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November 28, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED[3]
NOV 2 8 2001
Missouri Public
Service Commission

RE: Case No. EO-2001-684

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **JOINT SYNOPSIS OF FERC ACTIVITY.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dennis L. Frey

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DLF:ccl
Enclosure
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED[3]
NOV 2 8 2001
Missouri Public Service Commission

In the Matter of the Application of Union Electric Company d/b/a AmerenUE for an Order Authorizing It to Withdraw from the Midwest ISO to Participate in the Alliance RTO	))))))	Case No. EO-2001-684

JOINT SYNOPSIS OF FERC ACTIVITY

COME NOW the undersigned parties ("Signatories") and, pursuant to the Commission's November 21, 2001 Order Directing Filing, respectfully submit the following Joint Synopsis of FERC activity since the October 10, 2001 evidentiary hearing in the above-styled case:

1. On October 11, 2001, the Federal Energy Regulatory Commission ("FERC") issued Opinion No. 453, "Opinion and Order Affirming in Part and Clarifying in Part Initial Decision, Addressing Separately Briefed Issue, and Addressing Supplemental Filings" with respect to the Midwest ISO (Docket Nos. ER98-1438-000 et. al.). In that opinion, the FERC states: "The Commission intends for this order to provide the Midwest ISO with the authority it needs to become operational as soon as possible." In addition to Opinion No. 453, the FERC has issued no other opinions or orders related exclusively to Independent System Operators ("ISOs") or Regional Transmission Organizations ("RTOs") in the Midwest. A copy of Opinion No. 453 is attached as Appendix A.

2. On November 7, 2001, the FERC issued its Order Providing Guidance on Continued Processing of RTO Filings. This Order, which is attached as Appendix B, outlines several steps that the FERC will take to move the RTO process forward.

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3. The FERC has not yet approved National Grid USA as the managing member of the Alliance RTO.

4. The FERC has sent to the various state commissions a letter seeking answers to a series of questions regarding RTOs in the Midwest. Moreover, on November 27, 2001, the FERC Commissioners held a telephone conference with Midwest state commissioners and their staffs in a further effort to obtain input from the state commissions.

5. In recent FERC agenda meetings, the FERC has stated its intention to make a decision regarding the RTO situation in the Midwest by this coming Christmas. Accordingly, it appears that the December 15, 2001 start-up date, formerly set by the FERC, is no longer in effect for the Midwest.

6. Unless directed otherwise, the Commission's Staff ("Staff") will submit a further update to the Commission on December 6, 2001. The Staff also suggests that Union Electric Company, d/b/a AmerenUE do likewise.

7. Due to the short time period and the press of numerous other Commission matters, the parties were unable to file this document by 12:00 noon on this date, as ordered by the Commission. The parties apologize for the delay.

Respectfully submitted,

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Missouri Energy Group

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 28th day of November 2001.

Dennis L. Frey

97 FERC ¶ 61,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 453

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER98-1438-000 ER98-1438-006 ER98-1438-007 ER01-479-000 and ER01-479-001
The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, Kentucky Utilities Company	Docket No. EC98-24-000

OPINION AND ORDER AFFIRMING IN PART AND CLARIFYING
IN PART INITIAL DECISION,
ADDRESSING SEPARATELY BRIEFED ISSUE,
AND ADDRESSING SUPPLEMENTAL FILINGS

Issued: October 11, 2001

Appendix A

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 453

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER98-1438-000 ER98-1438-006 ER98-1438-007 ER01-479-000 and ER01-479-001
The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, Kentucky Utilities Company	Docket No. EC98-24-000

APPEARANCES

Karl Zobrist for **Midwest Independent Transmission System Operator, Inc.**

David S. Berman, Paul M. Flynn, Michael E. Small, and Barry S. Spector for **Midwest ISO Participants**

Kevin F. Duffy for **American Electric Power Service Corporation**

Bonnie S. Blair, Mary Nagelhout, and David R. Straus for **American Municipal Power - Ohio**

Peter J. T. Brickfield, Christopher C. O'Hara, and Frederick H. Ritts for **Blue Ridge Power Agency** and **Steel Dynamics, Inc.**

Wayne A. Kirkby, William M. Lange, Deborah A. Moss, and Robert M. Neustifter for **Consumers Energy Company**

William D. DeGrandis and Jennifer Han for **Central Iowa Power Cooperative**, **Corn Belt Power Cooperative**, and **Soyland Power Cooperative**

John Ward for **Central Iowa Power Cooperative** and **Corn Belt Cooperative**

Michael P. May for **Cities of Batavia and St. Charles, Illinois**, and **Municipal Electric Utilities of Wisconsin**

James N. Horwood, David Lieb, and David E. Pomper for **City of Detroit, Michigan**

Jeffrey L. Landsman for **Dairlyland Power Cooperative**

Gregory W. Camet, Jon P. Christinidis, Mary Ann Huntington, and John D. McGrane for **The Detroit Edison Company**

Douglas F. John, Shelby L. Provencher, and Gordon J. Smith for **Duke Energy Trading and Marketing, L.L.C.**, and **NYMEX**

Daniel A. King and Kathryn L. Patton for **Electric Clearinghouse, Inc.**

Terry R. Black and Susan Hedman for **Environmental Coalition**

Howard A. Benowitz and Alan I. Robbins for **Hamilton, Ohio**, and **Illinois Municipal Electric Agency**

Paul G. Foran and Eric Robertson for **Illinois Industrial Energy Consumers**

Robert A. Jablon for **Index Energy Services, Inc.**

Thomas C. Trauger for **Indiana Municipal Power Authority**, **Michigan Central Power Agency**, **Michigan Public Power Agency**, and **Wolverine Power Supply Cooperative**

Eric Eisen for **Indiana Utility Regulatory Commission**

Samuel C. Randazzo for **Industrial Energy Users - Ohio** and **Midwest Coalition for Effective Competition**

Lee Cullen and Curt F. Pawlisch for **Madison Gas and Electric Company**

Walter R. Hall II and Bryan G. Moorhouse for **Maryland Public Service Commission**

David D'Alessandro, Kelly A. Daly, Gregory O. Olaniran, and David A. Voyes for **State of Michigan** and **Michigan Public Service Commission**

Robert A. Jablon and Sarah C. Weinberg for **Michigan Central Power Agency, Michigan Public Power Agency**, and **Wolverine Power Supply Cooperative**

Edward J. Finn for **Northern Indiana Public Service Company**

Peter J. Mattheis for **Nucor Steel**

J. Cathy Fogel and Sang Y. Paek for **Ormet Primary Aluminum Corporation**

Denise R. Foster and Denise Goulet for **Pennsylvania Office of Consumer Advocate**

