

Exhibit No.:
Issue: Withdrawal from
Midwest ISO
Witness: David A. Whiteley
Type of Exhibit: Direct Testimony
Sponsoring Party: Union Electric Co.
d/b/a AmerenUE
Case No.: EO-2001-684
Date Testimony Prepared: August 17, 2001

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO. EO-2001-684

DIRECT TESTIMONY

OF

DAVID A. WHITELEY

ON BEHALF OF

UNION ELECTRIC COMPANY

d/b/a AmerenUE

St. Louis, Missouri
August 17, 2001

1 **DIRECT TESTIMONY**
2 **OF**
3 **DAVID A. WHITELEY**
4 **ON BEHALF OF**
5 **UNION ELECTRIC COMPANY**
6 **d/b/a AmerenUE**
7 **CASE NO. EO-2001-684**
8

9 **Q. Please state your name and business address.**

10 **A.** My name is David A. Whiteley. My business address is Ameren Services
11 Company, 1901 Chouteau Avenue, St. Louis, Missouri, 63103.
12

13 **Q. What is your educational background and work experience?**

14 **A.** I have a Bachelor of Science Degree in Electrical Engineering from Rose-Hulman
15 Institute of Technology, Terre Haute, Indiana and a Master of Science Degree in
16 Electrical Engineering from the University of Missouri-Rolla. I am also a
17 registered Professional Engineer in the states of Missouri, Illinois, and Iowa. I
18 have worked for Ameren and its predecessor Union Electric Company since 1978.
19 During that period I have held various engineering and management positions in
20 planning, design and operations.
21

22 **Q. What is your present position with Ameren Services and what are your**
23 **responsibilities?**

1 **A.** My present position is Vice-President, Energy Delivery Technical Services. In
2 this position I lead an organization that is responsible for the operations,
3 maintenance, planning, engineering design, and construction of all transmission
4 facilities for AmerenUE and AmerenCIPS, the utility operating subsidiaries of
5 Ameren Corporation. In addition, the Energy Delivery Technical Services
6 organization provides engineering and maintenance support for some of Ameren's
7 generation and distribution system facilities.

8
9 **Q.** **What is AmerenUE requesting in this proceeding?**

10 **A.** AmerenUE is requesting approval from the Commission to withdraw from the
11 Midwest Independent System Operator ("ISO"), as required by Commission
12 Order in case No. EO-98-413, so that it may participate in the Alliance Regional
13 Transmission Organization ("RTO").

14
15 **Q.** **Why did AmerenUE join the Midwest ISO?**

16 **A.** As part of a Stipulation and Agreement reached in the merger of Union Electric
17 and Central Illinois Public Service Company, AmerenUE was ordered by the
18 Commission to file or join in the filing of a regional ISO proposal at the Federal
19 Energy Regulatory Commission ("FERC"). At the time of this Order, outside of
20 filing its own ISO proposal at FERC, the Midwest ISO was AmerenUE's only
21 viable option to comply with the Commission's directive.

22

1 **Q. Why didn't AmerenUE file its own ISO proposal at FERC?**

2 **A. At the time of the Commission's Order in the merger case, most, if not all of the**
3 transmission owning utilities that were members of the Mid-American
4 Interconnected Network ("MAIN") were working on the formation of the
5 Midwest ISO, and from an operational standpoint, it seemed logical for all of the
6 utilities receiving security coordination services from MAIN to participate in the
7 same ISO.

8
9 **Q. Aside from the Commission's Order in the merger case, is there any other**
10 **reason why AmerenUE must participate in a Regional Transmission**
11 **Organization?**

12 **A. Yes. Late in 1999, FERC issued Order No. 2000, which required all transmission**
13 owning utilities providing transmission service in interstate commerce to file with
14 the FERC their intentions for participating in a RTO. In addition to this
15 requirement, Order No. 2000 set forth the required functions and characteristics
16 that a RTO must meet to be approved by FERC.

17
18 **Q. Generally speaking, what is a FERC approved RTO required to do?**

19 **A. FERC requires the RTO to be independent of any market participant. The**
20 independence aspect is deemed necessary to assure that the actual owners of the
21 transmission facilities over which transmission service is provided would not
22 favor their generation and marketing affiliates and discriminate against others in
23 the granting of transmission service. The RTO will be required to provide

1 non-discriminatory, open access transmission service over its transmission
2 facilities (if applicable) and the transmission facilities of its members pursuant to
3 a tariff approved by FERC. The RTO also will coordinate the planning and
4 operation of the transmission facilities of its members, and much like the services
5 AmerenUE currently receives from MAIN, the RTO also will provide regional
6 security coordination to assure reliable operation of the transmission network.
7

8 **Q. When did AmerenUE give notice to the Midwest ISO that it intended to**
9 **withdraw?**

10 **A.** On November 9, 2000 Ameren Services Company on behalf of AmerenUE
11 provided written notice to the Midwest ISO of its intent to withdraw from
12 participation in the Midwest ISO.
13

14 **Q. Why did AmerenUE want to withdraw from the Midwest ISO?**

15 **A.** At the time of AmerenUE's notice of withdrawal, the continued viability of the
16 Midwest ISO was extremely uncertain, if not doubtful, due to the announced
17 withdrawals of Illinois Power Company ("IP") and Commonwealth Edison
18 Company ("ComEd"). The Midwest ISO faced significant financial uncertainty
19 due to high projected costs to achieve operation and difficulty in borrowing
20 additional funds in light of the pending IP and ComEd withdrawals. In addition,
21 small transmission owning members of the Midwest ISO, by virtue of provisions
22 in the Midwest ISO agreement, had veto power over any tariff or revenue
23 distribution amendments proposed by transmission owners participating in the

1 Midwest ISO. Some of the small transmission owners in the Midwest ISO were
2 utilizing this power to block proposed changes to the transmission tariff and
3 revenue distribution protocol that would have eliminated the significant
4 transmission service revenue shifts away from AmerenUE (and other transmission
5 owners in the Midwest ISO) and assured AmerenUE (and other transmission
6 owners) continued transmission service revenues in proportion to the amount of
7 open access transmission service business contributed to the Midwest ISO.
8 Finally, AmerenUE had concerns that operational problems in Illinois could result
9 with the departure of IP and ComEd. All of these issues had negative
10 implications for AmerenUE and its customers. Moreover, FERC's issuance of
11 Order No. 2000, in late 1999, provided a basis for the creation of other RTO
12 business models, spawning the better business model and transmission service
13 revenue allocation approach of the Alliance RTO.

14
15 **Q. Has AmerenUE received permission from the Federal Energy Regulatory**
16 **Commission (FERC) to withdraw from the Midwest ISO?**

17 **A.** Yes. AmerenUE filed a request with the FERC on January 16, 2001 in Case
18 No. ER01-966-000 seeking to withdraw from the Midwest ISO. As mentioned
19 earlier in my testimony, prior to AmerenUE seeking to withdraw from the
20 Midwest ISO, IP and ComEd had already filed with FERC to withdraw from the
21 Midwest ISO. Rather than resolve these three cases independently, the FERC
22 ordered a settlement negotiation process within the IP docket that involved all
23 parties to these three cases. The end result of the settlement proceedings was a

1 Settlement Agreement that resolved all issues in the AmerenUE docket and
2 approved AmerenUE's withdrawal from the Midwest ISO.
3

4 **Q. Who participated in these settlement proceedings?**

5 **A.** The participants included the Alliance Companies, the Midwest ISO Inc., the
6 transmission owning members of the Midwest ISO, electric energy marketing
7 entities, consumer advocacy groups, and several State Commissions from states in
8 the Midwest ISO and Alliance RTO region, including the Missouri Commission
9 and the Office of Public Counsel.
10

11 **Q. You stated that the settlement participants included the "Alliance**
12 **Companies". Please describe which companies make up the "Alliance**
13 **Companies" and the difference between the "Alliance Companies" and the**
14 **Alliance RTO.**

15 **A.** The "Alliance Companies" include Ameren Services Company (as agent for
16 AmerenUE and AmerenCIPS), Illinois Power, Commonwealth Edison, American
17 Electric Power Service Corporation, FirstEnergy, Consumers Energy, Detroit
18 Edison, Virginia Electric and Power, Northern Indiana Public Service
19 Corporation, and Dayton Power and Light. These are the companies that have
20 joined together to form the Alliance Transco and the Alliance RTO. The Alliance
21 Transco will be a transmission only company that owns facilities divested from
22 the Alliance Companies. Furthermore, the Alliance Transco will be the signatory
23 to an operations agreement executed by and between the Alliance Transco and

1 each Alliance Company that does not divest its transmission assets to the Transco.
2 The Alliance Transco must be qualified to be an RTO and will be approved by the
3 FERC as an RTO under Order No. 2000. Thus, for most purposes, the Alliance
4 Transco and Alliance RTO are interchangeable.
5

6 **Q. Please describe the settlement negotiations.**

7 **A.** The settlement negotiations took place between February 1, 2001 and
8 February 23, 2001 under the direction of the FERC's Chief Administrative Law
9 Judge, Curtis Wagner. The parties met in various groups and sub-groups to
10 negotiate the terms and conditions of the settlement that would resolve the issues
11 raised and achieve the goals set forth by the FERC. After lengthy negotiation, a
12 final settlement was reached. In the Chief Judge's Certification of Settlement,
13 Judge Wagner stated "The goals set forth by the [FERC] in its January 24, 2001,
14 orders in Docket No. ER01-123-000 and in Docket No. ER99-3114-003, *et al.*,
15 that the Alliance RTO and the Midwest ISO resolve their differences and
16 negotiate a seams agreement **have been more than met**". (emphasis added) (See
17 Illinois Power, *et. al.*, 95 FERC ¶ 63,003 (2001) attached hereto as Exhibit 1.0
18 and made a part hereof.) Judge Wagner further stated that he believed it was fair
19 to say that the final settlement was a compromise with give and take on the parts
20 of all parties. *Id.* Again quoting from the Chief Judge's Certification, "Everyone
21 gets something that they will not have otherwise without the settlement." *Id.* On
22 February 23, 2001, the Chief Judge issued a report advising the FERC that
23 agreement in principle and on a term sheet had been reached.

1

2 **Q. Did any party or participant in the settlement object to the certification of**
3 **the Settlement Agreement by the Chief Judge?**

4 **A.** Only one party, Enron, opposed the Settlement Agreement.

5

6 **Q. Did the FERC accept the Settlement Agreement?**

7 **A.** Yes, the FERC accepted the settlement with minor clarifications and
8 modifications on May 8, 2001. The modifications were later accepted by the
9 parties to the settlement.

10

11 **Q. What are the key components of the Settlement Agreement?**

12 **A.** The key elements of the settlement are described below:

13 1) The settlement accepts that there will be two RTOs in the Midwest – the
14 Midwest ISO and the Alliance RTO – while allowing the regions served
15 by the RTOs to operate as a seamless market. It also calls on the Alliance
16 Companies and the Midwest ISO Transmission Owners to support RTO
17 status for both the Midwest ISO and the Alliance RTO.

18 2) The settlement calls for the development of a “Super-Regional”
19 transmission service rate that eliminates rate pancaking across the
20 Midwest ISO and Alliance RTO systems. While the development of non-
21 pancaked rates within each RTO (but not between RTOs) would have
22 been expected under the guidelines established by FERC Order No. 2000,
23 the Super-Regional rate eliminates pancaking within the Super-Region,

1 even for transactions between the two RTOs. The settlement also called
2 for the Super-Regional transmission service rates to remain in effect
3 through December 31, 2004.

