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## Missouri Public Service Commission

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December 21, 2001

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

**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 **STAFF'S THIRD UPDATE REGARDING 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* By SD

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DLF:ccl  
Enclosure  
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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

**STAFF'S THIRD UPDATE REGARDING FERC ACTIVITY**

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission") and respectfully states:

1. On November 28, 2001, the Staff, the Office of the Public Counsel, the Missouri Industrial Energy Consumers and the Missouri Energy Group jointly filed, pursuant to the Commission's November 21, 2001 Order Directing Filing, their Joint Synopsis Of FERC Activity. Also on November 28, Union Electric Company, d/b/a AmerenUE ("AmerenUE") filed its Synopsis Of Relevant Activity At FERC As Directed By Commission Order.

2. On December 6, and December 14, 2001, the Staff filed successive updates concerning Federal Energy Regulatory Commission (FERC) activity with respect to this matter. Paragraph 4 of the December 14 pleading stated that, unless otherwise directed, the Staff would file another update on December 21, 2001. Inasmuch as the Staff has not received a contrary order from the Commission, the Staff hereby submits its Third Update Regarding FERC Activity.

3. As expected, on December 19, 2001, the FERC met and announced major decisions affecting the future of regional transmission organizations ("RTOs") in the Midwest. Most notably, according to the December 19, 2001 FERC News Release (Attachment A), the

FERC issued an order approving the Midwest Independent System Operator ("MISO") to operate as the sole RTO in the Midwest (Attachment B). In doing so, the FERC issued an order denying the Alliance Companies' proposal to operate as a second RTO in the region and instead encouraged the Alliance Companies to develop proposals as to how they might operate as a for-profit transmission business under the MISO umbrella. (Attachment C). In that connection, the FERC ordered the Alliance Companies to file, within sixty days, a status report regarding their efforts to join the MISO. Accordingly, AmerenUE, as one of the Alliance Companies, will be required to make its intentions known within sixty days.

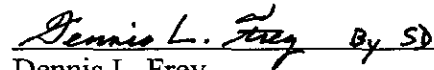
4. In separate but related developments, the Indiana Utility Regulatory Commission ("IURC") issued two orders on December 17, 2001. In one order (Cause No. 42027), the IURC approved the petition of five Indiana utilities to "transfer functional control of operation of their applicable transmission facilities to the MISO." These five Indiana utilities include Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; PSI Energy, Inc.; Vectren Energy Delivery of Indiana, Inc., also known as Southern Indiana Gas & Electric Company; and Wabash Valley Power Association, Inc. (Attachment D). In the other order (Cause No. 42032), the IURC denied the petition of Indiana Michigan Power Company, d/b/a American Electric Power and Northern Indiana Public Service Company to transfer functional control of the operation of their Indiana transmission facilities to the Alliance Regional Transmission Organization ("Alliance RTO" or "ARTO"). (Attachment E).

5. Appended hereto as Attachments A through E, respectively, are copies of the December 19, 2001 FERC News Release concerning the five RTO orders issued by the FERC on December 19, 2001, the two FERC orders noted in paragraph 3 above and the two IURC orders noted in paragraph 4 above.

6. Unless otherwise directed, the Staff will file a further update with the Commission on Friday, December 28, 2001.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

 By SD

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Missouri Bar No. 44697

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#### **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 21st day of December 2001.



# FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426



## NEWS RELEASE

### NEWS MEDIA CONTACT:

Barbara A. Connors  
(202) 208-0680

### FOR IMMEDIATE RELEASE

December 19, 2001

RT01-87-000, et al.; RT01-88-000, et al.; EL-01-80-001, et al.; ER01-3000-000, et al; EC01-137-000

### COMMISSION PAVES WAY FOR OPTIMALLY SIZED MIDWEST RTO

The Federal Energy Regulatory Commission today approved the proposal of the Midwest Independent System Operator (MISO) for a regional transmission organization (RTO) and told the Alliance Companies, which had submitted a separate RTO proposal, to explore joining the MISO organization.

Chairman Pat Wood, III said, "A seamless Midwestern power market that allows for diverse transmission business plans is our goal. A positive trend in our recent RTO work has been the engagement of the state commissions, who are critical partners in making power markets work well."

The Commission said that MISO's proposal generally complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope. The Commission expressed confidence that the Alliance Companies' desire to be a viable, for-profit transmission business can be accommodated under the MISO RTO umbrella.

The Commission acted on five related orders aimed at paving the way for an optimally sized RTO in the Midwest. It stressed that its orders do not preclude different types of RTOs, including for-profit transcos, in other parts of the country.

In granting RTO status to MISO, the Commission cites its announced merger with the Southwest Power Pool (SPP). The Commission also directed MISO to explore ways to address the less than ideal situation on its eastern border before the integration of the

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Alliance Companies into MISO and to present recommendations to the Commission within 60 days.

MISO's RTO, a nonprofit based in central Indiana, will operate in some 20 states and the Canadian province of Manitoba. When merged with the SPP, MISO will stretch from Manitoba to New Mexico. The Alliance companies cover parts of 11 states from Missouri to North Carolina.

In denying the request from the Alliance Companies to form a for-profit transco RTO, the Commission, in a separate order, said the proposed RTO lacked sufficient scope and that the public interest would be best served if Alliance joined MISO. The Commission emphasized the importance of fostering RTO development designed to provide a seamless and robust market for millions of customers. Allowing two RTOs in the Midwest would be a second-best solution that would compromise customers' interests, the Commission said.

Although the Commission did not approve the Alliance proposal as a stand-alone RTO, the order expressed confidence that the companies could form a successful transco under the MISO's Appendix I. Appendix I creates a framework for membership and operation of independent transmission companies within the Midwest ISO. The Commission ordered the Alliance Companies to file a status report on their efforts to join MISO within 60 days.

In a third order, the Commission granted in part and deferred in part a National Grid proposal to manage the Alliance transmission system. The Commission directed the Alliance Companies to explore how their business plan, including National Grid's proposal, could be accommodated within the MISO RTO. The Commission expressed its intent to provide more guidance on this matter in future proceedings.

In other orders, the Commission said that International Transmission Company (ITC), a subsidiary of DTE Energy, could join the new RTO as an independent transmission company that will be able to pursue innovative business strategies. ITC proposes to maintain and develop transmission while turning over to the RTO such functions as congestion management and curtailments, tariff administration, and security coordination. DTE Energy has indicated its intention to sell ITC to a third party, and the Commission preliminarily approved the divestiture of the transmission facilities.

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The Commission made it clear that it was particularly encouraged by MISO's planned accommodation of flexible business plans and innovation as well as its considerable geographic span.

While the MISO and the Alliance Companies had put money and resources into seeking to reconcile their competing proposals, the time had come, the Commission said, for it to make the necessary difficult decisions.

For the most part, the Commission found that MISO satisfied the four characteristics for an RTO—*independence, scope and configuration, operational authority, and short-term reliability*, as well as *key functions*. In approving MISO's RTO plan, the Commission did, however, direct MISO to submit a number of revisions to its compliance filing. They included:

- **Independence characteristic:** The Commission found MISO's independence satisfactory in most respects, but said that transmission owners cannot be permitted to have veto privileges on filings that affect pricing. The Commission conditioned MISO's RTO status on modification of the MISO Agreement to give it the authority to propose rates, terms and conditions of transmission service under the MISO tariff.
- **Scope and regional configuration characteristic:** As indicated, the Commission told MISO to present recommendations within 60 days addressing the question of its eastern seam prior to the integration of the Alliance Companies into MISO.
- **Congestion management function:** The Commission said MISO should participate in its recently announced rulemaking proceeding to standardize market design rules. However, pending the issuance of a final rule, MISO should develop certain congestion management solutions to deal with a superseding congestion management methodology.
- **Market monitoring function:** The Commission ordered MISO to make additional filings to satisfy the criteria for this function to ensure that the independent market monitor (IMM) is truly independent of the RTO, re-file its market monitoring plan as an attachment to its tariff, and meet a 45-day deadline to implement market reform recommendations of the IMM.
- **Planning and expansion function:** The Commission directs MISO to modify its ,

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planning framework to reflect that it will give full consideration to all market perspectives and identify expansions that are critically needed to support competition and reliability. In addition, MISO must revise its planning framework to make it possible for third parties to participate in constructing and owning new transmission facilities identified by the plan.

### Questions and Answers

Q. What action is the Commission taking today with regard to regional transmission organization (RTO) development in the Midwest?

A. Today the Commission is acting on five interrelated orders intended to facilitate the establishment of an optimally sized RTO in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella. Generally, in the orders the Commission does the following: (1) approves the Midwest ISO as an RTO; (2) approves International Transmission Company's (International Transmission) request to transfer operational control of its transmission facilities to Midwest ISO and accepts an agreement between International Transmission and Midwest ISO which would allow International Transmission to be an independent transmission company which performs certain RTO functions; (3) preliminarily approves the divestiture of International Transmission's facilities making it a stand-alone transmission company under the Midwest RTO umbrella; (4) concludes that Alliance Companies' proposed RTO lacks sufficient scope to exist as a stand-alone RTO and thus directs Alliance Companies to explore how their business plan (including National Grid's proposal which seeks to be the managing member of the Alliance Companies) can be accommodated within the Midwest RTO; and, (5) grants in part, and dismisses in part, National Grid's proposal and Alliance Companies' business plan.

Q. What is the general rationale behind the Commission's actions in these five dockets?

A. Our decisions in these five orders consider the record before us as well as the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions.

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Q. What action has the Commission taken today regarding Midwest ISO's application for RTO status?

A. The Commission issued an order granting Midwest ISO RTO status.

Q. Will the Midwest ISO need to make additional filings before its newly approved RTO status becomes effective?

A. No. While the Commission has directed Midwest ISO to make certain additional filings, Midwest ISO may begin operating as an RTO as soon as possible.

Q. Can the Midwest ISO accommodate the Alliance Companies within its umbrella?



A. Yes. Those Alliance Companies who divest their transmission facilities to an independent entity can join Midwest ISO as non-transmission owning members while the independent entity can join under the terms of Appendix I which we discuss further in the International Transmission Company orders. Other Alliance Companies who retain ownership of their transmission facilities may join Midwest ISO as regular transmission owners either singly or as part of a group such as the group which formed American Transmission Company.

Q. What are some of the benefits that the Commission expects Midwest ISO to bring to customers and the electric industry in the Midwest?

A. By assuming functional control over the transmission facilities of so many entities, Midwest ISO should bring a degree of standardization not seen before in the Midwest. For instance, the immediate standardization of generator interconnection procedures over such a vast region should be extremely helpful to the various load serving entities and state commissions as they work to ensure an adequate supply of electricity. Additionally, through its independent operation of the transmission grid, Midwest ISO should help ensure that healthy competition flourishes in the Midwest with all of the attendant customer benefits that such competition tends to bring.

Q. Is this the end of the story for RTO development in the Midwest?

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A. No. While this order is meant to get the ball rolling in the Midwest, the Commission and industry participants are currently engaged in ongoing efforts, on a variety of fronts, to further refine the restructuring of the electric industry. RTO developments in the Midwest may be affected by this process as well.

Q. What action does International Transmission seek in its filings?

A. International Transmission seeks approval of agreements governing the relationship of (1) International Transmission and Midwest ISO (i.e., the ITC-MISO Agreement) and (2) itself, Midwest ISO, and transmission-owning members of Midwest ISO (i.e., the Supplemental Agreement). International Transmission also seeks approval to transfer control of its transmission facilities to the Midwest ISO to allow an RTO to operate International Transmission's facilities in conjunction with the facilities of other transmission owners in the

Midwest ISO. The ITC-MISO Agreement contemplates sharing or assuming responsibilities related to RTO functions once International Transmission is acquired, through divestiture, by an independent entity. The Supplemental Agreement clarifies the operating relationship between Midwest ISO and International Transmission prior to the time International Transmission becomes independent.

Q. What responsibilities does International Transmission propose to assume or share once it is independent?

A. International Transmission seeks to offer a transmission service option to customers for service wholly within its transmission system under International Transmission's tariff terms and rates. A customer could also choose to take service under Midwest ISO's tariff terms and rates.

International Transmission also seeks to address and mitigate certain system security issues in coordination with Midwest ISO; establish ratings of and set maintenance schedules for its transmission facilities; and expand its transmission planning responsibilities (in coordination with Midwest ISO).

Q. What are the circumstances regarding the proposed divestiture of International Transmission Company?

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A. DTE Energy and its wholly-owned subsidiary, International Transmission Company (International Transmission), have jointly requested Commission authority to dispose of International Transmission's facilities to an as-yet-undetermined unaffiliated third party through the sale of International Transmission stock. The applicants state that the purchaser will have no affiliation with a market participant, *i.e.*, any entity that either directly or through an affiliate sells or brokers electric energy or provides ancillary services to a Regional Transmission Organization (RTO) or any other entity that the Commission finds has economic or commercial interests that would be significantly affected by the RTO's actions or decisions.

Q. What outcome is achieved by the Commission's order addressing the proposed divestiture?

A. The Commission preliminarily approves the disposition of International Transmission's facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a

stand-alone transmission company under the Midwest ISO umbrella. additional information the Commission. The Commission finds that the proposal is a significant step in the process of forming a for-profit transmission company that may be sufficiently independent to perform certain RTO functions as set forth in the Commission's Order No. 2000. The order also notes that this type of divestiture, the transfer of control over assets to a non-market participant, is one of the most effective means of separating transmission interests from market or generation interests thereby achieving independence for a for-profit transmission company.

Q. Why has the Commission only given preliminary approval to the joint proposal?

A. Before the Commission can determine whether to give final approval, it must have all the relevant facts, including the identity of the purchaser and other information related to the purchaser and the transaction. Consequently, the order requires the applicants amend their application when International Transmission's purchaser is determined.

Q. What action has the Commission taken with respect to the Alliance Companies?

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A. Today's order essentially overturns an earlier decision that the Alliance Companies' proposal had sufficient scope to become a stand-alone RTO.

Q. Why does the Commission now conclude that the Alliance Companies' proposed RTO lacks sufficient scope to exist as a stand-alone RTO?

A. The Commission's earlier finding regarding the adequacy of the scope of the proposed Alliance RTO was based, in part, on implementation of the Inter-RTO Cooperation Agreement (IRCA) with the Midwest ISO, which was intended to provide the basis for a seamless market in the territories served by both the Midwest ISO and the proposed Alliance RTO. Subsequent events, however, have called into question the IRCA's ability to resolve seams between the two organizations as well as the Alliance Companies' scope.

Q. What were the events that lead to this determination?

A. First, the Midwest ISO and Alliance Companies filed status reports regarding progress in implementing the IRCA which indicated that IRCA implementation has not progressed as expected. Second, the Commission concluded that even in regards to those provisions of the

IRCA that have been addressed, significant seams issues still exist in the areas of available transmission capability (ATC) determination, one-stop shopping, imbalance markets and security coordination.

Q. Are there any additional factors which resulted in the proposed Alliance RTO having insufficient scope?

A. Yes. Since the Commission's previous ruling on scope, International Transmission has elected to withdraw from the proposed Alliance RTO, thereby shrinking the scope of the proposed Alliance RTO.

Q. Were there many parties dissatisfied with the Commission's earlier determination regarding Alliance Companies's scope?

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A. Yes. The overwhelming majority of the Midwest state commissions as well as many intervenors prefer a single Midwest RTO with Midwest ISO as the surviving RTO rather than having both entities as RTOs. State Commissions contend that multiple RTOs managed through seams agreements will not work in the Midwest and emphasize that little progress has been made to date on implementing the IRCA agreement between the Midwest ISO and Alliance Companies. Additionally, state commissions argue that only the Midwest ISO has the infrastructure in place necessary to assume control over transmission facilities.

Q. What is the purpose of National Grid USA's (National Grid's) petition in Docket No. EL01-80-001?

A. National Grid seeks a determination that it not be deemed a market participant, as defined under Order No. 2000, and thus that it would be eligible to manage the Alliance RTO. In response to concerns raised by intervenors, the Commission, in an order issued July 26, 2001, requested that National Grid supply additional information regarding its market interests, particularly last resort retail service, in New York and New England.

Q. What is the purpose of the Alliance Companies' filing in Docket Nos. RT01-101-005, ER99-3144-013 and EC99-80-013?

A. The Alliance Companies seek approval of a business plan in which National Grid would: (1) serve as a strategic investor in the Alliance transco; (2) own transmission facilities within Alliance; and, (3) manage all transmission facilities controlled by Alliance, including those facilities whose functional control, but not ownership, has been transferred to Alliance. The Alliance Companies contend that the business plan will satisfy the Commission's requirement for independence in decision-making by RTOs.

Q. What has been National Grid's response to the Commission's request for more information in the July 26 order in Docket No. EL01-80-001?

A. National Grid commits to implement mechanisms to ensure that until such time as National Grid has permanently disposed of all of its remaining interests in

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generation and sales obligations, it will transfer to non-affiliated entities both the marketing rights and the profits from the sale of energy associated with its remaining interests. National Grid asserts that with respect to its retail market interests in both New England and New York, state restructuring policies and restructuring settlements have required or resulted in the full reconciliation of costs and revenues associated with the service provided by its distribution subsidiaries to retail customers. As a consequence, National Grid claims that it and its affiliates have no economic interest in the provision of retail service. In New York, National Grid stated that Niagara Mohawk (to become a National Grid subsidiary) had entered into arrangements with an affiliate of the Tractebel Corporation which transfer the marketing rights and profits of Niagara Mohawk's power purchase contracts and the risks and responsibilities associated with its last resort service to Tractebel. Those arrangements have now been terminated due to failure to obtain the New York Public Service Commission approval and National Grid states that it is currently analyzing similar options to accomplish the same end once it has acquired Niagara Mohawk. National Grid states further that Niagara Mohawk has sold its last remaining generating interests in New York and has entered into an agreement to sell its wholly-owned power marketer. National Grid states that it intends to sell Niagara Mohawk's 50 percent interest in a Canadian power marketer after it acquires Niagara Mohawk and commits to implement mechanisms to ensure that National Grid will have no economic or commercial interests in the marketer that may be affected by the market in the interim period prior to divestiture.

Q. What concerns and issues have been raised by intervenors regarding the related National Grid petition and the Alliance Companies' business plan filing?

- A. Intervenors raise four principal concerns. First, they assert that conflicts of interest arise because National Grid will have an ability and an incentive to manage the Alliance RTO to benefit its New York market interests to the detriment of other power suppliers in New York. They contend that arrangements of the type entered into with Tractebel, even if they eliminate National Grid's direct economic or commercial interest, will provide National Grid with an incentive to manage Alliance to ensure the success of any third party suppliers to whom it has transferred its interests so as to avoid hearings on the prudence of the power supply arrangements. Second, intervenors note that, in some instances, mechanisms have not yet been filed which propose to transfer National Grid's economic or commercial interests to third parties and argue that granting National

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Grid non-market participant status would be premature before such mechanisms have been reviewed by the Commission. Third, intervenors assert that resolution of interregional coordination issues between the New England-New York-PJM regions and the Alliance region will be impaired and conflicts of interest will arise if National Grid is permitted to manage Alliance while it still owns substantial transmission assets in New England and New York. Fourth, intervenors claim that within Alliance, National Grid will have an incentive and an ability to manage Alliance to benefit the assets it owns within Alliance.

Q. How does the Commission's order today resolve these issues and concerns?

- A. The Commission concludes that National Grid can satisfy criteria which permit it to not be deemed a market participant by virtue of its market interests in New England and New York if it implements the commitments stated in its response to the July 26 order. The Commission also concludes that ruling on concerns related to National Grid's position as manager of Alliance as it may affect the resolution of inter-regional coordination issues and potential discriminatory behavior favorable toward National Grid's transmission assets within Alliance will be premature at this time. In this regard, the Commission dismisses without prejudice the business filing of the Alliance Companies for a stand-alone Alliance RTO in which National Grid would be the managing member as well as a strategic investor. However, the Alliance Companies are encouraged to file a revised business plan for Alliance with National Grid as the managing member of an independent transmission company to operate within the Midwest ISO. The Commission will make a determination of whether such an arrangement satisfies the independence requirement for participation in RTOs based in part on the nature of the transmission functions to be preserved for National Grid's or another managing member's

control.

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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. RT01-87-000  
RT01-87-001  
ER02-106-000  
ER02-108-000  
Not consolidated

ORDER GRANTING RTO STATUS AND  
ACCEPTING SUPPLEMENTAL FILINGS

(Issued December 20, 2001)

On January 16, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing in accordance with Order No. 2000.<sup>1</sup> Subsequent events led Midwest ISO to amend its compliance filing on August 31, 2001. Midwest ISO states that under its current structure, as supported by the Inter-RTO Cooperation Agreement with Alliance Companies (IRCA), it satisfies all of the required characteristics and functions of a Regional Transmission Organization (RTO) under Order No. 2000.

For the reasons discussed below, we find that Midwest ISO's RTO proposal satisfies the criteria required under Order No. 2000 for RTO status. Accordingly, we will grant Midwest ISO RTO status as discussed below. We also accept two supplemental filings as discussed in the body of this order.

We believe that a properly formed RTO in the Midwest will greatly benefit the public interest by enhancing the reliability of the Midwest electric grid and facilitating and enhancing competition. It will accomplish this primarily through its standardization of the rates, terms, and conditions of

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<sup>1</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir. 2001).



transmission service over a broad region. With this order, and others that we are issuing concurrently, we hope to help Midwest ISO achieve substantial benefits for Midwestern customers.

I. Introduction

Today the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimally sized RTO in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000. In taking today's actions, we have made findings as to the RTO structure that we conclude best serves the public interest in the Midwest. Our decisions in these five orders recognize the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions. However, our actions should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO.

For two years now, since the issuance of Order No. 2000, electric industry participants in the Midwest, State commissions, and this Commission have struggled with an array of different proposals and issues and how best to achieve a seamless wholesale power market in the Midwest. While both Midwest ISO and Alliance Companies have spent considerable money and resources in developing and attempting to reconcile their competing proposals, the Commission is at a point where we must make some difficult decisions with respect to the competing proposals. Based on the record before us, and taking into account the views of the majority of the Midwestern State commissions, we conclude that Midwest ISO's proposal most fully complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope, and that the Midwest ISO therefore should serve as the foundation upon which a Midwest RTO should be built. In this regard, we are confident that the Alliance Companies' desire to be a viable transmission business can be accommodated under the Midwest ISO umbrella.

In today's five orders, we take the following specific steps:

- (1) approve the Midwest ISO as an RTO (Docket No. RT01-87-000, et al.);
- (2) approve International Transmission Company's request to transfer operational control of its transmission facilities to Midwest ISO; and accept an agreement between International Transmission Company and Midwest ISO that would allow International Transmission Company to be an independent transmission company that would share certain RTO functions with Midwest ISO (Docket

No. ER01-3000-000, et al.);

(3) preliminarily approve the disposition of International Transmission Company's transmission facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella (Docket No. EC01-137-000);

(4) conclude that Alliance Companies, which filed for approval as a separate RTO, lacks sufficient scope to exist as a stand-alone RTO; but direct Alliance Companies to explore how their business plan (including the proposal for National Grid to become the managing member of Alliance) can be accommodated within the Midwest ISO (Docket No. RT01-88-000, et al.); and

(5) grant in part and defer in part National Grid's request for a declaratory order that it is not a market participant and dismiss Alliance Companies' business plan (Docket No. EL01-80-001, et al.).

We now turn to the specific actions taken in the above captioned dockets.

## II. Background

By order issued September 16, 1998, the Commission conditionally approved the formation of the Midwest ISO.<sup>2</sup> On October 13, 2000, Dynegy Inc. filed on behalf of Illinois Power Corporation (Illinois Power) a notice of Illinois Power's intent to withdraw from Midwest ISO. Subsequently, Ameren Corporation (Ameren) and Commonwealth Edison Company (ComEd) announced their intent to leave Midwest ISO. This prompted the Commission to order settlement judge procedures, which resulted in a Settlement agreement (Settlement) among the Midwest ISO, Alliance Companies, and certain transmission owners (TOs) in the Midwest ISO. On May 8, 2001, in Illinois Power Company, et al.,<sup>3</sup> the Commission accepted the Settlement, which, among other things, allowed Illinois Power, Ameren and ComEd to withdraw from Midwest ISO, and in conjunction with the IRCA, provided guidance to facilitate the development of a seamless Midwest market. In Illinois Power, the Commission stated its expectation that Midwest ISO would supplement its original RTO compliance

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<sup>2</sup>Midwest Independent Transmission System Operator, Inc., et al., 84 FERC ¶ 61,231 (September 16 Order), order on reconsideration, 85 FERC ¶ 61,250, order on reh'g, 85 FERC ¶ 61,372 (1998). In addition, the Commission conditionally accepted for filing an open access transmission tariff for Midwest ISO (Midwest ISO Tariff), and an Agreement of Transmission Facilities Owners to Organize the Midwest Transmission System Operator, Inc. (Midwest ISO Agreement), and established hearing procedures.

<sup>3</sup>See Illinois Power Company, 95 FERC ¶ 61,183 (2001), reh'g denied, 95 FERC ¶ 61,026 (2001) (Illinois Power). The IRCA requires Alliance Companies and Midwest ISO to coordinate activities for transmission and transmission-related services, and outlines steps to assist the parties in complying with Order No. 2000 requirements.

filing to reflect the effect of subsequent events since the time of its initial compliance filing.<sup>4</sup>

On August 31, 2001, in response to Illinois Power, Midwest ISO filed a supplement to its original Order No. 2000 compliance filing to reflect the effect of subsequent events. Midwest ISO states that its compliance filing demonstrates that Midwest ISO, operating within the framework of the Settlement, satisfies the scope and configuration requirements of Order No. 2000. Midwest ISO requests that the Commission find that Midwest ISO meets the Commission's requirements for RTOs, established in Order Nos. 2000 and 2000-A.

On October 11, 2001, the Commission issued Opinion No. 453 which affirmed in part and clarified in part,<sup>5</sup> the initial decision issued by the judge who presided over the hearing ordered in the September 16 Order.

On October 15, 2001, in compliance with certain directives from the September 16 Order, Midwest ISO filed its Summary of Operating and Emergency Procedures (Docket No. ER02-106-000) and its proposed Market Monitoring Plan (Docket No. ER02-108-000).

