

150 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-1791-003

ORDER ESTABLISHING PAPER HEARING PROCEDURE

(Issued January 22, 2015)

1. This order establishes a paper hearing in response to a decision by the United States Court of Appeals for the Seventh Circuit (Seventh Circuit),¹ remanding to the Commission the determination, in light of current conditions, of what if any limitation on export pricing to PJM Interconnection, L.L.C. (PJM) for Multi-Value Projects (MVP) by Midcontinent Independent System Operator, Inc. (MISO)² is justified.

I. Background³

2. In July 2002, the Commission accepted the choices of American Electric Power Service Corporation, Commonwealth Edison Company, Commonwealth Edison

¹ *Illinois Commerce Commission v. FERC*, 721 F.3d 764, 778-780 (7th Cir. 2013) (*Illinois Commerce Commission-II*), cert. denied sub nom. *Schuette v. FERC*, 134 S.Ct. 1277 (2014) and cert. denied sub nom. *Hoosier Rural Energy Co-op., Inc. v. FERC*, 134 S.Ct. 1278 (2014).

² Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

³ A complete description of the underlying MVP proceeding can be found at *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh’g and compliance filing*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order).

Company of Indiana, and Dayton Power and Light Company to join PJM.⁴ In so doing, the Commission found that this regional transmission organization (RTO) choice would result in an elongated and highly irregular seam between MISO and PJM that would “island” portions of MISO (Wisconsin and Michigan) from the remainder of MISO and would divide highly interconnected transmission systems across which substantial trade takes place. The Commission found that, without mitigation, the seam would subject a large number of transactions in the region to continued rate pancaking, impeding the goals of Order No. 2000.⁵ Therefore, as a condition of accepting those RTO choices, the Commission required parties in the region to address the problem of rate pancaking across the MISO-PJM seam and instituted a proceeding under section 206 of the Federal Power Act (FPA)⁶ to investigate the rates for service between the two RTOs and established trial-type hearing procedures.⁷ Following the hearing and issuance of an initial decision,⁸ the Commission found that the pancaked rates for service wheeled through or out of one RTO to serve load in the other RTO were unjust and unreasonable and directed the RTOs to eliminate them.⁹

3. The Commission replaced the pancaked rates between MISO and PJM with a license plate rate design, and, consistent with its policies concerning use of license plate rates in RTOs, the Commission also directed MISO and PJM to work with their transmission-owning members to propose a method to allocate between the RTOs the costs of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO (cross-border facilities), noting that the RTOs had committed to develop just such a methodology for allocating the costs of certain facilities in their

⁴ *Alliance Cos.*, 100 FERC ¶ 61,137 (2002) (Alliance 2002 Order), *order on reh'g*, 103 FERC ¶ 61,274 (2003).

⁵ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,024 (1999) (citing the elimination of rate pancaking as one of the benefits of Order No. 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁶ 16 U.S.C. § 824e (2012).

⁷ Alliance 2002 Order, 100 FERC ¶ 61,137.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049 (2003).

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 23, 2003 Order).

Joint Operating Agreement.¹⁰ In related proceedings while requests for rehearing of the November 18, 2004 Order were pending, the Commission accepted proposals to include in the Joint Operating Agreement methods to allocate between the RTOs the cost of cross-border facilities built for reliability purposes¹¹ and cross-border facilities that provide economic benefits.¹²

4. In the MVP Order, the Commission accepted the proposed MVP charge for export and wheel-through transactions, except for transactions that sink in PJM. With regard to transactions that sink in PJM, the Commission stated that the filing parties (MISO and the MISO Transmission Owners (MISO TOs)) had not shown that their proposal did not constitute a resumption of rate pancaking along the MISO-PJM seam, contrary to previous Commission orders.¹³ The Commission stated that, while there have been some changes since the elimination of rate pancaking between MISO and PJM, the Commission did not find that such changes were sufficient to mitigate the RTO scope and configuration concerns that led the Commission to find that pancaked rates between MISO and PJM are unjust and unreasonable. The Commission also found arguments that its decision to eliminate rate pancaking is now incorrect to be impermissible collateral attacks on prior Commission orders.¹⁴

5. In the MVP Rehearing Order, the Commission denied rehearing, reiterating that Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will look at the extent to which an RTO would encompass one contiguous area, whether it encompasses a highly interconnected portion of the grid, and will recognize trading patterns.¹⁵ The

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004) (November 18, 2004 Order) (“[T]he Commission does require that proposals to use license plate rates clearly address how the cost of new transmission facilities will be allocated and how that methodology will impact efficient transmission expansion.”), *reh’g denied*, 131 FERC ¶ 61,174, at P 22 (2010).

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008).

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

¹³ MVP Order, 133 FERC ¶ 61,221 at P 440 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35).