Neil L. Levy and Steven M. Sherman for **ProLiance Energy, LLC**

Thomas W. McNamee for **Public Utilities Commission of Ohio**

Michael Briggs, Randolph Q. McManus, and Wendy B. Warren for **Reliant Energy Power Generation , Inc.**

Becky Bruner for **Western Resources, Inc.**

Walter T. Woelfle for **Wisconsin Electric Power Company**

John Michael Adragna, Howard A. Benowitz, Susan N. Kelly, Alan I Robbins, and Michael G. Stuart for **Wisconsin Public Power, Inc.**

Robert L. Daileader, Jr., and Elizabeth W. Whittle for **Wisconsin Public Service Corporation**

Hyun Sun Kim, Joseph H. Long, Stanley A. Berman, Richard L. Miles, and Laura K. Sheppeard for the **Staff of the Federal Energy Regulatory Commission**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos.	ER98-1438-000 ER98-1438-006 ER98-1438-007 ER01-479-000 and ER01-479-001
The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, Kentucky Utilities Company	Docket No.	EC98-24-000

OPINION NO. 453

OPINION AND ORDER AFFIRMING IN PART AND
CLARIFYING IN PART INITIAL DECISION,
ADDRESSING SEPARATELY BRIEFED ISSUE,
AND ADDRESSING SUPPLEMENTAL FILINGS

(Issued October 11, 2001)

I. Introduction

This proceeding is before the Commission on exceptions to an Initial Decision (Midwest Independent Transmission System Operator, Inc., 89 FERC ¶ 63,008 (1999)). The proceeding concerns the initial application to form the Midwest Independent Transmission System Operator (Midwest ISO).

In addition to addressing the litigated issues from this proceeding, this opinion addresses a separately briefed issue and supplemental filings, all of which are components of the same proceeding, as discussed further below.

The Commission intends for this order to provide the Midwest ISO with the authority it needs to become operational as soon as possible. To date, no regional entity exists that performs the functions to be performed by the Midwest ISO in its region. The Commission believes that an operational Midwest ISO, as currently configured, will bring public interest benefits to its region that should not be delayed. These benefits include, among other things, reduced transmission rates, increased transmission system reliability, and increased competition in generation sales.

We note that during the pendency of this proceeding, much has changed. The Commission continues to examine developments in the Midwest,[1] and other regions of the country,[2] and may take further action on the matters addressed herein, as necessary, to assure appropriate structure and operations of proposed regional transmission organizations (RTOs).[3]

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[1]See Illinois Power Company, 95 FERC ¶ 61,183 (2001), reh'g denied, 95 FERC ¶ 61,026 (2001); see also, Southwest Power Pool, Inc. et al., 96 FERC ¶ 61,062 (2001).

[2]See GridSouth Transco, LLC, et al., 96 FERC ¶ 61,067 (2001) and related orders; see also PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 (2001) and related orders.

[3]Midwest ISO's updated filing in Docket No. RT01-87-001 and other related filings are pending. The Commission is encouraged by developments related to the Midwest ISO, e.g., Midwest ISO's expanded membership and its settlement with the Alliance Companies addressing interregional coordination, and by Midwest ISO's efforts to be operational on or by December 15, 2001.

II. Procedural Background

On January 15, 1998, ten transmission-owning public utilities[4] (Applicants) filed an application under section 203 of the Federal Power Act (FPA), 16 U.S.C. § 824b (1994), for Commission approval of the transfer of operational control over their jurisdictional facilities to the Midwest ISO. Concurrently, in Docket No. ER98-1438-000, the entities establishing the Midwest ISO (Midwest ISO Participants)[5] filed under section 205 of the FPA for Commission approval of the Midwest ISO Tariff and the Midwest ISO Agreement.

By order issued September 16, 1998, the Commission conditionally authorized the establishment of the Midwest ISO and established hearing procedures.[6]

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[4]The Cincinnati Gas & Electric Company; Commonwealth Edison Company and Commonwealth Edison Company of Indiana (Collectively, Commonwealth Edison); Illinois Power Company; PSI Energy, Inc.; Wisconsin Electric Power Company; Union Electric Company; Central Illinois Public Service Company; Louisville Gas & Electric Company; and Kentucky Utilities Company.

[5]Those participating are listed in the filing as Cinergy Corp. (for Cincinnati Gas & Electric Company; PSI Energy, Inc.; and Union Light, Heat & Power Company), Commonwealth Edison, Wisconsin Electric Power Company, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), Wabash Valley Power Association, Inc. (Wabash), Ameren (for Central Illinois Public Service Company and Union Electric Company), Kentucky Utilities Company, Louisville Gas & Electric Company, and Illinois Power Company. Hoosier and Wabash did not file under FPA section 203 because they are not public utilities.

[6]84 FERC ¶ 61,231 (1998)(September 16 Order). The Commission analyzed Midwest ISO's proposal pursuant to the ISO principles laid out in Order No. 888. See 84 FERC at 62,142. See also Order on Motion for Reconsideration and Request for Clarification, 85 FERC ¶ 61,250 (1998), and Order on Rehearing, 85 FERC ¶ 61,372 (continued...)

By order issued May 17, 1999, the Commission waived the issuance of an initial decision on the issue of return on equity.[7] The order approved a stipulated rate of return on equity floor of 10.5 percent and allowed the parties to directly brief the Commission on the issue of whether an upward adjustment to equity return should be provided as an incentive for membership in the Midwest ISO.

Following a public hearing on the remaining issues, the Presiding Judge issued an Initial Decision on November 26, 1999.[8]

III. Summary Affirmance Issues

The Initial Decision identified and resolved ten issues, identified therein as issues A through J.[9] We will adopt the Initial Decision's sequential identification of issues. In this opinion, we summarily affirm the Initial Decision, without discussion, on all issues except issues B and F which are addressed below. We find that the Initial Decision properly decided the issues that we are summarily affirming and the arguments on exceptions, to the extent there were any, have failed to convince us that the Initial Decision erred or that additional discussion is necessary.

Midwest ISO Participants also request that the Commission specifically approve two trial stipulations entered into prior to the hearing.[10] Specifically, Midwest ISO

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[6](...continued)
(1998).

[7]87 FERC ¶ 61,189 (1999).

[8]89 FERC ¶ 63,008 (1999)(Initial Decision).

