherwise mitigate the seams resulting from the proposed configuration. While New PJM Companies are correct that Order No. 2000 does not require RTOs to join with other RTOs to form common markets in order to be deemed appropriately configured, our action in the July 31 Order is entirely consistent with Order No. 2000; coordination arrangements such as a common market can mitigate an otherwise inappropriate scope and configuration for an RTO.

32. The Commission relied upon the conditions to mitigate the problems resulting from the RTO choices of the former Alliance Companies. Cost recovery issues are more appropriately addressed in the context of the Section 205 filings addressing the detailed terms and conditions, and rates, for the participation of the former Alliance Companies in PJM and Midwest ISO. Therefore, we will deny these requests as misplaced in this proceeding. However, we clarify that we will consider, in a more appropriate proceeding, proposals to recover costs prudently incurred to comply with the July 31 Order. We also clarify that New PJM Companies and Illinois Power need not defer further actions effectuating their proposals until all conditions imposed by the Commission have first been met; however, as we discuss below, certain conditions (e.g., the RTOs' Reliability Plans and joint operating agreement) must be met at the time of commencement of transmission service over the transmission systems of any of the New PJM Companies or Illinois Power under the PJM tariff or integration of any of those systems into the PJM market.

33. Moreover, contrary to parties' contentions, their good faith efforts are not the determining factor in evaluating whether the conditions are met. Illinois Power's argument amounts to a claim that it be allowed to act in a manner that is inconsistent with the goals of Order No. 2000 and with the July 31 Order, and thus, unreasonably, simply because Illinois Power cannot by itself "fix" the problem. We find this argument to be unpersuasive. It would allow public utilities to act unreasonably or adopt unreasonable rates, terms and conditions and claim immunity from challenge simply because they themselves couldn't "fix" the problem. The FPA, however, does not excuse unreasonable actions or rates, terms and conditions so long as utilities make a "good faith" effort to

²⁹See Order No. 2000 at 31,083; see also supra note 18 and accompanying text.

"fix" the problem. Rather, the FPA proscribes such actions, rates, terms and conditions regardless of whose responsibility it is to "fix" the problem.³⁰

34. The Moraine Pipeline and Ozark Gas cases cited by Illinois Power, see supra note 13, are inapposite as they involve different factual scenarios. In Moraine Pipeline and Ozark Gas, the applicants were required to adhere to the Commission's conditions in order to construct and/or operate a natural gas pipeline; these facts are not present here. Illinois Power was not prevented from participating in an RTO without the conditions; Illinois Power could have chosen Midwest ISO. Instead Illinois Power voluntarily chose PJM, and, in so doing, voluntarily subjected itself to the conditions.

35. Moreover, in Moraine Pipeline, the court remanded to the Commission the condition that Moraine base its rates on an annual throughput which Moraine claimed to be unable to achieve. Likewise, in Ozark Gas, the court remanded to the Commission the blanket certificate conditions that would have required the applicant to charge significantly more than its competitor, and directed the Commission to formulate a proposal that was consistent with the purpose behind the conditions. In contrast to Moraine Pipeline, it is far from clear here that, as claimed by Illinois Power, the conditions imposed by the Commission cannot be met. In any event, as explained above, unlike in Ozark Gas, the Commission's conditions were reasonably grounded on the facts in the record and are consistent with the goals of Order No. 2000.

36. Finally, we disagree with Soyland's claim that the conditions adopted in the July 31 Order do not adequately mitigate the seams issues prior to implementation of the common market. The conditions specifically provide that operational and rate issues will be addressed prior to commencement of the common market. Specifically, the July 31 Order: (1) conditioned approval of the RTO choices on NERC's approval of PJM and Midwest ISO's Reliability Plans; (2) required that PJM and Midwest ISO file a joint operating agreement detailing how they will operate at the seams during the period prior to implementation of the common market; and (3) instituted a Section 206 proceeding to resolve inter-RTO rate issues.³¹ However, we note that the July 31 Order did not establish a deadline for the filing of the joint operating agreement. Adequate provisions for efficient and reliable management of the seam must be in place at the time of the commencement of transmission service over the transmission systems of any of the New PJM Companies or Illinois Power under the PJM tariff or integration of any of those systems into the PJM market. Therefore, we clarify that this joint operating agreement

³⁰See 16 U.S.C. §§ 824d, 824e (2000).