- 4 3) The settlement established an Inter-RTO Cooperation Agreement
5 ("IRCA") between Midwest ISO and the Alliance RTO that assures the
6 two RTOs will work together to facilitate a seamless energy market. The
7 Alliance Companies and the Midwest ISO executed the IRCA on
8 March 20, 2001. In addition, the Alliance Companies will assign the
9 IRCA to the Alliance RTO upon its creation.
- 10 4) The settlement allows the three companies seeking to withdraw from the
11 Midwest ISO (Ameren Service as agent for AmerenUE and AmerenCIPS,
12 Illinois Power, and Commonwealth Edison) to withdraw from the
13 Midwest ISO and join the Alliance RTO. The three departing companies
14 agree to stay in the Alliance RTO until at least December 31, 2002.
- 15 5) The settlement required Ameren, ComEd, and IP to pay the Midwest ISO
16 a total of \$60 million to satisfy the financial commitment made in joining
17 the Midwest ISO and to assure the financial viability of the Midwest ISO
18 through start-up. Without this payment, the Midwest ISO would not have
19 had sufficient funding to complete the development of the computer
20 systems, software and other infrastructure necessary to operate as an RTO.
- 21 6) The settlement calls for negotiations with the Midwest ISO, the Alliance
22 Companies, PJM Interconnection L.L.C., and all of the PJM transmission
23 owners to develop a joint transmission service rate methodology for

1 transactions involving all three RTOs. If no agreement in these
2 negotiations is reached by November 15, 2001, any of the parties may file
3 proposals with the FERC under Section 205 of the Federal Power Act to
4 implement the joint rate contemplated in the settlement.

5 7) The settlement reiterated the goal of the Alliance Companies and the
6 Midwest ISO to achieve operations on or before December 15, 2001.
7

8 **Q. Is AmerenUE's withdrawal from the Midwest ISO necessary for the**
9 **Settlement Agreement to proceed and for both the Midwest ISO and the**
10 **Alliance RTO to initiate operations in a timely manner?**

11 **A.** Yes. The settlement was a "package deal". AmerenUE's withdrawal from the
12 Midwest ISO is a non-severable part of that package deal. Failure of the
13 Commission to approve AmerenUE's withdrawal from the Midwest ISO would
14 destroy the settlement reached by all parties, unquestionably delay the start-up of
15 both RTOs, and cast uncertainty on the future of RTOs in the Midwest.
16

17 **Q. Is the Settlement Agreement, which includes AmerenUE's withdrawal from**
18 **the Midwest ISO, in the public interest?**

19 **A.** Yes. The ratification of the Settlement Agreement by the Commission in this
20 proceeding will result in benefits for AmerenUE customers that would not have
21 otherwise occurred had a settlement not been reached.
22

1 **Q. How do AmerenUE's customers benefit from the Settlement Agreement?**

2 **A.** The Settlement Agreement created the largest, seamless electric energy market in
3 the United States. The creation of this large energy market provides AmerenUE's
4 customers with non-pancaked access to significantly more generation than they
5 would have had access to had the Settlement Agreement not been reached. Non-
6 pancaked access to more generation increases the competitiveness of the
7 generation and ancillary services markets, which in the long run, should result in
8 lower overall energy costs for AmerenUE's customers. The Settlement
9 Agreement also solidifies the revenue distribution protocol adopted by the
10 Alliance Companies, which will minimize, if not eliminate, the transmission
11 service revenue shifts away from AmerenUE. The retention of this transmission
12 service revenue stream from the Alliance RTO results directly in revenue credits
13 applicable to AmerenUE's retail customers' bundled rates, which effectively will
14 lower the bundled rates charged to such retail customers. The Settlement
15 Agreement also resulted in the execution of the IRCA, which will assure that a
16 seamless market is maintained throughout the Midwest ISO and Alliance RTO
17 regions while providing a basis for regional oversight on reliability, planning, and
18 operational issues to assure that continued reliability is maintained throughout the
19 midwest. The IRCA also codifies the intent of the Midwest ISO and the Alliance
20 RTO to jointly acquire the services of an independent market monitor. The
21 presence and oversight of an independent market monitor should ameliorate the
22 possibility of market power abuses driving up the cost of energy and ancillary
23 services for all customers receiving service through the Alliance RTO and

1 Midwest ISO Super-Region. Finally, the IRCA concept can be used as a platform
2 from which the Alliance RTO and Midwest ISO can potentially enhance the
3 seamless market in the midwest by forming additional relationships with other
4 adjacent transmission providers and RTOs such as the Southwest Power Pool.

5

6 **Q. Do you believe the Alliance companies satisfy the FERC's requirements for**
7 **the Alliance RTO to be granted RTO status in accordance with Order**
8 **No. 2000?**

9 **A.** Yes. The FERC already found that the area served by the Alliance Companies
10 fully satisfies the scope and configuration requirements of Order No. 2000. The
11 FERC has also indicated that it sees no fundamental problems with the business
12 model of a Transco that functions as an RTO and the two possible paths described
13 in the Alliance Companies' January 16, 2001 filing by which the Alliance RTO
14 will establish independence. (Alliance Companies Order No. 2000 Compliance
15 Filing, Docket No. RT01-88-000, January 16, 2001)

16

17 **Q. Does Ameren intend to continue its support of the development of the**
18 **Alliance RTO?**

19 **A.** Yes. AmerenUE will continue its support of the Alliance RTO with a goal of
20 reaching initial operations by December 15, 2001.

21

22 **Q. Would you please describe the current status of development of the Alliance**
23 **RTO?**

1 **A.** I will describe the current status of the Alliance development in six major areas.

2 1) Governance – The FERC has ordered the Alliance Companies to file by
3 August 27, 2001, which of two paths to independence they plan to follow.
4 FERC has already accepted either of these two paths as sufficient to assure
5 independence. The two paths are: i) attract a strategic investor with
6 industry expertise that is recognized by the FERC as a non-market
7 participant. The strategic investor would provide an equity investment,
8 seat an independent Board of Directors, and become the managing
9 member of the Alliance Transco.; or ii) attract financial-only investors
10 with no industry expertise to seat a Board of Directors that would be
11 independent of market participation and would manage and control the
12 Alliance Transco. The Alliance Companies are working diligently to
13 address the business and independence issues in order to make that filing.

14 2) Stakeholder Involvement – The Alliance Companies filed a stakeholder
15 process with the FERC calling for the formation of a Stakeholder
16 Advisory Committee with broad representation in Advisory Groups from
17 across all industry segments and from other interested parties including
18 state regulatory authorities. The Alliance Companies initiated the process
19 of forming this committee by seeking stakeholder self-nominations to the
20 various Advisory Group membership slots. Various stakeholders have
21 also suggested changes to the process filed with the FERC. These changes
22 were recently discussed with a group of representatives from various
23 stakeholder entities. The Alliance Companies hope to reach consensus

1 soon and implement the process quickly. The Alliance Companies intend
2 for the first meeting of the newly formed Stakeholder Advisory
3 Committee to take place as soon as possible after all Advisory Groups
4 have selected their representatives.

- 5 3) Congestion Management – The FERC has already approved the
6 congestion management approach to be used upon initial operations of the
7 Alliance RTO. This so-called “Day 1” approach involves redispatching
8 generation to preserve firm transmission service even when physical
9 transmission system limitations are reached. This proposal will cover the
10 time period immediately following initial start-up operations and will
11 continue until a new long-term congestion management mechanism is
12 approved for implementation by the independent board of the Alliance
13 RTO. The Alliance Companies will file with the Alliance Open Access
14 Transmission Tariff a proposal for handling the costs associated with the
15 initial congestion management approach. The filing will describe how the
16 costs incurred by the Alliance RTO in managing congestion under the
17 “Day 1” approach will be recovered on a local or zonal basis and on a
18 regional or system wide basis. In addition, the Alliance RTO and the
19 Midwest ISO will jointly provide a voluntary bulletin board service for
20 use by transmission customers and generation owners to facilitate bilateral
21 arrangements to “firm-up” non-firm transmission service by purchasing
22 posted redispatch services.

1 4) Transmission Expansion – The Alliance RTO transmission planning
2 process will be a coordinated transmission planning process which
3 considers inputs from all stakeholders including Transmission Owners
4 (TO), Local Distribution Entities (LDE), and Transmission Users. Non-
5 divesting TOs will not relinquish responsibility for planning their
6 individual systems to the Alliance RTO. Rather, each TO will develop
7 expansion plans for their transmission systems, utilizing knowledge of
8 their existing systems, their load, load growth, new generation connections
9 and transmission service requests through the Alliance RTO. The
10 Alliance RTO will coordinate the individual planning activities of the non-
11 divesting TOs and produce results from planning activities between RTOs.
12 The results of the Alliance RTO planning process will become the basis
13 for development of the Alliance annual regional transmission plan that
14 will be available for review by all interested parties. These plans will be
15 updated annually and will describe transmission facility additions for a
16 ten-year planning horizon. The Alliance RTO will coordinate the
17 planning process through committees and working groups consisting of
18 TO, LDE, and other interested parties including state regulator
19 representatives. AmerenUE will continue to play a key role in the overall
20 Alliance RTO coordinated planning process by participating on the
21 working groups and committees, by providing data as a TO and LDE, and
22 by developing the initial input plans for the Alliance RTO planning
23 process.

1 5) Seams Issues – The Alliance Companies are actively addressing issues
2 arising with RTOs that boarder the Alliance RTO. These have been called
3 “seams issues” because they relate to how the RTOs will operate across
4 the “seam” between them. The most significant progress in addressing
5 seams issues has come out of the implementation of the IRCA that was
6 created during the FERC ordered settlement discussions and which
7 became a part of the Settlement Agreement. To implement the IRCA,
8 work teams with representatives from the MISO and Alliance Companies
9 have reached agreement on procedures and protocols that will assure
10 transmission users seamless access to markets throughout the regions
11 served by the Alliance RTO and the Midwest ISO. The following areas
12 have been addressed through the IRCA process: joint RTO transmission
13 planning; facilitation of one-stop shopping; congestion management;
14 independent market monitoring; imbalance markets; security data and
15 information sharing; ATC coordination and determination; transmission
16 loading relief coordination; generator interconnection agreement;
17 combined reservations and schedules. In each area, the agreed approach
18 for initial operation has been posted to the Midwest ISO and Alliance
19 RTO websites. Ameren continues to participate in the various Alliance
20 seams issues groups, and through that effort, Ameren continues to support
21 resolution of seams issues between neighboring RTOs and other
22 transmission systems.

1 6) Market Monitoring – The Alliance RTO, Midwest ISO and Southwest
2 Power Pool have hired Potomac Economics to fill the role of market
3 monitor. The market monitor will independently assess market power
4 issues within the three regions. A Market Monitoring Plan is to be
5 developed based on the input from market participants, stakeholders, and
6 through advice from Potomac Economics. Meetings to develop the plan
7 have already started, with an objective to have the plan finalized by
8 October, 2001.

10 **Q. Will AmerenUE be a divesting or non-divesting member under the Alliance**
11 **RTO?**

12 **A. AmerenUE will be a non-divesting transmission owner and will execute an**
13 **operating agreement with the Alliance RTO. AmerenUE understands that the sale**
14 **or divestiture of all or part of AmerenUE's transmission assets to the Alliance**
15 **Transco or to a third party requires approval from the Commission. Presently, we**
16 **do not have any intent to sell or contribute our transmission assets to the Alliance**
17 **Transco. Furthermore, we are not asking the Commission for permission to sell,**
18 **divest, or otherwise dispose of AmerenUE's transmission assets in this**
19 **proceeding.**

21 **Q. In your description of the FERC directed settlement proceeding that**
22 **concluded earlier this year, you stated that the three companies departing the**
23 **Midwest ISO paid \$60 million to the Midwest ISO to satisfy the financial**

1 **commitment made in joining the Midwest ISO and to assure the financial**
2 **viability of the Midwest ISO through start-up. What portion of that \$60**
3 **million was paid by AmerenUE?**

4 A. Ameren paid a total of \$18 million. AmerenUE's share of that total is \$12.5
5 million based on the split of the relative gross book value of transmission plant
6 in-service between AmerenUE and AmerenCIPS.