#### Order No. 2000

In Order No. 2000, the Commission recognized that there continue to be important transmission-related impediments to a competitive wholesale electric market. These impediments include the engineering and economic inefficiencies inherent in the current operation and expansion of the transmission grid and the continuing opportunities for transmission owners to unduly discriminate in the operation of their transmission systems to favor their own or their affiliates' power marketing activities.<sup>6</sup> The engineering and economic inefficiencies the Commission identified and sought to address in Order No. 2000 resulted from the lack of regional coordination of an interconnected transmission grid.<sup>7</sup> The Commission concluded that a properly structured RTO could provide significant benefits in the operation of the transmission grid. A successful RTO would, through transmission grid management, improve grid reliability, remove remaining opportunities for discriminatory transmission practices, improve market performance, and facilitate lighter-handed

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<sup>4</sup>Illinois Power at 61,647.

<sup>5</sup>Midwest Independent Transmission System Operator, Inc., et al., 97 FERC ¶ 61,033 (2001) (Opinion No. 453).

<sup>6</sup>Order No. 2000 at 31,003.

<sup>7</sup>Id. at 31,004.

regulation.<sup>8</sup> These efficiencies would include, among other things, regional transmission pricing, improved congestion management of the grid, more accurate calculation of total transmission capability (TTC) and available transmission capability (ATC), more effective management of parallel path flows, reduced transaction costs, and facilitation of state retail access programs.<sup>9</sup>

In order for an RTO to adequately address regional operational and reliability issues, the Commission stated in Order No. 2000 that, at a minimum, an RTO must have four characteristics: (1) independence from market participants; (2) appropriate scope and configuration; (3) operational authority over transmission facilities within the region; and (4) exclusive authority to maintain short-term reliability. In addition, the RTO would be required to perform eight functions: (1) design and administer its own tariff; (2) manage congestion; (3) address parallel path flow; (4) serve as provider of last resort of all ancillary services; (5) administer its own OASIS and independently calculate TTC and ATC; (6) provide for objective monitoring of the markets it operates or administers; (7) take primary responsibility for planning and expansion of transmission facilities; and (8) participate in interregional coordination of reliability practices.<sup>10</sup>

#### Subsequent RTO-Related Actions

Subsequent to the submission of this compliance filing and other pending RTO-related dockets, the Commission has undertaken an across-the-board assessment of RTO development, the status of numerous ongoing proceedings involving RTO proposals, and the ongoing changes in the electricity marketplace since the issuance of Order No. 2000. We also have undertaken several procedural steps to obtain additional information to assist us in moving forward with the development of RTOs that will meet the basic goals of the Federal Power Act. All of these recent activities, which are outlined below, have helped inform us in our resolution of the issues in this docket.

First, during the week of October 15 through 19, 2001, the Commission held a public conference on RTO issues, which consisted of 10 sessions on various topics involving RTOs and the need for clear, appropriately standardized transmission tariffs and market rules. In addition, at the October 24, 2001 Commission meeting, we considered status reports on RTO efforts in various regions of the country, including the Midwest. On November 7, 2001, we issued an order which provided generic guidance on the continued processing of RTO filings and, among other things, stated that we intended to issue future orders addressing the pending filings and providing specific guidance

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<sup>8</sup>Id. at 31,017.

<sup>9</sup>Id. at n. 99.

<sup>10</sup>Id. at 30,993-94.

and time lines to continue progress within the various RTO regions.<sup>11</sup> On November 9, 2001, we issued an order which recognized that we must work closely with state commissions to create a seamless national wholesale electricity market and which stated our intent to create state-federal regional RTO panels to discuss issues related to RTO status and development.<sup>12</sup>

With respect to the Midwest specifically, on November 9, 2001, the Commission sent a letter to all Midwest state utility commissioners asking them to respond to specific questions involving RTO development in the Midwest. In addition, on November 27, 2001, two of the Commissioners and Commission staff participated in an on-the-record state-federal RTO panel discussion on RTO issues with Midwest state utility

commissioners. A transcript of the panel discussion was placed in the record in the above dockets.

#### Midwest State Commissions' Responses

On November 30, 2001 and December 3, 2001, various state utility commissions filed responses to our letter dated November 9, 2001, concerning RTO formation in the Midwest to date.<sup>13</sup> Below we will describe the comments received generally inasmuch as they relate to RTO structure in the Midwest and as to whether RTO development (including implementation of the IRCA) has been satisfactory to date. Comments regarding other areas such as the possible sharing of functions within a hybrid RTO will be addressed in other, more appropriate dockets.

Joint Commissions were unanimous in their support for a single RTO to administer the transmission system in the Midwest. Joint Commissions argue that multiple RTOs managed through

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<sup>11</sup>Electricity Market Design and Structure, 97 FERC ¶ 61,146 (2001) (hereafter, "Rulemaking on Standard Market Design").

<sup>12</sup>State-Federal Regional RTO Panels, et al., 97 FERC ¶ 61,182 (2001).

<sup>13</sup>The state public utility commissions of Michigan, North Dakota, Iowa, Arkansas, Pennsylvania, Virginia, Wisconsin, Oklahoma and Kentucky (Joint Commissions) filed a joint response. Supplemental responses were also individually filed by the Michigan Commission and the Wisconsin Commission. Individual responses were filed by the Missouri Commission, the West Virginia Commission, the Arkansas Commission, the North Dakota Commission, the Indiana Regulatory Commission (Indiana Commission), the Public Utility Commission of Ohio (Ohio Commission), the Tennessee Regulatory Authority (TRA), the Kansas Corporation Commission (Kansas Commission), the South Dakota Public Utility Commission and the Nebraska Power Review Board (Nebraska Board). The Illinois Commerce Commission (Illinois Commission) filed two responses reflecting differing views.

seams agreements "[h]as not worked and will not work" in the Midwest.<sup>14</sup> For instance, Joint Commissions argue that little progress has been made to date on implementing the IRCA agreement between the Midwest ISO and Alliance Companies, and that only the Midwest ISO has the infrastructure in place necessary to assume control over transmission facilities.<sup>15</sup> Moreover, Joint Commissions contend that the lack of independence in the Alliance Companies proposal as well as the pending merger between the Southwest Power Pool and Midwest ISO have further complicated implementation of the IRCA.<sup>16</sup> Joint Commissions also caution that, while Appendix I of the Midwest ISO agreement may provide a useful framework to begin to analyze how functions could be shared under a hybrid RTO, such an approach should be evaluated on a case-by-case basis rather than in generic determination.<sup>17</sup>

Joint Commissions conclude by detailing three areas of importance regarding Midwest RTO development. First, they argue that the Commission can advance Midwest RTO development by providing prompt guidance. Second, Joint Commissions indicate that the Commission should direct its resources to regions like the Midwest where there is a "[b]road regional consensus among state regulators to move forward with a single RTO."<sup>18</sup> Lastly, they argue that there is a need for an advisory structure to provide state regulators a permanent place, separate from other stakeholders, from which to oversee RTO development.

In their supplemental comments, the Michigan Commission argues that careful attention needs to be paid to the fact that International Transmission Company has filed to leave Alliance Companies and join the Midwest ISO. According to the Michigan Commission, this creates serious operational and reliability concerns which render "[a]n already problematic IRCA wholly untenable to Michigan."<sup>19</sup>

The Indiana Commission states that it cannot participate due to a pending case before it. Likewise, the Missouri Commission states that, due to a pending case, it cannot express its view on the number and boundaries of RTOs in the Midwest but notes that over the past several years, it "[h]as

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<sup>14</sup>Joint Commissions at 2.

<sup>15</sup>Id.

<sup>16</sup>Id.

<sup>17</sup>Id. at 10; see also, Missouri Commission at 6-7.

<sup>18</sup>Id. at 14.

<sup>19</sup>Michigan Commission at 2.

worked toward promoting a single RTO environment in the Midwest.<sup>20</sup>

The West Virginia Commission agrees with the Joint Commissions that a seamless Midwest region "[c]an be efficiently achieved through a single RTO."<sup>21</sup> However, while the West Virginia Commission agrees that there has been little progress to date in implementing the IRCA, it believes that with, among other things, guidance from the Commission it could possibly work.<sup>22</sup>

The Nebraska Board, TRA, the Kansas Commission and the Illinois Commission response from Commissioners Harvill and Squires all support the call for a single RTO in the Midwest.<sup>23</sup> The Illinois Commission response from Commissioners Hurley and Kretschmer indicates that multiple RTOs could be supported in the Midwest "[p]rovided that there are seams agreements in place to ensure the smooth operation of the market."<sup>24</sup> Finally, the Ohio Commission states that, while it desires to accommodate different RTO business models in the Midwest, "[s]eamlessness in the Midwest is our priority."<sup>25</sup> The Ohio Commission believes that the IRCA could provide a "meaningful" vehicle to accommodate different models, but only after both considerable Commission direction and attention by the parties.<sup>26</sup> For instance, the Ohio Commission argues that much work needs to be done in the area of adopting compatible standards between the Midwest ISO and Alliance Companies. As a solution, the Ohio Commission recommends that the Commission require Alliance Companies to adopt the Midwest ISO's existing systems in order to ensure standardization.<sup>27</sup>

### III. Notice of Filing and Interventions

Notice of filing in Docket No. RT01-87-000, as amended in Docket No. RT01-87-001, was published in the Federal Register, 66 Fed Reg 47,200 (2001), with comments, protests or interventions due on or before September 21, 2001. Notices of the filings in Docket Nos. ER02-106-000 and

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<sup>20</sup>Missouri Commission at 1-2.

<sup>21</sup>West Virginia Commission at 3.

<sup>22</sup>Id.

<sup>23</sup>Nebraska Board at 2; TRA at 2; Kansas Commission at 1; Illinois Commission (Commissioners Harvill and Squires) at 2.

<sup>24</sup>Illinois Commission (Commissioners Hurley and Kretschmer) at 2.

<sup>25</sup>Ohio Commission at 1-2.

<sup>26</sup>Id. at 2-3

<sup>27</sup>Id.

ER02-108-000 were published in the Federal Register, 66 Fed. Reg. 54,001 and 54,002 (2001), with comments, protests or interventions due on or before November 5, 2001. Motions to intervene, comments and protests were filed by the parties listed in the appendix. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely, unopposed motions to intervene and the notices of intervention by state Commissions serve to make the intervenors listed in the appendix parties to this proceeding. Further, we find good cause to grant the motions to intervene out-of-time because they do not prejudice any party or cause undue delay in the proceeding.

As also listed in the appendix, various parties filed answers. Although the Commission's Rules of Practice and Procedure normally do not permit answers to protests,<sup>28</sup> the answers help us to clarify certain issues therefore we will grant the motions to file answers.

#### IV. RTO Characteristics

##### RTO Characteristic No. 1: Independence

##### The RTO must be independent of any market participant

##### 1. Midwest ISO's Proposal

Midwest ISO states that its existing governance structure and decision-making process satisfy the Commission's independence requirements. According to Midwest ISO, its directors, officers, and employees have no financial interests in, or affiliation with, any market participant. Additionally, Midwest ISO states that its board is made up of professionals who: (a) came from a slate of candidates selected by an independent search firm based on certain professional requirements such as expertise in corporate leadership, finance, or engineering; (b) were elected from among the aforementioned slate of candidates by the Midwest ISO membership;<sup>29</sup> and (c) have not served for the last two years prior to, and may not serve for two years following, their tenure with the Midwest ISO, as directors, officers, or employees of any market participant or its affiliates. Midwest ISO adds that its board and management have independent decision-making authority with respect to strategic and operational matters. The Midwest ISO also states that it has independently raised capital to finance its start-up activities and has the independent right to amend the Midwest ISO Tariff.<sup>30</sup> In addition,

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<sup>28</sup>See 18 C.F.R. § 385.213(a)(2) (2001).

<sup>29</sup>All eligible customers, as defined in the Midwest ISO Tariff, can become members of the Midwest ISO. Accordingly, the Midwest ISO membership includes a broad range of market participants and each member, irrespective of what type of market participant it is, may cast one vote.

<sup>30</sup>During the transition period, unanimous approval of TOs is required before Midwest ISO can  
(continued...)



Midwest ISO states that it has exclusive and independent control over recovery of its own costs, subject to Commission approval, making it financially self-sufficient regarding on-going operations.

## 2. Intervenors' Comments

WEPCO<sup>31</sup> asserts that Midwest ISO has met the Commission's independence requirements. WPPI, on the other hand, argues that certain issues remain to be resolved. In this regard, WPPI objects to the limitations on Midwest ISO's ability to make revisions affecting pricing or revenue distribution, and supports modifying the Midwest ISO Agreement to provide Midwest ISO with exclusive authority to make section 205 filings to modify rates. The Illinois Commerce Commission makes a similar point. Additionally, Calpine asserts that the continued existence of local control areas within the Midwest ISO region undermines the Midwest ISO's ability to meet the Commission's independence requirements. Calpine contends that, despite assurances that each local control area is merely implementing the real-time decisions of the RTO, these local control area operators will have routine access to the competitive information of their competitors and, therefore, a single ISO-wide control area would be ideal. Calpine recognizes that the voluntary formation process of the Midwest ISO requires compromises to preserve scope and contends that Midwest ISO can only meet the independence requirements of Order No. 2000, while still maintaining multiple control areas, by requiring that the local control areas be operated by personnel who are independent of, and unaffiliated with, the TOs.

## 3. Discussion

Order No. 2000 establishes the following independence requirement:

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

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<sup>30</sup>(...continued)

make revisions affecting pricing or revenue distribution. After the transition period, three quarters of TOs must vote affirmatively to allow Midwest ISO to make these types of revisions. All other Midwest ISO Tariff rates, terms, and conditions are subject to independent, unilateral revision by the Midwest ISO.

<sup>31</sup>See appendix for list of abbreviations for Intervenors.

transmission service . . .<sup>32]</sup>

Additionally, the Commission's Regulations require a compliance audit of the independence of the RTO if market participants either have an ownership interest in the RTO or play a role in the RTO's decision making process.<sup>33</sup>

Midwest ISO's existing design satisfies the requirements of this characteristic quite well. Midwest ISO is self-financing and thus not owned by any market participant and Midwest ISO's Board was structured to be independent of control by any market participant. However, while Midwest ISO's Board has independent authority to make changes to its tariffs and market rules in many areas, as noted by intervenors it does not have such independent authority with regard to matters that affect pricing or revenue distribution.

Order No. 2000 requires that the Midwest ISO must have exclusive and independent authority under section 205 of the Federal Power Act to propose rates, terms and conditions of transmission service. However, we note that Order No. 2000 does reserve for TOs the independent right to make section 205 filings to establish the payments that the RTO will make to the TO for the use of its transmission facilities.<sup>34</sup> Thus, while Order No. 2000 requires the RTO to have the exclusive authority to file its own rates, those rates would reflect, as costs, the revenue requirement accepted by the Commission for the TOs.

Rather than follow this dual approach sanctioned by Order No. 2000, Midwest ISO and its TOs have created a streamlined approach. First, Midwest ISO's rates are formulary, relying on FERC Form No. 1 data to automatically calculate Midwest ISO's rates based on actual cost. Next, Midwest ISO and its TOs agreed to a revenue

distribution methodology based in part on revenue requirement, in part on power flow impacts of a transaction, and in part on location of load.<sup>35</sup>

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<sup>32</sup> 18 C.F.R. § 35.34(j)(1) (2001).

<sup>33</sup> 18 C.F.R. § 35.34(j)(1)(iv) (2001).

<sup>34</sup> Order No. 2000 at 31,075-76.

<sup>35</sup> Revenues for through and export point-to-point services will be distributed to TOs 50% on the basis of relative revenue requirement and 50% on the basis of power flow impacts on each system that amount to at least 3% of the total transaction. Revenues for all other transactions are distributed to the TO in whose local service area the loads are located.

We agree with intervenors that TOs cannot be permitted to have veto privileges regarding filings that affect pricing.<sup>36</sup> Accordingly, we will require the modification of the Midwest ISO Agreement to eliminate the TOs' veto privileges regarding pricing. However, we find that the TOs have a valid right to protect themselves against potentially unreasonable changes to the proposed revenue distribution methodology, which after all only concerns the TOs, and we will permit them to maintain that right.

Regarding the competitive issue associated with the maintenance of multiple control areas, we share Calpine's concern that competitive information should not pass from transmission employees of the TOs to merchant function employees. We have historically relied upon standards of conduct to prevent this type of anti-competitive behavior and will continue to do so for now.<sup>37</sup> Additionally, we have required RTOs to monitor this situation.<sup>38</sup> If evidence arises which indicates that more stringent controls are needed, we will reconsider this finding.

With the modification to the Midwest ISO Agreement we discuss above, we find that Midwest ISO meets the independence requirements of Order No. 2000.

#### RTO Characteristic No. 2: Scope and Regional Configuration

The RTO must serve an appropriate region.

##### 1. Midwest ISO's Proposal

Midwest ISO states that the current scope and configuration of the Midwest ISO is adequate to comply with this important RTO characteristic. Midwest ISO points to the indirect effects of the Settlement that helped to provide for the conditional application of several new transmission-owning members to the Midwest ISO. Indianapolis Power & Light, Indiana Municipal Power Agency, Lincoln Electric (Neb.) System, Minnesota Power, Otter Tail Power Company, Sunflower Electric Power Corporation, and UtiliCorp United (including Missouri Public Service, St. Joseph Light & Power and WestPlains Energy-Kansas) all joined the Midwest ISO by February 28, 2001. City Water, Light and Power (Springfield, Ill.) joined soon thereafter. Montana-Dakota Utilities submitted an unconditional application and joined the Midwest ISO on July 12, 2001. Manitoba Hydro, a member of MAPP and a Canadian corporation, executed a Memorandum of Understanding ("MOU") with the Midwest ISO

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<sup>36</sup>Accord, Alliance Companies, 91 FERC ¶ 61,152 at 61,579 (2000) and 94 FERC ¶ 61,070 at 61,305 (2001).

<sup>37</sup>See, e.g., Order No. 888 at 31,655.

<sup>38</sup>See, Order No. 2000 at 31,104.

and jointly filed a Coordination Agreement.<sup>39</sup> Except for Sunflower Electric Power Corporation, all of these conditional members have since removed all of their prior conditions and are now TOs in the Midwest ISO.

Midwest ISO also notes that Dairyland Power Cooperative, Great River Energy, and Southern Minnesota Municipal Power Agency all submitted conditional applications to join the Midwest ISO as TOs on July 18, 2001. Four utilities, MidAmerican Energy, Nebraska Public Power District, Omaha Public Power District, and Corn Belt Power Cooperative have signed an MOU with two existing Midwest ISO TOs, Alliant Energy and Xcel Energy, and are planning the formation of TRANSLink,<sup>40</sup> as an independent transmission company (ITC) under Appendix I of the Midwest ISO Agreement. In addition, Midwest ISO notes that it is currently in membership discussions with additional transmission owners in MAPP, including the proponents of the Crescent Moon RTO (Northwestern Public Service, Western Area Power Administration, Basin Electric Power Cooperative, Heartland Consumers Power District, Minnkota Power Cooperative, and Saskatchewan Power Corporation). The addition of these entities would complete the Midwest ISO's western border.

The Midwest ISO also points to its pending purchase agreement to acquire substantially all of the assets held by MAPPCOR in St. Paul, Minnesota. It states that the new additions of MAPP load joining the Midwest ISO will move the MAPP membership load up to 65%. With the Commission's approval in Docket No. ER01-479-000,<sup>41</sup> Midwest ISO states that it will close the transaction.

Applicants state that Midwest ISO and Southwest Power Pool Inc. (SPP) have circulated a draft term sheet for a business combination. Negotiations to document and define the transaction are underway. The combination with SPP offers a prospect for significant further improvement of the Midwest ISO's scope and configuration as the RTO's southern seam continues to evolve.

In its August 31, 2001 filing, Midwest ISO notes that, as currently configured, it would serve a region with a peak load of 53,000 MW, generating capacity of approximately 59,000 MW, and over 62,000 miles of transmission lines. Midwest ISO also notes that with the likely affiliation of TRANSLink ITC, the region would expand to include a peak load of over 61,000 MW, close to 68,000 MW of generation capacity, and 73,000 miles of transmission lines and the addition of Crescent Moon RTO and the combination with SPP would increase these figures even further. If an RTO's scope were judged purely on its size, Midwest ISO argues that it would satisfy the requirement.

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<sup>39</sup>See Docket No. ER02-325-000.

<sup>40</sup>On September 28, 2001, the TRANSLink participants filed for approval to operate as an Appendix I participant in Midwest ISO in Docket No. ER01-3154-000.

<sup>41</sup>The Commission approved the proposed changes in Docket No. ER01-479-000 as part of Opinion No. 453.

Midwest ISO states that, as is, it achieves a reasonable scope. However, Midwest ISO acknowledges that its physical configuration is not ideal on its eastern seam due to the intertwined configuration and expansive common seams between Midwest ISO and the Alliance Companies. The effectiveness of the Midwest ISO's configuration, it thus argues, depends on timely and effective implementation of the IRCA. With that implementation, Midwest ISO states that the total region (Alliance Companies and Midwest ISO) encompassed by the IRCA would include 169,000 MW of peak load, 180,000 MW of generation capacity, and 130,000 miles of transmission lines.

## 2. Intervenors' Comments

Some intervenors (e.g., Competitive Coalition, IEU-Ohio, WPPI, and Duke Energy) argue that the Midwest ISO does not yet, and likely will not, satisfy the scope and configuration requirements of Order No. 2000, because it is unlikely that the IRCA will be implemented successfully given the current dynamics in the Midwest. The realignment of transmission owners between the Midwest ISO and Alliance Companies poses serious problems for the development of a single energy market for the entire Midwest, given that the Alliance Companies and the Midwest ISO are currently developing separate and distinct markets. To ensure consistency with its rulings in other regions of the country, both IEU-Ohio and Duke Energy contend that the Commission should find that full, effective, and prompt compliance with the IRCA represents the absolute minimum means for Midwest ISO and Alliance Companies to comply with Order No. 2000's scope and configuration characteristic and other characteristics and functions. WPPI argues that the Midwest ISO cannot single-handedly ensure the success of the effort, and time will tell whether Alliance Companies will be able to satisfy the Commission's independence concerns and perform its end of the IRCA-implementation process.

Mirant Entities suggest alternative avenues for addressing the issues associated with the implementation of the IRCA that impact upon the Midwest ISO's scope and configuration. Mirant Entities contends that Appendix I to the Midwest ISO Agreement provides a framework within which a "Transco" may operate as a stand-alone business within the Midwest ISO. Appendix I offers an avenue for resolving the issues created by the conflicting business plans of the Alliance Companies and Midwest ISO. By joining the Midwest ISO under Appendix I, the Alliance Companies would solve this problem, while still allowing the Alliance Companies the opportunity to pursue a business model that permits them to maximize the return on their transmission assets.

Wisconsin Electric admits that without proper implementation of the IRCA and development of adequate procedures and protocols, the Midwest ISO is not ideal. However, Wisconsin Electric is supportive of the Midwest ISO becoming operational on the stated target date of December 15, 2001. Wisconsin Electric states that Midwest ISO should be granted the opportunity to continue its development and stick to its time line.

International Transmission Company requests that, if the Commission finds that the Midwest ISO's scope and configuration is acceptable, the Commission clarify that its finding is with respect to

the Midwest ISO including International Transmission Company as a member.

#### 4. Discussion

The Commission finds that, Midwest ISO has adequate scope and configuration to meet the requirements of Order No. 2000. As indicated above, the Midwest ISO has grown considerably over the last several months with the addition of Indianapolis P&L, IMPA, Lincoln, Minnesota Power, Otter Tail, UtiliCorp United, the City Water, Light and Power of Springfield, Ill., Montana-Dakota Utilities and Manitoba Hydro (through the above-referenced Coordination Agreement). In addition, in a concurrently issued order in Docket No. EC01 146-000, the Commission approves International Transmission Company's request to transfer control of its facilities to the Midwest ISO. The conditional applications for membership from Sunflower, Dairyland, Great River, and SMMPA, together with the TRANSLink proposal, and the acquisition of MAPPCOR promise to increase Midwest ISO's scope further in a short period of time.

Additionally, circumstances have changed further since the August 31, 2001 filing. Midwest ISO and SPP agreed to merge their operations effective sometime in the first quarter of 2002. The press release indicates that,<sup>42</sup> even without consideration of the IRCA, this merged entity would serve a region encompassing all or parts of 20 states and one Canadian province and over 120,000 MW of generating capacity. The merger with SPP will significantly enhance the Midwest ISO's scope and configuration.

However, while we are satisfied that Midwest ISO's expansion over the last several months allows it to meet the scope and configuration requirements of Order No. 2000, our finding today in a concurrently issued order in Docket No. RT01-88-000, et al., in which we determine that the public interest is best served by a single Midwest RTO (i.e., Midwest ISO) creates interim problems with Midwest ISO's eastern seam. Specifically, it creates a hole in the Midwest ISO and isolates Southern Illinois Power Cooperative, International Transmission Company, and Central Illinois Light Company from the other Midwest ISO members. By Midwest ISO's own admission, this configuration is not ideal. However, we have directed Alliance Companies to explore membership in the Midwest ISO, and the successful integration of some or all of these companies (particularly the Illinois companies) into the Midwest ISO would greatly enhance operational efficiency in the Midwest market. In the interim, Midwest ISO is directed to explore ways to address the less than ideal situation that will exist prior to the integration of the Alliance Companies into Midwest ISO and to present recommendations to the Commission for consideration within 60 days.

#### RTO Characteristic No. 3: Operational Authority

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<sup>42</sup>This press release is available on Midwest ISO's website.

The RTO must have operational authority for all transmission under its control.

1. Midwest ISO's Proposal

Midwest ISO states that its proposal complies with the operational authority provisions of Order No. 2000. Midwest ISO will have functional control of all networked transmission facilities owned and operated at 100 kV or above. Midwest ISO states that it will serve as the security coordinator for the transmission systems subject to its functional control and will also have emergency plans and procedures in place in the event of a system emergency. As a result of the Settlement Agreement, there are provisions that require the security coordination function and transmission loading relief protocols to be coordinated between Midwest ISO and Alliance Companies, which include an ongoing exchange of security-related data between the two entities. Midwest ISO notes that in July, the Midwest ISO's Security Plan was approved by the Operating Committee of the North American Electric Reliability Council ("NERC").