³¹See July 31 Order at P 48-50.

must be filed no later than 60 days prior the commencement of transmission service over the transmission systems of any of the New PJM Companies or Illinois Power under the PJM tariff or integration of any of those systems into the PJM market. In that filing, Midwest ISO and PJM are required to demonstrate that such agreement will provide for management of the seam between them in an efficient and reliable manner.³² Any specific concerns that Soyland has regarding seams issues are more appropriately considered once PJM and Midwest ISO make this filing.

37. Moreover, in conditionally accepting the proposed configuration, the Commission weighed the benefits that will be achieved by the expedited formation of a single common market spanning an area from the Rocky Mountains to the East Coast against the seams issues that will exist during the interim prior to the implementation of that single common market. All in all, we believe that the conditions will ensure that the proposed configuration will be consistent with the goals of Order No. 2000.

C. Hold Harmless Provision

38. New PJM Companies request that the Commission clarify that it is not requiring AEP and ComEd to hold utilities in Wisconsin and Michigan harmless from any incremental loop flow impacts not directly resulting from the companies' decision to join PJM. They request clarification that Michigan and Wisconsin utilities are to be held harmless by following an analysis that includes: (a) a determination, for the same set of transactions, of what different actions would have been taken by the RTO under different RTO choices; and (b) a determination of the actual impacts of those different choices on the Michigan and Wisconsin utilities. They further request that the Commission clarify that New PJM Companies and other utilities joining PJM are to be held harmless from any loop flows or congestion that result from the RTO choices made by the other Alliance Companies.

39. New PJM Companies submit that if the Commission does not provide the

³²We note that in an order issued on May 21, 2003, in Docket No. EL03-35-002, the Commission directed a joint filing by the market monitors of Midwest ISO and PJM to address the potential for inefficient dispatch and gaming opportunities due to the seam between the two RTOs. In that filing, the market monitors are to explain the seams issues, how and when they are expected to be resolved, and who is taking the leadership role in the seams process. When Midwest ISO and PJM file their joint operating agreement, they must explain how their proposal addresses the issues and recommendations contained in the market monitors' report. See Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61, 210 (2003).

requested clarification, the Commission erred in directing AEP, ComEd, Illinois Power, PJM and Midwest ISO to propose a solution which will effectively hold harmless utilities in Wisconsin and Michigan from any loop flows or congestion that results from the proposed configuration. They argue that their decision to join PJM has not created a non-contiguous configuration for Midwest ISO and question how the former Alliance Companies' RTO choices would render Midwest ISO's scope and configuration inadequate.³³ In addition, they contend that (1) the Commission has not established, based on substantial evidence, that incremental loop flows (or congestion), reliability or cost impacts will occur as a result of their joining PJM; (2) the Commission's condition is unduly discriminatory as it fails to consider loop flows across the PJM system as a result of decisions by some former Alliance Companies to join Midwest ISO;³⁴ and (3) the hold harmless condition is vague and did not provide a standard for developing the required "hold harmless" proposals. They argue that flows do not change merely because of the decision to join a particular RTO and object to requiring AEP, ComEd and Illinois Power to hold Michigan and Wisconsin utilities harmless from flows of energy that would occur regardless of which RTO they choose to join. In addition, they assert that the goals of the condition should be to ensure coordination so that parties will not be affected as a result of the RTO choices of all the former Alliance Companies. They request that the Commission clarify that any utilities that are required to hold other utilities harmless with respect to loop flows should file their proposals to satisfy this requirement as part of their anticipated Section 205 filings.

40. New PJM Companies also request that the Commission clarify the meaning of "financial impacts" when it directed PJM and Midwest ISO to analyze changes in loop flows and congestion, and post the expected financial and operational impacts prior to adding new members.³⁵

³³They argue that Midwest ISO is currently non-contiguous and, yet, the Commission still found in Midwest Independent Transmission System Operator, 99 FERC ¶ 61,302 (2001), that Midwest ISO satisfied the minimum characteristics of Order No. 2000. They also submit that Midwest ISO would be contiguous with the addition of Ameren and Northern Indiana Public Service Company.