[9]The issues are: (Issue A) Loss recovery methodology; (Issue B) ISO Cost Adder; (Issue C) rate divisor for the Midwest ISO's network and point-to-point transmission services; (Issue D) whether to use distance-based transmission pricing; (Issue E) whether to use locational marginal pricing for congestion management; (Issue F) conditions under which bundled retail loads can be served under the Midwest ISO tariff; (Issue G) deadline for transmission owners to file for a determination of transmission/distribution classification of their facilities; (Issue H) levelized vs. non-levelized ratemaking methodology; (Issue I) penalty provisions; and (Issue J) Ancillary Service Schedule.

[10]See Joint Stipulation of the Midwest ISO Participants, the Commission Trial (continued...)

Participants seek clarification by the Commission that the rates, terms and conditions it is approving are those set forth in the original filing, as modified by Joint Stipulation and the Loss Stipulation and any other changes deemed necessary by the Commission in its opinion.[11] The Commission will so clarify.

IV. Issues for Discussion

Issue B Whether the ISO cost adder proposed by the Midwest ISO Participants is just and reasonable and what, if any, changes should be made to such ISO cost adder?

Schedule 10 of the Midwest ISO Tariff proposes to charge transmission customers a rate adder that will recover the Midwest ISO's costs associated with investment and expenses to run the ISO. The ISO Cost Adder is based on the budgeted expenses to be recovered that month divided by the MWh of transmission service expected to be provided under the Midwest ISO Tariff during the same period, subject to a true-up.

During the six year transition period,[12] the ISO Cost Adder is capped at fifteen cents per MWh. Any costs in excess of the cap will be deferred and amortized monthly over the first five years following the transition period, and recovered from customers taking service under the tariff.

Initial Decision

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[10](...continued)
Staff, and other Undersigned Parties Regarding Certain Issues Set for Hearing (Joint Stipulation), Ex. S-20; see also Additional Joint Stipulation Between Midwest ISO Participants and the Commission Trial Staff Concerning Recovery of Losses (Loss Stipulation), Ex. S-21.

[11]Midwest ISO Participants Brief on Exceptions at 27-28.

[12]Initially, all new wholesale and unbundled retail transmission service is placed under the Midwest ISO Tariff. Existing wholesale loads, bundled retail load and grandfathered agreements that are not released under state retail access programs will be placed under the Midwest ISO Tariff in six years.

The Initial Decision concluded that the ISO Cost Adder is unjust and unreasonable because: (1) the calculation of the ISO Cost Adder during the transition period fails to include existing bundled retail load and any grandfathered wholesale load not served under the tariff;[13] (2) the Midwest ISO fails to propose either a rate cap, with related cost support, or a formula rate to be implemented in the ISO Cost Adder after the transition period; therefore, it is unclear what charges will apply; and (3) the Midwest ISO failed to explain how the Midwest ISO will apportion the deferred costs among the customers served under the Midwest ISO Tariff after the transition period ends.[14]

The Initial Decision further stated that the imposition of additional charges to recover the deferred costs from the transition period would result in a rate change and, therefore, at the end of the transition period, the Midwest ISO must make a section 205 filing detailing the apportionment of deferred cost and providing full cost support for any additional cost adder to be charged.

Exceptions

Midwest ISO Participants argue that bundled load should not be assessed the ISO Cost Adder during the transition period because during this period (1) bundled load will not take service under the Midwest ISO Tariff and (2) bundled load will not receive direct benefits from the ISO. According to Midwest ISO Participants, with the exception of the reliability function, most of the ISO's assigned functions do not apply to bundled customers and, in fact, only benefit transmission customers under the tariff.[15]

Midwest ISO Participants state that by assigning cost responsibility equal to the proportion of bundled loads in the ISO Cost Adder rate divisor, transmission owners will

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[13]The Initial Decision stated that because all of the Midwest ISO Participants' transmission customers will benefit from the Midwest ISO's operational and planning responsibilities for the transmission system as well as increased grid reliability, these loads should be included in the divisor to develop the ISO Cost Adder.

[14]The Initial Decision also stated that the Midwest ISO has not provided a means to amortize and collect deferred costs for formerly bundled customers who become unbundled within the transition period.

[15]These functions include transmission service to eligible customers, implementing and administering OASIS, offering ancillary services, serving as regional security coordinator, and engaging in a collaborative planning process.

face a trapping of costs and thus bear a large part of the ISO's administrative costs during the transition period. Midwest ISO Participants claim that these additional ISO costs cannot be recovered absent contract modification to grandfathered agreements and transmission owners may have difficulty in some states recovering additional ISO costs in retail rates.[16]

Midwest ISO Participants state that if the Commission concludes that bundled loads and grandfathered contracts should be included in the divisor for recovery of the ISO's administrative costs, then the Commission should clarify: (1) that ISO costs assigned to grandfathered wholesale load will not be collected from customers taking service under those contracts until the Commission approves the pass through of those costs to those customers; and (2) that any ISO costs assigned to bundled retail load not taking service under the tariff should be accounted for but deferred and collected after the transition period.[17]

Consumers Energy Company (Consumers) argues that it is inconsistent to impose the ISO cost adder on bundled retail load while restricting the transmission owners from taking network service from the Midwest ISO for power purchased on behalf of their bundled retail load during the transition period. Consumers states that the only way to make all bundled load responsible for the cost adder is to allow all such load to take network service from the ISO on a non-discriminatory basis.[18]

IMEA states that because retail bundled load benefits from the creation of the Midwest ISO, they should be assessed a portion of its start-up costs.

Trial staff disagrees that the formation of the Midwest ISO only provides limited benefits to bundled retail and grandfathered loads as Midwest ISO Participants suggest. Trial staff argues that transmission customers taking service under the Midwest ISO tariff should not subsidize the bundled retail and grandfathered loads that are part of the network load of each transmission customer. As an option, trial staff suggests that costs

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[16]Midwest ISO Participants Brief on Exceptions at 18-19.

[17]Midwest ISO Participants Brief on Exceptions at 24-26.

[18]Consumers' Brief on Exceptions at 20.

attributable to these loads be deferred until the end of the transition period, at which time an additional cost adder component under the tariff would apply to these loads.[19]

Discussion

The Commission will affirm the presiding judge's finding that the Midwest ISO Cost Adder must include all existing bundled retail load and any grandfathered wholesale load. We agree with the presiding judge that all users of the grid operated by the Midwest ISO will benefit from the Midwest ISO's operational and planning responsibilities for the Midwest ISO transmission system, as well as increased grid reliability of the transmission system. Therefore, to ensure that loads will properly bear a fair share of the Midwest ISO's costs, all long-term firm, bundled retail, and grandfathered load should be included in the divisor in developing the Cost Adder.