2. Intervenors' Comments

WPPI notes that Midwest ISO's compliance with the Operational Authority characteristic will depend not only on its ability to coordinate responsibility therein, but also on the currently-unspecified division of responsibilities between Midwest ISO and any ITCs that may be formed.<sup>43</sup>

Calpine argues that Midwest ISO must clarify the relationship between local control area balancing authority and its own real-time redispatch authority.

3. Discussion

We find that Midwest ISO meets our requirements for operational authority by virtue of its functional control of transmission facilities and its authority to act as security coordinator for all facilities under its functional control. The issue of what responsibilities will ultimately be shared by Midwest ISO with ITCs will be dealt with in the pending International Transmission Company and Translink cases;<sup>44</sup> however, ~~we clarify that~~ we will not allow a sharing of responsibilities that would hamper the Commission's goals of creating a seamless, competitive market place.

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<sup>43</sup>WPPI also raised a concern regarding the originally proposed transition period exclusion of bundled retail load from the Tariff. Opinion No. 453, which issued after WPPI filed its comments in this case, addressed this concern and directed Midwest ISO to place and provide all load under the Tariff. Accordingly, WPPI's concern has been addressed.

<sup>44</sup>See Docket Nos. ER01-3000-000, et al., for International Transmission Company's filing and ER01-3154-000, et al., for TRANSLink's filing.

Regarding Calpine's concern, as further discussed in the next section, as security coordinator for all facilities under its functional control, Midwest ISO has superseding authority over all actions of the control area operators to the extent they affect regional reliability. Additionally, as noted above, Midwest ISO recently filed its summary of operating and emergency procedures. The Commission addresses that filing in the next section, however, our examination of the filing did not reveal any information that contradicts the idea that Midwest ISO's redispatch will control. Accordingly, we find that, for start-up purposes, the relationship between Midwest ISO's real-time redispatch authority and the control areas' balancing authority is sufficiently clear.

#### RTO Characteristic No. 4: Short-Term Reliability

The RTO must have exclusive authority for maintaining the short-term reliability of the grid that it operates.

##### 1. Midwest ISO's Proposal

Midwest ISO states that it is in conformance with Order No. 2000's requirements regarding short-term reliability. Midwest ISO has the exclusive authority to receive, confirm, and implement all interchange schedules and Midwest ISO has the authority to order redispatch of any generator connected to transmission facilities it operates if necessary for the reliable operation of these facilities. Midwest ISO will have authority to approve and disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards. Midwest ISO also will honor and monitor compliance with reliability standards established by East Central Area Reliability Coordination Agreement ("ECAR"), Mid-America Interconnected Network ("MAIN") and MAPP.

##### 2. Intervenor's Comments

Calpine argues that because the local control area operators within the Midwest ISO will be responsible for managing localized congestion within their metered boundaries, performing real-time energy balancing, and regulating resources internal to their control areas, Midwest ISO will not have exclusive authority over all aspects of short-term reliability. Calpine again asserts that Midwest ISO must operate a single, ISO-wide control area.

##### 3. Discussion

While local control area operators are responsible for certain control area functions, the Midwest ISO Agreement provides Midwest ISO with superseding authority to ensure short-term reliability. For instance, Section III(D) of Appendix E of the Midwest ISO Agreement provides that, in performing their control area functions, local control area operators shall comply with the scheduling instructions of the Midwest ISO. Similarly, Section V(C)3 requires individual owners, users and



control areas to comply with emergency actions ordered by Midwest ISO for regional security. Through this hierarchical structure the Midwest ISO has clear authority over redispatch for reliability purposes of generation connected to transmission facilities it operates and, therefore, meets the requirements of this RTO characteristic.

#### 4. Docket No. ER02-106-000

Midwest ISO states that the proposed summary is submitted to comply with Ordering Paragraph N of the September 16 Order.<sup>45</sup> According to Midwest ISO, there are several documents that address the interrelated functions that it performs. The proposed summary, Midwest ISO asserts, covers three documents that make up the "heart" of its authority and capability to operate the system and to respond to emergencies.<sup>46</sup> These three documents are: (1) Midwest ISO Volume 3.3, "Interchange Scheduling Procedures"; (2) Midwest ISO Volume 3.1, "Security Coordination Process Manual"; and (3) "Congestion Management Procedures."

Interventions were filed by WEPCO and jointly by Calpine and Duke Energy. WEPCO generally supports the proposed summary however, it asserts that more detailed procedures are needed for the actual implementation of the IRCA. WEPCO further cautions that Midwest ISO needs to develop procedures that balance the concerns of grid security while restricting the possibility of Midwest ISO exercising excessive control over generating resources. Calpine and Duke Energy jointly object to the summary for lack of specificity.

In its response, Midwest ISO endorses WEPCO's concerns about balancing the equities of managing the grid's security with the amount of control that Midwest ISO will have over the generating resources. Midwest ISO asserts that sufficient detail of the operating and emergency procedures has been achieved to meet the projected start-up date and to permit participants and regulatory authorities to "gain a comfort level" in the ability of Midwest ISO to perform the functions entrusted to it. However, Midwest ISO commits to continuing to work with the Alliance Companies and all Midwest ISO participants to fully implement the IRCA. Accordingly, Midwest ISO disagrees with Calpine's and Duke Energy's protest. Midwest ISO also argues that it cannot provide specificity as to how it would unilaterally resolve conflicts between regions because only the Commission can resolve conflicts where a satisfactory accord cannot be reached by mutual consent. Additionally, Midwest ISO asserts that the non-public aspect of its procedures relate to emergency response procedures that are non-public

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<sup>45</sup>Ordering Paragraph N states:

The Midwest ISO shall file, no later than 60 days before the Transfer Date, a detailed summary of the Midwest ISO's operating and emergency procedures as discussed in the body of this order.

<sup>46</sup>Transmittal Letter at 2.

because they could aid terrorists or others seeking to disrupt the Midwest grid. Finally, Midwest ISO argues that this proposed summary is an informational filing only, does not constitute a section 205 submission<sup>47</sup>, and therefore should be accepted as being in full compliance with the September 16 Order.

We will accept the proposed summary for filing and terminate the docket. The September 16 Order does not require the filing of Midwest ISO's complete and unabridged operating procedures, as apparently the intervenors desire.<sup>48</sup> We find that the filing of all operating procedures would be unduly burdensome; furthermore, the Commission does not generally review all aspects of a transmission operator's operating and emergency procedures unless there is a demonstrated need. Our preliminary review of the proposed summary does not reveal any deficiencies and we are satisfied that Midwest ISO has procedures in place that should allow it to perform its duties. Indeed, the successful completion of market trials confirms our view on this matter. We note that once operations begin, if customers conclude that certain Midwest ISO procedures are harmful, they may file a complaint pursuant to section 206 of the FPA.<sup>49</sup>

#### V. RTO Functions

##### RTO Function No. 1: Tariff Administration and Design

The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities.

##### 1. The Midwest ISO's Proposal

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<sup>47</sup>16 U.S.C. § 824d (1994).

<sup>48</sup>The September 16 Order stated:

Although we will not require the filing of all operating procedures, [citation omitted] we believe it is important that the Midwest ISO file with us a detailed summary of these procedures, in sufficient detail for the Commission and customers to understand the Midwest ISO proposal, highlighting the Midwest ISO's operating authority, prior to the Transfer Date. Since the scheduling function will be performed by both Transmission Owners and the ISO, it is important that the required summary description of procedures provide detailed information as to how this function will be divided between the two.

September 16 Order, 84 FERC at 62,159.

<sup>49</sup>16 U.S.C. § 824e (1994).

The Midwest ISO states that it will be the sole administrator of its own FERC-approved tariff and it will be the entity with the sole authority to receive, evaluate, and approve or deny all requests for transmission service. The Midwest ISO states that it will also have the authority to review and approve requests for new generator interconnections.

## 2. Intervenors' Comments

ABATE asserts that the filing in the instant proceeding is deficient and should be rejected by the Commission and the Midwest ISO should be required to make a new filing reflecting International Transmission Company's admittance into the Midwest ISO. ABATE adds that the Midwest ISO rates are misleading and inaccurate because International Transmission Company is scheduled to become a part of Midwest ISO but thus far has not done so.

Basin Electric requests that the Commission order mediation concerning the terms on which transmission owners, such as Basin Electric, can join Midwest ISO. Basin Electric states that there are numerous possible solutions, such as a switch to postage stamp pricing, a waiver of license plate rates for transmission owners with a significant amount of native load in control areas outside their home zone, and the socialization, across all Midwest ISO customers, of the cost of all new transmission construction.

Basin Electric states that it owns transmission facilities in both the Eastern and Western Interconnections and, in combination with Western Area Power Administration (WAPA) and Heartland Consumers Power District (Heartland), provides transmission service over an integrated system in the Eastern Interconnection that would, if it were incorporated into Midwest ISO, become one rate zone under Midwest ISO's zonal rate structure (the Integrated System Zone). Basin Electric indicates that the cost of this integrated system is currently recovered from both 1,400 MW of native load located on the integrated system and from 900 MW of native load located off of the integrated system but still within the Eastern Interconnection.<sup>50</sup> Because of Midwest ISO's current zonal rate structure, Basin Electric states that, if it joined the Midwest ISO, the costs of the integrated system would only be recovered from the 1,400 MW of native load within the Integrated System Zone. Basin Electric contends that this would cause a cost shift among its native load customers of \$40 million per year.<sup>51</sup>

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<sup>50</sup> Additionally, Basin Electric states that revenues from 300 MW of native load located in the Western Interconnection are also used to defray the costs of the integrated system.

<sup>51</sup> Additionally, Basin Electric states that under Midwest ISO its 300 MW of native load located in the Western Interconnection would pay the "drive-out" average Midwest ISO rate but only a small

(continued...)

Basin Electric contends that this cost shift will result in a transmission rate increase, for loads that are located within the Integrated System Zone; from the current \$3.09/kW month to as much as \$6/kW month. Basin Electric claims that this figure is more than four times higher than the average rate for service in Midwest ISO and more than eight times higher than the rates for service for some zones in Midwest ISO and the Alliance Companies. Basin Electric contends that the large rate differential is unjust and unreasonable, and unduly discriminatory since most Midwest ISO transmission customers will pay far less for transmission service than Basin Electric's native load customers will have to pay even though they all have rights to the same transmission system.

Basin Electric is also concerned that the zonal pricing methodology that Midwest ISO plans to employ could result in customers in the Integrated System Zone paying for construction of facilities that do not provide any benefit to them. Basin Electric explains that new generation will result in the construction of more transmission facilities to serve out-of-zone customers, but those facilities will be paid for by increases in the rates of Integrated System Zone customers who would already face rates far higher than other Midwest ISO members' rates.

Calpine also seeks mediation because, it argues, Midwest ISO's proposal lacks sufficient detail.

### 3. Responses

Missouri River filed a response to Basin Electric's comments. Missouri River states that the current rates of the integrated system, upon which Basin Electric relies to argue that joining Midwest ISO would result in a cost shift, are themselves at issue in other proceedings.<sup>52</sup> According to Missouri River, the main reason for the ongoing dispute is the inclusion in the integrated system transmission rate of three long and expensive generator outlet lines owned by Basin Electric whose costs, Missouri River claims, should instead be recovered through Basin Electric's generation rates.<sup>53</sup> Missouri River believes that if Basin Electric were required to classify these lines as generation-related and recover their costs through generation rates, a substantial portion of Basin Electric's cost shift arguments would disappear. Accordingly, as long as this issue remains unresolved by Commission action in Docket Nos. TX97-7-000 and NJ98-1-000, Missouri River feels that Basin Electric's concerns here cannot be acted upon.

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<sup>51</sup>(...continued)

portion of the resultant revenue would be allocated back to the Integrated System Zone, thus causing another cost shift.

<sup>52</sup>Cases are pending in Missouri Basin Municipal Power Agency v. Western Area Power Administration, Docket No. TX97-7-000, and in WAPA's tariff filing in Docket No. NJ98-1-000.

<sup>53</sup>Missouri River states that these outlet lines extend, without subsidiary load, several hundred miles from Basin Electric's generators to the WAPA backbone transmission system.

#### 4. Discussion

We find that Midwest ISO meets the requirements of this function. With the modification to the Midwest ISO Agreement ordered in the independence section above, Midwest ISO will be the sole administrator of its own FERC-approved tariff. It will also be the entity with the sole authority to receive, evaluate, and approve or deny all requests for transmission service. Finally, through its standardized interconnection procedures, it will have the authority to review and approve requests for new generator interconnections.<sup>54</sup>

We will deny ABATE's request to reject the filing. The concerns of ABATE are off point. The instant filing reflects the facts as they existed when the filing was made. The later filing to incorporate International Transmission Company into the Midwest ISO, which is being dealt with concurrently, addresses ABATE's concerns.

We will deny Basin Electric's motion for mediation at this time. While we commend Basin Electric's desire to join Midwest ISO, we are mindful that the possible remedies cited by Basin Electric may interfere with the Midwest ISO's ability to ameliorate abrupt cost shifts to other transmission owners. We also note that Basin Electric's description of the rate shift resulting from becoming a Midwest ISO member does not appear to take into account the effects of any transition period rate adjustment to reflect lost revenues that Midwest ISO may adopt and does not take into account that our eventual findings in Docket Nos. TX97-7-000 and NJ98-1-000 may undermine Basin Electric's arguments here. Finally, we note that this issue should be important only during the transition period which was originally approved as a means of minimizing abrupt cost shifts in order to remove a barrier to voluntary entry into broad regional ISOs.<sup>55</sup> This goal remains of importance to the Commission. Accordingly, we will not at this time order mediation on this issue.

#### RTO Function No. 2: Congestion Management

The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. The RTO must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

##### 1. Midwest ISO's Proposal

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<sup>54</sup>These procedures were filed in Docket No. ER01-3053-000 and accepted by order issued November 7, 2001, Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,136 (2001).

<sup>55</sup>September 16 Order at 62,167-8.

Midwest ISO's existing congestion management methodology is largely modeled on the redispatch provisions in the pro forma tariff. All jurisdictional generators on the Transmission System are obligated to submit offer bids for redispatch service. Midwest ISO would be required to contract for generation redispatch in order to prevent curtailment of existing firm service obligations, after all non-firm transactions contributing to the constrained conditions have already been curtailed. The cost of such redispatch will be shared among all load on a pro-rata basis. In addition, Midwest ISO would facilitate transmission capacity reassignment and generation redispatch, in order to meet new requests for firm service, by posting capacity reassignment and redispatch bids electronically on a real-time basis. Midwest ISO would identify generators that could increase or decrease their output to relieve a constraint, determine the impact on ATC of these redispatch options, and also post this information electronically on a real-time basis. Requesters of service could then execute bilateral contracts for capacity reassignment or generation redispatch in order to accommodate their requests.

The September 16 Order found that Midwest ISO's congestion management proposal promotes greater efficiency than the status quo because it promotes greater use of generation redispatch relative to curtailment and encourages regional coordination. The Commission also found that, because it is based on the pro forma tariff, it should allow for rapid implementation. However, the Commission found that the proposal lacked sufficient detail and ordered Midwest ISO to file, no later than 60 days prior to the Transfer Date, revised tariff language specifying how redispatch bids will be obtained and how redispatch costs will be computed, as well as additional information regarding the amount of capacity that generators would be required to bid under different system conditions, the rate that they would be allowed to charge, and under what conditions, if any, TLR would be used. In addition, with respect to providing new firm service, the Commission expressed concerns regarding the transaction costs associated with the proposal's reliance on bilateral contracts and directed the Midwest ISO to evaluate this issue over the first eighteen months of operation and make recommendations in the event it becomes too cumbersome and costly.

The Midwest ISO believes that its congestion management provisions are in technical compliance with the requirements of Order No. 2000 for Day One operations. However, it concedes that, while market-based, its Day One approach is not sufficiently dynamic to achieve the optimal long-term efficiencies envisioned under Order No. 2000. Accordingly, the Midwest ISO and its stakeholder committees have studied and evaluated potential long-term, or Day-Two, congestion management solutions for the Midwest ISO, and have arrived at the conclusion that such a solution should be based on a hybrid approach that incorporates the most desirable elements of both locational marginal pricing (LMP) and physical flowgate methodologies, while limiting the perceived problems found in each methodology. Midwest ISO believes that there is ample time to solidify the hybrid approach within the time frame required by the Commission.

Midwest ISO also notes that the Settlement requires that certain activities associated with Day One congestion management be coordinated between Midwest ISO and Alliance Companies. These responsibilities include: (1) jointly developing a bulletin board where generator bids can be posted by

market participants and generation shift factors are posted by the RTOs; (2) identifying generators on both sides of an interface that can significantly relieve congestion; and (3) coordinating reservations and schedules that may impact the transmission capacity of constrained interfaces. Midwest ISO and the Alliance Companies have agreed to an initial set of protocols and procedures for the coordination of their Day One Congestion Management mechanisms. A key element of these protocols allows for the redispatch of generation on the adjacent RTO's system in the event of a system contingency. Midwest ISO reports that it and the Alliance Companies are discussing development of bidding rules that will be consistent between the two RTOs, so that all generators and loads are bidding into the same bulletin board under the same rules.

## 2. Intervenors' Comments

The Competitive Coalition argues that the Midwest ISO and Alliance Companies, as currently organized, have widely different business models. For this reason, the Competitive Coalition states that there is lack of a common Energy Imbalance Market approach and difficulties in exchanging operational and security related data between the Alliance Companies and Midwest ISO. The lack of common energy imbalance and congestion management markets will create artificial barriers to power transfers, according to the Competitive Coalition, resulting in less efficient usage of the grid, higher delivered prices, and potentially greater need to rely on TLRs rather than on economic redispatch to mitigate transmission congestion.

IEU-Ohio states that the lack of an independent decision-making body for the proposed Alliance Companies continues to delay finalization of an initial congestion management protocol, complete with pricing provisions and operational details, prior to the initial commencement date of Midwest ISO. IEU-Ohio argues that Midwest ISO's statement that both entities are working towards that goal is not acceptable because of the Alliance Companies' continued objection to establishing an independent entity to make business decisions regarding Day One or market-based congestion management options, and the inevitable delays associated with designing and installing software for market-based congestion management. IEU-Ohio complains that the Cooperative Procedure and Protocol 4 (Congestion Management) document is little more than a restatement of the IRCA's Day One congestion management obligations. Therefore, IEU-Ohio states that the Commission must find that Midwest ISO does not comply presently with the critical Order No. 2000 congestion management function requirement.

AF&PA seeks clarification regarding Midwest ISO's characterization of its authority to order redispatch when necessary to maintain short-term reliability. AF&PA states that its understanding is that such redispatch authority would extend only to generation "in the pool" and not self-supplied, on-site customer-owned ("inside the fence") generation. Therefore, AF&PA seeks clarification that Midwest ISO's redispatch authority will continue to be inapplicable to such generation.

WEPCO states that the Midwest ISO Tariff does not adequately explain how customers are

charged for redispatch or how redispatch providers are ultimately reimbursed, and that, therefore, these aspects of the tariff require greater elaboration and development. WEPCO submits that in order to track cost-causation principles, certain redispatch costs may be better suited to socialization over subregions within Midwest ISO while other redispatch costs should not be socialized at all.

Calpine asserts that Midwest ISO fails to satisfy the Order No. 2000 requirement that each RTO have in place at the time of initial operation an effective protocol for managing congestion. It notes, for example, that there is no provision for compensation for mandatory redispatch. Calpine argues that, in order to support the development of secondary markets, it is vital that generators be compensated at market-based rates for the capacity service requested through mandatory bidding. Calpine also submits that crucial details remain missing concerning implementation of the IRCA provision for redispatch of generation on the adjacent RTO's system. Calpine, therefore, requests that the Commission require clarification of each RTO's dispatch authority on the adjacent RTO's system.

With respect to a long-term congestion management plan for Midwest ISO, Calpine argues that a model that uses LMP and financial rights is superior to Midwest ISO's hybrid physical rights/flowgate congestion management plan. It submits that a financial rights model will result in more optimal utilization of the transmission grid and more rapid development of a competitive liquid wholesale market. It requests that the Commission require implementation of a congestion management model that uses financial rights instead of physical rights, or at least require Midwest ISO to justify why its approach is consistent with or superior to the industry's existing best practices, as was required of GridSouth. Calpine also requests that, in order to achieve timely implementation of a long-term congestion management scheme, the Commission establish a timetable for details of such a plan to be filed.

### 3. Discussion

For the reasons that we stated in the September 16 Order, we continue to believe that the Midwest ISO's proposed congestion management methodology is a reasonable initial approach to managing congestion and we find that it satisfies the requirements of Order No. 2000 for Day 1 operation of an RTO.<sup>56</sup>

Several intervenors raise "seams" issues concerning coordination of congestion management

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<sup>56</sup>We note that on October 15, 2001, in Docket No. ER01-3142-002, Midwest ISO filed a revised Attachment K to the Midwest ISO OATT providing additional detail related to actions that will be taken to avoid curtailment of firm transmission service and summarizing procedures under which bids will be obtained and redispatch costs will be established and recovered. We will deal with that filing in a subsequent order. Accordingly, our determination here is based strictly on the information in this proceeding.



practices between the Midwest ISO and Alliance Companies. As we discuss elsewhere in this order, in concurrent orders, we are directing the Alliance Companies to explore membership in Midwest ISO through Appendix I. Intervenor's concerns regarding "seams" are rendered premature by that action.

WEPCO contends that the Midwest ISO tariff is unclear as to how generators will be compensated for responding to redispatch instructions of the Midwest ISO or how redispatch costs will be recovered. Those details will be attended to in Docket No. ER01-3142-002, filed after WEPCO's September 21, 2001 comments in this docket. We find that Midwest ISO's congestion management methodology is sufficiently detailed in its tariff and procedures for now.

We will deny AF&PA's request for clarification that the Midwest ISO's redispatch authority to maintain short-term reliability does not extend to self-supplied, on-site customer-owned ("inside the fence") generation. Order No. 2000 requires that an RTO must have the right to order redispatch of any generator connected to the transmission system it operates, and we have approved Midwest ISO's compliance with this requirement in the short-term reliability section above.

Finally, regarding development of a superseding congestion management methodology that will utilize market mechanisms consistent with the requirements of Order No. 2000, we will direct Midwest ISO to coordinate its Day Two congestion management efforts with our recently announced Rulemaking on Standardized Market Design.<sup>57</sup> We will consider whether there is a need to relax the current requirement to implement a Day Two congestion management scheme within one year of start-up, as part of the Rulemaking on Standard Market Design.

#### RTO Function No. 3: Parallel Path Flow

The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. The RTO must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

##### 1. Midwest ISO's Proposal

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<sup>57</sup> Therefore, as it continues with the development of its Day Two congestion management methodology, Midwest ISO should be mindful of our goal of reforming the open access tariffs to standardize market design rules, as appropriate. In this regard, we urge Midwest ISO to continue with development of its Day Two congestion management methodology in every aspect, including software, in a sufficiently flexible manner so that any products developed may be readily adapted to incorporate whatever standard market design elements are ultimately adopted in the Rulemaking on Standardized Market Design.

Midwest ISO states that its current size and coordination with the Alliance Companies allow it to internalize most, if not all, of the effects of parallel path flow in its scheduling and pricing process. As presently structured, and given the expected addition of many new transmission-owning entities, Midwest ISO believes it will internalize significant flow issues within its region and many of the loop flows that exist in the Eastern Interconnection. Midwest ISO states that it has agreed with Alliance Companies to address parallel path flow issues within the combined region. In this regard, Midwest ISO states that the effects of parallel path flow on reliability can be greatly mitigated between neighboring RTOs through coordination of ATC calculations, interchange schedules, and transmission service reservations. Midwest ISO states that it has met with representatives of the Alliance Companies and SPP in a collaborative process to detail the data exchange requirements and methodologies, data usage principles, and coordination of methodologies necessary to calculate TTC and ATC values for a seamless market interface across all three entities.<sup>58</sup> Midwest ISO argues that these efforts will mitigate the effects of parallel path flows within the Super Region.

## 2. Intervenors' Comments

Illinois Commerce Commission notes that, by admission of certain Midwest ISO TOs, Midwest ISO's scope, as configured prior to the Settlement and thus prior to the announced merger with SPP, would not resolve all of the loop flow issues in the Midwest. As described further in the section above dealing with scope and configuration, several intervenors note that Midwest ISO's compliance with the parallel path flow requirement is contingent on appropriate implementation of the terms of the IRCA. They note that such implementation has either not been completed or is not proceeding in a way that results in compliance with the parallel path flow requirements. For example, Competitive Coalition, in its supplemental comments, cites evidence that Midwest ISO and Alliance Companies have adopted substantially different models for calculating ATC; a static model for Alliance Companies and a real-time, or dynamic, model for Midwest ISO.

## 3. Discussion

As discussed in the scope and configuration section, we find that Midwest ISO's current scope and configuration meet the requirements of Order No. 2000, including an enhanced ability to address parallel path flow issues. While we recognize that the "hole" in Midwest ISO's eastern seam discussed in the scope and configuration section has temporary implications for Midwest ISO's ability to address parallel path flow issues in that area, we believe that our action, in concurrent orders, directing the Alliance Companies to explore membership in Midwest ISO through Appendix I will ultimately eliminate this concern. Accordingly, we find that, with our interim directive in the scope and configuration section, Midwest ISO meets the requirements of this function.

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<sup>58</sup>This statement was made prior to the announcement that Midwest ISO and SPP had agreed to merge.

RTO Function No. 4: Ancillary Services

The RTO must serve as a provider of last resort of all ancillary services required by Order No. 888 and subsequent orders.

1. Midwest ISO's Proposal

Midwest ISO states that it will offer to provide all ancillary services as defined and required under the Midwest ISO Tariff and will serve as the provider of last resort for all ancillary services required by Order No. 888. Because the Midwest ISO will not be a control area, or own generation, it states that its role as provider rather than seller will be to secure ancillary services on behalf of customers and pass payment for such services directly to the supplying entity. Midwest ISO states that customers will have the option of self-supplying or purchasing ancillary services from third parties. In this regard, Midwest ISO states that it intends to involve independent third-party entities in the creation of ancillary service markets upon which both customers and the Midwest ISO can draw. Midwest ISO notes that one of the more prominent ancillary services is Energy Imbalance. Midwest ISO states that under the IRCA, Midwest ISO and Alliance Companies have agreed to cooperate in the development of their individual imbalance markets, as required under Order No. 2000.