7
8 Q. **Will AmerenUE seek to recover that payment, and if so, how?**

9 A. AmerenUE believes this expense was a prudently incurred regulatory expense that
10 should be recovered from all users of its transmission system. We have not yet
11 determined the appropriate way to allocate and recover these expenses. We are
12 not requesting or proposing a specific recovery mechanism in this proceeding.

13
14 Q. **What is the projected start-up date for the Alliance RTO?**

15 A. Based on the development effort to date and assuming no regulatory delays, we
16 believe at this time the Alliance RTO will be able to commence operations on
17 December 15, 2001. Once the Alliance RTO is determined to be commercially
18 operational, AmerenUE will cease to provide transmission service over its
19 transmission facilities pursuant to its own transmission tariff. That responsibility
20 will be transferred in accordance with FERC directive to the Alliance RTO. It is
21 our intention to comply with this FERC directive.

1 **Q. Once the Alliance RTO is commercially operational, how would you describe**
2 **AmerenUE's relationship with the Alliance RTO?**

3 **A.** The Alliance RTO will serve as AmerenUE's transmission service providing
4 agent. The Alliance will provide non-discriminatory transmission service over
5 the AmerenUE (and AmerenCIPS) transmission facilities in accordance with the
6 Alliance RTO transmission tariff. The transmission service revenues collected by
7 the Alliance on behalf of AmerenUE for providing transmission service over the
8 AmerenUE facilities will be distributed to AmerenUE in accordance with the
9 revenue distribution protocol in the Alliance agreement. The Alliance RTO will
10 also have jurisdictional control over the operation of AmerenUE's transmission
11 assets, however, AmerenUE will retain functional control over these assets. This
12 means that AmerenUE will be required to coordinate the operation, maintenance
13 and construction activities on its transmission system with the Alliance RTO.
14 This is required to prevent AmerenUE and other non-divesting transmission
15 owners in the Alliance RTO from performing maintenance or scheduling outages
16 that would somehow advantage their affiliate generation companies to the
17 detriment of other generation providers.

18
19 **Q. Does this conclude your testimony?**

20 **A.** Yes.

95 FERC ¶ 63,003**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION****Illinois Power Company****Docket No. ER01-123-002¹****CHIEF JUDGE'S CERTIFICATION OF SETTLEMENT****(Issued April 6, 2001)****TO THE COMMISSION:****INTRODUCTION**

A Settlement Agreement (Settlement) involving the Midwest Independent Transmission System Operator, Inc., (Midwest ISO), Certain Transmission Owners in the Midwest ISO, the Alliance Companies and other parties was filed on March 21, 2001. Attached to the Settlement are an Inter-RTO Cooperation Agreement (IRCA) between the Alliance Companies and the Midwest ISO and a separate Explanatory Statement which provides background information and a brief description of the terms of the Settlement.

In order for the Midwest ISO to remain financially viable, in order to meet the December 15, 2001 operational date, and in order to implement the procedures contemplated by the Settlement, a Commission decision on the Settlement is needed by May 1, 2001.

¹The Settlement also resolves the following proceedings which were not referred to the Chief Judge by the Commission: Commonwealth Edison Company, Docket No. ER01-780-000; Ameren Corporation, Docket No. ER01-966-000; Alliance Companies: Ameren Corporation; American Electric Power Corporation, Docket No. ER99-3144-008; Consumers Energy Company; Exelon Corporation; First Energy Corporation, Docket Nos. EC99-80-008; Illinois Power Company; Northern Indiana Public Service Company; The Dayton Power and Light Company; RT01-88-000; The Detroit Edison Company; and Virginia Electric and Power Company (not consolidated).

010409-0497-1

FERC - DOCKETED
APR 6 2001

Docket No. ER-01-123-000

-2-

This Settlement was achieved through the extremely hard work of all participants (which will be described in more detail later herein) and involved much give and take on the part of all parties. No one can, and no one does, deny the fact that the Settlement is beneficial to everyone in the Alliance Regional Transmission Organization (Alliance RTO) and in the Midwest ISO regions. It provides a sounder, more reliable electric transmission system in the two areas, it makes the Midwest ISO financially viable, and it permits the Alliance RTO to achieve greater regulatory certainty. The goals set forth by the Commission in its January 24, 2001, orders in Docket No. ER01-123-000² and in Docket No. ER99-3114-003³, *et al.*, that the Alliance RTO and the Midwest ISO resolve their differences and negotiate a seams agreement have been more than met. The Settlement is the basis for two RTOs that eliminate pancaking between the two RTOs by providing for the transmission of electric energy from any source within the Alliance RTO and the Midwest ISO regions, now called the "Super-Region" to any sink within the Super-Region for a single rate during a transition period that will end no earlier than December 31, 2004; it includes a Cooperation Agreement between the two RTOs which is the first of its kind to be executed and which will provide the basis for the development of a seamless market throughout the Alliance RTO and the Midwest ISO; it provides for the negotiation of a joint rate under the Chief Judge's supervision, among three RTOs—Midwest ISO, the Alliance RTO and the PJM; and it permits Illinois Power Company (Illinois Power), Commonwealth Edison Company (Commonwealth Edison), and Ameren Corporation (Ameren) to withdraw from the Midwest ISO by paying a combined exit fee of \$60 million which will make the Midwest ISO financially sound. It is doubtful that anyone in their wildest dreams would have thought this much could be accomplished in the settlement negotiations herein.

The Settlement is the absolute very best product that is possible given the state of the energy market at the present time. As pointed out before herein, it benefits not only all parties, but also the entire consuming public in the Super-Region. Everyone gets something that they will not have otherwise without the Settlement. No party nor participant objects to the certification of the Settlement.

The vast majority of the parties filing comments support and many strongly support the Settlement and recognize that its overall benefits are in the public interest.

²See *Illinois Power Co.*, 94 FERC ¶ 61,069 (2001), *reh'g denied*, 94 FERC ¶ 61,332 (2001).

³See *Alliance Companies, et al.*, 94 FERC ¶ 61,070 (2001).

Docket No. ER-01-123-000

-3-

Some commenters do request material changes but none of the proposed changes involves an issue of material fact. No party raises a genuine issue of material fact nor submitted the required affidavits supporting such an issue. All objections or requests for modifications to the Settlement raise only policy issues. It is noted that many of the requested modifications concern matters that were not at issue in the Commission's orders or in the Settlement negotiations. A brief summary of each comment is set forth later in this certification.

The Settlement was signed by each of the Alliance Companies, the Midwest ISO, and the Midwest ISO Transmission Companies.

BACKGROUND

By order issued on September 16, 1998, the Commission conditionally approved the application of ten transmission-owning public utilities, namely, Cincinnati Gas & Electric Company (CG&E), Commonwealth Edison, Commonwealth Edison Company of Indiana (Commonwealth Indiana), Illinois Power, PSI Energy, Inc. (PSI), Wisconsin Electric Power Company (Wisconsin Electric), Union Electric Company (Union Electric), Central Illinois Public Service Company (Central Illinois), Louisville Gas & Electric Company (LG&E), and Kentucky Utilities Company (KU), to transfer operational control of their jurisdictional transmission facilities to the Midwest ISO.⁴

Subsequently, a separate group of transmission-owning public utilities, namely, American Electric Power Service Corporation (on behalf of its operating utility subsidiaries Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company), Consumers Energy Company, Detroit Edison Company, FirstEnergy Corp. (on behalf of its operating utility subsidiaries Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company), and Virginia Electric and Power Company, filed an application to transfer ownership and/or functional control of their jurisdictional transmission facilities to the Alliance RTO.⁵ By order issued on

⁴ See *Midwest Independent Transmission System Operator, Inc., et al.*, 84 FERC ¶ 61,231 (1998), *order on rehearing*, 85 FERC ¶ 61,371 (1998).

⁵ The Alliance RTO does not presently exist. It will be established upon the completion of a series of transactions, including the establishment of a for-profit transco
(continued...)

Docket No. ER-01-123-000

-4-

December 20, 1999, the Commission conditionally approved the general framework of the Alliance RTO filing.⁶

On October 13, 2000, in Docket No. ER01-123-000, Dynegy Inc. (Dynegy), which had previously merged with Illinois Power's former parent company, Illinova Corporation (Illinova), filed on behalf of Illinois Power a notice of Illinois Power's withdrawal from the Midwest ISO, to be effective as of November 1, 2001. In its notice, Dynegy contended that Article V of the Midwest ISO agreement permits a transmission owner to withdraw from the Midwest ISO after one year's notice, subject to approval by the Commission. A substantial number of parties filed protests and interventions to Dynegy's filing, including present and prospective members of the Midwest ISO, a number of state public utility commissions, consumer advocacy groups, environmental organizations, industrial and commercial user groups, electric cooperatives and the New York ISO. Most of the interveners opposed Illinois Power's withdrawal from the Midwest ISO because of perceived adverse impacts on the Midwest ISO or a delay in its implementation. Other parties contended that Illinois Power's withdrawal raises issues related to congestion management, parallel path flow, and regional transmission planning and expansion. Separately, Exelon Corporation (Exelon), on behalf of Commonwealth Edison and Commonwealth Indiana, filed a request to withdraw from the Midwest ISO on December 22, 2000. In addition, Ameren, on behalf of Union Electric and Central Illinois, filed a request to withdraw from the Midwest ISO on January 16, 2001.⁷

By order issued on January 24, 2001, the Commission declined to rule on Dynegy's notice of withdrawal and set the issues for settlement judge procedures before the Chief Judge.⁸ In its order, the Commission identified three general goals in developing an RTO with the broadest possible reach in the best interest of market development. These goals are: (1) the desire of certain parties to continue various ISO features that were of critical importance to certain parties to the Midwest ISO; (2) the

⁵(...continued)

and transfer of transmission assets to it by certain of the Alliance Companies.

⁶ See *Alliance Companies, et al.*, 89 FERC ¶ 61,298 (1999) (*Alliance I*), order on rehearing, 91 FERC ¶ 61,152 (2000) (*Alliance II*).

⁷ The Exelon proceeding has been docketed as Docket No. ER01-780-000 and the Ameren proceeding has been docketed as Docket No. ER01-966-000. The Commission has not issued orders in either of these proceedings.

⁸ I.e., 94 FERC ¶ 61,069.

Docket No. ER-01-123-000

-5-

preference of other parties for the business model developed by the Alliance RTO; and (3) the desire of state regulators and consumer representatives for the entire Midwest region to operate a seamless market.⁹

By order issued on January 24, 2001, the Commission accepted in part Alliance Companies' compliance filing submitted in response to the Commission's *Alliance I* and *Alliance II* orders, directed the Alliance Companies to submit further filings, denied requests for rehearing of the *Alliance II* order and directed the Alliance Companies to participate in the settlement judge procedures established in Docket No. ER01-123-000.¹⁰

The Chief Judge convened settlement procedures in this proceeding beginning on February 1, 2001, and continuing through March 20, 2001. Thirteen full days of settlement negotiations were held with all parties and participants present, which resulted in confidential notes totaling 1639 pages. In addition, hours upon hours of private meetings between parties and with the Chief Judge were held. All participants worked extremely hard from very early in the morning until late into the night most every day during this period. The result of this hard work is a unanimous comprehensive Settlement that disposes of all issues in this proceeding, as well as issues in other proceedings pending before the Commission. On February 23, 2001, the Chief Judge issued a Report advising the Commission that an agreement in principle had been reached and a separate Term Sheet describing in detail the major provisions of the agreement.¹¹ Additional negotiating sessions were held on March 19, 2001 and March 20, 2001 to resolve residual issues pertaining to document drafting.