³⁴They state that loop flows across PJM systems from Michigan and the rest of Midwest ISO are greater than loop flows across Midwest ISO and that the Commission, by requiring utilities joining PJM to "hold harmless" other utilities joining Midwest ISO without requiring similarly situated PJM transmission owners to be held harmless, penalizes only New PJM Companies for their RTO choices.

³⁵See July 31 Order at P 54.

41. Illinois Power requests that the Commission specify a standard of configuration for Illinois Power to measure its hold harmless obligations, or, alternatively, eliminate the obligation. It requests that, at a minimum, the Commission should: (1) require Illinois Power, AEP and ComEd to propose a correction to conditions that are demonstrably a product of their collective RTO election; and (2) explain why such a condition is not imposed on all comparable situations.

42. Illinois Power also requests clarification of the July 31 Order's requirement that Illinois Power, ComEd and AEP propose a solution that will effectively hold harmless utilities in Wisconsin and Michigan from any loop flows or congestion resulting from the configuration. Illinois Power seeks clarification that this condition is limited to a good faith effort to develop such a solution and that the Commission will not require Illinois Power to bear the cost of implementing any such solution. Illinois Power seeks rehearing of this condition to the extent the Commission intends that this condition encompass financial contributions from Illinois Power on the grounds that imposing such costs on some parties and not others, is inequitable and unjustifiable.

Commission Response

43. We will deny rehearing of the requirement that utilities in Wisconsin and Michigan be held harmless from loop flows or congestion that result from the proposed RTO configuration. New PJM Companies and Illinois Power do not deny that an inter-RTO seam will result at the already highly constrained southern interface of the Wisconsin Upper Michigan System (WUMS) and that the proposed RTO configuration would partially isolate Wisconsin and Michigan. That the proposed configuration would result in an inter-RTO seam at such a critically constrained interface is cause for concern with respect to adverse congestion and loop flow impacts, given that, as noted above, one of the goals of RTO formation is to internalize and efficiently manage congestion and loop flows. In order to ensure that the proposed configuration is reasonable, utilities in Wisconsin and Michigan, therefore, must be held harmless from congestion or loop flows resulting from the creation of this seam during the interim period prior to commencement of the common market (at which time congestion and loop flows will be effectively internalized).³⁶

³⁶New PJM Companies' reliance on the existence of the seam to argue against the hold harmless provision reflects a misreading of not only the Commission's order approving Midwest ISO's RTO status, but also the Commission's order rejecting the Alliance Companies' RTO status and finding that there should be a single RTO in the Midwest. The Commission granted Midwest ISO RTO status because it found that

(continued...)

44. New PJM Companies do not substantiate their claim that loop flows and congestion will remain the same regardless of which RTO they choose to join. However, even if loop flows and congestion remain the same, the financial and operational impacts associated with such loop flows and congestion may not be the same under the proposed configuration as compared to a configuration where loop flows were internalized within one RTO. In any event, arguments concerning such financial and operational impacts are more appropriately raised at the time that a proposal to effectuate the hold harmless condition has been filed.

45. Nor do we agree that the hold harmless condition is unduly discriminatory because it does not also hold PJM transmission owners harmless from congestion and loop flow resulting from the choice of certain former Alliance Companies to join Midwest ISO. The fact of the matter is that the former Alliance Companies that chose to join Midwest ISO are not similarly situated to New PJM Companies and Illinois Power. We find that the decisions of Ameren, Nipsco and FirstEnergy to join Midwest ISO are consistent with the scope and configuration requirements of Order No. 2000. As New PJM Companies acknowledge, the addition of Ameren and Nipsco to Midwest ISO, in fact, improved Midwest ISO's contiguity, and, thus, enhanced RTO scope and configuration. These companies' RTO choices, therefore, do not require conditions, such as a requirement that these companies hold PJM transmission owners harmless as a result of their decisions to join Midwest ISO, in order to mitigate inappropriate RTO scope and configuration. Their choices, however, are distinguishable from New PJM Companies and Illinois Power, whose RTO choices, without conditions, would result in inappropriate RTO configuration and, therefore, necessitate the hold harmless condition.