2. Intervenors' Comments

Calpine argues that Midwest ISO's proposal is vague and requires clarification and certain modifications. Calpine contends that, since Midwest ISO's interconnection agreement requires generators to provide some ancillary services, Midwest ISO should clarify that these generators will be appropriately compensated. Calpine also notes that Midwest ISO retains the right to deny scheduling of any request where the required ancillary services have not been arranged. Calpine feels that this right contradicts the concept of being the provider of last resort and requests that the Commission require Midwest ISO to automatically provide ancillary service to support a transmission service request, even when not requested to do so by the transmission customer.

3. Discussion

We find that the Midwest ISO has satisfied the requirements of Order No. 2000 for ancillary services. We view the Order No. 2000 requirement that an RTO must facilitate customer access to a real-time balancing market as distinct from the requirements of this function. To the extent that a customer meets its own balancing needs through such a market, Midwest ISO will not have provided the actual service. Accordingly, we will address Midwest ISO's proposal regarding a real-time balancing market in a separate section below.

In response to Calpine, we find that the ancillary service terms of Midwest ISO's Tariff (Section I.3 and Schedules 1 through 6) provide ample specificity. In particular, they provide rates for

ancillary services and, where the service is generation-related, provide that individual generators are responsible for maintaining FERC-approved charges for providing ancillary services. We find these provisions reasonable.

In addition, we do not share Calpine's concern about Midwest ISO's right to deny scheduling when necessary ancillary services have not been arranged. We expect that if a transmission customer determines that a particular transaction must go through, it will take the necessary steps with either third party providers, the Midwest ISO, or a combination of both, to make sure the transaction will have the ancillary support it needs. While Midwest ISO may deny scheduling when a customer fails to arrange for ancillary services, Midwest ISO must make these arrangements at the customer's request.

We note that there will be one temporary exception to this rule. On November 30, 2001, in response to comments and protests in Docket No. ER01-3142-002, Midwest ISO requested a temporary suspension of the effective date when Midwest ISO would begin providing the Energy Imbalance and Inadvertent Interchange (Schedule 4) ancillary service. In the interim, Midwest ISO stated that this service will be provided directly by the TOs under their existing ancillary service schedules. While that filing will be addressed in a separate order, we note here that the stated reason for the suspension is to develop, through an inclusive stakeholder process, a revised Schedule 4 which will be more acceptable to stakeholders. Since this inclusive stakeholder process will be temporary, and since customers will have access in the interim to the FERC-approved Schedule 4 services of the TOs, we will not delay RTO approval for this reason. Accordingly, we find that Midwest ISO's proposal to be the supplier of last resort for all ancillary services meets the requirements of this function. However, Midwest ISO's proposal does not require the RTO or the control area operators to procure ancillary services at least cost. We will require Midwest ISO to amend its tariff to require that ancillary services be provided or procured at least cost.

RTO Function No. 5: OASIS, Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

The RTO must be the single OASIS site administrator for all transmission facilities under its control and independently calculate TTC and ATC.

1. Midwest ISO's Proposal

Midwest ISO states that it will be the single OASIS administrator for all transmission facilities under its control and will independently calculate TTC and ATC based upon information filed by each TO regarding the physical ratings of the TO's facilities. Midwest ISO notes that in the September 16 Order, the Commission found that the authority set forth in Appendix B attached to the Midwest ISO

Agreement was adequate to allow the Midwest ISO to perform an independent verification of ATC.<sup>59</sup> Midwest ISO also notes that, in case of dispute, the September 16 Order found that Midwest ISO's determination of ATC will govern pending the outcome of ADR proceedings.

## 2. Intervenors' Comments

The Competitive Coalition argues that the lack of common energy imbalance and congestion management markets between the Alliance Companies and the Midwest ISO will create artificial barriers to power transfers. The Competitive Coalition asserts that this will create difficulties in exchanging operational and security data which raises concerns about the ability to maintain system security and post accurate ATC values, especially with regard to the Midwest ISO members that are located within the boundaries of Alliance Companies and ECAR transmission owners that are isolated to the East.

Calpine asserts that Midwest ISO will maintain its own OASIS separate from that operated by the Alliance Companies, with each RTO separately calculating ATC and TTC. While Midwest ISO claims it will coordinate its OASIS operations with the Alliance Companies and will independently verify the data supplied by the TOs in calculating ATC, Midwest ISO has not yet filed with the Commission the details on how these processes will occur. Calpine further asserts that the maintenance of two separate OASIS nodes violates the One-Stop Shopping policy because transmission customers in the Super-Region will be required to monitor two separate OASIS sites in order to reserve transmission capacity.

## 3. Discussion

Order No. 2000 concluded that an RTO must be the single OASIS site administrator for all transmission facilities under its control, must independently calculate ATC and TTC, and must base the calculation of ATC values on data developed partially or totally by the RTO.<sup>60</sup> The Midwest ISO satisfies the requirements of this RTO function. The Midwest ISO will be the single OASIS administrator for all transmission facilities under its control and will calculate TTC and ATC based on information that it independently verifies. As in the September 16 Order, we continue to find this arrangement acceptable. Additionally, once actual operational experience is gained, the independent market monitor, discussed elsewhere in this order, should be able to determine if there are insurmountable problems with this arrangement and, if needed, we will revisit the issue.

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<sup>59</sup>Section V of Appendix B provides that the Midwest ISO, in carrying out its responsibilities, shall use equipment ratings supplied by transmission owners and verified and accepted as appropriate by the Midwest ISO where such ratings affect Midwest ISO reliability.

<sup>60</sup>Order No. 2000, at 31,144-45.

Intervenors' arguments revolve around the potential problem of coordination with the Alliance Companies. Given that we are, in concurrent orders, directing the Alliance Companies to explore membership in Midwest ISO through Appendix I, intervenors' arguments require no further discussion here.

#### RTO Function No. 6: Market Monitoring

To ensure that the RTO provides reliable, efficient and not unduly discriminatory transmission service, the RTO must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements, and propose appropriate actions.

##### 1. Midwest ISO's Proposal

Midwest ISO states that Midwest ISO, Alliance Companies, and SPP, have jointly contracted to utilize the same service provider, Potomac Economics, to meet the market monitoring requirements of Order No. 2000. Midwest ISO states that Potomac Economics has extensive experience in this field and has provided a draft independent market monitoring plan (Plan) to be refined through an open stakeholder process and then filed with this Commission 60 days prior to the operation date of the Midwest ISO. The Plan was subsequently filed on October 15, 2001, in Docket No. ER02-108-000. Because the information submitted in that docket is germane to our review here, we will address that docket here as well.

Midwest ISO's application in Docket No. ER02-108-000 indicates that the tendered Plan passed through a refining process that included broad stakeholder participation under the guidance of Potomac Economics. Midwest ISO states that one major issue, related to the release of information by the Independent Market Monitor ("IMM"), could not be resolved prior to filing.

The Plan calls for the IMM to monitor the conduct of market participants, transmission owners, and the participating RTOs (Midwest ISO, Alliance Companies, and SPP). The IMM's goal will be to detect (1) attempts to exercise market power in the participating RTO's markets, as defined in the plan,<sup>61</sup> and (2) attempts to reduce the quantity or quality of transmission service in the region. The IMM will also assess the market rules and procedures that may affect the competitiveness or economic efficiency of the participating RTO's markets or services, and will assess the operation, use, and resulting congestion on the transmission system.

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<sup>61</sup>The Plan states that the IMM will only monitor markets operated by the participating RTOs. It will not generally monitor bilateral energy or capacity markets, or private transmission rights not administered, coordinated, or facilitated by the participating RTOs.

The Plan calls for the IMM to report its findings to the Commission and others in regular annual reports, and to respond to special requests for investigations from the Commission and others, subject to the requirement that information sharing will follow certain guidelines to protect confidential information. In addition, the Plan calls for the creation of a Market Monitoring Committee (MMC) to serve as liaison with the participating RTOs. While the IMM will have authority to gather information and make analyses and recommendations, it will not have authority to impose sanctions or penalties and the Plan does not include any automatic mitigation measures.

Midwest ISO states that it has chosen not to include the Plan in the Midwest ISO Tariff because Midwest ISO believes that the Plan does not define any transmission or ancillary service offered by Midwest ISO nor establish a price for any service offered through the Midwest ISO Tariff.

## 2. Intervenors' Comments

Some intervenors complain that the IMM will not have authority to mitigate, sanction, or penalize activities in the wholesale bulk power markets, imbalance markets, and ancillary services markets where the IMM has found anti-competitive practices. Similarly, they complain that the IMM has no authority to implement necessary rule changes that could prevent or mitigate anti-competitive practices. To the extent that the IMM cannot act on its own, some intervenors believe that the RTO should be given a deadline in which to act on the IMM's recommendations.

Some intervenors also complain as to the frequency of the regular reports issued by the IMM and their content. For example, the Missouri Office of Public Counsel believes that the IMM should be required to submit a monthly report detailing both bid prices from the month and corresponding identities, in order to enhance the transparency of competitive power markets.

Several intervenors find fault with the concept or make-up of the MMC and request that it either be eliminated or changed to reflect an independent and purely administrative role. For example, Competitive Coalition states that the MMC should be eliminated since Midwest ISO and SPP are merging, and thus the need for any institutional coordinating committee is eliminated. Other intervenors state that, at the very least, the Plan should provide more detail as to the daily interaction between the IMM, the MMC, and other RTO staff.

Some intervenors also stress that future changes to the Plan must be filed with the Commission, with adequate opportunity for public notice and comment.

Regarding the information requirements of the IMM, some intervenors are in favor of greater protections for market participants, while others defend the need of the IMM to have full access to information. Regarding the protections on confidential information sharing with regulators, some intervenors state that the Plan should contain a complete policy that is not subject to the individual information sharing policies of the participating RTOs. Similarly, State Commissions recommend that

the Commission establish, to the extent possible, a standardized RTO information sharing policy.

To the extent that the IMM performs investigations of individual parties, some intervenors argue that the investigations should be confidential. Intervenors also seek clarification that the IMM will have full authority to monitor ITCs.

Finally, Iowa Utilities Board requests that the Commission convene a regional council made up of affected state commissions and other regulatory entities, in order to provide input into the decision-making process regarding market monitoring.

### 3. Response

Midwest ISO responds that the Plan is a step up from the market monitoring plans in existing ISOs because it provides for monitoring of the RTOs as well as other market participants. Midwest ISO states that it welcomes that scrutiny and will promptly implement meritorious recommendations by the IMM.

Midwest ISO does not, at this time, agree that the IMM should have independent authority to impose sanctions or penalties but states that if real-time measures are shown to be necessary, the IMM will be instrumental in designing them. Additionally, Midwest ISO states that it believes that the IMM should work with appropriate state authorities to the extent that it detects market impediments or corrupting conduct that is within the state's sphere of regulatory jurisdiction.

Midwest ISO also defends the MMC as an appropriate intermediary between the participating RTOs and the IMM. Midwest ISO argues that the MMC, as proposed, will serve as the voice of management for the participating RTOs, and will thus ensure that each RTO's staff will respond to the IMM with a high level of support. Midwest ISO commits to delineate the operations of the MMC within the Midwest ISO in published business practices which shall be open to stakeholder input.

Regarding investigations of individual parties, Midwest ISO argues that such investigations should remain confidential unless and until the IMM develops sufficient evidence of questionable conduct to warrant a referral of the matter to the Commission. At that point Midwest ISO asserts that both the referral and the resulting Commission action should be public.

Regarding information sharing, Midwest ISO states that the Plan provides for state regulatory agency access to data gathered by the IMM and that parties are free to address these provisions through the Advisory Committee process.

Finally, regarding the data access requirements for the IMM, Midwest ISO states that the IMM will need unfettered access to information, subject to appropriate confidentiality provisions. Midwest ISO believes that the data access requirements delineated in the Plan will meet this requirement.



#### 4. Discussion

Order No. 2000 requires market monitoring plans to be designed to ensure that there is objective information about the markets that the RTO operates or administers and a vehicle to propose appropriate action regarding any improvements needed, market design flaws, or market power.<sup>62</sup> We find that Midwest ISO's Plan generally satisfies the Order No. 2000 requirements for this function. Of particular importance is the fact that the IMM can, at any time for informational purposes, report its unscreened and unaltered findings and recommendations directly to the Commission.<sup>63</sup> However, we will direct Midwest ISO to make certain additional filings as discussed below.

First, Midwest ISO must submit for review its contract with Potomac Economics. Without knowing the details of the contract we cannot be sure that the IMM is truly independent of the RTO. For instance, since the IMM will be paid for its services pursuant to this contract, the Commission must be able to satisfy itself that the terms of payment cannot result in inappropriate incentives to find in favor of the RTO when reviewing the RTO's conduct, market rules, and procedures. The fact that the RTO itself is independent from other market participants would not ameliorate this concern.

Assuming that we are satisfied following review of the actual contract with Potomac Economics, that the IMM will be truly independent, we find that the Plan will provide objective information about the markets that the RTO operates or administers and a vehicle to propose appropriate action regarding any improvements needed, market design flaws, or market power. We note that the question of what markets the RTO should operate may have a different answer after the completion of our Rulemaking on Standard Market Design. Accordingly, this finding is subject to the outcome of that proceeding.

In addition, we find that proper protections should be in place before confidential information is shared and state commission commentors appear to agree that this information must be protected. We also note that the impending merger with SPP, and our concurrent orders directing Alliance Companies to explore becoming members of Midwest ISO, should result in Midwest ISO's information sharing procedures becoming the only such procedures that Midwestern state regulators must contend with. Of course, to the extent that our Rulemaking on Standard Market Design results in standard information sharing procedures for all RTOs, Midwest ISO's procedures may require further modification to comply with the outcome of that proceeding as well.

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<sup>62</sup>Order No. 2000, at 31,156.

<sup>63</sup>See sections 1.4 and 4.3 of the Plan. To the extent that the IMM exercises this right, the IMM should address its filing to the Secretary of the Commission in the above docket. All regularly scheduled reports to the Commission should be filed with the Secretary as well. The IMM may seek confidential treatment for the information filed.

Since the terms of the Plan are integral to Midwest ISO's continued compliance with the Order No. 2000 requirements for this function, we find that any proposed changes to the Plan must be approved by the Commission. We will, therefore, require Midwest ISO to re-file the Plan as a properly formatted Attachment to the Midwest ISO Tariff.<sup>64</sup>

Regarding intervenors' arguments that the IMM must have independent authority to assess penalties or sanctions, Order No. 2000 states that penalties and sanctions may be appropriate for certain actions and any proposed sanctions or penalties must be clearly identified in the market monitoring plan, as well as the specific conduct to which they would be applied, the rationale to support the sanctions and an explanation as to how they would be applied.<sup>65</sup> Order No. 2000 did not, however, require that the market monitor have the authority to impose penalties and sanctions.<sup>66</sup> Thus, the Plan's proposal to authorize the IMM to make recommendations for corrective action is completely consistent with Order No. 2000.

Additionally, we see merit in intervenors' argument that Midwest ISO should face a deadline for addressing recommendations made by the IMM. Midwest ISO, in its response, agrees to promptly implement meritorious recommendations of the IMM, however, we believe that this commitment should be strengthened with a deadline to either agree to implement an IMM recommendation or explain why it lacks merit. Implementation of any given market reform may require long lead times and we will not, at this time, mandate uniform implementation deadlines. However, we will impose a deadline for Midwest ISO to either agree or disagree to an IMM recommendation, of 45 days. Midwest ISO is hereby directed to make this modification to the Plan before making the filing under section 205 directed above.

Finally, in light of the impending merger with SPP, and our concurrent orders directing Alliance Companies to explore becoming members of Midwest ISO through Appendix I, we believe that Midwest ISO's commitment to publicly delineate the operations of the MMC addresses intervenors' concerns in this area. As a result of these changed circumstances, the MMC will only represent the management of one RTO and its procedures will be available for public scrutiny, comment, and adjustment through Midwest ISO's established processes, where necessary.

In Order No. 2000, the Commission did not prescribe a particular market monitoring plan, or the specific elements of such a plan, because market monitoring is evolving as trading markets are created. The Commission provided for a flexible approach and noted that different market monitoring

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<sup>64</sup>See Order No. 614 for guidance on formatting requirements for filed tariff sheets.

<sup>65</sup>Order No. 2000, at 31,156.

<sup>66</sup>See also GridSouth, 94 FERC at 62,006.

plans may be appropriate for different RTOs.<sup>67</sup> In addition, the Commission stated that it would periodically assess the need for, and the degree of, market monitoring that should be done. In this proceeding, we accept Midwest ISO's Plan with the understanding that the Commission will periodically assess the need for, and degree of market monitoring; and hereby reserves our authority to issue a supplemental order regarding market monitoring.

#### RTO Function No. 7: Planning and Expansion

The RTO must be responsible for planning and for directing or arranging necessary transmission expansions, additions and upgrades that will enable it to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities. If the RTO is unable to satisfy this requirement when it commences operations, it must file with the Commission a plan with specified milestones that will ensure that it meets this requirement no later than three years after initial operation.

##### 1. Midwest ISO's Proposal

Midwest ISO states that it will play a key role with overall responsibility for coordinating regional transmission system planning and expansion through the terms of Appendix B of the Midwest ISO Agreement (Planning Framework). In addition, Midwest ISO states that Midwest ISO and Alliance Companies will create a joint RTO planning committee with representatives from both RTOs. The Joint Planning Committee shall be responsible for coordinating planning activities for all facilities under the functional control of both Alliance Companies and Midwest ISO. Midwest ISO notes that it has developed a Generator Interconnection Agreement that is largely consistent with a similar agreement developed by Alliance Companies.

##### 2. Intervenors' Comments

WPPI argues that the Midwest ISO's Planning Framework does not meet the RTO requirements and should be modified. WPPI asserts that the TOs play too great a role in the proposed Planning Framework. For instance, the Midwest ISO will adhere to the TOs' filed planning criteria and will make use of equipment capability ratings provided by the TOs. WPPI believes that the Planning Framework should be transformed so that it is a "top down" process driven by the Midwest ISO staff and Board. WPPI states that the TOs have too much power to block or delay the construction of needed transmission facilities using the terms of the Agreement and dispute resolution. WPPI asserts that the Planning Framework fails to adopt an inclusive and even-handed mechanism for considering input of all stakeholders since there are rights for affected TOs to participate on committees. WPPI argues that this violates the Commission's expectation that all market participants will have the

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<sup>67</sup>Order No. 2000 at 31,155-56.

opportunity to participate in the planning process on the same footing as TOs and will be able to contribute studies and analyses.

Calpine argues that a single set of common planning protocols and procedures and a common interconnection agreement should exist for both Midwest ISO and Alliance Companies.

### 3. Discussion

With the modifications discussed below, we find that Midwest ISO's transmission planning and expansion provisions meet the Commission's requirements outlined in Order No. 2000. In PJM,<sup>68</sup> we emphasized that RTO regional transmission expansion plans must be more than a collection of traditional expansion plans developed by individual TOs and assembled by the RTO after confirming that they serve reliability needs. Midwest ISO's Planning Framework provides that the Midwest ISO planning staff will develop the regional transmission expansion plan consistent with good utility practice and based upon: (1) transmission needs identified in facilities studies; (2) transmission needs identified in the TOs' planning studies; (3) transmission obligations imposed by law; (4) inputs provided by the Planning Advisory Committee;<sup>69</sup> and (5) inputs, if any, provided by state regulatory authorities having jurisdiction over any of the TOs. Thus, only two aspects of Midwest ISO's proposal require modification in order to fully satisfy our RTO objectives.

First, the Planning Framework states that the "...collaborative planning process is designed to ensure the development of the most efficient and cost-effective transmission plan to meet the obligations of the ISO and the needs of the stakeholders." Although this is an important objective, the focus of an RTO regional plan that supports the development of a competitive bulk power market must be broader. As we noted in GridFlorida II,<sup>70</sup> planning protocols must fully explain how the RTO "will pursue infrastructure investment that will make generation markets more competitive." This means that the planning process should also focus on identifying projects that expand trading opportunities, better integrate the grid, and alleviate congestion that may enhance generator market power. It is not completely clear that the Midwest ISO planning process includes as a goal the fostering of competitive markets. Consequently, we will direct Midwest ISO to modify the Planning Framework to reflect that it will give full consideration to all market perspectives, including demand-side options, and identify expansions that are critically needed to support competition as well as reliability needs.

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<sup>68</sup>PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 (2001) (PJM).

<sup>69</sup>The Planning Advisory Committee is made up of a cross section of the members of the Advisory Committee as defined in Article Two, Section VI.(A) of the Midwest ISO Agreement. As such, both committees include a broad range of stakeholders.

<sup>70</sup>GridFlorida LLC, 94 FERC ¶ 61,363 at 62,367 (2001) (GridFlorida II).

Second, we find that the Planning Framework appears to limit construction and ownership of new transmission facilities identified by the plan to TOs only. Merchant transmission projects are only possible if the TOs in direct contact with the proposed project are financially incapable of carrying out the construction or would suffer demonstrable financial harm from such construction. As in PJM, we find that the principle of third-party participation is important even though we recognize practical obstacles may prevent third parties from competing effectively with incumbent TOs, at least in the short-run. For example, obtaining rights-of-way under eminent domain authority may not be possible for some third parties. Nevertheless, as in PJM, we find that our long term competitive goals are better served by RTO expansion plans that allow for third party participation as well as permit merchant projects outside the plan. Accordingly, Midwest ISO must revise its Planning Framework to make it possible for third parties to participate in constructing and owning new transmission facilities identified by the plan.

We do not agree with WPPI's argument that other stakeholders do not have the opportunity to participate in the planning process on the same footing as TOs. As described above, the Planning Framework vests primary planning responsibility on staff members of the Midwest ISO, which this order finds to be independent subject to conditions described in the Independence section of the order. The Planning Framework also provides that the Midwest ISO planning staff will consider inputs both from TOs and from others, including the Planning Advisory Committee which represents a broad range of stakeholders. Thus, the Planning Framework does provide all interested parties an opportunity to participate. At this point, we feel that any attempt to broaden the stakeholder process beyond what is contemplated in the Planning Framework will risk creating a process too cumbersome to function properly.

Finally, Calpine's concern is rendered moot by the Commission's concurrent order directing Alliance Companies to explore membership in Midwest ISO through Appendix I.

#### RTO Function No. 8: Interregional Coordination

The RTO must ensure the integration of reliability practices within an interconnection and market interface practices among regions.

##### 1. The Midwest ISO's Proposal

The Midwest ISO asserts that it has been instrumental in inter-regional coordination and that the IRCA confirms this assertion. The Midwest ISO states that it has been a leader in developing several white papers and has co-authored, with the representatives of the Alliance Companies and SPP, several sets of procedures and protocols as required under the Settlement Agreement. These substantial technical efforts have primarily focused on the elimination of the "seams" between the RTOs. Midwest ISO contends that the IRCA goes beyond the intent of inter-regional coordination as it requires the Midwest ISO and the Alliance Companies to develop compatible protocols and

procedures and addresses several seams issues. According to Midwest ISO, this arrangement forces the two start-up RTOs to design compatible market approaches within the RTOs themselves and not just manage the differences at the seams as prescribed by the Commission's Order No. 2000. While several stakeholders would have preferred that the Midwest ISO and Alliance Companies merge, the IRCA allows both business models to coexist side-by-side. The Midwest ISO is steadfastly dedicated to the development of the compatible procedures and protocols and is working to continue to convert these paper agreements into functional reality upon the commencement of full-scale operations in order to meet the needs of market participants.

## 2. Intervenors' Comments

The Competitive Coalition argues that the realignment of transmission owners between the Midwest ISO and Alliance Companies poses serious problems for the development of a single energy market for the entire Midwest, given that the Alliance Companies and the Midwest ISO are currently developing separate and distinct markets.

Mirant Entities contend that Appendix I to the Midwest ISO Agreement provides a framework in which an ITC may operate as a stand-alone business within the Midwest ISO. Mirant Entities contend that Appendix I offers an avenue for resolving the issues created by the conflicting business plans of the Alliance Companies and Midwest ISO. By joining the Midwest ISO under Appendix I, Mirant Entities and others contend that the Alliance Companies would solve this problem, while still allowing the Alliance Companies the opportunity to pursue a business model that permits them to maximize the return on their transmission assets.

## 3. Discussion

Order No. 2000 requires an RTO to develop mechanisms to coordinate its activities with other regions regardless of whether or not an RTO exists in these other regions.<sup>71</sup> In addition, Order No. 2000 states that if it is not possible to coordinate mechanisms at the time an RTO proposal is filed, the RTO must propose reporting requirements, including a schedule and provide follow-up details as to how it is meeting the coordination requirements of this function.<sup>72</sup> Additionally, in Order No. 2000-A, the Commission noted that we expect parties to utilize the collaborative process to discuss interregional coordination issues.<sup>73</sup>

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<sup>71</sup>Order No. 2000, at 31,167.

<sup>72</sup>Id.

<sup>73</sup>Order No. 2000-A, at 31,382.

As we explained in GridSouth,<sup>74</sup> the interregional coordination function of Order No. 2000 has two aspects: the integration of reliability practices and the integration of market interface practices. With the impending merger with SPP promising to eliminate Midwest ISO's southern seam, the main seams issue remaining involves Alliance Companies. This is confirmed by intervenors' comments on this issue. Our concurrent order directing the Alliance Companies to explore membership in Midwest ISO through Appendix I makes this seams issue moot as well. Accordingly, we find that Midwest ISO meets the requirements of this function.

#### VI. Other Requirements of Order No. 2000

##### Open Architecture

Any proposal to participate in an RTO must not contain any provision that would limit the capability of the RTO to evolve in ways that would improve its efficiency, consistent with the required characteristics and required functions for an RTO.

##### 1. Midwest ISO's Proposal

Midwest ISO states that its existing Tariff, agreements, and other governing documents do not limit the capability of the RTO to evolve in an efficient manner. Midwest ISO points to its adoption of provisions that permit ITCs to operate within the framework of the Midwest ISO as one example of its ability to evolve to embrace different business models. It also points to the changes it has made in order to permit members of MAPP to join as further evidence of its flexibility and open architecture.