The above discussion, moreover, highlights a more fundamental problem in the proposed design and operation of the Midwest ISO. The Midwest ISO's origin dates back to January 15, 1998, when it filed with the Commission in Docket Nos. EC98-24-000 and ER98-1438-000 for Commission approval of the Midwest ISO Tariff and Midwest ISO Agreement. In that Agreement, the Midwest ISO proposed to not place existing bundled retail load and any grandfathered wholesale load under the Midwest ISO's Tariff for at least a six year transition period. In the context of an ISO, the Commission accepted the Midwest ISO's proposal in its September 16 Order.[20] Now, however, the Commission must review its proposal in the context of Order No. 2000.[21]

As we explained in Southern,[22] Order No. 2000 and section 35.34(k) of the Commission regulations require that an RTO be the only provider of transmission services over the facilities under its control. Section 35.34(k)(1)(i) provides that:

> The Regional Transmission Organization must be the only provider of transmission service over the facilities under its control, and must be the sole administrator of its own Commission-approved open access transmission tariff.

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[19]Trial staff Brief On Exceptions at 15.

[20]84 FERC ¶ 61,231 at 62,167-68 (1998).

[21]Midwest ISO's compliance with Order No. 2000 will be more fully addressed in Docket Nos. RT01-87-000 and RT01-87-001.

[22]See Southern Company Services, Inc., 94 FERC ¶ 61,271 (2001).

> The Regional Transmission Organization must have the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Regional Transmission Organization must have the authority to review and approve requests for new interconnects.[23]

The Commission therefore directs Midwest ISO to revise its Midwest ISO Agreement and Tariff, as necessary, to place and provide all load under the Midwest ISO's Tariff. Further, the Commission intends to initiate a rulemaking proceeding on market design and market structure to translate the RTO functions into concrete protocols that RTOs will follow in providing transmission services and administrating or monitoring certain energy markets and the decisions we make here will be subject to that rulemaking.

Issue F Whether the Provisions of the Midwest ISO Agreement and the Midwest ISO Participants' Proposed Tariff, Which Prescribe Conditions Under Which Bundled Retail Loads Can Be Served Under the Midwest ISO Tariff, Are Just And Reasonable?

Section 37 of the Midwest ISO Tariff provides that during the transition period transmission owners may elect to take network service to serve bundled retail load only if they meet one of two conditions. They must either be transmission dependent utilities within a particular rate zone (i.e., their transmission facilities within a zone are insufficient to serve their load in that same zone) or they must operate in a state that requires them to take transmission service from Midwest ISO to serve bundled retail load. If they do not satisfy either of these conditions, they must take point-to-point service to serve these loads.[24]

Initial Decision

The presiding judge found that the conditions under which bundled retail loads can be served under the Midwest ISO Tariff (not including the MAPP member exemption which was filed later) are just and reasonable because allowing all transmission owners to elect network transmission service for their bundled load would disrupt the negotiated

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[23] 18 C.F.R § 35.34(k)(1)(i) (2000).

[24] After the issuance of the Initial Decision, in Docket No. ER01-479-000, Midwest ISO proposed to add Section 37.5 which provides a special exemption from these restrictions to certain members of Mid-Continent Area Power Pool (MAPP). This will be discussed further below.

revenue distribution that was key to the formation of the Midwest ISO.[25] The presiding judge also found that it would be unjust to upset the consensus reached by the Midwest ISO Participants on this point in order to appease the two parties (Consumers and Detroit Edison) who objected to these provisions, because they were not participants of the Midwest ISO.

Briefs on and Opposing Exceptions

On exceptions, Consumers argues that the Initial Decision erred by failing to require the Midwest ISO to allow bundled retail load to be served under its Tariff. Consumers asserts that allowing some transmission owners to have this option and not others is discriminatory. This, Consumers argues, derives from the fact that using network service to serve bundled retail load will remove a "virtual" rate pancake that otherwise applies when the point-to-point service rate is combined with the transmission costs included in the bundled retail rate. Consumers argues that allowing this type of disparate treatment will lead to improper price signals and the encouragement of inefficient power decisions. Consumers also asserts that this proposal contravenes the requirements of ISO Principle No. 3 which calls for non-discriminatory open access to an ISO's systems and all services under its control at non-pancaked rates. Finally, Consumers rejects the presiding judge's rationale that preserving the negotiated revenue distribution is sufficient reason to allow some transmission owners to take network service to serve bundled retail load while denying the same benefit to other transmission owners.

In their Brief Opposing Exceptions, Midwest ISO Participants answer that there is no rate pancake in the filed proposal, the presiding judge's attempt to preserve the negotiated revenue distribution is appropriate, and the Commission has already approved this revenue distribution method. Accordingly, the Midwest ISO Participants argue that the Commission should affirm the presiding judge and reject Consumers' proposal to upset that revenue distribution method.

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[25]Appendix C to the Owners Agreement requires that revenue from network service be distributed to the transmission owners based on what zone a load is located in while revenue from point-to-point service is distributed based 50 percent on transmission investment and 50 percent on power flows. Accordingly, a relaxation of the transition conditions on who can take network service to serve bundled retail load would alter the overall revenue distribution to transmission owners.

Commission trial staff, in its brief opposing exceptions, states that the Commission already addressed this issue in the September 16 Order and accepted the proposed transition period restrictions on using network service to serve bundled retail load.

Discussion

The Commission will affirm the presiding judge's finding on this issue. The Commission recognizes that a great amount of work and negotiation went into the voluntary attempt to organize the Midwest ISO. We recognize that efforts to mitigate cost shifts, including the negotiated revenue distribution, were essential to the process of reaching a voluntary consensus among the great number of participants in those negotiations, and that rejecting the proposed conditions on use of network service to serve bundled retail load will upset that negotiated revenue distribution. Finally, we recognize that the conditions that Consumers opposes only exist during the transition period. On this basis, we hereby approve the transition conditions on use of network service to serve bundled retail load. These conditions are temporary, they are consistent with the wishes of the Midwest ISO Participants, and we believe that the public interest benefits of Midwest ISO operation will far outweigh any temporary drawback attributable to these transition conditions.

V. Separately Briefed Issue (Return On Equity Adjustment)

Background

On April 16, 1999, the Midwest ISO Participants, Wisconsin Public Service Corporation, Wisconsin Public Power, Inc., the Illinois Municipal Electric Agency, the City of Hamilton, Ohio and the Commission trial staff filed a joint motion to waive an initial decision on the issue of rate of return on common equity. The motion was filed as a result of a joint stipulation dated April 6, 1999 among the parties. The Joint Stipulation states in pertinent part:

> The Midwest ISO Participants, Staff and any other signatories agree to the following procedure for the purposes of avoiding or minimizing the burdens and risks of litigation with respect to the issue of rate of return on equity. First, a rate of return on equity floor of 10.50 % shall be established. Second, the Midwest ISO Participants as well as others will be allowed to argue to the Commission for an increase in the rate of return on equity from 10.5% to up to 11.50% to reflect their participation in the Midwest ISO. . . . The parties shall not be permitted to address in their briefs any other issues as to the return on equity. Thus, all issues pertaining to return on equity are

> resolved except the issue of whether an upward adjustment to equity return should be provided as an incentive for membership in the Midwest ISO. Nothing herein shall preclude the Midwest ISO Participants from supporting the request for an 11.50% return by arguing that the facts and circumstances would warrant an even higher return; provided that no such return higher than 11.50% shall be requested to be approved in this proceeding.