The negotiations had an attendance of between 90 and 135 participants each day and ten or more parties on the speaker phone. Among those participating in person were: Commissioner Gary Gillis of the Kentucky Public Service Commission, Commissioner Robert Nelson of the Michigan Public Service Commission, Commissioner Terry Harvill of the Illinois Commerce Commission, Commissioner David Ziegner of the Indiana Utility Regulatory Commission, and Commissioner Judith Jones of the Public Utilities Commission of Ohio. Parties in attendance were: The Alliance Companies, Commonwealth Edison, Illinois Power, Ameren, American Electric Power, First Energy Company, Detroit Edison Company, the Midwest ISO, Alliant Energy Corporation,

⁹ See 94 FERC at 61,295.

¹⁰ *I.e.*, 94 FERC at 61,329 (2001).

¹¹ See *Illinois Power Co.*, 94 FERC ¶ 63,012 (2001).

Docket No. ER-01-123-000**-6-**

American Transmission Company, Central Illinois, Cinergy Corporation, Hoosier Energy Rural Electric Cooperative, Inc., LG&E, Consumers Energy Company, Virginia Electric Power Company, Dominion Virginia Power, Coalition of Midwest Transmission Owners, Calpine Corporation, Enron Power Marketing, Inc. (Enron), Illinois Industrial Energy Consumers, Edison Mission Energy, Mid-America Energy Company, Northern States Power (Excel Corp.), Southern Illinois Power Company, Southern Indiana Gas & Electric Company, Wabash Valley Power Association, Inc., Allegheny Power Company (Allegheny Power), Coalition of Municipal and Cooperative Users of Alliance Companies and Transmission, Constellation Power Source, Dairyland Power Cooperative, Nebraska Public Power District, Pacific Gas & Electric National Energy Group, Reliant Electric, Wisconsin Electric Company, Wisconsin Public Service Corporation, Wisconsin Public Power, Inc., Wolverine Power Company, the Williams Companies, TCA Shell Energy Company, Otter Tail Power Company, Dayton Power and Light Company, Great River Energy, IMEA, International Transmission Company, Mid-Continent Area Power Pool and MAPPCOR, PJM Interconnect, Omaha Public Power District, Illinois Commerce Commission, Indiana Office of Utility Consumer Counselor, Indiana Utility Regulatory Commission, Iowa Utility Board, Electricity Consumers Resource Counsel, National Association of Consumer Advocates, Citizens Action Coalition of Indiana, Inc., Izzak Walton League of America, Inc., Environmental Law and Policy Center, Kentucky Public Service Commission, Michigan Department of Consumer and Industry Services, Michigan Public Service Commission, Missouri Office of Public Counsel, Missouri Public Service Commission, Public Utilities Commission of Ohio, Ohio Consumers Counsel, Pennsylvania Consumer Advocate, South Dakota Commission, Virginia State Corporation Commission (Virginia Commission), West Virginia Public Service Commission, and the FERC Trial Staff.

THE SETTLEMENT

The Settlement consists of an introductory statement identifying the Midwest ISO, certain transmission owners in the Midwest ISO, and the Alliance Companies as Executing Parties of the Settlement and eleven substantive Articles. The introductory statement notes that the Settlement is binding on parties who execute it and states that it constitutes an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2000), to parties who do not execute it.

Docket No. ER-01-123-000

-7-

Article I is a Preamble which recites certain goals which the Commission set forth in its January 24, 2001 order ¹² as well as additional objectives, the need for which became apparent during the course of the negotiations. These objectives include: the opportunity for the Midwest ISO to remain financially viable and to proceed to operations in accordance with Order No. 2000 without the need to issue additional debt financing; to preserve the Alliance Companies' business model; and to create the basis for an arrangement that will preserve the separate organizations and features of the Alliance RTO and the Midwest ISO while allowing the regions served by the Alliance RTO and Midwest ISO to operate as a seamless market. Article I also notes that the IRCA commits the Midwest ISO and the Alliance Companies to coordinate activities for transmission and transmission-related services so that the regions will be able to operate as a seamless market. Article I notes that the Settlement establishes specific deadlines and a process for resolving implementation disputes consistent with the Order No. 2000 requirement of achieving operational status on or before December 15, 2001.

Article II contains a series of definitions for specific terms used in the Settlement.

Article III, Paragraph 3.1 observes that the Alliance Companies and the Midwest ISO executed the IRCA on March 20, 2001 and provides that the Alliance Companies will assign all their rights and obligations to the Alliance RTO upon its formation and that the Alliance RTO will accept the assignment. This Paragraph notes that the procedures and protocols developed therein are important to the consistent provision of transmission services needed to support a seamless power market within the Midwest ISO and Alliance RTO regions. Among these procedures and protocols are:

1. Coordinated Transmission Planning, achieved as part of the executed IRCA
2. Security Coordination and Available Transfer Capability (ATC) determination and coordination, to be achieved by May 31, 2001
3. Congestion Management, Day 1, achieved as part of the executed IRCA and Long Term, to be achieved by December 31, 2001
4. Independent market monitoring, achieved as part of the executed IRCA
5. Accommodation of One-Stop Shopping ¹³
6. Compatible real-time balancing markets, to be achieved by May 31, 2001

¹² See 94 FERC at 61,295.

¹³ Article X of the IRCA describes One-Stop Shopping as a system under which a customer could arrange a transaction across the systems of multiple Cooperating RTOs through a single point of contact.

Docket No. ER-01-123-000

-8-

7. A common Generation Interconnection Agreement, to be developed by June 30, 2001
8. Compatible business practices, to be developed by October 15, 2001
9. Dispute Resolution Procedures for real-time operational disputes, to be developed by October 15, 2001

Paragraph 3.2(a) provides that the Midwest ISO and the Alliance RTO will file the IRCA under section 205 within ten days of its assignment by the Alliance Companies to the Alliance RTO and that the Midwest ISO and the Alliance Companies may protest it only to the extent that it differs from the document attached to the Settlement. The rights of other parties to protest or comment on the IRCA are unaffected by the Settlement.

Paragraph 3.2(b) of the Settlement provides for the posting of the procedures and protocols of the IRCA on the websites of the Alliance RTO and the Midwest ISO and to the extent required by section 205. Paragraph 3.2(b) states that the Alliance RTO and the Midwest ISO will request expedited treatment of any such filing by the Commission and that if protocols and procedures are not agreed to by the applicable dates, then either party to the IRCA or any other interested person may make unilateral proposals to the Commission subsequent to the agreed deadlines. Paragraph 3.2(b) provides that the Executing Parties, as that term is defined therein, will not challenge the legal authority of any Party¹⁴ to make such a filing or the Commission's authority to consider and accept it for filing.

Paragraph 3.3 provides that, consistent with the Commission's January 24, 2001 order in Docket Nos. ER99-3144-003, *et al.*, and EC99-80-003, *et al.*,¹⁵ the Alliance Companies, in conjunction with stakeholders, shall establish a process for stakeholder involvement in the Alliance RTO, commencing with a meeting with stakeholders on March 22, 2001. Paragraph 3.3 establishes a May 15, 2001 deadline for proposing this process to the Commission, the purpose of which is to provide a forum for stakeholder input to the Alliance Companies and, upon its formation, the Alliance RTO.

¹⁴ The term "Party" is defined in Article II as any person that is an applicant or who has been granted intervention in any of the proceedings in which this Settlement has been filed.

¹⁵ *I.e.*, 94 FERC ¶ 61,070.

Docket No. ER01-123-000

-9-

Article IV governs the withdrawal of the Departing Companies, *i.e.*, Illinois Power, Commonwealth Edison and Ameren, from the Midwest ISO. Under Paragraph 4.1, the Departing Companies will pay an aggregate of \$60 million to the Midwest ISO (Settlement Amount) allocated as follows:

Commonwealth Edison	\$35.5 million	(59.2 percent)
Ameren	\$18.0 million	(30.0 percent)
Illinois Power	\$ 6.5 million	(10.8 percent)

Payment will be made to the Midwest ISO by wire transfer within three business days after issuance of an initial Commission order approving the Settlement and permitting the Departing Companies to withdraw from the Midwest ISO.

Paragraph 4.2 provides that the Departing Companies and the Midwest ISO Transmission Owners ¹⁶ disclaim any direct or indirect liability or obligation for the obligations or liabilities of the Midwest ISO except for express guarantees to which they were signatories. Notwithstanding this disclaimer, Paragraph 4.2(a) provides that the Midwest ISO Transmission Owners shall indemnify the Departing Companies for an Indemnifiable Claim ¹⁷ arising out of obligations of the Midwest ISO prior to the Withdrawal Date ¹⁸ to the extent that such claims are less than or equal to \$145 million.

¹⁶ The Midwest ISO Transmission Owners are the remaining members of the Midwest ISO, namely, American Transmission Company LLC (ATT LLC); Alliant Energy Corporation (for IES Utilities, Inc. and Interstate Power Company); Central Illinois Light Company; Cinergy Corp. (for CG&E, PSI and Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; LG&E Energy Corporation (for LG&E and KU); Otter Tail Power Company; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; Upper Peninsula Power Company; Northern States Power Company; and Northern States Power Company (Wisconsin). Several of these entities joined the Midwest ISO recently.

¹⁷ Article II defines the term Indemnifiable Claim extremely broadly as essentially any claim in law or equity.

¹⁸ Under Article II, the Withdrawal Date is the effective date of the withdrawal of the Departing Companies from the Midwest ISO. Paragraph 4.11 provides that upon issuance of an initial Commission order approving the Settlement by the Commission,

(continued...)

Docket No. ER01-123-000

-10-

Paragraph 4.2(b) provides for indemnification without restriction as to amount of the Departing Companies by the Midwest ISO Transmission Owners for an Indemnifiable Claim arising after the Withdrawal Date.

Under Paragraph 4.3, the Departing Companies release the Midwest ISO Transmission Owners from their indemnification pledge with respect to Third Party (as that term is used in the Settlement) claims against the Departing Companies for their decision to withdraw from the Midwest ISO, including allegations that the transmission costs of third parties have increased as a result of the Departing Companies' withdrawal decision. The release in Paragraph 4.3 is not applicable to liabilities of the Midwest ISO and does not limit the liabilities or obligations of the Midwest ISO Transmission Owners as set forth in Paragraph 4.2.

Paragraph 4.4 provides that the Departing Companies and the Midwest ISO Transmission Owners, for both themselves and their subsidiaries, parents and affiliates waive any claims by them arising out of the withdrawal of the Departing Companies from the Midwest ISO, except the rights and obligations to enforce the Settlement. Paragraph 4.4 contains a separate indemnification provision with respect to ATC LLC and specifically acknowledges that the Departing Companies have satisfied their obligations with respect to the Midwest ISO's start-up costs.

Under Paragraph 4.5, the Midwest ISO waives and releases the Departing Companies from any claims the Midwest ISO may have against them. In addition, Paragraph 4.5 requires the Midwest ISO to indemnify the Departing Companies against all Indemnifiable Claims, including Third Party claims of employees and others, who have provided credit, goods or services to the Midwest ISO prior to its date of operations. Paragraph 4.5 excludes from this hold harmless provision Third Party claims based solely on an increase in transmission costs resulting from the Departing Companies' withdrawal from the Midwest ISO.