##### 2. Discussion

We note that since the time of Midwest ISO's compliance filings herein, Midwest ISO has made additional strides in adapting itself to include transmission owners with varying business models. For instance, Midwest ISO has made changes to its governing documents that allow tax exempt-financed governmental entities to join and has executed a cooperation agreement with a Canadian provincial transmission owner which effectively expands the Midwest ISO region beyond the U.S. border to the benefit of all concerned. We conclude that the Midwest ISO meets the requirements of open architecture in an exemplary manner.

##### Real-Time Balance Market

An RTO must insure that its transmission customers have access to a real-time balancing market that is developed and operated by either the RTO itself or another entity that is not affiliated with any market

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<sup>74</sup>94 FERC at 62,011.

participant

### 1. Midwest ISO Proposal

Midwest ISO's day-one proposal for a real-time balancing market is contained in Cooperative Procedure and Protocol 7 (CPP7) that was created by Midwest ISO and Alliance Companies consistent with the terms of the Settlement and IRCA.<sup>75</sup> In essence, CPP7 provides that customers can avoid imbalance charges under Midwest ISO's normal provision of ancillary services by staying "in balance" through the use of bilateral schedules arranged with third-party providers. Midwest ISO commits to make available a posting system where the buy and sell quotes can be posted. This, then, would be the real-time balancing market. Midwest ISO's goal is to have this posting system be operated by an Independent Market Operator (IMO), but CPP7 indicates that the IMO may not be available on day one.

### 2. Discussion

We find that this proposal can lead to a real-time balancing market that meets the requirements of Order No. 2000 for an interim period. However, this conclusion hinges on the remaining details of the posting system proposal, such as the nature of the IMO and the physical and computational requirements of the posting system that will form the market. Accordingly, we direct Midwest ISO resolve and file the remaining details of this proposal so that the posting system can become operational at the same time that Midwest ISO becomes operational.

We note that neither the RTO nor the control area operators are required to use the Day One posting system in providing real-time imbalance service. However, as noted earlier, Midwest ISO states that it and its stakeholders are developing a Day Two proposal for congestion management based on real-time locational pricing and other features that will significantly improve the efficiency of the markets in the Midwest region. Midwest ISO also states that the solution for real-time balancing is closely tied to the long-term solution for dealing with congestion management. Therefore, we will accept Midwest ISO's posting system proposal for a balancing market for the interim, conditional on its commitment to file a Day Two proposal for congestion management that will improve the efficiency of the markets in the Midwest region, including the real-time imbalance energy market. To the extent that the outcome of the Rulemaking on Standard Market Design results in standardized requirements for real-time imbalance markets, Midwest ISO's proposal may need further modification at that time.

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<sup>75</sup>CPP7 is publicly available on Midwest ISO's website.



The Commission finds:

While we are granting RTO status to Midwest ISO in today's order, we emphasize that Midwest ISO should continue working diligently to complete its announced merger with SPP and to integrate the Alliance Companies into the Midwest ISO in order to develop an RTO that truly encompasses the natural markets in the Midwest.

The Commission orders:

(A) The answers to comments and protests listed in the appendix are hereby granted, as discussed in the body of this order.

(B) Late-filed motions to intervene are hereby granted and late-filed protests are hereby granted for consideration.

(C) The Midwest ISO's compliance filing is hereby accepted as discussed in the body of this order, and the Midwest ISO is hereby directed to submit additional material, as discussed in the body of this order. Additionally, Docket Nos. ER02-106-000 and ER02-108-000 are accepted as discussed in the body of this order and terminated.

By the Commission

Secretary.

**Motions to Intervene, Notices of Intervention, Comments and Protests  
Docket Nos. RT01-87-000 and RT01-87-001**

- 1) Allegheny Energy Supply Co. LLC
- 2) Alliance Companies
- 3) American Forest and Paper Association (AF&PA)
- 4) American Transmission Co., LLC (ATCLLC)
- 5) Association of Businesses Advocating Tariff Equality (ABATE) ( ABTco, Inc., a Louisiana-Pacific Company; ATOFINA Chemicals, Inc.; BASF Corp.; The Budd Co.; Cargill; DaimlerChrysler Corp.; Eaton Corp.; Edward C. Levy Co.; Escanaba Paper; a Mead Co.; Ford Motor Co.; General Motors Corp.; Marin Marietta Magnesia Specialties, Inc.; National Steel Corp.-Great Lakes Division; Pharmacia & Upjohn Col.; Quanex Corp.; and Steelcase, Inc.)
- 6) Basin Electric Power Cooperative(Basin Electric)
- 7) Calpine Corporation(Calpine)
- 8) Central Illinois Light Company(CILCO)
- 9) CMS Marketing, Services, & Trading Co.
- 10) Coalition of Midwest Transmission Customers and Industrial Energy Users-Ohio (CMTC and IEU-Ohio, respectively)
- 11) The Competitive Coalition (NRG Cos.; Mirant Entities; Constellation Cos.; PSEG Cos.)
- 12) Constellation Companies
- 13) Consumers Energy Co.
- 14) Dairyland Power Cooperative (Dairyland)
- 15) Detroit Edison Company
- 16) Duke Energy North America, LLC (DENA)
- 17) Dynegy Inc.
- 18) Dynegy Power Marketing Inc.
- 19) Edison Electric Institute
- 20) Edison Mission Companies
- 21) Electric Power Research Institute
- 22) Electric Power Supply Association
- 23) Enron Power Marketing, Inc. (Enron)
- 24) FirstEnergy Corp.
- 25) Great River Energy (Great River)
- 26) Illinois Commerce Commission
- 27) Illinois Industrial Energy Consumers
- 28) Indiana and Michigan Municipal Distributors Association
- 29) Indiana Municipal Power Agency (IMPA)
- 30) Indiana Office of Utility Consumer Counselor

- 31) International Transmission Company
- 32) Michigan Public Service Commission (Michigan PSC)
- 33) MidAmerican Energy Company
- 34) Mid-Atlantic Power Supply Association
- 35) Midwest Energy Inc.
- 36) Midwest ISO Transmission Owners
- 37) Midwest Generation-EME, LLC
- 38) Minnesota Department of Commerce and Iowa Utilities Board
- 39) Minnesota Power Company
- 40) Mirant Entities (Mirant Americas Energy Marketing, LP., Mirant State Line Ventures, Inc., Mirant Neenah, LLC, and Mirant Zeeland, LLC)
- 41) Missouri Public Service Commission (Missouri PSC)
- 42) Missouri River Energy Services (Missouri River)
- 43) Morgan Stanley Capital Group Inc.
- 44) Northern States Power Companies
- 45) NUCOR Steel
- 46) Ohio Consumers' Counsel
- 47) Ohio Public Utilities Commission (Ohio PUC)
- 48) Oklahoma Corporation Commission
- 49) Ontario Independent Electricity Market Operator
- 50) PG&E National Energy Group, Inc
- 51) Public Interest Organizations
- 52) Reliant Energy Power Generation, Inc
- 53) Shell Energy Services Company, LLC
- 54) Sunflower Electric Power Corporation (Sunflower)
- 55) TECO Power Services Corporation
- 56) Tractebel Companies
- 57) Wabash Valley Power Association
- 58) Western Area Power Administration(WAPA)
- 59) Williams Companies
- 60) Wisconsin Electric Power Co. (WEPCO)
- 61) Wisconsin Public Power, Inc. (WPPI)
- 62) Wisconsin Public Service Corp. and Upper Peninsula Power Co.(WPSC/UPPCO)

#### **Answers**

- 1) Missouri River Energy Services (Missouri River)

**Motions to Intervene, Notices of Intervention, Comments and Protests**  
**Docket No. ER02-106-000**

- 1) DENA
- 2) Illinois Commerce Commission
- 3) Mirant Entities
- 4) Orion Power Midwest LP (Orion)
- 5) Reliant Resources Inc.
- 6) Sunflower Electric Power Corporation (Sunflower)
- 7) WEPCO
- 8) WPSC/UPPCO

**Answers**

- 1) Midwest ISO

**Motions to Intervene, Notices of Intervention, Comments and Protests  
Docket No. ER02-108-000**

- 1) Arkansas PSC
- 2) Calpine
- 3) CMTC and IEU-Ohio
- 4) Competitive Coalition
- 5) DENA
- 6) Edison Mission Companies
- 7) Enron
- 8) Illinois Commerce Commission
- 9) Indiana Office of Utility Consumer Counselor
- 10) Indiana Utility Regulatory Commission
- 11) Iowa Utilities Board
- 12) Joint Movants (NRG Companies, Constellation Companies, Reliant)
- 13) Madison G&E
- 14) Michigan PSC
- 15) Minnesota Department of Commerce
- 16) Mirant Entities
- 17) Missouri Office of the Public Counsel
- 18) Missouri PSC
- 19) Missouri River Energy Services
- 20) NRG Companies
- 21) Ohio Consumers' Counsel
- 22) Oklahoma Corporation Commission
- 23) Orion
- 24) PSEG Companies

- 25) Public Service Commission of the Commonwealth of Kentucky
- 26) Public Service Commission of Wisconsin
- 27) Public Utilities Commission of Ohio
- 28) State Regulators (Arkansas PSC, Indiana URC, Iowa Utils. Bd., Kentucky PSC, Michigan PSC, Minnesota PSC, Missouri PSC, PUC Ohio)
- 29) Sunflower
- 30) Wabash
- 31) WEPCO
- 32) Williams Energy Marketing & Trading Company
- 33) WPPI
- 34) WPSC/UPPCO

**Answers**

- 1) Midwest ISO

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Companies	Docket Nos. RT01-88-000, -001, -002, -003, -004, -006, -007, -008, -009, -010, -011, ER99-3144-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -10, -011, -012, -014, EC99-80-000, -001, -002, -003, -004, -005, -006, -007, -008, -009, -010, -011, -012, -014,
Ameren Corporation	

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

Detroit Edison Company  
and International Transmission Company

Docket No. RT01-88-000, et al.

-2-

Exelon Corporation

On behalf of:

Commonwealth Edison Company  
Commonwealth Edison Company of Indiana, Inc.

Docket No. ER01-2992-000

First Energy Corporation

On behalf of:

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

Illinois Power Company

Docket Nos. RT01-84-000,  
001  
Docket Nos. ER01-123-000,  
001, 002, 003, and 004,  
Docket No. ER01-2999-000

Northern Indiana Public Service Company

Docket Nos. RT01-26-000, 001

Virginia Electric and Power Company

Docket No. ER01-2993-000

The Dayton Power and Light Company

Docket Nos. RT01-37-000,  
001 and Docket No.  
ER01-2997-000

American Electric Power Company  
Appalachian Power Company  
Columbus Southern Power Company  
Indiana Michigan Power Company  
Kingsport Power Company  
Ohio Power Company  
Wheeling Power Company

Docket No. ER01-2995-000

ORDER ON REQUESTS FOR REHEARING

(Issued December 20, 2001)

On July 12, 2001, the Commission issued an order in the above-captioned dockets addressing a compliance filing by the Alliance Companies regarding their proposed regional transmission organization (Alliance RTO). In this order we dismiss requests for rehearing and direct Alliance Companies to explore membership in the Midwest Independent System Operator (Midwest ISO). In our view, this approach offers the best opportunity for fostering RTO development in a way that will provide a seamless and robust market for millions of consumers in the Midwest.

#### I. Introduction

Today the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimally sized regional transmission organization (RTO) in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000.<sup>1</sup> In taking today's actions, we have made findings as to the RTO structure that we conclude best serves the public interest in the Midwest. Our decisions in these five orders recognize the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions. However, our actions should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO.

For two years now, since the issuance of Order No. 2000, electric industry participants in the Midwest, State commissions, and this Commission have struggled with an array of different proposals and issues and how best to achieve a seamless wholesale power market in the Midwest. While both Midwest ISO and Alliance Companies have spent considerable money and resources in developing and attempting to reconcile their competing proposals, the Commission is at a point where we must make some difficult decisions with respect to the competing proposals. Based on the record before us, and taking into account the views of the majority of the Midwestern State commissions, we conclude that Midwest ISO's proposal most fully complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope, and that the Midwest ISO therefore should serve as the foundation upon which a Midwest RTO should be built. In this regard, we are confident that the Alliance Companies' desire to be a viable transmission business can be accommodated under the Midwest ISO umbrella.

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<sup>1</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd, Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir. Dec. 11, 2001).



In today's five orders, we take the following specific steps:

- (1) approve the Midwest ISO as an RTO (Docket No. RT01-87-000 et al.);
- (2) approve International Transmission Company's (International Transmission) request to transfer operational control of its transmission facilities to Midwest ISO; and accept an agreement between International Transmission and Midwest ISO which would allow International Transmission to be an independent transmission company that would share certain RTO functions with the Midwest ISO (Docket No. ER01-3000-000 et al.); and
- (3) preliminarily approve the disposition of International Transmission's transmission facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella (Docket No. EC01-137-000);
- (4) conclude that Alliance Companies, which filed for approval as a separate RTO, lacks sufficient scope to exist as a stand-alone RTO; but direct Alliance Companies to explore how their business plan (including the proposal for National Grid to become the managing member of Alliance) can be accommodated within the Midwest ISO (Docket No. RT01-88-000 et al.); and
- (5) grant in part and defer in part National Grid's request for a declaratory order that it is not a market participant and dismiss Alliance Companies' business plan (Docket No. EL01-80-001 et al.).

We now turn to the specific actions taken in the above captioned dockets.

## II. Background

The Commission has addressed the Alliance RTO in a series of orders,<sup>2</sup> and on January 24, 2001, ultimately found that Alliance Companies' proposal to create a for-profit transmission company or transco basically met the four characteristics and most of the functions discussed in Order No. 2000,

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<sup>2</sup>See, e.g., Alliance Companies, et al., 89 FERC ¶ 61,298 (1999) (Alliance I Order), order on rehearing and compliance, 91 FERC ¶ 61,152 (2000) (Alliance II Order).

but directed further modifications.<sup>3</sup> Concurrently with the Alliance IV Order, the Commission issued an order on the Settlement among the Midwest ISO, Alliance Companies, and others which was to provide for, among other things, an Inter-RTO Cooperation Agreement (IRCA) that would develop a seamless market in the region covered by the Alliance RTO and the Midwest ISO.<sup>4</sup>

On July 12, 2001, the Commission conditionally approved Alliance Companies' RTO filing submitted in compliance with Order No. 2000, subject to certain conditions.<sup>5</sup> Among other things, the Commission was concerned that business decisions prior to implementation of an Alliance RTO were not being made independently, but by Alliance Companies. Therefore, it directed Alliance Companies to decide which of the alternative business plans proposed they intended to implement, within 45 days of the date of the order, and it further directed that from the date of the order an independent board be established to make all business decisions for the RTO consistent with the Commission's directives in GridFlorida LLC, et al., 94 FERC ¶ 61,363 at 62,325 (2001) (GridFlorida). It also noted, that until final RTO approval was granted, a stakeholder advisory committee should advise the independent board.<sup>6</sup>

With respect to the scope and configuration of Alliance RTO, the Commission's indication that Alliance Companies satisfied those requirements for scope and configuration under Order No. 2000 was based on the reasons previously stated in the Alliance III Order, and the fact that the Alliance RTO grew both physically (with the addition of new members, as well as the departing Midwest ISO members) and contractually (with the execution of the IRCA with the Midwest ISO). Finally, it reminded Alliance Companies of their continuing commitment to explore ways to expand their IRCA with neighboring RTOs.<sup>7</sup>

The Commission reiterated that although Alliance Companies' congestion management plan was an effective protocol for managing congestion and was consistent with the requirements of Order No. 2000 for so-called Day One operations, their long-term congestion management proposal was still a work in progress. Therefore, the Commission did not have enough information to rule on the proposal then, but would address Alliance Companies' congestion management plan when the completed proposal was filed under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994).

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<sup>3</sup>See Alliance Companies, et al., 94 FERC ¶ 61,070 at 61,622 (Alliance III Order), order denying reh'g and providing clarification, 95 FERC ¶ 61,182 (2001) (Alliance IV Order).

<sup>4</sup>See Illinois Power Company, et al., 95 FERC ¶ 61,183 (2001).

<sup>5</sup>See Alliance Companies, et al., 96 FERC ¶ 61,052 (2001) (Alliance V Order).

<sup>6</sup>Id. at 61,134-35.

<sup>7</sup>Id. at 61,135.

However, it encouraged Alliance Companies to resolve issues raised by protestors in their customer advisory process, and should substantial issues remain it would institute procedures to resolve such differences. The Commission also found that the Virginia State Corporation Commission's (Virginia Commission) competitive concerns regarding the pricing of mandatory incremental and decremental bids from generators for Day One operations was unsupported since Alliance Companies' proposal called for compensation to be at the applicable bid prices, which were capped at the party's authorized charges, if subject to regulatory approval. Therefore, the Commission found that there were no competitive concerns because bids from jurisdictional entities must be based on Commission-approved charges.<sup>8</sup>

Finally, the Commission found that Alliance Companies' proposed Planning Protocol was not a product of the Settlement, but instead was limited to establishing a planning protocol within the Alliance RTO individually. The Commission stated that to the extent joint planning with the Midwest ISO effects the Planning Protocol, Alliance Companies should amend it accordingly under section 205 of the FPA.<sup>9</sup>

### III. Requests for Rehearing

Various requests for rehearing and/or clarification, as noted below, were filed, which raised issues in five primary categories: (1) independence; (2) scope and configuration; (3) planning; (4) congestion management; and (5) stakeholder concerns. A request was also made for the Commission to convene a mediation-type proceeding between Alliance Companies and the Midwest ISO for the purpose of attempting to resolve seams issues and to explore the development of a single Midwest ISO. The specific issues raised by petitioners are discussed separately below.

On August 8, 2001, the Virginia Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and West Virginia Public Service Commission (Joint Commissions) filed a motion for clarification and request for expedited action, or, in the alternative request for rehearing. On August 10, 2001, Alliance Companies filed a request for clarification and rehearing. On August 13, 2001, the Association of Businesses Advocating Tariff Equity, the Coalition of Midwest Transmission Customers, Indiana Office of Utility Consumer Counselor, Missouri Office of the Public Counsel, the Ohio Consumers' Counsel, and Public Interest Organizations (collectively, Midwest Intervenor) and the Illinois Commerce Commission, the Michigan Public Service Commission, the Indiana Utility Regulatory Commission, the Pennsylvania Public Utility Commission, and the Public Utilities Commission of Ohio (Midwest Commissions) filed a request for

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<sup>8</sup>Id. at 61,138-39.

<sup>9</sup>Id. at 61,144.

rehearing. On August 17, 2001, the Public Utilities Commission of Ohio (Ohio Commission) filed an answer to the Joint Commissions' motion for clarification and/or request for rehearing. On August 27, 2001, Duke Energy North America, LLC (Duke) filed an answer and protest to Alliance Companies' request for clarification and rehearing. Finally, on September 12, 2001, Alliance Companies filed a motion for leave to answer and answer to the requests for rehearings and clarifications.

#### IV. Subsequent RTO-Related Actions

Subsequent to the filing of the rehearing requests in this and other pending RTO-related dockets, the Commission has undertaken an across-the-board assessment of RTO development, of the status of numerous ongoing proceedings involving RTO proposals, and of the ongoing changes in the electricity marketplace since the issuance of Order No. 2000. Several procedural steps provided additional information to assist us in moving forward with the development of RTOs that will meet the basic goals of the Federal Power Act. All of these recent activities, which are outlined below, have helped inform us in our resolution of the rehearing requests in these dockets.

First, during the week of October 15 through 19, 2001, the Commission held a public conference on various topics involving RTOs and the need for clear, appropriately standardized transmission tariffs and market rules. In addition, at the October 24, 2001 Commission meeting, we considered status reports on RTO efforts in various regions of the country, including the Midwest. On November 7, 2001, we issued an order which provided generic guidance on the continued processing of RTO filings and, which, among other things, stated that we intended to issue future orders addressing the pending filings and providing specific guidance and time lines to continue progress within the various RTO regions.<sup>10</sup> On November 9, 2001, we issued an order which recognized that we must work closely with state commissions to create a seamless national wholesale electricity market and which stated our intent to create state-federal regional RTO panels to discuss issues related to RTO status and development.<sup>11</sup>

With respect to the Midwest specifically, on November 9, 2001, the Commission sent a letter to all Midwest state utility commissioners asking them to respond to specific questions involving RTO development in the Midwest. In addition, on November 27, 2001, two of the Commissioners and Commission staff participated in an on-the-record state-federal RTO panel discussion on RTO issues with Midwest state utility commissioners. A transcript of the panel discussion was placed in the record in the above dockets.

#### V. Midwest State Commissions' Responses

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<sup>10</sup>Electricity Market Design and Structure, 97 FERC ¶ 61,146 (2001).

<sup>11</sup>State-Federal Regional RTO Panels, *et al.*, 97 FERC ¶ 61,182 (2001).

On November 30, 2001 and December 3, 2001, various state utility commissions filed responses to our letter dated November 9, 2001, concerning RTO formation in the Midwest to date.<sup>12</sup> Below we will describe the comments received as they relate to RTO structure in the Midwest and as to whether RTO development (including implementation of the IRCA) has been satisfactory to date. Comments regarding other areas such as the possible sharing of functions within a hybrid RTO will be addressed in other, more appropriate dockets.

Joint Commissions were unanimous in their support for a single RTO to administer the transmission system in the Midwest. Joint Commissions argue that multiple RTOs managed through seams agreements "[h]as not worked and will not work" in the Midwest.<sup>13</sup> With regard to the matters before us, Joint Commissions argue that little progress has been made to date on implementing the IRCA agreement between the Midwest ISO and Alliance Companies, and that only the Midwest ISO has the infrastructure in place necessary to assume control over transmission facilities.<sup>14</sup> Moreover, Joint Commissions contend that the lack of independence in the Alliance Companies' proposal as well as the pending merger between the Southwest Power Pool and Midwest ISO have further complicated implementation of the IRCA.<sup>15</sup> Joint Commissions also caution that, while Appendix I of the Midwest ISO agreement may provide a useful framework to begin to analyze how functions could be shared under a hybrid RTO, such an approach should be evaluated on a case-by-case basis rather than in a generic determination.<sup>16</sup>

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<sup>12</sup>The state public utility commissions of Michigan, North Dakota, Iowa, Arkansas, Pennsylvania, Virginia, Wisconsin, Oklahoma and Kentucky (Joint Commissions) filed a joint response. Supplemental responses were also individually filed by the Michigan Commission, the North Dakota Commission, the Oklahoma Corporation Commission and the Wisconsin Commission. Individual responses were filed by the Missouri Commission, the West Virginia Commission, the Arkansas Commission, the Indiana Regulatory Commission (Indiana Commission), the Public Utility Commission of Ohio (Ohio Commission), the Tennessee Regulatory Authority (TRA), the Kansas Corporation Commission (Kansas Commission), the South Dakota Public Utility Commission, the Nebraska Power Review Board (Nebraska Board), and the Virginia Commission. The Illinois Commerce Commission (Illinois Commission) filed two responses reflecting differing views. On December 12, 2001, National Grid filed a response to the filings of the state public utility commissions.

<sup>13</sup>Joint Commissions at 2.

<sup>14</sup>Id.

<sup>15</sup>Id.

<sup>16</sup>Id. at 10; see also, Missouri Commission at 6-7.

Joint Commissions conclude by detailing three areas of importance regarding Midwest RTO development. First, they argue that the Commission can advance Midwest RTO development by providing prompt guidance. Second, Joint Commissions indicate that the Commission should direct its resources to regions like the Midwest where there is a "[b]road regional consensus among state regulators to move forward with a single RTO."<sup>17</sup> Lastly, they argue that there is a need for an advisory structure to provide state regulators a permanent place, separate from other stakeholders, from which to oversee RTO development.

In their supplemental comments, the Michigan Commission argues that careful attention needs to be paid to the fact that International Transmission has filed to leave Alliance Companies and join the Midwest ISO. According to the Michigan Commission, this creates serious operational and reliability concerns which render "[a]n already problematic IRCA wholly untenable to Michigan."<sup>18</sup>

The Indiana Commission states that it cannot participate due to a pending case before it. Likewise, the Missouri Commission states that, due to a pending case, it cannot express its view on the number and boundaries of RTOs in the Midwest but notes that over the past several years, it "[h]as worked toward promoting a single RTO environment in the Midwest."<sup>19</sup>

The West Virginia Commission agrees with the Joint Commissions that a seamless Midwest region "[c]an be efficiently achieved through a single RTO."<sup>20</sup> However, while the West Virginia Commission agrees that there has been little progress to date in implementing the IRCA, it believes that with, among other things, guidance from the Commission it could possibly work.<sup>21</sup>

The Nebraska Board, TRA, the Kansas Commission and the Illinois Commission response from Commissioners Harvill and Squires all support the call for a single RTO in the Midwest.<sup>22</sup> The Illinois Commission response from Commissioners Hurley and Kretschmer indicates that multiple RTOs could be supported in the Midwest "[p]rovided that there are seams agreements in place to ensure the

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<sup>17</sup>Id. at 14.

<sup>18</sup>Michigan Commission at 2.

<sup>19</sup>Missouri Commission at 1-2.

<sup>20</sup>West Virginia Commission at 3.

<sup>21</sup>Id.

<sup>22</sup>Nebraska Board at 2; TRA at 2; Kansas Commission at 1; Illinois Commission (Commissioners Harvill and Squires) at 2.

smooth operation of the market.<sup>23</sup> Finally, the Ohio Commission states that, while it desires to accommodate different RTO business models in the Midwest, "[s]eamlessness in the Midwest is our priority."<sup>24</sup> The Ohio Commission believes that the IRCA could provide a "meaningful" vehicle to accommodate different models, but only after both considerable Commission direction and attention by the parties.<sup>25</sup> For instance, the Ohio Commission argues that much work needs to be done in the area of adopting compatible standards between the Midwest ISO and Alliance Companies. As a solution, the Ohio Commission recommends that the Commission require Alliance Companies to adopt the Midwest ISO's existing systems in order to ensure standardization.<sup>26</sup>

## VI. Discussion

Although the Commission's Rules of Practice and Procedure do not generally permit answers to requests for rehearing, see 18 C.F.R. §§ 385.213(a)(2), 713(d) (2001), given the peculiarly complex nature and history of this proceeding and because the answers have aided us in clarifying certain issues, we will take the atypical step of accepting Duke's and Alliance Companies' answers in this instance.