³⁶(...continued)

Midwest ISO was best positioned to meet the requirements of Order No. 2000 and should, therefore, form the basis for the single RTO in the Midwest. Alliance Cos., et al., 97 FERC ¶ 61,327 at 62,531 (2001). However, the Commission specifically noted that Midwest ISO exhibited configuration problems on its eastern border that were inconsistent with the Order No. 2000 scope and configuration requirements, and found that these problems would be solved by successful integration of some or all of the Alliance Companies into Midwest ISO. Midwest Independent Transmission Operator, Inc., 97 FERC ¶ 61,326 at 62,507-508, order on reh'g, 103 FERC ¶ 61,169 (2001). This action was entirely consistent with Order No. 2000, in which the Commission specifically provided that it would not categorically deny RTO status or delay RTO start-up where transmission owners representing a large majority of the facilities in a region are ready to move forward, even though agreement by a few transmission owners in the region has yet to be obtained. See Order No. 2000 at 31,086.

46. The July 31 Order directed New PJM Companies, Illinois Power, PJM and Midwest ISO to propose a solution to effectuate the hold harmless condition, and stated that such a solution should be part of an overall joint operational plan to be filed by Midwest ISO and PJM. We expect that Midwest ISO and PJM will be instrumental performing the analysis of the impacts associated with the proposed and alternate configurations that will form the basis of a hold-harmless solution, and also that such a solution will be an integral part of coordination agreements between Midwest ISO and PJM. Accordingly, we will deny the requests for clarification to the extent that they seek our authorization to unilaterally propose hold-harmless solutions. Rather, New PJM Companies and Illinois Power should work with Midwest ISO and PJM to develop and jointly propose a solution.³⁷

47. Consistent with the discussion above and in the previous section, we will deny Illinois Power's request for clarification that this condition is limited to good faith efforts to develop a hold-harmless solution. However, we will clarify the standard against which Wisconsin and Michigan utilities should be held harmless, and clarify the meaning of financial impacts. In Alliance Companies, et al., 102 FERC ¶ 61,214 (2003), in response to the settlement judge who presented questions to the Commission regarding the meaning of the language establishing the "hold harmless" condition in the July 31 Order, the Commission clarified that utilities in Wisconsin and Michigan should be held harmless from any adverse operational and financial impacts related to loop flow and congestion resulting from the choices of AEP, ComEd, and Illinois Power to join PJM. The Commission added that such financial impacts may include changes in congestion uplift, locational prices, or changes in levels and/or frequency of Transmission Loading Relief procedures, and any other significant commercial impacts that can be reasonably identified and quantified. The Commission also clarified that utilities in Wisconsin and Michigan should be held harmless from any adverse operational and financial impacts related to loop flow and congestion resulting from the choices of AEP, ComEd, and Illinois Power to join PJM, as compared to what would have existed had AEP, ComEd,

³⁷The July 31 Order directed that the hold harmless solution be filed as part of the joint operating agreement, between Midwest ISO and PJM, addressing how they will manage the seam between them prior to the implementation of the common market. We clarify above that this agreement must be filed at least 60 days prior to the commencement of transmission service over the transmission systems of any of the New PJM Companies or Illinois Power under the PJM tariff or integration of any of those systems into the PJM market. We clarify that our intent in the July 31 Order was that an adequate hold harmless solution must be in place at the commencement of transmission service over the transmission systems of any of the New PJM Companies or Illinois Power under the PJM tariff or integration of any of those systems into the PJM market.

and Illinois Power joined Midwest ISO and loop flows were internalized.³⁸ As discussed above, we further clarify here that utilities in Wisconsin and Michigan should be held harmless from any such adverse operational and financial impacts during the interim period prior to commencement of the common market at which time congestion and loop flows will be effectively internalized. Finally, consistent with our discussion in the prior section, we find it premature to address responsibility for costs associated with implementation of the hold harmless condition. Cost responsibility issues are more appropriately addressed in the context of Section 205 filings implementing the hold harmless condition.