Paragraph 4.6 provides, *inter alia*, that the releases, indemnities and waivers set forth in Paragraphs 4.3, 4.4 and 4.5 shall take effect upon the payment by the Departing Companies of the \$60 million settlement amount described in Section 4.1, that the releases, waivers and indemnities are applicable to unknown and undiscovered claims,

¹⁸(...continued)

the Departing Companies will be permitted to withdraw from the Midwest ISO and to join the Alliance RTO.

Docket No. ER01-123-000

-11-

that the releasing parties are empowered to effect their releases and that such releases may not be modified except in writing by authorized agents.

Paragraph 4.7 provides that the Midwest ISO will credit the Departing Companies with a credit (to be negotiated) for their portion of service fees earned by the Midwest ISO for services performed for the Alliance RTO.

Paragraph 4.8 provides that the Departing Companies will receive a credit against amounts owed for transmission services provided by the Midwest ISO to the Departing Companies or their current affiliates up to the \$60 million Settlement Amount to be applicable against the amount paid by the Departing Company or its current affiliates with respect to the capital cost component of the administrative cost adder in Schedule 10 of the Midwest ISO OATT. This credit is subject to the transfer of the benefit of such credit beyond any Departing Company's portion of the Settlement Amount to other Departing Companies, as set forth in Paragraph 4.9 (described below), in a manner to be negotiated by the Midwest ISO and the Departing Companies.

Paragraph 4.9 provides that the total credits to be provided to the Departing Companies pursuant to Paragraphs 4.7 and 4.8 shall not exceed \$60 million, and that no Paragraph 4.8 credits will be applicable after December 15, 2013. Paragraph 4.9 provides that once any Departing Company has received credits equal to its share of the Settlement Amount under Paragraph 4.1, the remaining Departing Companies shall be entitled to the benefit of additional credits in allocable shares that the Departing Company would otherwise have received.

Paragraph 4.10 provides that the Departing Companies agree to stay in the Alliance RTO until December 31, 2002 and that the Midwest ISO Transmission Owners agree to stay in the Midwest ISO until December 31, 2002. The Midwest ISO Transmission Owners also agree in Paragraph 4.10 not to seek a regulatory out under the Midwest ISO Agreement due to the Commission's final action in Docket No. ER98-1438,¹⁹ subject to the preservation of existing state regulatory out rights under the Midwest ISO Agreement exercised in good faith. Except with respect to the Departing Companies' withdrawals from the Midwest ISO, nothing in Paragraph 4.10 shall supersede any other commitment of any of the Midwest ISO Transmission Owners or any of the Departing Companies to join or remain in an ISO or RTO.

¹⁹ *I.e.*, the proceeding involving the establishment of the Midwest ISO.

Docket No. ER01-123-000

-12-

Paragraph 4.11 permits the Departing Companies to withdraw from the Midwest ISO upon issuance by the Commission of an initial order approving the Settlement.

Paragraph 4.12 provides that each Departing Company shall notify each of the Midwest ISO Transmission Owners and the Midwest ISO of any suit or action for which the Departing Member requests indemnification pursuant to Paragraphs 4.2 or 4.5. Paragraph 4.12 provides that the indemnifying party shall defend such Indemnifiable Claim through counsel of its choice, subject to the right of the indemnified party to object to such counsel on reasonable grounds. Paragraph 4.12 states that Departing Companies requesting indemnification agree to cooperate at their own expense in defense of claims against them and may participate in the defense of claims against them through use of their own counsel at their own expense. Paragraph 4.12 provides that indemnifying parties may not settle claims without the consent of the indemnified party except Indemnified Claims involving only the payment of monetary damages by the indemnifying party with no prejudice to the indemnified party.

Paragraph 4.13 provides that in the event a Midwest ISO Transmission Owner transfers ownership of or divests itself of all or substantially all of its transmission facilities (a Divesting Owner), it may assign its indemnification and hold harmless obligations to the new owner without the consent of the Departing Companies. Paragraph 4.13 provides that the Divesting Owner shall not be released from further indemnification or hold harmless obligation without the consent of the Departing Companies, which consent will not be unreasonably withheld if the new owner is a sufficiently creditworthy entity and delivers to the Departing Companies a written agreement to be bound by these obligations. Paragraph 4.13 contains specific provisions concerning the assignment of indemnification obligations with respect to ATC LLC.

Article V governs the single rate methodology established for the Alliance-Midwest ISO Super-Region (Super-Region). Under Paragraph 5.1(b), the Super-Region encompasses the transmission systems and the electrically metered NERC-certified control areas of the Alliance Companies that have joined the Alliance RTO as of February 28, 2001 and the transmission systems and electrically metered NERC-certified control areas of the Midwest ISO Transmission Owners, including the ATC LLC Companies, that have joined the Midwest ISO as of this same date.²⁰ Paragraph 5.1(a) provides that a single, non-pancaked rate shall be applicable in the Super-Region during

²⁰ Paragraph 5.1(b) also provides that the rate methodology may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO or the Alliance RTO upon their mutual agreement or by order of the Commission.

Docket No. ER01-123-000

-13-

the Transition Period²¹ to eligible customers under the Alliance RTO OATT or the Midwest ISO OATT, provided that the transaction meets the requirements of Paragraph 5.2(i).²²

Paragraph 5.2 describes the rate methodology applicable in the Super-Region. This section requires the Alliance Companies to propose and provide to the Midwest ISO the single, non-pancaked rate methodology by March 31, 2001. Midwest ISO, in turn is required to transmit the proposed rate methodology to the Midwest ISO Transmission Owners pursuant to provisions of the Midwest ISO Agreement pertaining to rate filings. Paragraph 5.2(ii) provides, *inter alia*, that the single, non-pancaked rates for the Super-Region will be developed based upon the principles of the transition rate methodology proposed by the Alliance Companies for the Alliance RTO, which includes a zonal facilities component and a Zonal Transition Adjustment (ZTA). Paragraph 5.2(ii) provides that the ZTA responsibility for each zone will be calculated on the basis of lost revenues throughout the Super-Region and that revenues collected from the ZTAs will be distributed between the two RTOs pursuant to the relative sources of the lost revenues and subsequently allocated among the transmission owners within each of the two RTOs pursuant to their respective revenue distribution methods. Paragraph 5.2(iii) provides that transmission service to all load taking service under the single, non-pancaked rate applicable in the Super-Region, including retail bundled load, in any Alliance RTO or Midwest ISO zone shall be priced to include the ZTA applicable to the zone where the load is located. Paragraph 5.2(iii) further provides that Midwest ISO Transmission Owners that, as load serving entities, do not take transmission service for all of their load under the Midwest ISO OATT shall be responsible for ZTA payments as if such Midwest ISO Transmission Owners do take transmission service for all of their load under the Midwest ISO OATT. Finally, Paragraph 5.2(iii) provides that nothing in that paragraph shall deprive State Commissions (as that term is defined in the Settlement) of their authority over retail rates or to exercise their discretion contemplated in Paragraph 5.5 (described below).

Paragraph 5.3 provides that the single, non-pancaked rates and rate methodology described in Article V shall be effective throughout the Transition Period and until such

²¹ Under Article II, the Transition period ends on December 31, 2004, as set forth in certain described filings of the Alliance Companies.

²² Paragraph 5.2(i) provides that the transaction may be point-to-point or network service under the Alliance RTO OATT or the Midwest ISO OATT, with both a source and sink (as these terms are defined in the Settlement) in the Alliance-Midwest ISO Super-Region.

Docket No. ER01-123-000

-14-

time as they are superseded by effective Post-Transition Rates²³ applicable to the Alliance RTO or to the Super-Region, provided, however, that if the end of the Transition Period is advanced in accordance with the provisions of Paragraph 7.1, the single, non-pancaked rates shall remain in effect until the later of December 31, 2004 or until superseded, except that the transmission owners participating in the RTO for which the Transition Period is advanced may not recover revenues under the ZTAs applicable to the Super-Region for the period of advancement.

Paragraph 5.4 describes the procedures under which the non-pancaked rate methodology for the Super-Region will be placed into effect. This Section states that after the Midwest ISO and the Midwest ISO Transmission Owners have had the opportunity to review and comment on the proposed rate methodology, the Alliance Companies shall file the proposed rates under section 205 based on the methodology in Article V for the Alliance RTO region. Paragraph 5.4 requires the Alliance Companies to coordinate with the Midwest ISO to permit a concurrent rate filing by the Midwest ISO for its region. These rate filings will be submitted to the Commission no later than 120 days before the respective Transmission Service Date²⁴ of the RTO for which the filing is made. Under Paragraph 5.4, parties retain the right to file comments or protests to the section 205 rate filings contemplated in Article V, including challenges to the calculation of lost revenues and ZTAs, except that such comments or protests may not challenge the rate methodology principles set forth in Paragraph 5.2.

Paragraph 5.5 provides that State Commissions will take reasonable action, consistent with state law, including state-approved settlements, after giving consideration to the positions of all parties, to consider petitions filed at the state level for cost recovery of the ZTAs that result from the Super-Region rate methodology.

Article VI of the Settlement describes procedures for developing a joint rate methodology among the Midwest ISO, the Alliance RTO and the PJM Interconnection, L.L.C. (PJM). Under Paragraph 6.1, the Midwest ISO, the Alliance Companies, the Alliance RTO (upon its creation) and the Midwest ISO Transmission Owners agree to negotiate in good faith to develop a joint rate methodology for transactions involving the three subject RTOs. Paragraph 6.1 provides that the negotiations may continue until

²³ Article II describes the term Post-Transition Rates as those developed consistent with the terms of the IRCA.

²⁴ This term is defined in Article II as the effective date on which transmission service begins under the Alliance RTO or the Midwest ISO.

Docket No. ER01-123-000

-15-

November 15, 2001 and that an objective of maintaining revenue neutrality is consistent with good faith participation in these negotiations.

Paragraph 6.2 provides that in the event there is no agreement among the affected parties, the Alliance Companies (or, upon its creation, the Alliance RTO), the Midwest ISO or PJM may file proposals under section 205 to implement the joint rate contemplated in Paragraph 6.1. Paragraph 6.2 states that the proposals may not seek to alter existing or planned congestion management programs within any of the RTOs. Paragraph 6.2 provides that the Executing Parties will not challenge the legal authority of the Alliance RTO, the Midwest ISO or PJM to propose a joint rate methodology consistent with Article VI under section 205 or the Commission's authority to accept such a proposal for filing.

Article VII addresses the proposed operational date of the Alliance RTO and the Midwest ISO. Paragraph 7.1 states that it is the goal of both the Alliance Companies and the Midwest ISO to become operational on or before December 15, 2001. Paragraph 7.1 provides an incentive to meet this objective by advancing the end of the Transition Period, consistent with Paragraph 5.3 one month for each month that the commencement of operations is delayed, subject to the following exceptions: (1) the advancement mechanism would not be imposed if operations are commenced by January 15, 2002; (2) if the December 15, 2001 operational date is modified by the Commission in a ruling of general applicability, the advancement mechanism would be adjusted accordingly; (3) the end of the Transition Period will not be advanced if the Alliance RTO (or, prior to its creation, the Alliance Companies) or the Midwest ISO can demonstrate to the Commission by a showing of good cause that the operational date of either RTO should be delayed beyond December 15, 2001, subject to certain constraints and qualifications; and (4) the advancement of the end of the Transition Period applies only to the RTO that fails to meet the operational date.