### 1. Scope and Configuration

Midwest Intervenor's argue that in the Alliance V Order the Commission approved the scope and configuration of the Alliance RTO by, in part, citing to the IRCA. However, they maintain that in other parts of the order, the Commission recognized that the IRCA was, at best, a work in progress, and that the IRCA was only a basis for the development of a seamless market. Therefore, they ask that the Commission grant rehearing, or, at a minimum, clarify its order so that it is clear that successful implementation of the IRCA is a prerequisite to any finding of adequate scope and configuration. In addition, Midwest Intervenor's note that Alliance Companies and the Midwest ISO have not resolved operational issues to promote seamless operations and, therefore, request that the Commission require the Alliance RTO, PJM, and the Midwest ISO to negotiate seams agreements. They also ask that the Commission grant rehearing and clarify whether it intends to take measures necessary to create a single RTO in the region.

Similarly, Midwest Commissions ask that the Commission grant rehearing of its decision that the Alliance RTO satisfies Order No. 2000's scope and configuration requirement. They assert that the Commission should consider Settlement implementation as a key factor because the Commission relied

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<sup>23</sup>Illinois Commission (Commissioners Hurley and Kretschmer) at 2.

<sup>24</sup>Ohio Commission at 1-2.

<sup>25</sup>Id. at 2-3

<sup>26</sup>Id.

upon implementation of the IRCA in support of its finding that the Alliance RTO satisfies Order No. 2000's scope and configuration requirement. They note that certain aspects of the Settlement and IRCA have not been appropriately implemented, and the absence of progress in implementation leads the Midwest Commissions to the conclusion that seams issues in the Midwest will not be adequately mitigated in a timely manner.

Midwest Commissions also contend that the lack of cooperation between the Alliance RTO and Midwest ISO with respect to the development of a real-time balancing market, a long-term congestion management protocol, and generator interconnection practices, among other things, demonstrates that the Midwest seams problems remain unresolved. As a remedy, Midwest Commissions ask that the Commission initiate mediation in the Midwest region to address Settlement implementation problems. Midwest Commissions state that the Commission could direct the parties to use the mediation process as a forum to address continued and expanded RTO development in the Midwest. They note that these discussions could include the future potential of a single RTO that would encompass the entire Midwest.

In their answer, Alliance Companies argue that the Commission should reject requests seeking to revisit the finding that the proposed scope and configuration of Alliance is consistent with Order No. 2000. They maintain that the various petitioners are wrong in their assertion that the Commission relied upon the IRCA as support for its finding of adequate scope and configuration. Rather, they argue, the Commission found in the Alliance III Order that the scope and configuration of the Alliance RTO were consistent with Order No. 2000, and made no mention of the IRCA. In addition, they contend that allegations that the IRCA is not being appropriately implemented are erroneous, and, in any event, the Settlement with the Midwest ISO contains provisions for parties to file unilateral proposals with the Commission should they be dissatisfied with the timeliness or the appropriateness of a procedure or protocol developed by the parties. Finally, Alliance Companies state that the Commission should reject petitioners' requests for further mediation between the Alliance Companies and the Midwest ISO as outside the scope of the proceeding.

#### Commission Determination

We agree with the petitioners and we grant rehearing of our prior finding that Alliance RTO has adequate scope. At the outset, we emphasize that a common theme in all of the Alliance proceedings to date has been the perception among a range of entities that a single RTO is needed in the Midwest. Until now, the Commission believed that, with full and fair stakeholder input, coupled with the Settlement and corresponding IRCA, the two proposed RTOs could seamlessly coexist. Unfortunately, as the state commissions point out, it has become apparent that despite the work done to date toward this end, a seamless Midwest market remains an unfulfilled promise.

Our earlier finding regarding the adequacy of the scope of the Alliance RTO relied, in part, on implementation of the IRCA, which was intended to provide the basis for a seamless market in the



territories served by the Midwest ISO and the Alliance RTO. However, since the Commission issued its order approving the Settlement and its July 12 Order approving Alliance RTO's scope, the confidence of the Commission and participating state commissions in the IRCA's ability to resolve seams issues has eroded. Specifically, as discussed below, the Midwest ISO and Alliance Companies filed status reports which indicate that the IRCA implementation has not progressed as expected.

The status reports indicate that certain provisions of the IRCA have not been fully satisfied. More importantly, regarding those provisions that have been addressed, significant seams issues still exist.<sup>27</sup> For example, the Settlement requires the parties to support the development of a standardized process to determine available transmission capability (ATC) within the region. However, the Midwest ISO and Alliance Companies each state that they will calculate ATC and Total Transmission Capability (TTC) using similar, but not identical, methods. Failure to use identical methods creates a seam that inhibits efficient market operations.<sup>28</sup> The Settlement also requires that the Midwest ISO and Alliance Companies facilitate one-stop shopping for transmission service. Detailed operating protocols and procedures necessary to accomplish this one-stop shopping have not yet been developed and agreed upon, however. In addition, the Settlement requires that the proposed RTOs cooperate in developing their imbalance markets to ensure compatibility for multi-RTO transactions. The Midwest ISO and the Alliance RTO have only developed compatible, and not common, energy imbalance markets. Moreover, the status reports indicate that both the Midwest ISO and the Alliance RTO will have separate security coordinators. This presents the potential for disputes over security matters on the respective grids – disputes which would not exist if the two systems involved operated under the authority of a single security coordinator.

We have also taken additional comments from the various state commissions in the Midwest, and they overwhelmingly prefer a single Midwest RTO with Midwest ISO as the surviving RTO.

Another change affecting our ruling is International Transmission's election to withdraw from the Alliance RTO, thereby shrinking the Alliance RTO and concomitantly diminishing its scope.

As a result, we can no longer conclude that the proposed Alliance RTO has sufficient scope consistent with the factors identified in Order No. 2000; including, among other things, ATC

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<sup>27</sup>We note that this is a common theme in many of the state commissions' responses. See, e.g., Joint Commissions at 3: ("As for IRCA implementation, the Joint Midwest State Commissions had hoped that commitments to develop 'compatible' approaches to congestion management, transmission planning, calculation of available transmission capacity, etc., would lead to common solutions. Instead, little progress has been made. . .").

<sup>28</sup>The Midwest ISO noted this point when it acknowledged that while similar methods are somewhat of an improvement, "[t]he situation is not the same as if one and the same system were being implemented by each of these entities." Midwest ISO Status Report at 26.

determinations and improved operations (including one-stop shopping) as well as elimination of the seams effects between neighboring RTOs.<sup>29</sup> As explained in Order No. 2000, a proposed RTO, even though it could not meet Order No. 2000's four characteristics, and, in particular, scope, on its own, "may be able to achieve sufficient 'effective scope' by coordination and agreements with neighboring entities, or by participating in a group of RTOs with either hierarchical control or a system of very close coordination."<sup>30</sup> Our earlier orders expected the IRCA discussions to provide the necessary coordination and agreement, but this expectation has yet to materialize into a concrete plan. For example, the Alliance RTO and the Midwest ISO will; use different methods to calculate ATC and TTC; do not yet have the detailed operating protocols and procedures needed to accomplish one-stop shopping; do not operate under the authority of a single security coordinator; and will not have a common energy imbalance market. In sum, the Alliance RTO has not achieved the necessary close coordination that was called for to achieve Order No. 2000's characteristics, and in particular, scope, that it could not achieve on its own.

While a more effective IRCA could have provided that necessary close coordination, and so have "adequately eliminated" the effects of seams between the proposed Alliance RTO and the Midwest ISO,<sup>31</sup> the IRCA as currently drafted does not. While we find in another order considered contemporaneously with this order that the Midwest ISO as it has developed (with the addition of the Southwest Power Pool, for example) now has sufficient scope, the Alliance RTO has yet to achieve sufficient scope for it to satisfy the Order No. 2000 requirement.

## 2. Other Rehearing Issues

We will dismiss the requests for rehearing on the other issues raised by petitioners (i.e., independence, planning protocol, congestion management, stakeholder process, and other procedural issues) based on our finding below that the public interest would best be served if Alliance were to join the Midwest ISO.<sup>32</sup>

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<sup>29</sup>Order No. 2000 at 31,082-83; see also, e.g., id. at 31,083-84 (discussing other factors); 31,090-91 (the RTO must be the security coordinator for the region).

<sup>30</sup>Id. at 31,083.

<sup>31</sup>Id.

<sup>32</sup>We also note that, as a result of our action here, other dockets involving various aspects of Alliance Companies' RTO filing are terminated as a result of our finding that the public interest would  
(continued...)

### 3. A Single Midwest RTO

As discussed above, Alliance RTO has been unable to meet the conditions necessary to give it sufficient scope. Thus, we cannot approve Alliance RTO as an RTO because it fails to meet the characteristics specified in Order No. 2000.

In addition, the views of many of the state commissions have persuaded us that allowing two RTOs in the Midwest would be a second-best solution that would not serve the best interests of customers throughout the Midwest. Combining the two entities should not only dramatically reduce costs (as there will now be one rather than two separate entities) but will achieve the goal of a seamless market in the Midwest. We conclude that the public interest would best be served if Alliance were to join the Midwest ISO. Of the two proposed RTOs, Alliance RTO and Midwest ISO, we believe that the Midwest ISO, because it is further along in its development and more fully complies with Order No. 2000, represents the foundation upon which a single Midwest RTO should be built. While we cannot approve Alliance RTO as a stand-alone RTO, we are confident that it can be a successful transco under the Midwest ISO's Appendix I. Therefore, we direct Alliance Companies to explore how their business plan (including National Grid) can be accommodated within the Midwest ISO, e.g., via Appendix I,<sup>33</sup> in doing so, we are mindful of the benefits that for-profit transcos can provide.<sup>34</sup> We note that numerous Alliance Companies,<sup>35</sup> as a result of merger conditions or commitments made in merger proceedings, are required to join an RTO. We realize that some companies were already

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<sup>32</sup>(...continued)

best be served if Alliance were to join the Midwest ISO. The following dockets are now terminated: Docket Nos. RT01-88-003, 004 and 006 through RT01-88-011; Docket Nos. ER99-3144-008 through ER99-3144-014; Docket Nos. EC99-80-006 through EC99-80-014; Docket Nos. RT01-37-000, -001; Docket Nos. RT01-84-000, -001; Docket Nos. RT01-26-000, -001; Docket Nos. ER01-123-000 through ER01-123-004; Docket No. ER01-2995-000; Docket No. ER01-2993-000; Docket No. ER01-2999-000; Docket No. ER01-2997-000; and Docket No. ER01-2992-000.

<sup>33</sup>Appendix I creates a framework for membership and operation of independent transmission companies within the Midwest ISO. See *Commonwealth Edison Company, et al.*, 90 FERC ¶ 61,192 (2000).

<sup>34</sup>Order No. 2000 at 31,037.

<sup>35</sup>These companies are American Electric Power Services Company, Exelon Corporation, FirstEnergy Corporation, Illinois Power Company and Virginia Electric and Power Company. See *American Electric Power Company, et al.*, 90 FERC ¶ 61,242 (2000); *Commonwealth Edison Company, et al.*, 91 FERC ¶ 61,036 (2000); *Ohio Edison Company, et al.*, 94 FERC ¶ 61,291 (2001); *Illinova Corporation, et al.*, 89 FERC ¶ 61,163 (1999); *Dominion Resources, Inc., et al.*, 89 FERC ¶ 61,162 (1999).

members of Alliance or Midwest ISO prior to the merger and that additional companies, as a result of the Illinois Power Settlement, moved from Midwest ISO into the proposed Alliance RTO. By joining the Midwest ISO, these companies can satisfy their merger commitments.<sup>36</sup> Finally, we are mindful of the significant time and expense incurred by Alliance Companies to date<sup>37</sup> and we will consider proposals for recovery of all prudently incurred costs.<sup>38</sup>

Consistent with this determination, Alliance Companies are directed to file a statement of their plans to join an RTO, including the timeframe, within 60 days of the date of this order. We expect that significant progress will be made during this period.

The Commission orders:

(A) The requests for rehearings are hereby dismissed, as discussed in the body of this order.

(B) Alliance Companies are hereby directed to file a statement of their plans to join an RTO, including the timeframe, within 60 days of the date of this order.

(C) The following dockets are hereby terminated: Docket Nos. RT01-88-003, 004 and 006 through RT01-88-011; Docket Nos. ER99-3144-008 through ER99-3144-014; Docket Nos. EC99-80-006 through EC99-80-014; Docket Nos. RT01-37-000, -001; Docket Nos. RT01-84-000, -001; Docket Nos. RT01-26-000, -001; Docket Nos. ER01-123-000 through ER01-123-004; Docket No. ER01-2995-000; Docket No. ER01-2993-000; Docket No. ER01-2999-000; Docket No. ER01-2997-000; and Docket No. ER01-2992-000.

By the Commission. Commissioner Breathitt dissented with a  
separate statement attached.

( S E A L )

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<sup>36</sup>We note that we retain authority under Section 203(b) of the FPA to address concerns and issue supplemental orders as appropriate regarding commitments made in the merger proceedings.

<sup>37</sup>See Comments of Alliance Companies, including supporting affidavits, filed on December 7, 2001, and revised on December 11, 2001, in Docket Nos. RM01-12-000 and RT01-88-000.

<sup>38</sup>We recognize that the Midwest ISO may not be the ideal RTO for all of the Alliance Companies. (For example, Virginia Power may prefer to join another RTO.) If so, those companies should explore membership in another RTO.

Linwood A. Watson, Jr.,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Companies, et al.

Docket Nos. RT01-88-000, 001, 002, 003, 004 006,  
007, 008, 009, 010, 011, ER99-3144-000, 001, 002,  
003, 004, 005, 006, 007, 008, 009, 010, 011, 012,  
014, EC99-80-000, 001, 002, 003, 004, 005, 006,  
007, 008, 009, 010, 011, 012, 014, RT01-37-000,  
001, RT01-84-000, 001, RT01-26-000, 001, ER01-  
123-000, 001, 002, 003, 004, ER01-2995-000,  
ER01-2993-000, ER01-2997-000, and ER01-2992-  
000

(Issued December 20, 2001)

Breathitt, Commissioner, dissenting:

Since the Alliance Company's application was submitted to the Commission two and a half years ago, I have supported Alliance's business model through affirmative votes in the five orders applying the Order No. 2000 criteria to the Alliance proposal. Based on the Commission's guidance and encouragement, the Alliance member companies have expended significant energy, time and expense in developing and implementing their proposal. The Commission also has expended considerable resources in processing the Alliance's application.

Today's order abruptly changes the landscape in the Midwest by concluding that Alliance lacks sufficient scope to exist as a stand-alone RTO, and by directing the Alliance Companies to explore how their business plan can be accommodated within the Midwest RTO. I believe that Alliance has worked in good faith to satisfy the characteristics and functions established in Order No. 2000. Alliance tells us it could be operational in the first quarter of 2002 pending the necessary FERC approvals. By its own estimation, Alliance has expended approximately \$75 million in start-up costs - excluding legal and regulatory expenses. At the issuance of this order, these dollars will become stranded costs - to be borne, at least in part, by ratepayers in the Midwest. For the Commission now to find that Alliance does not satisfy the requirements of Order No. 2000 is an action of major consequence, and it is one that I am not ready to take.

The rehearing order relies heavily on the comments of state commissions, which generally favor one RTO for the Midwest. That view is not unanimous, however. I would like to highlight the

comments of the Public Utilities Commission of Ohio, which has offered constructive ideas for the Inter-RTO Cooperation Agreement (IRCA), reached in Docket No. ER01-123-000, to provide for a meaningful platform upon which different RTO business models could operate seamlessly in the Midwest. In addition, Commissioners Kretschmer and Hurley of the Illinois Commerce Commission assert that the Midwest is capable of supporting multiple RTOs provided that there are seams agreements in place to ensure the smooth operation of the market. I fully supported the IRCA, and would have continued working with the parties, using the IRCA as a basis on which to allow the MISO and Alliance to function as one market. The comments of the Ohio and Illinois commissioners and recent pleadings submitted by the Alliance Companies propose several avenues in this regard that I believe merit the Commission's consideration.

Commissioners Kretschmer and Hurley also observe that FERC allowed Illinois' three largest utilities to exit the Midwest ISO – at the cost of \$60 million – to join the Alliance RTO. They point out that to force fit one RTO on the Midwest could cause many months of delays and cost millions of dollars more. I share these concerns, and agree that it is counterproductive to require a single RTO in the Midwest after both MISO and the Alliance have already invested so many resources to develop their operations based upon the preferences of their member companies.

In conclusion, I cannot participate in this sudden departure from the road map I believe we drew in our prior Alliance orders. In my view, the Commission has not done all it should to allow Alliance to develop as an RTO that could co-exist with the Midwest ISO. For this reason, I respectfully dissent. For now, I will take comfort in the assurance that appears in this order and in the companion orders that the Commission's actions today "should not be construed to prejudice other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO."

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Linda K. Breathitt  
Commissioner

ORIGINAL

## INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF HOOSIER )  
 ENERGY RURAL ELECTRIC )  
 COOPERATIVE, INC., INDIANAPOLIS )  
 POWER & LIGHT COMPANY, PSI )  
 ENERGY, INC., VECTREN ENERGY )  
 DELIVERY OF INDIANA, INC., AND )  
 WABASH VALLEY POWER )  
 ASSOCIATION, INC., SEEKING )  
 APPROVAL OF, AND RELATED RELIEF )  
 CONCERNING, THEIR INDIVIDUAL )  
 AND COLLECTIVE PARTICIPATION AS )  
 TRANSMISSION OWNER MEMBERS IN )  
 THE MIDWEST INDEPENDENT )  
 TRANSMISSION SYSTEM OPERATOR, )  
 INC. )

CAUSE No. 42027  
 (Consolidated with  
 CAUSE No. 42032)

RECEIVED

DEC 18 2001

APPROVED:

INDIANA UTILITY REGULATORY COMMISSION  
ELECTRICITY DIVISION

DEC 17 2001

BY THE COMMISSION:

David E. Ziegner, Commissioner  
 David W. Hadley, Commissioner  
 Scott R. Storms, Chief Administrative Law Judge

**I. Procedural Background.** On June 25, 2001, Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier"), Indianapolis Power & Light Company ("IPL"), PSI Energy, Inc. ("PSI"), Vectren Energy Delivery of Indiana, Inc., also known as Southern Indiana Gas & Electric Company ("Vectren"), and Wabash Valley Power Association, Inc. ("WVPA") (together, the "Joint Petitioners" or the "Jt. Pet. MISO"), filed their Joint Petition requesting approval from the Indiana Utility Regulatory Commission (the "Commission") of the transfer of functional control of operation of certain of their transmission facilities to the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO"), as well as related relief.

By Docket Entry dated July 26, 2001, the Presiding Officers determined that the proceeding filed by the Joint Petitioners shared common issues of fact and law with issues raised by a joint petition filed by Indiana Michigan Power Company, d/b/a American Electric Power ("AEP") and Northern Indiana Public Service Company ("NIPSCO") regarding the transfer of control of transmission facilities by AEP and NIPSCO (together, the "Alliance Participants" or "Jt. Pet. Alliance") to the Alliance Regional Transmission Organization ("ARTO" or "Alliance") in Cause No. 42032. The Presiding Officers ordered that the two causes be consolidated in accordance with the provisions set forth in 170 IAC § 1-1.1-19. The Presiding Officers further indicated that, at a minimum, the following list of issues regarding the formation and functionality of Regional

Transmission Operators ("RTOs") should be considered as part of the consolidated proceeding: (i) Congestion Management; (ii) Real-Time Balancing Markets; (iii) Security Coordination; (iv) Transmission Loading Relief ("TLR"); (v) Control Areas; (vi) Rate Design; (vii) Market Monitoring; (viii) Regional Planning; and (ix) Interconnection Policy.

On August 2, 2001, the Presiding Officers issued a second Docket Entry providing more detailed guidance regarding the issues to be addressed in the consolidated proceeding which would facilitate the Commission's review of market reliability in Indiana in the context of the relief requested.

On July 23, 2001, Citizens Action Coalition of Indiana, Inc. ("Coalition") filed a petition seeking intervention in the proceeding. On August 13, 2001, Indiana Municipal Power Agency ("IMPA") filed a petition to intervene. On August 22, 2001, the Indiana Industrial Group ("IIG"), consisting of a group of customers served by some of the petitioning public utilities in the consolidated cause, filed a petition to intervene. On September 24, 2001, Enron Power Marketing, Inc. ("Enron") filed a petition seeking intervention in this proceeding. The Commission subsequently granted all of the requested interventions.

An Evidentiary Hearing in this consolidated proceeding was held on November 19-21, 2001, in Room TC10 of the Indiana Government Center South, Indianapolis, Indiana. At the hearing, evidence in the consolidated proceeding was submitted by the Joint Petitioners and the Alliance Participants, the Indiana Office of Utility Consumer Counselor ("OUCC"), and Intervenor IIG and Enron.

The following witnesses testified at the Evidentiary Hearing in the consolidated proceedings: Mr. James P. Torgerson, Chief Executive Officer of the MISO; Mr. John C. Procario, Vice President and Chief Operating Officer of the service company for PSI and its utility affiliates; Mr. Ronald R. Jackups, Vice President of Electric System Operations for the service company for PSI and its utility affiliates; Mr. William Doty, Senior Vice President of Energy Delivery for Vectren; Mr. Michael L. Holtsclaw, Team Leader, Transmission Operations for IPL; Mr. Ronald C. Snead, Manager of Bulk Transmission Planning for the service company for PSI and its utility affiliates; Mr. Douglas E. Hils, Manager of Control Area Operations for the service company for PSI and its utility affiliates; Mr. Michael J. Mooney, Manager of Corporate Planning for Hoosier; and Mr. Martin J. Blake, a consultant specializing in the areas of marketing, market research, rate and regulatory support, training and strategic planning for energy industry clients. J. Craig Baker, Senior Vice President - Regulation and Public Policy, American Electric Power Service Corporation and Frank A. Venhuizen, Director, Electric Transmission and Market Services, NIPSCO, testified in support of the joint petition filed by the Alliance RTO Transmission Owners. These witnesses also sponsored the responses to issues presented by the Commission in its Docket Entry dated August 2, 2001. Dr. Peter Boerger testified on behalf of the OUCC, James R. Dauphinais testified on behalf of Intervenor IIG, and Michael J. Roan offered testimony on behalf of Intervenor Enron. Members of the general public appeared at the Evidentiary Hearing.

Based upon the applicable law and evidence herein, the Commission now finds as follows:



A. **Notice.** Notice of the hearing in this Cause was duly given and published more than ten (10) days prior to the hearing in newspapers of general circulation as required by law.

B. **Jurisdiction.**

1. **Jurisdiction over the Joint Petitioners.** IPL, PSI, Vectren and WVPA are each a "public utility" within the meaning of that term as used in Ind. Code § 8-1-2-1, and are each subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. Hoosier is a "general district corporation" within the meaning of that term as used in Ind. Code § 8-1-13-23, has withdrawn from the jurisdiction of the Commission and is only subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana, after giving effect to the provisions of Ind. Code § 8-1-13-18.5. The Joint Petitioners are subject to the Commission's jurisdiction in the manner and to the extent provided by Indiana law, and the Commission has jurisdiction over the subject matter of this proceeding consistent therewith. Jurisdictional issues specific to Hoosier are dealt with separately in a specific finding set forth in this Order.

2. **Jurisdiction over the Subject Matter.** Ind. Code. 8-1-2-83 provides, in relevant part:

No public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, or contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation, without the approval of the commission after hearing.

Each Joint Petitioner seeks to transfer to MISO, by contract, the responsibility for the functional control of part of its transmission facilities. These transmission facilities constitute a "part of [each utility's] works or system." Consequently, the Commission has subject matter jurisdiction over this cause.

C. **Joint Petitioners' Characteristics and Business.** Each Joint Petitioner is a corporation organized and existing under the laws of the State of Indiana, and has its principal office located within the State of Indiana. Each Joint Petitioner is engaged in rendering public utility electric service within the State of Indiana. Each Joint Petitioner owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used and useful for the production, transmission, delivery and furnishing of such utility service to persons within the State of Indiana. Hoosier and WVPA provide such utility service to their respective member rural electric membership corporations and to other wholesale customers. IPL, PSI and Vectren provide such utility service to their respective retail electric customers and to various wholesale customers.

D. **Nature of the Case.** The Joint Petitioners seek the Commission's approval of their transfer of functional control of operation of certain of their electric transmission facilities to the Midwest ISO. Participating transmission owner members in the Midwest ISO will transfer functional control of operation of the following facilities to the Midwest ISO: (i) all networked

transmission facilities above 100 kilovolts; (ii) all networked transformers where the two highest voltages qualify under the voltage criteria of (i) above; and (iii) other facilities that the Midwest ISO directs the participating transmission owner members to assign to it subject to certain procedures set forth in the Midwest ISO Agreement (see Appendix B to the Midwest ISO Agreement). The facilities are integral to the provision of adequate and reliable electric service to retail customers in Indiana.

In their Petition, the Joint Petitioner's indicate that they believe that the provisions contained in Ind. Code §§ 8-1-2-42, 49, 52, 61 and 83, may be applicable to the current proceeding. Based on the evidence and testimony presented in this case it is apparent that the issue presented for consideration by the Joint Petitioners in this matter is limited to a determination by the Commission with respect to the requirements set forth in IC § 8-1-2-83.

**E. Legal Overview of Requested Relief.** The Joint Petitioners in this proceeding seek Commission approval to transfer control over certain transmission assets as provided under Ind. Code. § 8-1-2-83(a), which states, *inter alia*, that:

No public utility, as defined in section 1 of this chapter, shall sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation, or contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation, without the approval of the commission after hearing.

The provisions set forth in IC § 8-1-2-83, are intended to ensure that Commission approval is granted before a utility may be operated or controlled by any person other than the person that is licensed or permitted to do so. *Illinois-Indiana Cable TV v. Public Service Comm'n*, 427 N.E. 2d 1100, 1108 (Ind. App. 1981). In enacting the foregoing provision, the Legislature intended the Commission to regulate public utility transfers "in the interest of public welfare." See, *In re N.W. Ind. Tel. Co.*, 171 N.E. 65 (Ind.1930). Explaining the purpose of the transfer approval legislation, the court stated:

By [Section 95, predecessor to Ind. Code sec. 8-1-2-83], the Legislature undertook to supervise the sale of public utility property in the interest of the public by providing a means for the investigation of the proposed sale in advance of its consummation. Such investigation necessarily has to do with the effect in the future on public convenience and necessity....One of the reasons for this statute, and there may be many more, is to protect the public in the use of utility service with as little inconvenience as may be essentially necessary to furnish the same.