D. Section 206 Investigation

48. In the July 31 Order the Commission also instituted, in Docket No. EL02-111-000, an investigation and hearing before a presiding administrative law judge pursuant to Section 206 of the FPA with regard to the rates for through and out service under the Midwest ISO and PJM tariffs and with respect to the protocols relating to the distribution of revenues associated with through and out service in the PJM, PJM West, and Midwest ISO Transmission Owners Agreements.³⁹

49. New PJM Companies request that the Commission clarify that the Section 206 investigation ordered in the July 31 Order should respect intra-RTO arrangements for maintaining revenue neutrality and minimizing cost shifts during a transition period. In addition, they request clarification that the arrangements for maintaining revenue neutrality and minimizing cost shifts associated with intra-RTO transactions should not impose costs on participants in another RTO. If the Commission does not make the requested clarification, they seek rehearing on the grounds that there is no factual basis for the Section 206 investigation and that the assertion that the July 31 Order's finding

³⁸We note that on March 28, 2003, the settlement judge issued a status report to the Commission stating that, while the parties found the Commission's order helpful, it also raised other issues of interpretation among the parties. On April 30, 2003, the settlement judge issued another status report to the Commission stating that the parties needed more technical information, and that PJM and Midwest ISO stated that they would jointly issue a White Paper on congestion management coordination. The settlement judge held a technical conference on May 7, 2003, so that PJM and Midwest ISO could present their White Paper and open the floor for technical discussions among the parties. The settlement judge stated that she would keep the Commission apprised of any further developments in this matter in a status report on May 30, 2003.

³⁹See July 31 Order at P 50.

that inter-RTO rate pancaking has been one of the primary obstacles to RTO formation is unsupported and contradicted by the record and by the Commission's orders approving the existing rates for through and out service under the Midwest ISO and PJM tariffs.⁴⁰ In addition, they contest the value of investigating rates that will be superseded in the foreseeable future by rate changes that they anticipate filing under FPA Section 205. They request termination of the Section 206 proceeding. Separately, New PJM Companies request clarification that the Commission is not prejudging a future rate filing to incorporate New PJM Companies into the PJM Open Access Transmission Tariff (OATT).

50. DTE requests clarification regarding the scope of the Section 206 investigation initiated in the July 31 Order. It states that it is not clear whether the Commission, in referring to the IRCA as providing useful guidance, intended that the scope of the investigation also include "an examination of the justness and reasonableness of 'lost pancaking revenues,' which were a part of the IRCA's inter-RTO rate methodology." DTE requests that, to the extent that the Commission intends that the hearing in Docket No. EL02-111-000 include issues regarding lost pancaking revenues, the Commission should clarify that the Section 206 investigation would examine the justness and reasonableness of: (1) the methodology used to establish lost revenue amounts, which were part of the IRCA's inter-RTO rate methodology; and (2) existing transmission rate levels of transmission owners who propose to recover lost pancaking revenues in Docket No. EL02-111-000.⁴¹ DTE also requests clarification that alleged lost revenues may only be recovered for a transition period until December 31, 2004, consistent with the April 25 Order. DTE notes that in the April 25 Order the Commission found that DTE's cost of service arguments regarding existing transmission rate levels in the context of lost revenue calculations were premature and were more appropriately raised at the implementation stage, i.e., when actual rates are filed. As DTE does not want to be foreclosed from raising cost-of-service issues in the hearing ordered in Docket No. EL02-111-000, it requests clarification that this proceeding constitutes this implementation stage.

Commission Response

⁴⁰In support they cite to Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001), and PJM Interconnection LLC and Allegheny Power, 96 FERC ¶ 61,061 (2001).

⁴¹DTE Energy states that the justness and reasonableness of existing transmission rates must be placed at issue if such rates are to be used as the basis for calculating alleged lost revenues. DTE Energy Clarification/Rehearing at 4.