Paragraph 7.2 commits the Midwest ISO and the Alliance Companies to support RTO status for both the Alliance RTO and the Midwest ISO, notwithstanding the withdrawal of the Departing Companies from the Midwest ISO.

Article VIII provides for Commission acceptance of a rate moratorium during the Transition Period previously proposed by the Alliance Companies in Section 2.1 of the Pricing Protocol filed on September 15, 2000 in a separate proceeding.²⁵ Article VIII

²⁵ Docket Nos. ER99-3144-004, ER99-3144-005, EC99-80-004 and EC99-80-

Docket No. ER01-123-000

-16-

provides that the rate moratorium will be applicable to the single, non-pancaked rates for the Super-Region to be developed in accordance with Article V of this Settlement. And that the rate moratorium will apply only to Schedules 7, 8 and 9 of the Alliance RTO OATT and to the ZTA components of the Midwest ISO Transmission Owners' zonal rates.

Article IX contains a series of miscellaneous provisions governing the conduct and rights of the parties, state action and findings requested by the Commission. Paragraph 9.1(a) states that the Settlement constitutes a complete and final resolution of all issues raised or which reasonably could have been raised in Docket Nos. ER01-123-000, ER01-780-000 and ER01-966-000. Paragraph 9.1(b) states that the Settlement is not intended to affect any party's right to protest or comment on: (1) issues that are the subject of any future compliance filings in Docket Nos. ER99-3144-000, EC99-80-000 and RT01-88-000 and embraced subdockets; (2) issues raised in Docket No. RT01-88-000 concerning selection of a managing member for the Alliance RTO; (3) issues raised in Docket No. RT01-88-000 concerning long-term congestion management; and (4) issues raised in Docket No. RT01-88-000 concerning terms and conditions for participation of municipal and cooperative utilities in the Alliance RTO. Paragraph 9.1(c) states that the Settlement does not affect the obligations, if any, of Commonwealth Edison under a specified provision of the Midwest ISO Agreement with respect to transmission service agreements executed by Commonwealth Edison and Wisconsin Public Power, Inc., Wisconsin Electric or Madison Gas and Electric Power Company prior to November 1, 2000 for transmission service occurring after the Transition Period.

Paragraph 9.2 provides that the Chief Judge's will remain available during the negotiations for the purpose of resolving disputes.

Paragraph 9.3 provides that upon issuance of a final order approving the Settlement, all protests to the withdrawal of the Departing Companies from the Midwest ISO will be deemed to be withdrawn in Docket Nos. ER01-123-000, ER01-780-000 and ER01-960-000. In addition, Paragraph 9.3 states that all requests for rehearing of the Commission's January 24, 2001 order in Docket Nos. ER99-3144-000 and EC99-80-000 shall be deemed withdrawn and of no effect. Further, Paragraph 9.3 provides that protests and requests for rehearing by Parties in Docket No. RT01-88-000 shall be limited to the issues identified in Paragraph 9.1(b) and that protests and requests for rehearing on issues other than those identified in Paragraph 9.1(b) shall be deemed withdrawn.

²⁵(...continued)

Docket No. ER01-123-000

-17-

Paragraph 9.4 provides that State Commissions will fully consider any requests for regulatory approvals that may be necessary for transmission owners to participate in the Alliance RTO or the Midwest ISO, consistent with state law.

Paragraph 9.5 provides that an essential condition of the Settlement is that the Alliance RTO upon its creation be bound by its provisions and those of the IRCA as if it were an Executing Party.

Paragraph 9.6 provides that Commission approval of the Settlement constitutes approval of the scope and configuration of the Midwest ISO and the Alliance RTO.²⁶

Paragraph 9.7 provides for the withdrawal of the Settlement in the event that either the Board of Directors of the Midwest ISO votes to dissolve the Midwest ISO or if the Midwest ISO ceases operations prior to payment of the Settlement Amount by the Departing Companies.

Article X establishes an effective date for the Settlement. Paragraph 10.1 provides that, except for Paragraph 4.1, the effectiveness of which is governed by Article IV, the Settlement shall become effective on the first day of the first month following issuance of a Commission order approving it without modification. Paragraph 10.1 provides that the Executing Parties may unanimously agree to waive this requirement, and that notwithstanding the requirements of Paragraph 10.1, the Alliance Companies and, upon its creation, the Alliance RTO, and the Midwest ISO will perform all actions required under Article III and the IRCA by the dates indicated therein.

Paragraph 10.2 states that an order of the Commission becomes a Final Order on (a) the day after the last day for filing a request for rehearing, if no rehearings are filed or (b) if requests for rehearing are filed, on the day after the last day for filing a notice of appeal of the Commission's substantive order on rehearing.

Article XI contains a series of standard provisions governing, *inter alia*, nonseverability and requirement of acceptance in the entirety, lack of precedential effect, privileged nature of discussions leading to settlement, execution in multiple counterparts, and controlling nature of substantive provisions over descriptive captions. In addition, Paragraph 11.1(b) provides that in the event a final, non-appealable order denies the right of the Departing Companies to withdraw from the Midwest ISO, the Settlement shall be null and void and the Midwest ISO will be obligated to repay the amounts described in

²⁶ These terms are equated with RTO Characteristic 2 in Order No. 2000.

Docket No. ER01-123-000

-18-

Paragraph 4.1, net of any amounts paid to the Departing Companies with respect to credits pursuant to Paragraphs 4.7 and 4.8. Paragraph 11.1(b) requires the Midwest ISO to make any required repayment by the earlier of 180 days after the date of a final order denying the right of the Departing Companies to withdraw or the date on which the Midwest ISO obtains financing under its existing authorization in Docket No. ES01-13-000.

The IRCA

The IRCA is filed as Attachment A to the Settlement. The IRCA sets forth agreements for cooperation between the Midwest ISO and the Alliance Companies (and any other RTOs that might adhere to the agreement), and for the coordination of their transmission services, to provide transmission users seamless access to markets throughout the regions they serve. (IRCA at p. 1). The IRCA provides detailed steps and structures, including deadlines for particular actions and task forces and committees to achieve its various objectives.

Article I of the IRCA (Definitions) restates Article II of the Settlement. Sections 2.1 and 2.2 of Article II (Pricing of Transmission Service) of the IRCA restate paragraphs 5.1, 5.2, 5.3, 5.4, 6.1, 6.2, and 7.1 of the Settlement, summarized above.

Section 2.3 of the IRCA provides that the RTOs shall develop an "incremental" pricing structure for the Transition Period. The RTOs anticipate that the Settlement's rate arrangements will result in increased use of transmission facilities in their regions, and agree that an incremental pricing structure (known as "and pricing") will be necessary to provide incentives for new investment in such facilities. Incremental prices will be proposed to compensate transmission owners for both their embedded costs and incremental costs of transmission upgrades necessary to relieve constraints and maintain reliability that will result from the expected increase in transmission transactions. Any such proposals must be consistent with Order No. 2000. If the RTOs are unable to agree upon a mutual incremental pricing approach, they agree to support such proposals filed with the Commission by the other.

In Section 2.4, the RTOs agree to develop an equitable and efficient methodology for pricing multi-RTO transmission transactions for the post-transition period. They agree to begin this process no later than June 29, 2003, and to consider a wide array of pricing methodologies, including a distance-sensitive rate-making structure, a postage stamp rate, and a license plate approach. However, the RTOs do not obligate themselves to agree to a post-transition pricing structure, nor to discard their transition-period pricing structures upon completion of the transition period. Any post-

Docket No. ER01-123-000

-19-

transition pricing structure must take into account state rate moratoriums, so that providers of last resort to retail customers incur no "trapped" costs. If a post-transition pricing structure is agreed to under Section 2.4.2(e), it might nevertheless not apply to a transmission-owner that would not recover a material portion of its revenue requirement due to increased transmission charges and the transmission owner's provision of electricity service to bundled loads. Such a transmission owner must first seek rate relief from the state regulatory authority in the state or states where it serves such bundled loads, and failing to receive such relief, may retain its transition-period prices until its inability to recover its transmission costs is relieved due to unbundling or other state regulatory action.

In Section 2.5, the RTOs agree to work to harmonize the end of their respective transition periods, and to negotiate the duration of any pricing structure developed for the post-transition period.

Article III addresses inter-RTO operations. Section 3.1 provides that the RTOs will develop and implement appropriate mechanisms to coordinate Super-Regional operations and to assure the compatibility of their operations, including data sharing protocols, security coordination protocols, ATC coordination, operational planning, congestion management practices, transmission loading relief (TLR) processes, imbalance markets, and combined reservations/schedules. The RTOs agree to develop and implement a variety of mechanisms to coordinate Super-Regional operations and assure the compatibility of those mechanisms. They agree to participate in industry efforts, and initiate joint work-groups where industry efforts do not exist, to develop compatible protocols and formats for the exchange of data on operations and inter-RTO TLR processes. The RTOs agree to seek to reduce overall operations infrastructure costs through development of compatible systems and sharing arrangements, and by utilizing common systems, to the extent feasible and appropriate. The RTOs will develop protocols for sharing transmission and generation outage schedule data, and encourage adoption of consistent modeling protocols for planning and operating studies.

In Section 3.2, the RTOs state they have already established a joint working group to develop protocols to determine and coordinate the posting of compatible estimates of ATC at any regional seam. In Section 3.3 they also agree to share security information among themselves and with neighboring RTOs to coordinate and improve the security coordination function, and to share load flow modeling information (including outage coordination data) to facilitate the determination of parallel path flows and mitigation of their effects. Furthermore, they agree to actively participate in industry efforts regarding market redispatch and TLR, and to work toward developing a redispatch sharing agreement with adjacent RTOs to resolve congestion on flowgates. Initial procedures

Docket No. ER01-123-000**-20-**

and protocols for calculating ATC and for cooperation in security coordination are to be developed by May 31, 2001. The deadline for initial procedures and protocols regarding TLR coordination and imbalance markets is May 31, 2001. Initial procedures and protocols for combined reservations and schedules are to be developed by July 31, 2001. Procedures addressing real-time operational disputes must be in place by October 15, 2001.

In Sections 3.4 - 3.7, the RTOs commit to cooperate in developing an interface between OASIS, tagging, and scheduling systems across multiple regions to simplify the acquisition of transmission information and facilitate "one-stop shopping" for transmission service. They agree to work together whenever feasible to implement and minimize TLR curtailments, subject to appropriate compensation. Each RTO agrees to implement its own imbalance market, pursuant to Order No. 2000 guidelines, and to cooperate to ensure the compatibility of their imbalance markets affecting multi-RTO transmission transactions. They also agree to develop procedures to address real-time operational disputes, including disputes initiated by their customers.

Article IV provides for coordination of congestion management. In Section 4.1, the RTOs agree to develop an open, accessible electronic bulletin board system for posting congestion management information, to require generators to submit bids to raise or lower generation to relieve transmission constraints, and, in processing day-ahead transmission requests, to identify for the transmission customers the generators on both sides of an interface that can significantly relieve congestion. Furthermore, they agree to coordinate their reservations and energy schedules through the constrained interfaces, as well as other such schedules that may impact the transmission capacity of the interfaces. A Joint Congestion Management Committee will be set up by April 1, 2001. The actions specified in Section 4.1 are to be completed by July 31, 2001 to the extent needed for market trials.

In Section 4.2, the RTOs agree to develop long-term congestion management mechanisms using "hybrid" (flowgate/location marginal pricing) congestion management models, and to cooperate in the development of their individual systems to ensure their compatibility in affecting multi-RTO transmission transactions. Initial procedures and protocols are to be developed by December 31, 2001.