¹⁴ *Id.*

¹⁵ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 289 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

Commission rejected the argument by MISO and the MISO TOs that, as a result of changes in membership of PJM and MISO, the Commission's previous concerns have been alleviated. The Commission instead found that:

[N]o party has provided substantial evidence comprehensively addressing the factors identified in Order No. 2000, nor have they otherwise supported their claim that the Commission's scope and configuration findings regarding the irregular Midwest ISO-PJM seam no longer are justified.^[16] While parties may be correct that the underlying regulatory priorities and state and federal requirements have changed since the Commission rendered its previous findings regarding the appropriateness of rate pancaking between Midwest ISO and PJM (e.g., implementation of state renewable portfolio standards), the relevant requirements of Order No. 2000 remain applicable.^[17]

6. The Commission also rejected attempts by rehearing parties to distinguish MVP charges from the pancaked rates that were previously eliminated by the Commission on the basis of the types of transmission projects considered (e.g., new versus existing transmission projects), transmission planning processes employed (e.g., regional versus local project planning), or benefits generated (e.g., cross-border versus local benefits). The Commission determined that none of those arguments changed its view of the scope and configuration of MISO and PJM, nor did they suggest that the design of the proposed MVP cost allocation methodology would not involve pancaked rates between MISO and PJM. The Commission also rejected the notion that its previous orders encouraging a broader sharing of transmission costs implicitly endorsed an impermissible resumption of rate pancaking. In addition, the Commission rejected the argument that MVP charges should be viewed as being akin to charges that recover the costs associated only with administering MISO and its markets.¹⁸

7. With respect to the challenges to the Commission's decision to exempt PJM entities from an allocation of MVP charges but not loads within MISO or in other regions, the Commission found that such arguments were collateral attacks on its previous decision to eliminate rate pancaking between MISO and PJM, but not between MISO and other RTOs, and, as such, it need not consider them. However, the

¹⁶ *Id.* (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 33).

¹⁷ *Id.*

¹⁸ *Id.* P 290.

Commission did note that it had stated in the July 23, 2003 Order that the circumstances presented in that proceeding were “unprecedented” and explained that certain transmission owners were “uniquely situated” in relation to PJM and MISO.¹⁹

8. The Commission also disagreed with claims that the MVP Order conflicted with cost causation principles, endorsed free ridership by PJM members, and condoned unduly preferential treatment for PJM loads. The Commission noted that, while the MVP Order rejected the proposed methodology to allocate MVP costs to transactions that sink in PJM, it did not find that any allocation of MVP costs to PJM would necessarily be unjust and unreasonable, nor did the Commission otherwise prohibit MISO from seeking to allocate MVP costs to PJM loads (e.g., through a filing under section 205 of the FPA²⁰) in a manner that does not involve an impermissible resumption of pancaked rates and is in accordance with cost causation principles.²¹

9. On June 7, 2013, the Seventh Circuit granted a petition for review regarding the Commission’s determination in the MVP Orders that, in view of Commission precedent prohibiting rate pancaking along the seam between MISO and PJM, MISO may not allocate costs of MVPs to export transactions that sink within PJM. The Seventh Circuit remanded the case to the Commission for further proceedings to determine, in light of current conditions, what if any limitation on export pricing to PJM by MISO is justified.²²

10. On May 6, 2014, PJM Transmission Owners (PJM TOs) filed a motion to establish procedures on remand in order to supplement the record to ensure a solid foundation for its decision on remand.²³ Specifically, PJM TOs recommend that the

¹⁹ *Id.* P 291 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at PP 29-30).

²⁰ 16 U.S.C. § 824d (2012).

²¹ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 292 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

²² 721 F.3d at 780.

²³ PJM TOs Motion at 4 & n.14 (citing *Black Oak Energy, L.L.C. v. PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,099 (2014)). The following PJM Transmission Owners are participating in this motion: American Electric Power Service Corporation, on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company

(continued...)

Commission establish paper hearing procedures. PJM TOs state that a paper hearing can be completed promptly, will provide necessary due process for the stakeholders, and will allow a final Commission decision to be issued within months and thereby provide the stakeholders financial certainty without unnecessary delay.²⁴ They request that the Commission set an appropriate schedule for submissions by the parties of: (1) verified statements; (2) verified answering statements and accompanying comments; and (3) rebuttal comments. They state that the Commission's order should encourage the parties to engage in informal discovery. To the extent the parties are unable to cooperate in informal discovery, PJM TOs state that they reserve the right to request that the Commission institute more formal discovery procedures.

II. Discussion

11. We will establish paper hearing procedures to allow parties to supplement the record in this proceeding. We will first provide a 45-day period for parties to submit comments regarding, in light of current conditions, what if any limitation on export pricing to PJM for MVPs by MISO is justified. Reply comments will then be due within 30 days. Parties are encouraged to provide studies, methodologies, or other evidence to support their positions.

(collectively "AEP"); The Dayton Power and Light Company; Exelon Corporation; FirstEnergy Service Company on behalf of American Transmission Systems, Inc., Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, The Potomac Edison Company and Monongahela Power Company (collectively, "the FirstEnergy Companies"); Old Dominion Electric Cooperative; Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and Rockland Electric Company.

²⁴ PJM TOs argue that a trial-type evidentiary hearing is unnecessary as there is no need to weigh the credibility of witnesses.

The Commission orders:

A paper hearing procedure is hereby established, as discussed in the body of this order. Parties' comments are due 45 days from the date of this order and reply comments are due 30 days thereafter.

By the Commission. Commissioner Honorable is present.

(S E A L)

Kimberly D. Bose,
Secretary.