By order issued May 17, 1999,[26] the Commission granted the motion to waive the Initial Decision on the issue of return on equity. In doing so, the Commission also approved the rate of return on equity floor, stating that the 10.50 percent agreed to in the joint stipulation is fair and reasonable and in the public interest and is, therefore, approved. The Commission further stated that the sole issue to be briefed is "whether an upward adjustment to equity return should be provided as an incentive for membership in the Midwest ISO."

Pleadings

On August 2, 1999, Blue Ridge Power Agency (Blue Ridge), Wisconsin Public Service Corporation (WPSC), Midwest ISO Participants, Consumers and Joint Consumer Advocates[27] (Joint Consumers), respectively, filed initial briefs on the establishment of the return on equity for the Midwest ISO. On September 16, 1999, Blue Ridge, WPSC, Midwest ISO Participants and Consumers, respectively, filed reply briefs. On September 16, 1999, trial staff filed a reply brief and motion to disregard allegedly improper arguments made by Midwest ISO Participants, Consumers, and WPSC, and extra-record testimony filed by Midwest ISO Participants. On the same date, Blue Ridge filed a motion to strike the same arguments and extra-record testimony of Midwest ISO Participants. On October 1, 1999, Midwest ISO Participants filed an answer in opposition to motions to strike or disregard portions of its initial brief.

Initial Briefs

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[26] 87 FERC ¶ 61,189 (1999).

[27] Joint Consumer Advocates consist of the Pennsylvania Office of Consumer Advocate, the Ohio Consumers' Counsel, the Missouri Office of Public Counsel, the Indiana Office of Utility Consumer Counselor, and The Citizens Utility Board.

Midwest ISO Participants state that a return on equity of at least 11.50 percent is necessary to encourage continued and expanded ISO participation. Because the Midwest ISO will provide substantial benefits such as lower transmission rates, more reliable service, and independent administration of a region-wide transmission tariff, the Midwest ISO Participants state that the Commission should affirmatively reward the participating transmission owners. According to the Midwest ISO Participants, an increase in the return on equity will counter the reduction in revenues that Participants will experience, and may facilitate the construction of transmission facilities needed to maximize ISO benefits.

Midwest ISO Participants argue that increased risks and cost under-recovery associated with participation also justify a higher return on equity. Midwest ISO Participants argue that transmission owners will face increased financial risk because transmission owners will be required to incur costs at the direction of the ISO, some of which may not be fully recovered in rates. Transmission owners will also face increased operational risks because they will bear the obligations of ownership such as debt costs while the Midwest ISO will direct operation of the transmission facilities. Moreover, according to Midwest ISO Participants, the transmission owners may face liability which extends beyond their existing service territories to include the territory served by the ISO.

WPSC and Consumers also agree that an upward adjustment to the equity return should be provided. They contend that a higher return is needed to (1) encourage the participation by a large number of transmission owners throughout the region, (2) reflect a return more in line with existing state commission allowed returns, and (3) provide sufficient return to encourage and fund needed construction. WPSC states that by joining the Midwest ISO, a transmission owner accepts considerable risk including loss of control over assets and reduced transmission revenues associated with the elimination of rate pancaking.[28] Consumers argues that a true incentive for voluntary Regional Transmission Organization (RTO) formation is a positive adjustment to an existing authorized return. Consumers states that a RTO's initial return on equity should be no lower than one percent above the highest currently authorized return on equity of the individual RTO transmission owners.[29]

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[28]WPSC also states that it faces an immediate reduction in revenues if it follows the Wisconsin requirement that all transmission service including that for bundled retail load be taken from the ISO.

[29]According to Consumers, the Commission should grant the Midwest ISO a return

(continued...)

Blue Ridge and Joint Consumers oppose an unconditioned increase to the return on equity as an incentive to join the Midwest ISO. According to Blue Ridge, because the Midwest ISO is a transmission-only utility, it is a low-risk regulated monopoly that cannot be bypassed by its transmission dependent utilities or customers. Therefore, Blue Ridge argues that the return on equity should be lower than a return on equity for a vertically integrated utility to reflect this decreased risk. Blue Ridge asserts that, since no downward adjustment was made, the proposed return on equity already contains an incentive.[30]

Joint Consumers also opposes the use of a rate of return on equity adjustment to encourage or reward participation in the Midwest ISO. Joint Consumers states that the incentive mechanism is unnecessary and would result in rates that are unjust and unreasonable, particularly for those Midwest ISO Participants who have already voluntarily committed to participate. An upward adjustment increases transmission rates without providing any other benefit to consumers. In addition, Joint Consumers argues that a rate of return adder will increase transmission rates and serves to move regulated transmission rates further from marginal cost and economic efficiency. According to Joint Consumers, with an excessive rate of return, a utility has the incentive to overinvest in transmission utility plant in order to maximize excess profits.[31]

Trial staff differentiates between payment for the acceptance of risk and payment in the form of an incentive for the purpose of encouraging companies to participate in the ISO. Trial staff states that Midwest ISO Participants, Consumers, and WPSC violated the Joint Stipulation by failing to restrict their arguments to reasons why an adder should be allowed in order to encourage transmission owners to join the Midwest ISO.[32]

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[29](...continued)
on equity between 15.23 percent and 17.23 percent. Consumers' Initial Brief at 7.

[30]Blue Ridge Initial Brief at 9-10.

[31]Joint Consumers favors a generic policy proceeding to address how to set an appropriate rate of return for an RTO.

[32]Trial staff requests that the Commission disregard certain inappropriately made arguments, such as the extra-record testimony attached to the Midwest ISO Participants' Brief on Exceptions. In the alternative, trial staff requests that the Commission set for hearing the issue of what the Midwest ISO's market-required return on equity would be. Trial staff Reply Brief at 5.