In Article V, the RTOs agree to establish a Joint RTO Transmission Planning Committee to coordinate their long-term transmission planning activities in order to maintain adequate reliability, alleviate transmission restraints (both within each and between both RTOs), while minimizing overall costs, and to prepare an annual joint transmission planning report. A Planning Advisory Subcommittee will review

Docket No. ER01-123-000

-21-

transmission plans, recommend further studies, review planning standards and recommend alternative system reinforcements (e.g., distributed generation and demand side management). A Reliability Planning Subcommittee will develop computer models, assess reliability, identify needed expansion or reinforcement, direct coordinated planning studies and review and coordinate the RTOs' reliability inputs.

In Article VI, the RTOs state that they have internalized most, if not all, parallel path flows within their own regions, and through coordination under this agreement, will be able to mitigate the effects of such flows until they have long-term procedures in place to address such issues between their respective systems by December 15, 2004, as required by Order No. 2000.

Article VII provides for binding arbitration of disputes between the RTOs that arise out of the IRCA, and specifically excludes binding arbitration of disputes for which the Settlement provides resolution procedures. Nothing in this Article restricts the rights of any party under the Federal Power Act.

In Article VIII, the RTOs agree to perform the market monitoring functions through use of an independent market monitor that will operate in consultation with their Joint Market Monitoring Committee. The RTOs agree to monitor market activities in transmission, ancillary service, and imbalance markets, and to monitor for attempts to create transmission constraints. They will also monitor a congestion management market (if run by the RTOs), and interaction with related markets. They specifically do not agree to monitor energy and capacity markets (under any circumstances) or generation market power (except as related to markets run by the RTOs).

Article IX provides that the RTOs agree to work together to create a common *pro forma* generator interconnection agreement for all generators connected to their transmission systems, striving to finish by June 30, 2001.

In Article X, the RTOs agree to facilitate one-stop shopping, whereby a transmission customer could make a transaction across the transmission systems of multiple RTOs through a single point of contact, consistent with the Commission's concerns about seams, the need for operational efficiency and administrative feasibility, the requirements of Order Nos. 888 and 2000, and the processes, procedures and tariffs of the participants..

In Article XI, the RTOs commit to develop common, or fully compatible, business practices and rules to provide transmission users seamless access to markets through the regions they serve, and to collaborate to address and resolve any other "seams issues" that may arise, with input from interested parties.

Docket No. ER01-123-000

-22-

Article XII commits the RTOs (together with any other RTOs that might become signatories to this agreement) to investigate the delegation of certain common functions to an Interregional Transmission Service Coordinator.

In Article XIII, the RTOs agree to establish by September 15, 2001 a Cooperation Committee to carry out all of the objectives of IRCA, and agree that if protocols and procedures required under IRCA are not executed by the deadlines provided, either of the RTOs, or any non-parties, may unilaterally make proposals for the applicable procedures and protocols to the Commission.

Article XIV provides for miscellaneous "boilerplate" provisions, including a provision that the RTOs' OATTs shall prevail in the event of a conflict with the provisions of the IRCA, and a provision that the Alliance RTO (yet to be formed as a corporate entity distinct from the Alliance Companies) will accept assignment of the IRCA from the Alliance Companies, if the Commission binds the Alliance RTO to the Settlement Agreement.

COMMENTS TO THE SETTLEMENT

Initial comments to the settlement were filed on March 30, 2001, by the following participants: Waverly Light & Power; Michigan Public Power Agency and Michigan South Central Power Agency; Wisconsin Public Power, Inc.; City of Springfield, Illinois City Water, Light and Power; Illinois Municipal Electric Agency; Minnesota Power, Inc. and Superior Light, Water and Power Company; Wabash Valley Power Association, Inc.; Lincoln Electric System; the Virginia Commission; Southern Minnesota Municipal Power Agency; Midwest Stakeholders; North Carolina Electric Membership Corporation; American Public Power Association and National Rural Electric Cooperative Association; Madison Gas and Electric Company; Midwest Independent System Transmission Operator, Inc.; PG&E National Energy Group and Duke Energy North America LLC; Enron Power Marketing, Inc.; State of Michigan and the Michigan Public Service Commission, the Illinois Commerce Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Missouri Public Service Commission, the Public Service Commission of Wisconsin, the Pennsylvania Public utility Commission, the Kentucky Public Service Commission, and the Public Service Commission of West Virginia (State Commissions); MidAmerican Energy Company, Nebraska Public Power District and Omaha Public Power District; Allegheny Power; Western Resources, Inc.; Wolverine Power Supply Cooperative, Inc.; Water and Light Department of the City of Columbia, Missouri; Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation EME, LLC (EME Companies); Great River Energy and Dairyland Power

Docket No. ER01-123-000

-23-

Cooperative; Sunflower Electric Power Corporation; Kansas City Power & Light Company; Calpine Corporation; Otter Tail Power Company; Wisconsin Electric Company; Basin Electric Power Cooperative; Ormet Primary Aluminum Corporation; and the Commission Trial Staff. As indicated before herein, no participant opposes certification of the Settlement to the Commission.

Enron, while not opposing certification of the Settlement to the Commission, filed comments in opposition to the Settlement on the grounds that it fails to fully address the scope and configuration, rate pancaking, parallel path flow, and other operational and seams issues.

Reply comments were filed on April 4, 2001, by the Alliance Companies; the Midwest ISO; Allegheny Power; American Transmission Company LLC, Alliant Energy Corporate Service, Inc. for IES Utilities, Inc. and Interstate Power Company, Central Illinois, Cinergy Corp. for The Cincinnati Gas & Electric Company, PSI, and Union Light, Heat & Power Company; LG&E Energy Corporation for Louisville Gas and Electric Company and Kentucky Utilities Company; Otter Tail Power Company, Southern Indiana Gas & Electric Company; Upper Peninsula Power Company, and Northern States Power Company and Northern States Power Company (Wisconsin) (jointly); Minnesota Department of Commerce; and by the Commission Trial Staff.

Following is a brief description of each of the initial comments filed in this proceeding:

Otter Tail Power Company - Supports the Settlement and seeks prompt Commission approval.

Wisconsin Electric Power Company - Supports the Settlement because it would establish the fundamental building blocks needed to create a seamless market in the Midwest region and provides a mechanism to resolve issues that are not yet adequately addressed by the Settlement.

Madison Gas and Electric Company - Fully supports the Settlement.

Wisconsin Public Power, Inc. - Supports prompt approval of the Settlement. Withdraws all objections to the withdrawal of Commonwealth Edison, Illinois Power, and Ameren from the Midwest ISO.

Docket No. ER01-123-000

-24-

Midwest Independent System Transmission Operator - Fully supports the Settlement and requests that the Commission accept and approve the Settlement no later than May 1, 2001.

Illinois Municipal Electric Agency - Generally supports the Settlement. Seeks elimination of the February 28, 2001 cut-off date, or alternatively, the imposition of a new deadline that occurs after the date of a Commission order approving the Settlement.

City of Springfield, Illinois City Water, Light and Power - Does not oppose the Settlement. Seeks elimination of the February 28, 2001 cut-off date, or alternatively, the imposition of a new deadline that occurs after the date of a Commission order approving the Settlement.

Waverly Light & Power - Does not oppose approval of the Settlement because of the public benefits to establishing the Midwest and Alliance RTOs and a Super-Regional rate. Seeks participation in Midwest ISO on non-discriminatory terms.

Michigan Public Power Agency & Michigan South Central Power Agency - Does not oppose approval of the Settlement. Seeks participation in the Alliance RTO on non-discriminatory terms.

North Carolina Electric Membership Corporation - Does not oppose certification of the Settlement. Opposes provisions of the Settlement that purport to cut off its right to litigate issues unrelated to the relationship between the Midwest ISO and the Alliance. Specifically, concerned with the provisions of Section 9.3 of the Settlement dealing with requests for rehearing.

Ormet Primary Aluminum Corporation - Requests clarification that nothing in the Settlement waives the Federal Power Act Section 206 authority of the Commission or rights of customers. Seeks approval of only the zonal rates. Opposes waiver of rehearing/protest rights on rate design. Opposes limitations on membership contained in Section 5.1(b) of the Settlement.

American Public Power Association and the National Rural Electric Cooperative Association - Urges certification of the Settlement to the Commission. Opposes limitations on membership contained in Section 5.1(b) of the Settlement.

Basin Electric Power Cooperative - Requests that Section 5.1(b) of the Settlement be modified to eliminate the date restriction on eligibility for inclusion in the Super-Region rate. Requests that at a minimum, this section of the Settlement be

Docket No. ER01-123-000

-25-

amended to provide that the facilities of members of the Mid-Continent Area Power Pool who join the Midwest ISO by December 31, 2001 are eligible for inclusion in the Super-Region rate.

Southern Minnesota Municipal Power Agency - Does not oppose the Settlement. Opposes limitations on membership contained in Section 5.1(b) of the Settlement. Opposes source/sink limitations on access to Super-Region rate.

Minnesota Power, Inc. and Superior Light, Water and Power Company - Supports the approval of the Settlement subject to revisions. Seeks elimination of the February 28th cutoff date so it may participate in Midwest ISO/Alliance RTO on non-discriminatory terms. Argues the "mutual consent" language for membership is discriminatory.

Calpine Corporation - Does not object to certification and approval of the Settlement. Urges the Commission to establish Post-Transition rates that allow access to non-pancaked rates within the Alliance-Midwest ISO Super-Region to generation located outside the Super-Region, and to provide for the operation of a spot market within the Super-Region.

Lincoln Electric System - Super-Regional rate should not be limited to those who join the Midwest ISO as of February 28, 2001. Super-Region rate should be available for drive-in transactions.

PG&E National Energy Group and Duke Energy North America, LLC - request that the Commission conditionally approve the Settlement subject to: The requirement that the Alliance RTO and Midwest ISO file a status report by a date certain that addresses their efforts to eliminate rate-pancaking for all transactions in the Super-Region; establish a Super-Regional imbalance market; and develop a Super-Regional real-time congestion management system. They also request clarifications that will ensure adequate, meaningful and ongoing stakeholder involvement in the Alliance RTO and an independent Super-Regional market monitoring.

Sunflower Electric Power Corporation - Conditionally supports certification and approval of the Settlement. Requests that additional participants be allowed to join the Midwest ISO/Alliance RTO Super-Region.

Great River Energy and Dairyland Power Cooperative - Generally supports the Settlement but requests that the Commission modify the Settlement as follows: Eliminate the February 28, 2001 deadline for access to the single rate in the Alliance-

Docket No. ER01-123-000

-26-

Midwest ISO Super-Region; change the definition of Sink and Source used to determine who has access to the single rate; eliminate the provision in Section 9.6 of the Settlement that approval of the Settlement constitutes approval of the scope and configuration of the Midwest ISO; and defer acting on the rate moratorium proposal for the Super-Region to the Section 205 filing of rates for the Super-Region, and clarify that compliance with the requirements of Order No. 2000 is required.

Wolverine Power Supply Cooperative, Inc. - Generally supports the Settlement but requests that the Commission modify the Settlement as follows: Eliminate the February 28th deadline used to define the Super-Region and reject the proposed Super-Region rate moratorium.

MidAmerican Energy Company, Nebraska Public Power District, and Omaha Public Power District - Do not object to the Settlement, but recommend conditional approval by the Commission. Requests elimination of the February 28, 2001 cut-off date.

Kansas City Power & Light Company - Does not oppose the Settlement, but requests the Commission eliminate the requirement that the sink and source be located in the Super-Region for a transaction to qualify for the single non-pancaked rate.