51. The rate filings to incorporate New PJM Companies into PJM's OATT are at issue in the hearing presently under way in Docket Nos. ER03-262-000 and ER03-262-001, and we will clarify that the Commission is not prejudging the issues in that proceeding. We need not address the requests for clarification that intra-RTO pricing arrangements should not impose costs on participants in another RTO and that the Section 206 investigation will respect intra-RTO arrangements for maintaining revenue neutrality and minimizing cost shifts. In this regard, we do not intend to prejudge what is the appropriate outcome for this proceeding, which the parties' requests would have us do. We will clarify, however, that the Commission's guidance concerning transition period pricing in the context of a specific proposal in the April 25 Order⁴² still applies to intra-RTO rates to incorporate the former Alliance Companies into PJM and Midwest ISO.

52. We will deny rehearing of the finding that the inter-RTO rate issue must be resolved as a condition of accepting the proposed configuration. While the July 31 Order cited the wrong page of the transcript of the July 17, 2002 Commission meeting,⁴³ the fact remains that PJM and Midwest ISO have agreed that inter-RTO rates is an issue which needs to be addressed.⁴⁴ Additionally, Midwest ISO has indicated that it shares the Commission's concern that inter-RTO rates must be addressed if the Commission is to promote formation of RTOs that are appropriately configured.⁴⁵ Finally, as noted above, the proposed configuration divides a highly interconnected area of the transmission grid and partially isolates Wisconsin and Michigan utilities, which would result in greater dependency on inter-RTO transmission service than would be the case given different RTO choices and, therefore, also necessitates that the inter-RTO rate pancaking issue be resolved.

53. In addition, we find that the various requests that the Commission clarify the scope of, or terminate, the Section 206 investigation have been overtaken by subsequent events. On March 31, 2003, in Midwest Independent System Operator, et al., 102 FERC ¶ 63,049 (2003), the presiding administrative law judge in Docket No. EL02-111-000 issued an Initial Decision. The presiding administrative law judge found no precedential authority that would permit him to order the elimination of the Regional Through and Out Rates (RTORs) between the expanded PJM and Midwest ISO under the circumstances of

⁴²April 25 Order, 99 FERC at 61,442-47.

⁴³The correct citation is to pages 176-77, and not page 89.

⁴⁴See July 17, 2002 Commission Meeting, Tr. at 176-77.

⁴⁵See Jim Torgerson statement at June 12, 2002 Commission Meeting at 6 (filed June 18, 2002).

the proceeding, and further stated that the RTORs that would exist between the expanded PJM and Midwest ISO were not unjust and unreasonable and should not be eliminated. The presiding administrative law judge added that, if they were eliminated, a Seams Elimination Charge/Cost adjustment Assignment Charge (SECA) such as proposed by the parties should be adopted in their place to prevent cost shifting between the native load ratepayers in one RTO and those in the other.⁴⁶ The Initial Decision is currently pending before the Commission.

E. ITC Participation

54. New PJM Companies state that the July 31 Order implicitly assumed that they would join National Grid in the formation of an ITC and request that the Commission clarify that it did not require them to participate in an ITC.⁴⁷ They state that, under the terms of their June 25, 2002 memorandum of understanding (MOU) with PJM,⁴⁸ each of the New PJM Companies has the option of joining PJM either as part of an ITC or as an individual transmission owner. They also request clarification that the Commission did not require that the PJM ITC agreement be identical to those of Midwest ISO. They assert that each RTO must be able to address its own unique set of facts and circumstances.

55. If the Commission does not provide the requested clarifications, New PJM Companies argue that the Commission lacks the authority to require them to join an ITC as it is their business decision under the terms of their MOU with PJM.⁴⁹ They also contend that the Commission similarly lacks the authority under the FPA to require that the PJM ITC agreements be identical to Midwest ISO's, and note that each RTO may face

⁴⁶See 102 FERC ¶ 63,049 at P 7, 101.

⁴⁷New PJM Companies support PJM's August 15, 2002 filing, which sets forth a framework for cooperation between PJM and Midwest ISO to meet the relevant conditions of the July 31 Order. They state that they are working towards completing an agreement to form an ITC to operate within PJM West, with National Grid as managing member. They intend to make a joint rate filing with Illinois Power and DVP later this year to reflect their participation in PJM West under the PJM Tariff. See New PJM Companies Rehearing at 3-4.