*In re N.W. Ind. Tel. Co.* 171 N.E. at 71.

Consistent with the foregoing analysis, the Commission has applied the public interest standard of review in numerous proceedings and determined that, "[I]n reaching a decision to approve a purchase or sale of utility property, the Commission's threshold inquiry must be whether or not that proposed purchase and sale is in the public interest." *See, In the Matter of the Joint Petition of Commonwealth Edison Company of Indiana, State Line Energy L.L.C and Commonwealth Edison Company*, Ind. Util. Reg. Comm'n, Cause No. 40575, (December 18, 1996), citing *Indiana ex rel Indianapolis Traction & Term Co. v. Lewis* 120 N.E. 129 (1918).

Also, in considering whether a transfer satisfies the public interest test of Ind. Code § 8-1-2-83, the Commission must look to other statutes. The combination of Commission decisions under IC § 8-1-2-83, and decisions under other statutes, yields a set of public interest factors with direct application to this cause.

Reliability: The Commission is charged with ensuring that a utility provide reliable service and facilities. *See*, IC § 8-1-2-4 (each utility "is required to furnish reasonably adequate service and facilities"); *Office of Util. Consumer Counselor v. PSI, Inc.*, 463 N.E. 2d 499, 503 (Ind. Ct. App. 1984)(finding that the Commission .."was established to insure that public utilities provide constant, reliable and efficient service to customers...."); *Indiana Michigan Power Company*, (Ind. Util. Reg. Comm'n, Cause No. 41982 ( July 27, 2001), (approving sale of a transmission facility in part because the transfer would "result in the improvement of transmission facilities and provide for customer load growth").

Financial Viability: *See, Commonwealth Edison of Indiana*, Ind. Util. Reg. Comm'n, Cause No. 40575, (December 18, 1996), (approving the transfer of certain assets and inventory because the transferee had significant experience in the business of operating coal-fired generating stations and had the necessary financial strength and experience to operate the project); *Investigation into the Operation of Arlington Utilities*, Ind. Util. Reg. Comm'n, Cause No. 41540 (March 29, 2001), (reviewing financial viability of transferee to consummate purchase of water utility's assets).

Impact on Competition: *See, Ameritech Communications Inc., and Williams Communications, Inc.*, Ind. Util. Reg. Comm'n, Cause No. 41678, (August 2, 2000), (In which the Petitioner's sought approval to transfer assets under IC § 8-1-2-83, and in which the Commission found that system enhancements resulting from asset transfer will lead to increased competition);

Impact on Efficiency and Rates: IC §§ 8-1-2-58 and 8-1-2-69, prohibit any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate regulation, act, practice or service as shall be just and reasonable. *See also, Ameritech, Id.* at \*9 (finding that the transfer would allow for "system-wide consistency" in the method of providing services and will result in a better utilization of resources and streamlined operations which will benefit the public");

Access to Information: IC § 8-1-2-48 requires that the Commission have access to "all

necessary information to enable the commission to perform its duties."

These public policy concerns -- reliability, financial viability, competition, efficiency and rates, and access to information -- all are implicated by the proposals in this case, and will be discussed in more detail below. As fully set forth in this Order, the Commission has reviewed the evidence presented in each Cause with respect to its effect on the public interest concerns in Indiana. While the review of each Cause is within the same general framework, the Commission hereby issues separate Orders for Cause Nos. 42027 and 42032.

**II. The Joint Petitioners' Evidence.** The Joint Petitioners submitted testimony, which addressed the issues in this Cause and responded to the issues presented in the Presiding Officers' August 2, 2001, Docket Entry. Nine witnesses described the MISO, and the MISO Agreement, including the MISO's formation, composition, financing, governance, functions, technical capability and costs; and also the recent actions by the Federal Energy Regulatory Commission relating to the MISO.

The MISO is a non-stock, not-for-profit corporation organized under the laws of the State of Delaware. (Jt. Pet. MISO Ex. A2, p. 17.) The management of all the property, business and affairs of the MISO is vested in the Board of Directors of the MISO. (Jt. Pet. MISO Ex. B, p. 5). The MISO was created pursuant to the Agreement Of Transmission Facilities Owners To Organize The Midwest Independent Transmission System Operator, Inc. ("MISO Agreement"). The MISO was formed for the following purposes:

- a) To provide nondiscriminatory open access transmission service over the transmission system ("Transmission System") under the functional control of the MISO to transmission customers, including transmission owners, who may lawfully request such service pursuant to a single tariff filed with the FERC;
- b) to receive funds associated with transmission services from transmission customers solely as agent for the participating transmission owner members in the MISO and to coordinate distribution of such funds; and
- c) to be responsible for regional system security in accordance with the MISO Agreement.

(Jt. Pet. MISO Ex. A, p. 23.)

MISO has more than twenty-five transmission owner members located in parts of Canada and 11 states. (Jt. Pet. MISO Ex. B1; and Tr. pp. A8 and A9). The MISO Agreement provides that the participating transmission owner members in the MISO, including the Joint Petitioners, will continue to own, operate, manage and maintain their respective transmission facilities which will be under the functional control of the MISO. The ownership of such facilities will not change because of the transfer of functional control for which approval is requested herein. The actual field operations of

the transmission owners facilities will remain with the transmission owners under the direction of the MISO. (Jt. Pet. MISO Ex. B, p. 19). Further details on Joint Petitioners' submission are presented in context throughout this order.

### **III. Effects of the Joint Petition on the Public Interest.**

#### **A. Introduction and Overview.**

The transmission facilities at issue in this case are integral to the provision of reliable, efficient electric service to retail customers in Indiana. Their importance to our state requires the Commission to consider carefully the implications of the proposed transfer, both short-term and long-term.

In Indiana, it has long been a fundamental principle that public utilities must furnish reasonably adequate service to customers at reasonable rates. Ind. Code § 8-1-2-4. Indiana utilities must be reliable and efficient. Providing reliable, efficient service means acquiring power supplies efficiently, either by building generating plants or acquiring generation resources in wholesale power markets. Thus the ability of utilities to carry out their responsibilities depends heavily on the efficiency and competitiveness of wholesale power markets.

There is a growing recognition throughout the electric industry that transmission policy is central to the efficiency, reliability and competitiveness of wholesale power markets. Transmission access, pricing, operations, planning and construction all require attention. Particularly relevant to the present case is the growing recognition that power supply markets are regional markets. As power supply markets are regional; transmission policy must also be regional.

Over the past five years, it has become increasingly apparent that the institution necessary to assure regional transmission service is the regional transmission organization. Most prominently, the FERC, beginning in late 1999, issued a series of orders that strongly encouraged electric public utilities subject to its jurisdiction to join an operational FERC approved RTO by December 15, 2001.

This Commission shares the central goal set forth in these orders: the evolution of efficient, effectively competitive regional power supply markets, and the development of transmission practices necessary to assure that evolution. We expect Indiana utilities to act consistently with that goal.

Whether the transfer of Indiana transmission assets to an RTO serves the public interest depends heavily on the RTO's internal design and readiness to start operation. To ensure that reliable service will be provided to Indiana customers, the RTO must have developed an efficient and reliable infrastructure and operating practices. In order to ensure reasonable costs and effective generation competition in the markets serving the State, the RTO must have governance that is independent of any market participant, and must rely on a fully participative stakeholder advisory process. Moreover, the market rules should be well understood and provide sufficient transparency to assure market participants that access to the transmission highways will be "fair" in both fact and

perception.

However, an adequate internal design, in and of itself, cannot address all issues that must be considered by an RTO. An RTO must have relations with neighboring RTOs that assure seamless markets. Even subtle differences in operational practices, definitions, communications equipment, hardware and software could cause severe problems with seams.

In the subsections that follow, the Commission will apply these principles to the proposals before it, focusing specifically on (1) reliability of service to Indiana customers, (2) financial viability of the RTO, (3) impact on competition and costs, (4) coordination with other RTOs and other transmission owners (the "seams" issue) and (5) responsiveness to the public's needs.

## **B-B. Reliability of Service to Indiana Customers.**

### **1. The Relationship Between RTOs and Reliability**

Formation of a regional transmission organization can have a variety of benefits, including:

1. improved coordination of multicompany operations, which will decrease transmission loading problems;
2. ability to import economical power from a wider region;
3. a broader, more regional approach to security coordination and the calculation of available transmission capacity (ATC);
4. an improved ability to coordinate generator outages that might otherwise adversely affect the transmission system;
5. improved coordination of merchant plant operation; and
6. increased options available to operators to respond to system loading problems.

(Jt. Pet. MISO Ex. C, pp. 27-28).

RTOs can and should enhance the reliability of our region's electric systems. Effective coordination of power supply on a regional basis should improve both short and long-term reliability. A specific indicator of improvement to short-term reliability, including system security, should be a reduction in the incidence of TLRs. TLRs are issued in different levels. The initial stages are merely notifications to transmission users that the system conditions are such that transmission constraints may occur. Final stages involve actual curtailment of transactions. The TLR procedure, introduced by North American Electric Reliability Council ("NERC"), is a step-by-step procedure to maintain network security by avoiding or relieving transmission overloads. It is used to mitigate

potential or actual violations of the operating limits on the transmission system. The TLRs are issued by a Security Coordinator who has the responsibility and authority to direct actions aimed at maintaining real-time security for a control area, group of control areas, NERC subregion, or NERC region. The TLR identifies the actual transactions causing Operating Security Limit violations, and then considers the actual paths over which transactions are flowing to determine which transactions to freeze or curtail.

The testimony in this Cause demonstrates that recent years have seen an increasing number of TLRs in this region. (Jt. Pet. MISO Ex. E, pp. 7-10). While most TLRs are warnings and do not ultimately necessitate a curtailment of transactions, the mere issuance of TLRs has a deleterious affect on the power markets by limiting transactions that could have enhanced reliability. While reliability is the impetus for a Security Coordinator to curtail transactions, or even issuing warnings that there is a potential that transactions could be curtailed, there are obvious commercial implications associated with transactions that are curtailed as well as those transactions that are not consummated for fear of curtailment.

RTOs would enhance reliability in the long term as well, by improved planning and better coordination of enhancements to the power supply system, thereby attracting new supply. An RTO can manage congestion on a price basis: providing the requisite price signals to generators, customers and transmission investors that induce (a) enhancements to the transmission system; (b) construction of new generating facilities in locations most likely to relieve congestion on the grid; and (c) demand side management in the form of interruptible load, direct load control, indirect load management.

Whether these benefits will accrue from a transfer of Indiana transmission assets to an RTO depends on whether the RTO (a) is capable of operating the to-be-transferred assets, and functionally able to assume control of them; and (b) is able and willing to coordinate its operations with neighboring RTOs and other transmission owners. Conversely, a transfer of transmission assets to an entity that is unprepared or unable to operate them, or unable or unwilling to coordinate with other RTOs or other transmission owners, will not be consistent with reliable service in Indiana. In this section, we address the internal RTO issues; in a later section we will address the inter-RTO coordination issue.

## **1.2. MISO Internal Readiness**

Internal readiness depends on whether the operational infrastructure is in place, whether the RTO is ready to operate and has successfully completed market trials, and whether the RTO is in compliance with applicable regulations.

**a. Infrastructure:** Mr. Torgerson, CEO of the MISO, testified that MISO will own those facilities necessary to operate its control center and its Integrated Control Center System, including backup facilities. The main facility is in Carmel, Indiana, where the MISO moved in April 2001. Backup facilities are in Indianapolis, Indiana; and, upon closing of the asset acquisition of MAPPCOR, Inc., additional facilities will be located in St. Paul, Minnesota. (Jt. Pet. MISO Ex. B,

p. 19).

The reliability of these facilities is assured through structural integrity, backup power supply and multiple redundancies of critical components. The Carmel facility has been hardened to withstand a Class 4 tornado. The Carmel facility contains an uninterruptible power supply and a 2 MW backup generator, to secure supply in the event both of the two separate electrical feeds to the building were interrupted.

The communication system permits secure communications with the control centers for all MISO utilities and all adjoining transmission organizations. The communications infrastructure is a managed network with 24X7 monitoring, and vendor support necessary to meet the MISO's high availability requirements.

The Integrated Control Center Systems ("ICCS") completed factory acceptance testing in March 2001, and site acceptance testing in June 2001; the ICCS underwent initial market trials in August and September 2001. The ICCS has full redundancy at both the Carmel site and the backup site, which is 15 miles away from the Carmel building. The backup site also has a full uninterruptible power supply and a backup generator for reliability safeguards. (Exhibit JCB-R5, pages 17-20).

The MISO Joint Petitioners have indicated that the MISO ICCS was designed to be scalable to allow the expansion of the MISO to include an entity as large as the ARTO. (IIG Ex. 2). This means that the MISO systems have sufficient capability to potentially operate both the MISO and the Alliance as a single system under the MISO protocols.

**b. Operational Readiness:** Mr. Torgerson testified about MISO's readiness to assume functional control of operation of the to-be-transferred transmission facilities. MISO has an experienced staff of 100 employees and plans to increase its staff to 150 by December 31, 2001. (Jt. Pet. MISO Ex. B, p. 12; and Tr. Pp. A9 and A10.) These employees will be located in the MISO's Carmel, Indiana facility, where the ICCS hardware is located and will perform the control functions to be assumed.

Moreover, on July 11, 2001, MISO received the North American Electric Reliability Council's ("NERC") approval of its security coordination plan. Consequently, MISO is now an official NERC recognized and approved security coordinator. The MISO also has the endorsements on its RTO Security Plan from the member councils of the three NERC security regions that span the service territory served by the MISO. (Jt. Pet. MISO Ex. B, pp. 16-17).

**c. Market Trials:** MISO has been performing testing on its ICCS since June 2001. This testing has covered all major systems: tariff administration; regional security system functions; tagging and scheduling and losses; operations and long term planning; interconnection service; maintenance coordination; and settlements and billing. Market trials have required active participation by the transmission owner members and other market participants. The testing has involved internal testing of systems, processing of trial customer requests for service, and processing



of the proper volume and type of service requests. (Jt. Pet. MISO Ex. B, pp. 11 and 14-16.)

Article Two, Section X of the MISO Agreement requires the MISO to demonstrate, prior to the proposed transfer of functional control, that it is functionally able and ready to take over the provision of transmission service under the MISO's FERC transmission tariffs. This provision further requires MISO to provide the participating transmission owner members with a technical demonstration of the MISO's ability to perform its functions at least sixty days before the proposed date of transfer of functional control. (Jt. Pet. MISO Ex. A-2, pp. 58-59; and Jt. Pet. MISO Ex. R, p. 34.). Article Two, Section X of the MISO Agreement further provides that following the technical demonstration, the participating transmission owner members in the MISO may, by majority vote, postpone the transfer date if the technical demonstration raises reasonable concerns as to whether the MISO is capable of taking over the provision of transmission service. In such an event, this provision provides that the MISO may begin interim operations related to the provision of transmission service if, and only to the extent that, the MISO and all participating transmission owner members in the MISO agree. (Jt. Pet. MISO Ex. A-2, pp. 58-59; and Jt. Pet. MISO Ex. R, p. 4).

Mr. Torgerson provided an update concerning the MISO's draft Commercial Operation Plan. This draft plan dated November 14, 2001, is being reviewed by, and subject to revision pursuant to the input of, the MISO's Advisory Committee and the MISO's Transmission Owners Committee. Under this draft plan, the MISO would commence: (i) certain Open Access Same Time Information System ("OASIS") and scheduling functions on November 27, 2001; (ii) certain security coordination, maintenance coordination, long-term planning, market monitoring, dispute resolution, operations planning, generation interconnection and other scheduling functions on December 15, 2001; (iii) certain point-to-point tariff administration, settlements, billing, congestion management and ancillary functions on January 1, 2002; and (iv) network service and full implementation of settlements on February 1, 2001. (Jt. Pet. Alliance Ex. CX-1; and Tr. Pp. A-10 through A-12).

Once Mr. Torgerson certifies the MISO's technical preparedness, the Chief Executive Officer of each participating transmission owner member in the MISO will be asked to certify that the MISO is ready to perform in a reliable manner. These certifications will be provided to the FERC. (Jt. Pet. MISO Ex. B, p. 11).

**d. Regulatory Compliance:** Transmission service provided by the MISO is subject to the FERC's jurisdiction under the Federal Power Act. (Jt. Pet. MISO Ex. B, p. 21.) Under the MISO Agreement, the MISO must comply with any transmission operation and planning obligations which federal or state authorities have imposed on the participating transmission owner members who are transferring functional control to the MISO. (Jt. Pet. MISO, Ex. P. 21; and Jt. Pet. MISO Ex. C, pp. 24-25.).

The record shows that MISO has met FERC's requirements. On January 15, 1998, the transmission owners then participating in the formation of the MISO requested approval of the MISO Agreement, the MISO open access transmission tariff ("MISO OATT"), and transfer of functional control of operation of their applicable transmission facilities to the MISO. (FERC Docket Nos.

ER98-1438-000 and EC98-24-000). On September 16, 1998, the FERC issued an Order finding that the MISO satisfied FERC's eleven "ISO principles" and conditionally approving the MISO OATT and the MISO Agreement. (Jt. Pet. MISO Ex. A, p. 18.) That Order stated that the MISO proposal, as conditioned, was just and reasonable, nondiscriminatory, and consistent with the public interest. (Jt. Pet. MISO Ex. A, pp. 18-19).

On October 11, 2001, in Opinion No. 453, the FERC stated that it intended with its order "to provide the MISO with the authority it needs to become operational as soon as possible...." FERC further stated that it "believes that an operational MISO, as currently configured, will bring public interest benefits to its region that should not be delayed." (IIG Ex. CX1, p. 6.) The MISO benefits referenced by the FERC in its Opinion No. 453 included, among other things, "reduced transmission rates, increased transmission system reliability and increased competition in generation sales." (IIG Ex. CX-1, p. 6).

In addition to these FERC approvals, Mr. Torgerson verified that each of the MISO's Directors, as well as all officers and employees, have satisfied FERC's test of independence and have signed statements of compliance with the MISO standards of conduct. (Jt. Pet. MISO Ex. B, p. 5.)

#### **2.C. Non-Profit and For-Profit Entities**

To assure reliable service, an RTO must have control over all transmission facilities within a region. If key transmission segments fall outside an RTO, consistent operations and planning for the region cannot occur. The result is reduced reliability. A risk of this result exists, creating a "swiss cheese" terrain, if the MISO excludes particular members. Thus the entity charged with ensuring reliable transmission in the state should make possible the widest possible participation, including both not-for-profit entities and for-profit entities.

The business model of the MISO facilitates participation by cooperative and municipally-owned utilities, as evidenced by the membership status of WVPA, Hoosier and IMPA. Mr. Torgerson testified that the MISO will work with other such entities to overcome restrictions which might preclude their membership. (Jt. Pet. MISO Ex. B, p. 25.) *See*, (Pub. Ex. 1, p. 10). The MISO also provides for membership by for-profit Transcos, through its "Appendix I" membership, filed as Appendix I of MISO Transmission Agreement in Jt. Pet. MISO Ex. A-2.

#### **D. Financial Viability**

As a result of the Settlement Agreement in, *Illinois Power Company*, FERC Docket No. ER01-123-000 ("Settlement Agreement"), the MISO received \$60 million from the three departing transmission owners members in May 2001. This payment provided MISO with the funds necessary to pay all projected remaining startup costs, without the need for a further debt offering. The MISO will fund its operations following start up from revenues collected from the users of the Transmission System. (Jt. Pet. MISO Ex. B, pp. 8-9.) The MISO will have an operating budget in its first year of \$77 million. (Jt. Pet. MISO Ex. B, pp. 17-18).

The MISO currently has \$100 million of long-term unsecured debt in addition to a \$25 million revolving credit facility. In preparation for its implementation, the MISO will spend more than \$150 million. (Jt. Pet. MISO Ex. B, pp. 17-18.) The record also shows that MISO's financing has been (since it obtained its own outside financing), and will be in the future, independent of the participating transmission owner members in the MISO (Jt. Pet. MISO Ex. B, p. 10).

**E. Impact on Competition and Costs.**

**1. In General**

The FERC recognized in Order No. 888, (FERC Stats. & Regs. Para. 31,036 at 31,682) that unduly discriminatory and anticompetitive practices existed in the electric industry. In that order the FERC stated:

It is in the economic self-interest of transmission monopolists, particularly those with high-cost generation assets, to deny transmission or to offer transmission on a basis that is inferior to that which they provide themselves. The inherent characteristics of monopolists make it inevitable that they will act in their own self interest to the detriment of others by refusing transmission and/or providing inferior transmission to competitors in the bulk power markets to favor their own generation, and it is our duty to eradicate unduly discriminatory practices.

Vertically integrated utilities have the incentive and the ability to provide their generation or affiliated marketers with more favorable treatment of transmission requests or more favorable access to transmission information than is provided to market competitors. The result is that these market competitors are unfairly disadvantaged. Retail customers are hurt because the wholesale power market is less competitive and efficient than it would otherwise be.

In FERC Order 2000, the FERC recognized that the perceptions of undue discrimination can cause considerable harm and stated that:

[W]e continue to believe that perceptions of discrimination are significant impediments to competitive markets. Efficient and competitive markets will develop only if market participants have confidence that the system is administered fairly. Lack of market confidence resulting from the perception of discrimination is not mere rhetoric. It has real-world consequences for market participants and consumers. As stated by NERC, there is a reluctance on the part of market participants to share operational real-time and planning data with transmission providers because of the suspicion that they could be providing an advantage to their affiliated marketing groups, and this can, in turn, impair the reliability of the nations electric systems. Lack of market

confidence may deter generation expansion, leading to higher consumer prices.

FERC Order No. 2000, December 20, 1999, slip op. at 69.

The FERC recognizes that an RTO or an ISO needs to be independent in reality and perception if the potential benefits of establishing these organizations are to be realized. Even the perception of unfairness or discrimination can have an adverse impact on the reliability of the nation's electric system. As a result, FERC has stressed the importance of a decision making process and governance structure that is independent of control by any market participant or class of participants. *Id.* at p. 194.

The record shows that the benefits of the transfer include many relating to enhancing generation competition and reducing transmission costs. These benefits include: (i) the elimination of pancaked transmission rates for deliveries into Indiana from within the MISO or within the MISO/ARTO Super Region; (ii) access to a very large, and therefore more competitive generation market; (iii) a MISO-wide, and ultimately a MISO/ARTO Super Region wide, set of common business practices, as compared to today's company-specific business practices; (iv) implementation of improved, and then later more sophisticated, congestion management systems, which will reduce the use of TLR procedures; (v) a MISO-wide energy imbalance market to physically and financially stabilize the delivery of power into Indiana; and (vi) an Independent Market Monitoring function that will be exceptionally broad in scope in the interests of protecting electric customers from gaming or market abuse. (Jt. Pet. MISO Ex. C, pp. 27-28).

Moreover, reductions in both generation and transmission costs will arise from: (i) improved coordination of transmission planning, resulting in reduced environmental impact and minimum cost solutions; (ii) a broader list of options to improve the Transmission System; (iii) improved coordination of interconnection studies among multiple companies; and (iv) a more regional evaluation of the impact of siting merchant generation in and around Indiana. (Jt. Pet. MISO Ex. C, pp. 27-28).

Supporting and maintaining these benefits is a decisionmaking process designed to produce neutral, efficient results, including: an independent board, neutral processes for operations and planning, and a stakeholder advisory board.

## **2. Independent Board**

MISO's Board of Directors consists of independent members with no competitive stake in market outcomes. (Jt. Pet. MISO Ex. A, p. 11.) Each Director, Officer and employee must satisfy the FERC's test of independence from the energy marketplace and electric transmission owners. (Jt. Pet. MISO Ex. B, p. 5.)

Each Director, Officer and employee of the MISO is required to sign a statement of compliance with the MISO's Standards of Conduct, which are intended to ensure the independence of the Directors, Officers and employees from both the decisionmaking and financial perspectives.

(Jt. Pet. MISO Ex. A, p. 24-25; Jt. Pet. MISO Ex. B, p. 5.) The Standards of Conduct are intended to implement three main policies of the MISO: (i) to operate in a fair and nondiscriminatory manner and to implement such rules and regulations necessary to prevent control, or the appearance of control, of the decisionmaking process by any participating transmission owner member in the MISO, any other member of the MISO or any user of the Transmission System; (ii) to operate and plan the Transmission System without adverse distinction or preference to any participating transmission owner member in the MISO, any other member of the MISO or any user of the Transmission System; and (iii) that the Directors, Officers and employees of the MISO shall not have any financial interest in, or a conflict of interest with, any participating transmission owner member in the MISO, any other member of the MISO or any user of the Transmission System. (Jt. Pet. MISO Ex. A, p. 24).

### **3.3. Neutrality in Operations and Planning**

Mr. Torgerson testified that MISO: (i) will not discriminate in its generator interconnection policies between power plants, regardless of ownership; (ii) will not be involved in the interconnection of distributed generation, unless such generation is proposed to be connected to the Transmission System or to be sold at wholesale using the MISO OATT; (iii) will have an expedited interconnection procedure for small generators (under 20 MW) that are connected to the Transmission System or that intend to take service under the MISO OATT; (iv) will provide, through the MISO expansion plan and reports, information to generators and other interested parties concerning preferred siting and capacity of generation that would be effective in reducing congestion management; and (v) will have an interconnection process that will identify areas where interconnection will result in the need for large investments in system upgrades to accommodate generator interconnection, and where it will not. (Jt. Pet. MISO Ex. B, pp. 29-31.) To ensure neutrality, the MISO Agreement provides that all interconnection studies for the Transmission System will be the responsibility of, and be performed under the policies of, the MISO. (Jt. Pet. MISO Ex. B, p. 30). Because the MISO is an independent entity, this will ensure nondiscriminatory interconnection processes.