Midwest ISO Participants' Response

Midwest ISO Participants state that the majority of Midwest ISO customers recognize that any increase in rates resulting from an 11.50 percent return on equity is offset by the elimination of rate pancaking and the larger the Midwest ISO becomes, the greater the transmission cost savings and other benefits will be to consumers.[33] They state that Blue Ridge and Joint Consumers ignore substantial disincentives to Midwest ISO participation, including reduced revenues and increased risks which are somewhat mitigated by the 11.50 percent return. They also fail to recognize that a return of at least 11.50 percent is the minimum return required as a starting point to encourage needed investment in transmission facilities.

Midwest ISO states that the joint stipulation is a compromise which establishes a 10.50 percent "floor" or lower limit on the equity return for the Midwest ISO. The fact that the parties agreed to support the 10.50 percent floor return on equity as just and reasonable (and the Commission found that return "fair and reasonable and in the public interest) does not mean that a higher return cannot be justified under the Commission's established rate of return standards. In fact, the joint stipulation specifically provides that the Midwest ISO Participants may argue that the "facts and circumstances" warrant a higher return.[34] Midwest ISO Participants also point out that an 11.50 percent return cannot serve as an incentive for overinvestment because the Midwest ISO, not the transmission owners, will decide on the planning and construction of transmission facilities.

In addition, Midwest ISO Participants argue that Blue Ridge offers no evidence to support its assertions that as a transmission-only utility, Midwest ISO faces less risk than a vertically integrated utility. To the contrary, Midwest ISO Participants state that those entities like the Midwest ISO will be subject to increased risks that warrant higher returns on equity. In addition to the loss of transmission revenues from the elimination of rate

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[33]According to Midwest ISO Participants, the issue before the Commission is whether the compromise 11.50 percent equity return should be adopted as an incentive for membership in the Midwest ISO or to lessen the disincentives of joining, which is separate from the issue of whether or not some form of performance-based regulation should apply after the ISO is formed and operational.

[34]Midwest ISO Participants Reply Brief at 29.

pancaking, transmission owners may need to collect from retail ratepayers substantial monies that are incurred by the ISO actions.[35]

Discussion

The Commission finds that the proposed adjustment to ROE to incent membership in the Midwest ISO constitutes an innovative rate proposal as defined in Order No. 2000.[36] Under the innovative rate requirements of Order No. 2000 and the Commission's regulations promulgated thereunder,[37] the Midwest ISO must first qualify as an RTO in order to receive approval of an innovative rate proposal. The determination of whether or not the Midwest ISO qualifies as an RTO will be made in a subsequent order.[38] While we are hereby rejecting the proposed 100 basis point adjustment to ROE, our rejection is without prejudice to Midwest ISO making a new rate filing supporting an innovative rate proposal consistent with the Commission's requirements for innovative rates. We endorse the concept of innovative rates where supported and will give our prompt consideration to an innovative rate proposal by Midwest ISO.[39]

VI. Supplemental Filing in Docket No. ER98-1438-006 (Loss Factors)

Background

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[35]For example, the transmission owner may need to recover costs from bundled retail load of constructing facilities required by the Midwest ISO which the owner would not have constructed as a non-participant.

[36]Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 FR 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom, Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.).

[37]See, 18 CFR § 35.34(e) (2000).

[38]See Docket Nos. RT01-87-000, et al.

[39]At that time the Midwest ISO may also to wish to revisit the issue of whether its base ROE of 10.5 percent properly reflects its financial requirements in light of the many changes that have transpired since the issue was stipulated. However, we emphasize that we are not requiring Midwest ISO to revisit that issue and we see no reason why it may not begin operating under the base ROE of 10.5 percent.

The proposed loss recovery methodology was Issue A from the Initial Decision. As noted earlier, prior to the hearing, Midwest ISO Participants and Commission trial staff entered into a Loss Stipulation pursuant to which the parties agreed that the proposed loss recovery methodology is appropriate but also agreed that one of the originally filed inputs to the methodology required recalculation. The parties agreed that the transmission owner loss factors, as originally filed, were not consistent with the assumptions of the proposed loss recovery methodology and agreed that the Applicants would submit revised loss factors in a subsequent filing. The presiding judge accepted the proposed loss recovery methodology in light of the Loss Stipulation, and we have summarily affirmed that action above. In Docket No. ER98-1438-006, the Midwest ISO Participants filed their revised loss factors.

Applicants' Representations

Applicants state that the revised loss factors were calculated using a uniform methodology that was applied to all of the companies. This methodology included a thorough evaluation of all of the different components of losses and took into consideration parallel flows on the Midwest ISO system.

Intervention and Answer

WPPI submitted a motion to intervene and limited protest. WPPI does not challenge the underlying methodology used to calculate the loss factors, but instead challenges the output of that methodology for two of the twelve transmission owners involved: Northern States Power (NSP) and Alliant Energy Operating Companies (Alliant). WPPI suggests that the calculation, in these two instances, may have been flawed in two ways. First, WPPI argues that a double-recovery of losses could occur because NSP and Alliant receive loss compensation for certain MAPP-related transactions. Second, WPPI asserts that an over-recovery of losses could occur as a result of NSP's and Alliant's reciprocity or dynamic scheduling arrangements. WPPI maintains that these errors should be corrected.

In their answer, Applicants state that there can be no MAPP-Midwest ISO double-recovery of losses because once NSP and Alliant transfer control of their transmission facilities to Midwest ISO, all transmission service over those facilities will be provided under the Midwest ISO Tariff. Thus, the MAPP loss recovery procedure will no longer apply to NSP and Alliant and there will be no MAPP-related double recovery. Next, Applicants state that all control area loads and losses will be properly matched, including those under dynamic scheduling and reciprocity arrangements. Accordingly, there will be no over-recovery on this account either.

Discussion

The Commission will approve the proposed loss factors. No party challenges the methodology used to calculate these loss factors and Applicants' response to WPPI sufficiently addresses WPPI's concerns regarding the output of the methodology.

VII. Supplemental Filings in Docket Nos. ER98-1438-007 and ER01-479-000

Background

In Docket No. ER01-479-000, the Midwest ISO filed amendments to the Midwest ISO Tariff and Owners Agreement to: (1) modify the membership of the Midwest ISO Advisory Committee, and (2) to allow some additional Transmission Owners, who are members of MAPP, to take Midwest ISO network service for their bundled retail customers.[40] Simultaneously, in Docket No. ER98-1438-007, the Midwest ISO filed a reformatted Midwest ISO tariff and Owners Agreement to conform with the requirements of Order No. 614. Midwest ISO proposed an effective date of November 20, 2000, for both filings.