⁴⁸New PJM Companies refer to the MOU with PJM that they filed in this proceeding on June 25, 2002.

⁴⁹New PJM Companies Rehearing at 38-39.

completely different facts and circumstances. They request that the Commission, on rehearing, overturn these conditions.

Commission Response

56. As evidenced by their June 25, 2002 MOU filed in Docket No. EL02-65-008, New PJM Companies and National Grid were actively pursuing an ITC arrangement with National Grid as a managing member.⁵⁰ Subsequently, in the July 31 Order, the Commission found that the participation of National Grid in both Midwest ISO and PJM, and operating as ITCs on both sides of the proposed seam could help resolve seams issues.⁵¹ Thus, we relied upon the fact that National Grid would manage ITCs on both sides of the proposed seam as one mitigating factor allowing us to accept the proposed configuration and required that PJM modify its tariff to provide a role for ITC's, including a pro forma ITC agreement establishing that role, in order to facilitate the formation of an ITC by New PJM Companies and National Grid.⁵² We are acting within the parameters of Order No. 2000 to ensure that the proposed configuration has the appropriate scope and configuration. In any event, insofar as the parties are pursuing ITCs involving National Grid, there is no need to further address what would happen if, ultimately, they did not form ITCs.

57. As noted above, on January 10, 2003, PJM filed, and on March 14, 2003, the Commission accepted, as modified, amendments to PJM's tariff to provide a role for ITC's.⁵³ However, New PJM Companies have yet to file an application with the

⁵⁰As we discussed above, on June 25, 2002, PJM entered into a Memorandum of Understanding with National Grid, AEP, ComEd, DP&L, Illinois Power, and DVP that AEP, ComEd, DP&L, Illinois Power, and DVP would join PJM either directly or through an ITC arrangement with National Grid as the managing member.

⁵¹See July 31 Order at P 43.

⁵²As noted above, parties that will be responsible in part for resolving the seams issues indicate that the complexity of the proposed configuration presents significant operational challenges. To the extent that ITCs are performing RTO functions on a delegated basis on both sides of the proposed seam, and that those ITCs have National Grid managing them, we believe that these operational challenges will be more easily and better met. Areas where we expect National Grid to aid in resolving seams issues include ATC/AFC and TTC calculation, actions to maintain reliability inside its footprint, and planning and expansion.

⁵³See PJM Interconnection, LLC, 102 FERC ¶ 61,296 (2003).

Commission to form an ITC. Instead, AEP and ComEd filed, and received conditional approval, to join PJM directly.⁵⁴

58. We clarify that, in the July 31 Order, we did not intend to require that New PJM Companies form an ITC under PJM. Rather, our objective was to create standard terms and conditions providing for the participation of ITCs in PJM, which, as noted above, has been accomplished. Whether New PJM Companies and National Grid seek to form an ITC under PJM pursuant to these provisions is their business decision to make. While we continue to believe that National Grid's participation in both Midwest ISO and PJM as managing member of ITCs on each side of the seam between PJM and Midwest ISO could help solve seams issues between the two RTOs, these seams issues will have to be resolved in any event. It will be up to the RTOs themselves to demonstrate, when they file their joint operating agreement as discussed above, that provisions are in place for them to reliably and efficiently manage the seam between them.

59. Regarding New PJM Companies' request for clarification that the ITC agreement under PJM need not be identical to the ITC agreement under Midwest ISO, we have already addressed this issue in approving PJM's tariff amendments and pro forma ITC agreement. Therefore, we will dismiss this request as moot.

F. Section 203 Filing

60. New PJM Companies request rehearing of the July 31 Order's directive requiring the companies to file under FPA Section 203 to transfer operational control of their facilities to PJM when they seek to make their RTO choices effective. Insofar as we have since approved transfers of control pursuant to Section 203, the request for rehearing is moot and will be denied.⁵⁵

The Commission orders:

The requests for rehearing are hereby denied, and clarification is provided, as discussed in the body of the order.

⁵⁴See American Electric Power Service Corporation, et al., 103 FERC ¶ 61,008 (2003).

⁵⁵See supra note 8.

Docket No. EL02-65-009, et al.

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By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.