## **F. The Seams Issue: Coordination With Other RTOs and other Transmission Owners.**

### **1.1. Overview**

a. **Seams in General:** Whenever there is more than one RTO within an interconnected area, the “seams” issue arises. While there is no official definition of this term, commenters have noted two types of seams issues: reliability practices across seams and market practices across seams. *See*, FERC Order No. 2000 at text following note 349. Seams are eliminated when there are, for example, “coordinated operations and consistent methods of access, pricing, and congestion management....” *Id.* at text preceding note 368. In addition to seams relating to operations, seams can develop in ways that are less obvious but no less important to the efficient and reliable functioning of the wholesale power markets. Differences between RTOs over governance structures, stakeholder involvement and incentive structures (such as incentives relating to the construction of transmission facilities) also can be impediments to trade.

Hils articulated that there is an inherent "co-dependence" between the MISO and the Alliance RTO. Differences in operations or rules between the two have the potential to create a dysfunctional market. (Hils at Tr. C-73) and (Jt. Pet. MISO Ex. E, p. 5). As more than one witness observed, even subtle differences in operational practices, definitions, communications equipment, hardware and software could cause severe seams problems. As MISO witness Snead said: "Especially when you go to...an overall single market design for a region, small – very small subtle differences between the market designs can cause events to occur that you don't anticipate." (Tr. C-110). With regard to subtle differences being critical, the experience of the Northeastern Independent System Operators' inability to resolve relatively minor seams problems was cited. (IGG Ex. 1. p. 14). The experience of the northeastern systems is particularly salient because they evolved from "tight" power pools where there was a history of considerable cooperation. In contrast, utilities in the Midwest were participants in "loose" power pools with very little coordination.

The FERC's concern with seams led it to include the following "minimum function" requirement in FERC Order 2000: "The Regional Transmission Organization must ensure the integration of reliability practices within an interconnection and market interface practices among regions." 18 C.F.R. § 35.34(k)(8). This obligation, while not requiring identical practices between RTOs, does require "compatible" practices. In short, "RTOs must coordinate their practices with neighboring regions to ensure that market activity is not limited because of different regional practices." FERC Order No. 2000, slip op. at 510. In discussing the seams issue in this proceeding, the Commission recognizes that seams management does not require a perfect market with no inconveniences, for there are no perfect markets. However, the Commission recognizes that there should not be any artificial barriers to efficient trading created by the failure of coordination between MISO and Alliance RTOs.

**b. Seams in Our Region: The *Illinois Power* Case and the IRCA:** The boundary between MISO and Alliance splits large portions of the Midwest market. This fact received widespread recognition in late 2000, when three MISO members (Illinois Power Company, Commonwealth Edison Company and Ameren Corporation) announced their intent to withdraw from the MISO in order to participate in the Alliance RTO, and made filings at FERC accordingly. This departure would mean that ARTO members would surround the Indiana members of the MISO on three sides, drawing a line at roughly the northern third, and isolating not only the Indiana members of MISO but also the MISO members in Ohio, Illinois, and Kentucky. The withdrawal thus would cut the MISO into two separate, unconnected segments, threatening MISO's viability in terms of its operational capability, its financial viability, its ability realize economic efficiencies and its ability to comply with the FERC Order No. 2000 requirements for geographic scope. (Jt. Pet. MISO Ex. C, pp. 14-15; and Jt. Pet. MISO Ex. A, p. 4).

In response to these and other concerns raised by intervenors in the three utilities' FERC cases, FERC consolidated the three cases in *Illinois Power*, and ordered a settlement conference. The resulting March 2, 2001 *Illinois Power* Settlement Agreement, ultimately approved by FERC, enabled the MISO, with its existing membership, infrastructure and staff, to remain viable. A copy of the *Illinois Power* Settlement Agreement was introduced into evidence in this proceeding as Jt. Pet. MISO Ex. C-1.

The *Illinois Power Settlement Agreement* included three significant features. First, the Settlement Agreement resolved all terms and conditions necessary to permit the three Illinois companies to withdraw from the MISO, but required them to pay the MISO \$60 million – a sum designed to fund the MISO's remaining startup costs. Second, the Agreement required the MISO and the ARTO to establish a single, non-pancaked rate methodology to apply to transactions from any source within the combined MISO/ARTO boundaries ("MISO/ARTO Super Region") to any sink within the MISO/ARTO Super Region. Third, in response to concerns that the boundary between ARTO and MISO would contain "seams," the Settlement Agreement includes an Inter-RTO Cooperation Agreement ("IRCA"). The IRCA commits the MISO and the ARTO (and, the Alliance companies, before the creation of the ARTO) to provide the basis for the development of a seamless market throughout the combined MISO-ARTO region, and to use the processes and timeframes contained in the IRCA to meet this objective in a timely fashion. (Jt. Pet. MISO Ex. C, p. 18).

The IRCA provides that the MISO and the ARTO will develop procedures and protocols in several areas, including: (i) coordinated transmission planning; (ii) security coordination; (iii) congestion management; (iv) independent market monitoring; (v) accommodation of one-stop shopping; (vi) compatible realtime balancing markets; (vii) common generation interconnection agreement; (viii) compatible business practices; and (ix) dispute resolution procedures for resolving realtime operational disputes. (Jt. Pet. MISO Ex. C, p. 18). The successful and timely implementation of the IRCA protocols and procedures in each of these areas is the key to assuring that the boundary between MISO and ARTO does not contain, or maintain, "seams" that impair efficient trading across the combined region. (Jt. Pet. MISO Ex. C, pp. 18-19). In the subsections to follow, we address certain concerns raised about the IRCA process.

## **2.2. Deficiencies in the Operating Protocols**

Mr. Jackups testified that concerns remain among the MISO Transmission Owners regarding the ability of the MISO and the ARTO to reach agreement on a sufficient level of detail on development and implementation of the IRCA-required protocols and procedures. Absent timely completion of these tasks, he stated, MISO startup still could occur, and reliability would not be compromised, but the desired level of seamlessness would not be achieved. (Jt. Pet. MISO Ex. C, pp. 19-21). Mr. Jackups further testified that because of the complexity of the MISO's planned operations and because of the work in progress nature of the IRCA, some degree of uncertainty will surround the implementation of the MISO's operations. However, he stated that such uncertainties can be adequately addressed to minimize the risks to Indiana retail electric customers. (Jt. Pet. MISO Ex. R, pp. 67; and Jt. Pet. MISO Ex. C, pp. 79 and 21).

Based on the concerns expressed by the MISO members, as well as his own analysis, Enron witness Michael Roan testified that the IRCA process has failed to resolve seams issues. Absent sufficient detail in the IRCA provisions, Mr. Roan questioned whether either RTO can satisfy FERC Order No. 2000 scope and configuration requirements. (Enron Ex. 1, p. 9). In contrast, ARTO witness Craig Baker testified that the IRCA process was proceeding smoothly. (ARTO Jt. Pt. JCB-R, p. 12).

### 3.3. Security Coordination

FERC Order 2000 requires that each RTO provide its own Security Coordinator function on a regional basis. "Security Coordination" is intended to safeguard reliability by curtailing transactions in extreme instances during periods when the transmission system is at risk of overloading. Because electricity travels at speeds approaching the speed of light, instantaneous communications are essential to the ability of the Security Coordinators to handle real-time operations of the grid. While reliability is the impetus for a Security Coordinator to curtail transactions, or even issuing warnings that there is a potential that transactions could be curtailed, there are obvious commercial implications associated with transactions that are curtailed as well as those transactions that or not consummated for fear of curtailment. The ability to interrupt transactions vests considerable power in the hands of individual Security Coordinators. Because a Security Coordinator has the opportunity to favor transactions of its own RTO or member companies, it is essential that the use of the Security Coordination authorities be fairly administered and transparent to all of the market participants. Given the extraordinary complexity of the physical power flows involved in transactions, combined with the large commercial value of power transactions, errors, whether intentional or inadvertent, could go undetected. Remedies are time-consuming, expensive and uncertain.

Joint Petitioners witness Hils stated that ideally, if all aspects of operations were seamless between the MISO and the ARTO, then only one security coordinator would be needed to oversee the Midwest region served by the two RTOs. With separate security coordinators for the MISO and the ARTO, the options available to a particular security coordinator for congestion management (other than transmission loading relief) would be limited to the resources within its RTO if the IRCA seams issues are not adequately addressed. This limitation could affect the other RTO and its customers and members. (Jt. Pet. MISO Ex. E, pp. 3-4 and 7). While the three security coordinator arrangement currently in existence in the ECAR reliability region would be improved by having only two security coordinators for the combined MISO and ARTO region, having a single security coordinator for that combined region, while not an absolute necessity in the short term, remains a legitimate goal. (Jt. Pet. MISO Ex. E, pp. 4-5).

### 4.4. Congestion Management

Congestion Management is a market-based mechanism to prevent reliability problems on the grid without having to resort to the use of TLRs or equivalent processes to curtail transactions. While TLRs can be a tool of last resort for RTOs, congestion management is a more efficient, robust means of relieving transmission concerns in advance of the real-time operations because it uses pricing mechanisms to accurately reflect the costs of the transmission congestion. Accurate pricing, in turn, will send appropriate price signals to the marketplace that discourage uneconomic transactions, encourage the construction of generation and transmission in locations that are limited by the transmission constraints, and encourage load control and consumer rate incentives to reduce usage during periods when the reliability of the power system is at issue. Ultimately, the success of any congestion management approach will be to enhance reliability and the economic value of transactions while minimizing the need for the RTO to physically curtail transactions.

The IRCA goal is a coordinated MISO-ARTO process. The IRCA looks at this from a short-term or "Day One" perspective, as well as a longer-term or "Day Two" perspective. With



respect to Day One congestion management, under the IRCA both RTOs have agreed to utilize a joint bulletin board to post congestion management information, including generation shift factors and identification of facilities that are likely to be constrained. The IRCA calls for both RTOs to require all generators "to the extent necessary for inter-RTO congestion management purposes" to provide bids for emergency and market redispatch, to increase or reduce generation or loads on both sides of a constraint. In addition, the agreement contains other provisions that provide, at a high level, processes and procedures to be followed by the two RTOs. As of this time, the joint bulletin board has not yet been completed. (Jt. Pet. MISO Ex. D, p. 25).

While the congestion management coordination procedures to be created under the IRCA may represent an improvement over current market practices, not all congestion management issues between the two RTOs have been resolved in a manner that will make the process seamless for customers. For example, allocation of costs resulting from redispatch of generation to resolve congestion problems has not been agreed upon. (Jt. Pet. MISO Ex. D, pp. 4-5). This remains an area where, while a joint committee has been established to form a compatible process, differences between how the two RTOs operate will exist, and thus may create seams issues in terms of disputes over operational and cost responsibilities. (Jt. Pet. MISO Ex. D, p. 6).

The Joint Petitioners thus asserted that the two RTOs should attempt to adopt nearly identical congestion management practices to avoid problems. Otherwise, when inter-RTO transactions occur, differences in operations will create a seam. (Jt. Pet. MISO Ex. D, pp. 7-8). Further, sharing of dispatch information between the two RTOs will be important. Given that the practices to be used by the two RTOs continue to evolve, it remains unclear whether the practices will ultimately be compatible. (Jt. Pet. MISO Ex. D, pp. 10-11).

#### **5.5. Available Transmission Capability**

The MISO will use the data it collects to create power flow models every hour. It will use these models in turn to calculate ATC, which will be posted. Under the IRCA, the MISO will share its ATC calculations with the ARTO, and vice versa.

MISO and ARTO will create common databases to allow input of data for individual Control Areas to facilitate central calculation of the required ATC values. The ATC calculation procedures will provide the ability to identify and adjust for parallel path flows both within the region and neighboring regions. A draft document entitled Cooperative Procedures and Protocol on ATC determination has been prepared and will be the basis of the coordination. Provided that appropriate external conditions (e.g. outages, reservations, load levels) are included in the RTOs calculation process and internal conditions are appropriately modeled, ATC values should yield similar results. (Jt. Pet. MISO Ex. D pp. 20-22).

The Protocol requires that the RTOs exchange data and consider the impact on the flowgates in both RTOs as they evaluate and grant transmission service. While the process should be an improvement over the coordination mechanism of today, there are still opportunities for incompatible results due to the limitations of data exchange or generation dispatch information. To the extent differences in calculation result in overloaded flowgates, relief measures could be required, such as shutting down particular transactions unnecessarily, resulting in a less efficient

marketplace. (Jt. Pet. MISO Ex. D, pp. 21-22).

#### **6.6. Ancillary Services**

The control areas within the ARTO and the MISO will continue to provide ancillary services to the customers within the control area's metered boundaries, unless the transmission customer chooses to self-provide applicable services.

The ancillary services are control area specific; as such, they do not require services from other RTOs or even other control areas within the same RTO. However, the Alliance RTO model anticipates that markets for ancillary services will develop and permit competition within the region. To ensure reliable and efficient sources of generation resources for providing ancillary services, the Alliance RTO will require generators interconnected to its transmission system to execute an Interconnection Agreement. The interconnection agreements will require the generation owners to supply ancillary services as determined to be necessary by the Alliance RTO. The generation owners will continue to provide ancillary services until it is determined that sufficient third party ancillary services are available through a regional power exchange or other market means. The ARTO and MISO are committed to develop and implement appropriate mechanisms to coordinate super regional operations and to assure the compatibility of their operations. Therefore, Joint Petitioners believe the MISO and Alliance RTO configuration will not impair the viable market for ancillary services.

The MISO Joint Petitioners, however indicated a concern that a viable, practical market for ancillary services will be impaired unless the configuration, requirements and other seams issues between the MISO and the ARTO can be made completely transparent to the market. (Jt. Pet. MISO Ex. E, pp. 22-23).

Specifically, Mr. Hils indicated a concern that a viable, practical market for ancillary services will be impaired unless the configuration, requirements and other seams issues between the MISO and the ARTO can be made completely transparent to the market. Mr. Hils further indicated that there should be standardization so that the rules for self-provision of an ancillary service are consistent across RTOs. (Jt. Pet. MISO Ex. E, pp. 22-23).

Mr. Hils stated that the control areas within the MISO and the ARTO will continue to provide ancillary services to the customers within the control areas metered boundaries, unless the transmission customer chooses to self-provide applicable services. Mr. Hils indicated a concern that a viable, practical market for ancillary services will be impaired unless the configuration, requirements and other seams issues between the MISO and the ARTO can be made completely transparent to the market. Mr. Hils further indicated that there should be standardization so that the rules for self-provision of an ancillary service are consistent across RTOs. (Jt. Pet. MISO Ex. E, pp. 22-23).

#### **7.7. Conclusions on IRCA and Seams**

The status of progress on the IRCA-required procedures and protocols is dealt with extensively in the Joint Petitioners' testimony. From that testimony, it appears that the IRCA process has produced some agreements. In other instances, the Agreements between the Alliance

transmission owners and the MISO were merely agreements to agree. In other cases, there are fundamental disagreements on matters that could, if unresolved, scuttle any hopes of Inter RTO cooperation. There are still other instances where less than satisfactory agreements have been reached. The testimony also reveals significant differences of opinion over other seams issues, as well as serious differences in perception as to the success of the IRCA effort.

For purposes of this order, we agree with Mr. Jackups that the transfer of the Joint Petitioners' transmission assets to the MISO will benefit Indiana. We do not view the MISO or its members as responsible for the apparent shortfalls between the expectations set forth in the IRCA. Consequently, we will not delay our approval of the MISO Petitioners' request until the IRCA matters are resolved.

#### **G. Responsiveness to the Public's Needs**

A less tangible but still important criterion is the transferee's record of responsiveness to the public in general and this Commission in particular. The importance of responsiveness to this Commission grows as our jurisdiction becomes shared with FERC's. This jurisdictional sharing occurs when the functional control of the transmission assets moves from utilities providing bundled, state-jurisdictional retail service to an RTO providing unbundled, FERC-jurisdictional transmission service.

Early Efforts: From its early days, the MISO has involved a broad set of interests. The formation process of the MISO commenced in early 1996 and continued through December of 1998, with over twenty-five Midwestern transmission owners involved in these discussions. (Jt. Pet. MISO Ex. A, p. 4). The participants in the MISO formation process included large and small investor-owned utilities, municipal utilities and municipal power agencies, and rural electric generation and transmission cooperatives. (Jt. Pet. MISO Ex. A, pp. 7-9). Various other stakeholder groups also participated in the MISO formation process, including environmental advocates, independent power producers and power marketers, industrial customers, state utility regulatory commissions, state consumer advocate agencies, and transmission dependent utilities. (Jt. Pet. MISO Ex. A, pp. 9-10). This group effort ultimately produced the MISO Agreement.

Board Composition: Beginning in April of 1997, all meetings of the Management Council were open to active participation by stakeholders, including power marketers, customers and state regulators. (Jt. Pet. MISO Ex. A, pp. 9-10). As a direct result of this input, the MISO's Board of Directors was changed from a "representative board" to a "disinterested board" (i.e., a totally independent board). (Jt. Pet. MISO Ex. A, p. 11). The elected Board of Directors of the MISO operates under Standards of Conduct that assure independent decisionmaking. (Jt. Pet. MISO Ex. A, p. 24).

Advisory Process. The Bylaws of the MISO further provide that at all times there shall exist an Advisory Committee to the Board of Directors of the MISO. (Jt. Pet. MISO Ex. B, p. 6.) The Advisory Committee of the MISO is a forum for the members of the MISO (both participating transmission owner members and general members) and other stakeholders of the MISO to be apprised of the MISO's activities and to provide information and advice to the Board of Directors of the MISO on policy matters of concern to the Advisory Committee or its stakeholder groups. (Jt.

Pet. MISO Ex. B, p. 6). Mr. Torgerson confirmed that after operational implementation, the Advisory Committee, reflecting a balanced mix of stakeholders, will continue to advise the Board on important matters. (Jt. Pet. MISO Ex. B, p. 7).

Under the Midwest ISO Agreement the Midwest ISO is required to grant federal and state regulatory commissions having jurisdiction over the Midwest ISO or any participating transmission owner member in the Midwest ISO such access to the Midwest ISO's books and records as is necessary to verify compliance by the Midwest ISO with the Midwest ISO Agreement and to audit and verify transactions under the Midwest ISO Agreement. Such access shall be at all reasonable times and under reasonable conditions. (Jt. Pet. MISO Ex. B, p. 20). On cross-examination, Mr. Torgerson indicated that such access to the books and records of the Midwest ISO applied to the Commission and the OUCC. (Tr. pp. A-82 and A-83).

**IV. Commission Findings and Conclusions.** If this Commission is to allow Indiana utilities to transfer functional control of transmission assets into an ISO and ultimately into an RTO, the evidence must demonstrate that such transfer will be to an entity that will provide reliable, adequate and efficient service to Indiana customers and those who serve them. The Commission has reviewed the testimony in this matter, and finds that Indiana electric customers should receive directly or indirectly substantial and material benefits from the Joint Petitioners participating as transmission owner members in the MISO. The benefits, as set forth in this matter, include: reliability, enhancement of wholesale generation competition and reduction in costs.

In addition to the specific discussion of the issues as set forth in this order the Commission has found the following issues to be instructive in reaching our determination.

First, according to the evidence presented in this matter, the Commission finds that the MISO appears capable of assuming control of transmission facilities in the state. The Joint Petitioners presented nine witnesses who testified in detail as to the status of the many operational issues that have been addressed by the MISO. (Jt. Pet. MISO A-I). The MISO has also filed with FERC a Status Report providing substantial technical information as to its progress in developing as a functional RTO. (ARTO Jt. Pet. Ex. JCB-R5).

Second, independence and stakeholder involvement are vitally important to this Commission. By allowing functional control over Indiana transmission facilities by a FERC-authorized entity, this Commission expects that it will necessarily have less direct oversight of the rules governing that functional control. Thus it is all the more important that this Commission have confidence that the day-to-day operations of the entity will be performed by an organization which is independent from market participants, and that such operations be informed by the interests of a wide range of stakeholders. Independence is the bedrock principle without which nondiscriminatory access to the interstate transmission grid is impossible. The evidence clearly demonstrates that the MISO's three years of independent governance is a critical factor in this Commission's review of these transfers (Jt. Pet. MISO Ex. A, p. 11).

Based on the testimony presented in this Cause the Commission recognizes that there are unresolved issues regarding the IRCA, which was characterized by one witness as a "work in progress". While the IRCA appears to have been a step toward ensuring seamless functionality

between the MISO and the ARTO, the evidence provided in this proceeding fails to demonstrate that the effective coordination across the proposed Indiana seam will be resolved in a manner that leads us to conclude that an approval that relies upon the IRCA as a central feature would be in the public interest.

In this proceeding, the MISO applicants have sought permission to transfer to MISO the functional control of their transmission assets. Our approval is limited to this request. We wish there to be no misunderstanding of this point. We therefore condition our present approval on the understanding that the MISO applicants' must seek and obtain this Commission's approval regarding any future requests governed by IC § 8-1-2-83.

**A. Hoosier Jurisdictional Issues.** Michael J. Mooney, Manager of Corporate Planning for Hoosier, testified that Hoosier is a general district corporation within the meaning of Ind. Code § 8-1-13-23. The Commission recognizes that Hoosier has withdrawn from the jurisdiction of the Commission pursuant to Ind. Code § 8-1-13-18.5, which withdrawal became effective on or about January 14, 1998. (Jt. Pet. MISO Ex. I, p. 2.) A corporation which withdraws from the jurisdiction of the Commission under Ind. Code § 8-1-13-18.5 is still subject to the jurisdiction of the Commission only in the following areas: (i) electric service area assignments under Ind. Code 8-1-2.3; (ii) certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under Ind. Code 8-1-2, 8-1-8.5 and 8-1-8.7; and (iii) water utility disputes under Ind. Code § 8-1-2-86.5. (Jt. Pet. MISO Ex. I, p. 2.) Hoosier has requested that the Commission concur that the relief requested in this proceeding by the Joint Petitioners does not fall within the continuing jurisdiction of the Commission over Hoosier pursuant to Ind. Code § 8-1-13-18.5. The Commission agrees that, with respect to the subject matter of this proceeding, Hoosier is not subject to the jurisdiction of the Commission for purposes of the relief requested herein by the Joint Petitioners.

**B. Conditions.** We further find that certain conditions, as set forth below, are necessary to protect the public interest.

**Condition #1: Acceptance of ARTO members**

It is necessary to assure that our approval of the MISO applicants' proposal is consistent with the Commission's goal of seamless wholesale generation markets. In light of our rejection of the ARTO applicants' request, we need to be sure that they will have the option of joining the MISO, among other options that we are directing the ARTO applicants to consider in a separate order issued today. It would not be consistent with seamlessness for us to approve the MISO transfer, reject the ARTO transfer, and be indifferent to whether the ARTO utilities would be able to join MISO.

The record indicates that MISO would be capable of accepting the ARTO applicants. The MISO Joint Petitioners have indicated that the MISO ICCS was designed to be scalable to allow the expansion of the MISO to include an entity as large as the ARTO. This means that the MISO systems have sufficient capability to potentially operate both the MISO and the Alliance as a single system under the MISO protocols.

We therefore condition our approval of the MISO applicants' request on our receiving, no later than December 31, 2001, a letter from MISO stating it is aware of no legal, operational or other impediment to accepting as members any or all of the Alliance Companies, assuming that such companies otherwise meet the requirements of the various MISO guiding documents. By Alliance Companies, we mean not merely the ARTO applicants in this case but the full set of companies presently seeking approval to form the Alliance RTO. While we do not have jurisdiction over the non-Indiana utilities seeking to form the Alliance RTO, we wish to ensure that the RTO which our jurisdictional utilities do join is able to accept these other companies, should they choose not to form the Alliance. This condition is not intended to prejudge the question whether the ARTO applicants should join MISO. That question will be addressed as part of the new investigation, in which we will investigate that option and others in a subsequent proceeding with the ARTO Participants. MISO must take part in the subsequent proceeding involving the ARTO Participants, as a condition of this Order. We recognize that MISO is not a party to this proceeding, and also that the Joint Petitioners in this proceeding do not control MISO's decisions. We are not requiring MISO to take any action. However, we are conditioning our approval of the Joint Petitioners request on the MISO's action.

#### **Condition #2: Subsequent Withdrawal from MISO**

The Commission is approving the MISO utilities' request based on its finding that joining these utilities' transmission assets with those of other MISO members will benefit Indiana. This finding presumes, obviously, that the applicants will remain members of MISO.

The Commission views this joint application as a serious commitment by the applicants, to seamlessness in general and the MISO in particular. The present application, and our approval thereof, would not be meaningful if the applicants, having transferred functional control to the MISO pursuant to this Commission's authorization, thence could transfer this responsibility somewhere else without this Commission's approval.

We recognize that jurisdiction over whether, when and how a company may depart from a FERC-jurisdictional arrangement, such as the MISO, lies with the FERC. But we do not view that jurisdiction as exclusive. IC § 8-1-2-83, applies to the subsequent transfers by our utilities no less than it applies to the initial transfer. It is true that the circumstances under which a member of an RTO may depart from the RTO are ruled by the RTO agreement, and that only FERC has jurisdiction over that agreement. From that statement, some may argue that FERC's jurisdiction over the departure is preemptive of the Commission's state law jurisdiction. We do not agree with this argument. The Commission believes that a reasonable protection of our jurisdiction, and respect for FERC's jurisdiction, is dependent upon the applicants' understanding that they must seek the Commission's approval before initiating or joining any filing at FERC in order to depart from the MISO, or to transfer functional control to any other RTO.

#### **IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:**

1. The Joint Petitioners transfer of functional control of operation of their applicable transmission facilities to the MISO, as described in and required by the Midwest Agreement

submitted in this Cause, shall be and is hereby approved, subject to the provisions and conditions set forth in this Order.

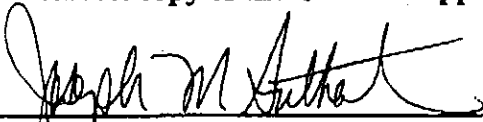
2. Hoosier has withdrawn from the jurisdiction of the Commission pursuant to Ind. Code § 8-1-13-18.5. With respect to the subject matter of this proceeding, Hoosier is not subject to the jurisdiction of the Commission for purposes of the relief requested herein by the Joint Petitioners.

3. This Order is effective on and after the date of approval.

**MCCARTY, HADLEY, RIPLEY AND ZIEGNER CONCUR; SWANSON-HULL ABSENT:**  
**APPROVED:**

**DEC 17 2001**

I hereby certify that the above is a true  
and correct copy of the Order as approved.

  
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Joseph M. Sutherland, Secretary to the Commission