Interventions and Answer

Motions to intervene in Docket No. ER01-479-000 were filed by Western Area Power Administration (WAPA), Midwest ISO Transmission Owners, Commonwealth Edison, MAPPCOR, and the Illinois Commerce Commission. Motions to intervene in Docket No. ER98-1438-007 were filed by Commonwealth Edison, GEN-SYS Energy, and Dairyland. In addition, Consumers filed a protest[41] and WAPA, Midwest ISO Transmission Owners, and Commonwealth Edison filed comments.

Midwest ISO filed a Motion for Leave to Answer and Answer.

Discussion

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[40]By letter dated June 4, 2001, designated Docket No. ER01-479-001, the Midwest ISO requested expedited action on the filing in Docket No. ER01-479-000.

[41]Because the subject matter of that protest actually applies to one of the changes submitted in Docket No. ER01-479-000, we will deal with it as though it were filed in Docket No. ER01-479-000.

With respect to Docket No. ER01-479-000, WAPA's comments included a request that Midwest ISO add certain additional language to the Midwest ISO Tariff in order to allow federal entities to participate in the Midwest ISO. In its answer, Midwest ISO committed to make the requested changes, with minor modifications, in a later filing. Similarly, Midwest ISO agreed with the comments of Midwest ISO Transmission Owners that the proposed changes to the Midwest ISO Tariff are not effective until the transfer date. Regarding Consumers' Protest,[42] Midwest ISO noted that the proposed modification was made to accommodate MAPP members that contemplated joining the Midwest ISO and if the option to take network service to serve bundled retail load during the transition period is a necessary condition for Consumers to join the Midwest ISO as a transmission owning member, the Midwest ISO would consider the same flexibility for Consumers.

We find that the proposed modifications to the Midwest ISO Tariff and Owners Agreement are acceptable in light of our affirmance of the presiding judge's findings on the issue of network service for bundled retail load during the transition period. The proposed change to the membership of the Midwest ISO Advisory Committee is unopposed and appears reasonable as well.[43] Accordingly, we will grant an effective date of November 20, 2000, for the reformatted and revised Owners Agreement, and make the reformatted and revised Midwest ISO Tariff effective on the transfer date, as requested.

The only comments that dealt with the Order No. 614 compliance filing were from Commonwealth Edison. Commonwealth Edison argued that the reformatted Midwest ISO Tariff should be made effective on the date that the Midwest ISO takes operational control of member transmission systems. In its answer, Midwest ISO agreed. We will accept the filing in Docket No. ER98-1438-007. In light of our approval of the proposed changes in Docket No. ER01-479-000 which are incorporated in this filing, our review indicates that the proposed modifications in Docket No. ER98-1438-007 comply with the requirements of Order No. 614.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part and clarified in part, as discussed in the body of this order.

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[42]In its protest, Consumers basically cited the same arguments it made on Exceptions to the Initial Decision.

[43]We will deal with Midwest ISO's filing to incorporate the proposed WAPA language once it is filed.

(B) Prior to the end of the transition period, the Midwest ISO/Midwest ISO Participants shall make a section 205 filing with the Commission detailing and supporting a post-transition period ISO Cost Adder and detailing how deferred costs from the transition period will be apportioned among all customers under the Midwest ISO Tariff following the end of the transition period.

(C) The rates, terms and conditions hereby approved are set forth in the Midwest ISO Participants original filing as modified by the Joint Stipulation and the Loss Stipulation, and further modified by this Order.

(D) The proposed adjustment to the stipulated return on equity floor is hereby rejected as discussed above.

(E) The proposed loss factors filed in Docket No. ER98-1438-006 are hereby approved, however, as the proposed tariff sheets associated with the revised loss factors do not conform to the requirements of Order No. 614, they must be refiled consistent with the Order No. 614 requirements.

(F) The proposed modifications, and associated designations, filed in Docket Nos. ER98-1438-007 and ER01-479-000 are hereby approved as filed and Docket No. ER01-479-001 is hereby terminated.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electricity Market Design and Structure — Docket No. RM01-12-000

ORDER PROVIDING GUIDANCE ON
CONTINUED PROCESSING OF RTO FILINGS

(Issued November 7, 2001)

It is a fundamental objective of the Commission, in exercising its responsibilities under Part II of the Federal Power Act, to create a seamless, national, competitive marketplace for wholesale sales of electric energy and adequate generation and transmission infrastructure to support that marketplace. Such a marketplace will provide customers with more reliable and efficiently priced electric energy than wholesale markets with unnecessary variation in market rules and business practices. As a cornerstone of support for this national marketplace, we have endeavored for several years to create regional transmission organizations (RTOs) to capture the benefits and efficiencies of a competitive power marketplace for the nation's electricity customers. The FERC has before it numerous ongoing proceedings involving RTO proposals, and it has recently assessed the status of these proceedings and the ongoing changes in the electricity marketplace. Taking into account the various stages of RTO efforts in the country, and the industry and state comments we have received in recent weeks (discussed below), in this order we state some of our goals and provide general guidance on how we intend to proceed on RTO filings and other related efforts. Our decision is in the public interest because it will provide direction for the electric industry and information to the public as we continue to move the RTO process forward.

The Commission held a public conference on RTO issues (RTO Week) during the week of October 15 through 19, 2001. RTO Week consisted of 10 sessions on various topics involving RTOs and the need for clear, appropriately standardized transmission tariff design and market rules. These sessions included participants from a wide range of affected interests and, significantly, included extensive comments from state commissioners. In addition, at our open meeting on October 24, 2001, we received status reports on RTO efforts in various regions of the country, including the Southeast, Northeast and Midwest. In association with the Western Governors' Committee on Regional Electricity Power Cooperation (CREPC) and the Commission's Western Regional Infrastructure Workshop in Seattle, Washington on November 1-2, 2001, the Commission also had the opportunity to hear updates on RTO efforts in the Western Interconnection. We now need to determine an expeditious, yet carefully deliberated, way to complete the development of RTOs, taking into account the need for further industry and state comments.

The Commission intends to complete the RTO effort using two parallel tracks. The first track will be to resolve issues relating to geographic scope and governance of qualifying RTOs across the nation; these will be addressed in pending RT dockets following consultation with state commissioners, as discussed below.

The second track for resolving RTO issues will be in the transmission tariff and market design rulemaking for public utilities, including RTOs, in Docket No. RM01-12-000. This will help address business and process issues needed for organizations to accomplish the functions of Order No. 2000.

The FERC will take several immediate steps to move the RTO process along these tracks: (1) a broader definition of how certain RTO functions will be fulfilled; (2) better state/federal dialogue; (3) further cost/benefit studies; (4) identification of areas where standardization is called for; and (5) creation of a time line for RTO implementation.

Statement of Policy Goals

A. Fulfillment of RTO Functions

The Commission must ensure that the RTO not only efficiently operates a transmission grid, but also undertakes certain activities to enable and sustain a vibrant and fair wholesale marketplace. For both aspects of an RTO to be successful, broad stakeholder support is important. In a number of proceedings, parties have proposed the development of a separate organization to perform some of the wholesale market activities, some of which were specified as RTO functions under Order No. 2000, and some of which have been raised as additional activities to enable vibrant and efficient wholesale markets. These wholesale market activities include: (1) congestion management; (2) ancillary services; (3) administration of a balancing market; (4) OASIS administration, including total transmission capacity and available transmission capacity calculations; (5) security coordination; (6) market monitoring; (7) regional transmission facility planning; and (8) tariff administration and design.

In Order No. 2000, the Commission contemplated that an ITC or an ISO may develop as a stand-alone RTO. In addition, however, the Commission will be seeking comments on other ways wholesale market activities might be fulfilled. For example, Midwest ISO, Alliance and Southwest Power Pool have already agreed to have a single market monitoring unit. In addition, the newly-formed Western Electric Coordinating Council handles both security coordination (reliability) and transmission planning duties. In order to phase in the progress toward comprehensive and geographically-large RTOs, these basic wholesale market activities could first be placed under the control or oversight of the broader organization. Other functions could be integrated into the broader organization later.

In written submissions in various pending dockets and in the discussions during RTO week, particularly from state commissions and public power entities, parties seek assurance that critical wholesale market operations are being administered as objectively as possible. A number of reasonable models have been offered for this function both in the mediation dockets and in pending RTO dockets. The FERC will address these issues in the pending RT dockets.

B. State Participation; Other Outreach

The invaluable participation of state commissioners in RTO Week confirms and reinforces our belief that we must work closely with state commissions to create a seamless national market. To that end, we plan to create and institute state-federal RTO panels as a forum for constructive dialogue between the Commission and state commissions with respect to RTO development.

We have asked our staff to provide recommendations on panel structure and propose a timeline for the work of the panels to begin. We invite state commissioners to participate in this process, and we look forward to working with them to address the ongoing needs of regional markets.

As the first matter of business, we intend to ask state commissioners to provide their advice to the Commission about the make-up of regional markets. Specifically, the Commission will ask them for comments on the allocation of wholesale market activities, as set forth in Section A above. For example, in the West, it is now apparent that the presence of three sub-regional organizations (bound by a workable seams agreement) under a larger umbrella organization has the potential to succeed.

The Commission will institute additional outreach efforts with stakeholders and other interested persons on the status of, and obstacles to, RTO formation. For example, the Commission intends to meet with investor representatives to help us better understand the financing of independent transmission companies and of transmission construction. [1] The Commission seeks to support development of a pro-investment marketplace that is flexible enough, under Order No. 2000, to include both for-profit transcos and not-for-profit ISOs and any reasonable combinations of the two.

C. Cost/Benefit Studies

On a parallel track to the organizational efforts listed above, the Commission will perform additional cost-benefit analyses on RTOs to guide our further efforts. These analyses are intended to demonstrate whether and, if so, how RTOs will yield customer savings and to provide a quantitative basis for the appropriate number of RTOs.

The Commission has established a working group with state commission participation to work with FERC staff and the study consultant in framing these further analyses.

D. Standardization of Market Rules

As recently announced, we intend to issue a notice of proposed rulemaking in this docket that will reform the open access tariffs to standardize market design rules, as appropriate. Our task in this rulemaking will be to balance the need to remove undue discrimination and excessive costs in transmission services with the need to permit regional differences and market innovation. The reformed tariff will be required to be

[1] These meetings will be publicly noticed, and we will invite subsequent comments on their content.

filed by RTOs and other public utilities that own, operate or control interstate transmission facilities.

During RTO Week we received many comments about the need for transmission tariff reform, and we also heard many views about the need for flexibility and market creativity in certain areas. RTO Week provided some concrete suggestions as to where flexibility is needed and where it will be a disadvantage. We look forward to receiving additional comments from the public on these issues.[2] It is important not to compromise the benefits that transmission organizations have already conferred upon the public, and we are committed to making sure that transmission customers and the electric customers they serve will benefit as a result of this effort. We do not believe that the best way to create a national marketplace is to begin with the lowest common denominator, but instead intend to build on successful concepts here and in other countries.

The Commission recently issued an advance notice of proposed rulemaking in Docket No. RM02-1-000 on standardizing generation interconnection agreements and procedures. The first phase of our interconnection rulemaking process will be a Notice of Proposed Rulemaking (NOPR) on terms and conditions of interconnection services to be published in January, 2002. The second phase will be a separate NOPR on pricing issues associated with interconnections, to be published in April 2002. Interconnection rules are

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[2]We encourage parties to view and file electronic comments at www.ferc.gov/electric/rto/mrkt-strct-comments/rm01-12-comments.htm. We will be holding staff follow-up conferences.

a critical piece of open access transmission services and RTOs initially will be required to follow the same interconnection policies that we set forth for other public utilities in the new rules. These rules will help support appropriately sited generation and appropriately priced infrastructure for new generation. It is clear that resolution of the pricing issue early in this process will allow for swifter consensus on broader RTO issues.

E. Timeline/Status

As noted above, numerous filings are pending involving RTO development. The Commission intends to issue future orders addressing the pending filings and providing specific guidance once it has received comments from the state regional panels as discussed above.

In recognition of the fact that RTO development is in very different stages in various parts of the country and that it is not possible for all RTOs to be in operation by the December 15, 2001 deadline established in Order No. 2000, we intend to address in our future orders the establishment of a progressive, but appropriately measured, timeline for continuing RTO progress in each general region. The Commission is particularly cognizant of the critical importance of keeping parties focused on performing RTO functions now while positioning for future, more regional integration. In particular, information systems are especially challenging to coordinate and must be handled with diligence and care. Any timetable ultimately adopted for regional integration must be based on a sound business plan with substantive buy-in from a cross-section of market participants.

Conclusion

This effort to create a seamless, national electricity marketplace is similar to that led by the Commission in the natural gas industry a decade ago. In that regard, the Commission calls upon all interested parties to commit the necessary time and resources to a thorough and expedient completion of the industry transition.

This order is not intended to provide final rulings with respect to creation of RTOs, but to lay out our goals and process for their creation. We have invited public comments subsequent to RTO Week, and we reiterate our willingness to consider the opinions of market participants, state commissions and the general public as we move to complete this transition. Although we strive for consensus where it can be reached, we are aware that the long-term success of regional electric markets will require the

Commission to make timely and clear policy decisions. For that reason, we are committed to a broad and open process that will allow for the most developed record possible.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

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