Midwest Stakeholders - Do not oppose certification and approval of the Settlement and request prompt Commission action. Request modification of source/sink limitations on access to Super-Region rate. Concerned about nondiscriminatory future eligibility for membership. Concerned about the pancaking of post-transition period rates. Opposes Joint Rate limitations. Seeks IRCA modifications for single imbalance market & congestion management. Seeks assurance that non-pancaked rates remain in effect until superceded. Seeks Commission approval of post-transition period rate designs.

Water and Light Department of the City of Columbia, Missouri - Settlement represents a major step toward the development of a seamless energy market and it does not oppose the Settlement. Requests that the Commission clarify the Settlement provisions by stating that they may not be construed or applied to limit the loads or the sources eligible for the Super-Regional rate.

Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation EME, LLC - Voice their collective support for the objective of the Settlement. Request that the Commission condition its approval of the Settlement Agreement on: Application of Joint Rates to any transaction between the Midwest ISO

Docket No. ER01-123-000

-27-

and PJM or the Alliance RTO and PJM; deletion of Section 9.6 of the Settlement Agreement (which states the Commission's approval of the Settlement Agreement constitutes approval of the scope and configuration of the Midwest ISO and the Alliance RTO under Order No. 2000); deletion of IRCA Section 2.3 (Incremental Pricing) and of IRCA Section 2.4 (Post Inter-RTO Transition Period Pricing Structure Development); development of a single imbalance market; and development of a single congestion-management mechanism.

Allegheny Power System Operating Companies- Support the Settlement and urge Commission approval. Request the Commission revise Paragraphs 6.1 and 6.2 of the Settlement regarding the mandated three-RTO negotiations to recognize revenue neutrality as a basic objective of the negotiations described in Paragraph 6.1 and by removing any temptation for parties to negotiate seriously because they have a unilateral settlement-created filing right.

Western Resources, Inc. - Does not object to the Settlement. Requests clarification that: The single, non-pancaked transmission rate in Article V of the proposed Settlement is available to customers scheduling imports into, or exports out of, the affected region [Source/Sink]; and that control areas joining the Alliance-Midwest ISO Super-Region after February 28, 2001 will be eligible service points under the proposed single non-pancaked transmission rate.

Wabash Valley Power Association, Inc. - Does not object to the Settlement. Requests the Commission modify the Settlement to eliminate discriminatory access to the Super-Regional rate, to mandate a through and out rate by a specific date, and to clarify that the obligation of Article IV of the Settlement that exceed those contained in the Midwest ISO Transmission Owner Agreement do not apply to Wabash Valley. Request the Commission reject the portions of the Settlement deeming requests for rehearing in the Alliance docket be denied.

State of Michigan and the Michigan Public Service Commission, the Illinois Commerce Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission, the Iowa Utilities Board, the Missouri Public Service Commission, the Public Service Commission of Wisconsin, the Pennsylvania Public utility Commission, the Kentucky Public Service Commission, and the Public Service Commission of West Virginia - While the State Commissions do not contest the Settlement, they outlined several concerns: Exclusion of outside generators from the Super-Regional Rate [drive-in]; no guarantee to the Super-Regional Rate after December 31, 2004; membership limited to members of the Alliance RTO and Midwest ISO as of February 28, 2001; the joint rate should apply to transactions involving any two RTOs

Docket No. ER01-123-000

-28-

instead of "all three"; control-area functions and congestion management should be centralized; scope and configuration; guidelines as to the circumstances under which a TO's move from one RTO to another is in the public interest; potential cost duplication; ZTA responsibility; certain IRCA commitments not designed to create a seamless market.

Virginia State Corporation Commission - Does not oppose certification to Commission. Requests that the Commission sever scope & configuration issue for further proceedings. Opposes withdrawal of requests for rehearing and/or protests on the Alliance RTO. Requests modification of the Settlement to require the Alliance companies to justify their proposed rate moratorium. Seeks expansion of Article VI of the Settlement to include negotiation of a PJM/PJM West-Alliance joint

ENRON Power Marketing, Inc. - Opposes the Settlement. Is the only participant requesting the Commission to reject the Settlement. Argues that the Settlement should not apply to withdrawal of protests and rehearing requests of parties that are not signatories to the Settlement; that the Settlement fails to implement joint management needed for a seamless market; that the Settlement fails to address market fundamentals, including the critical need for a real-time energy market; the Settlement fails to eliminate pancaked rates for energy imports; and that the Commission must direct the Alliance RTO and Midwest ISO to permit meaningful stakeholder involvement in the development of a congestion-management plan.

The Commission Trial Staff - Supports the Settlement and recommends certification and approval by the Commission.

DISCUSSION AND ANALYSIS

As pointed out before herein, the majority of the parties filing initial comments support the Settlement and recognize that the overall benefits of the Settlement are in the public interest. Additionally, the requests for modifications do not raise issues of material fact, but rather, raise issues of policy which the Commission can decide on the record before it.

The Chief Judge points out that the Settlement is in part a "work in progress." The success of the Settlement is predicated on the continuation of the good faith negotiations of the participants, with the oversight of the Chief Judge when necessary. This oversight role of the Commission should help alleviate the concerns of the State Commissions and some of the parties and will help create a seamless electricity market that extends over a broad region of the country.

Docket No. ER01-123-000

-29-

While several participants request modification of the Settlement in various material ways, it must be kept in mind that the negotiation of this Settlement was extraordinarily difficult and involved a tedious and arduous process. The end result is a Settlement that will provide enormous public interest benefits. Participants cannot have it both ways—they cannot accept the substantial benefits provided by the settlement, and at the same time, seek material modifications to these provisions that make those benefits possible. The Article 11.1(a) non-severability clause recognizes that each element of the Settlement is in consideration of each and every other element of the Settlement and that material modification of any one element would be unfair and inequitable and undermine the balance of considerations that made the Settlement possible.

Specific issues raised by the participants in their comments will be discussed below:

A. The February 28, 2001 Cut-Off Date

The arguments that the February 28th Cut-Off date creates a disincentive for RTO expansion should be balanced with the considerable difficulties posed for RTO formation by some transmission owners that procrastinate or are unwilling to commit to an RTO. This problem has been a particularly difficult one for the Midwest ISO and the Alliance RTO. Neither organization has the advantage of building upon a pre-existing infrastructure or power pool arrangement as do some organizations such as PJM, the New England ISO, and the New York ISO. Furthermore, the financial viability of the Midwest ISO was in question without a stable transmission owning membership. In fact, the cut-off date was not intended to protect generation located in the Super-Region as some participants argue, but rather, the date was important to reach certainty for the calculation of lost revenues. It is pointed out that no party can show injury from this deadline at the present time—no party has sought membership in either RTO and been rejected. If such a claim does arise in the future, the injured party would have a forum before the Commission to demonstrate that the rejection is unjust and unreasonable. In fact, the Settlement provides that the Super-Region pricing methodology will be applied to additional transmission systems and NERC-certified control areas of the two RTOs upon the mutual written agreement of the Midwest ISO and the Alliance RTO or by order of the Commission. Thus, there is no basis for assuming that undue discrimination will occur.

B. The Application of the Super-Region Rate to Entities Outside the Midwest ISO/Alliance RTO

Some commenters raised concern that the Super-Region rate only applies to

Docket No. ER01-123-000

-30-

generators located in the Super-Region. The Midwest ISO and the Alliance Companies have taken the first steps to combine markets seamlessly. The agreement to a Super-Region rate is a major and unprecedented achievement in the electric utility industry promising to provide substantial benefits to consumers throughout the entire Midwest region and is a model for other RTOs throughout the country. This progress should be encouraged and not thwarted by the fact that this is a first step and not the end game. The Super-Region rate is available not only to the members of the Alliance RTO and the Midwest ISO, but to eligible customers taking service under the Midwest ISO and the Alliance RTO tariffs. The Super-Region rate will be filed with the Commission pursuant to the provisions of Section 205 of the Federal Power Act, no later than 120 days before the Alliance RTO and the Midwest ISO operational dates. Any party who objects to any feature of the rate, other than the rate methodology, will have an opportunity to file a protest seeking revisions of the rate.

Several participants who are eligible customers under the Midwest ISO tariff or under the tariff of the Alliance Companies suggest that they are not eligible for the Super-Region rate unless they are members of the Alliance RTO or the Midwest ISO by February 28, 2001. This concern is unfounded. The rate applies to those entities who are eligible customers under the Alliance RTO or the Midwest ISO rates provided the Super-Region's source and sink criteria are satisfied.

Several participants objected that the Super-Region rate is guaranteed only for the transition period which ends December 31, 2004. It is pointed out that the Settlement stipulates that the Super-Region rate is to remain effective until the Commission allows it to be superseded. Thus, the Super-Region rate will terminate only if the Commission determines that the termination of the rate is in the public interest. Moreover, rate moratoriums are common features in settlement packages filed with the Commission because they ensure that negotiated bargains remain in place for a period of time.

C. Source and Sink Restrictions

The source and sink restrictions contained in the Super-Region raised concerns by some of the parties. These parties argue that these provisions are unduly discriminatory because the single rates are not available for the importation of power and energy from generation sources located outside of the Super-Region (i.e., "drive-in" transactions). These parties claim that the provisions are unduly preferential in favor of the RTO member's own generation located within the Super-Region. These arguments are without merit because the parties making the arguments refuse to recognize the fact that the Super-Region rate is an unprecedented inter-RTO pricing arrangement that goes far beyond the requirements of Order No. 2000. Moreover, any modification of the Super-

Docket No. ER01-123-000

-31-

Region pricing arrangement worked out after much give and take and agreed to by the Executing Parties could have a debilitating impact on the development of future rate reciprocity agreements between RTOs. Order No. 2000 requires an RTO to eliminate pancaking for transmission charges within its boundaries. The Alliance RTO and the Midwest ISO have not only satisfied this requirement, but they are now offering to go beyond the requirements of Order No. 2000 and to eliminate pancaking within the Super-Region during the transition period. In fact, the Settlement will establish, for a transition period, the largest area ever proposed for the elimination of transmission rate pancaking. In addition, there is no basis for the charge that the current transmission owners are attempting to favor their own generation. The Alliance RTO and the Midwest ISO have each proposed a zonal, license-place pricing structure that assesses a single zonal charge to serve load within a zone regardless of the location of the generation source. Thus, all generation located within the Alliance RTO and the Midwest ISO faces "drive-in"

competition from generators located outside of the respective Alliance RTO and Midwest ISO boundaries.

Some parties object to the requirement that a source and sink must be located within the electrically-metered NERC-certified control area of a current transmission-owning member of the Alliance RTO or the Midwest ISO. Any transmission-dependent utility located within the control area of a current member of the Alliance RTO or the Midwest ISO will be able to obtain the single rates under the same terms and conditions as the transmission-owning members of the RTOs. Transmission-owners that operate a NERC-certified control area that is located within a control area of a transmission-owning member of the Alliance RTO or the Midwest IO could still obtain these benefits by applying for membership in one of the RTOs and upon the mutual agreement of the two organizations to apply the Super-Region pricing structure to the new member, or by Commission order.

D. Inclusion of PJM West in Joint Rate Discussion

Allegheny Power and the Virginia Commission request that Article VI of the Settlement be expanded to include PJM West as part of the joint rate discussions that are now limited to the Midwest ISO, the Alliance Companies and PJM. This modification to the Settlement represents a material change. However, PJM West could be allowed to enter the negotiations with the Alliance RTO, the Midwest ISO, and PJM concerning the feasibility of its participation in the a joint-inter-RTO rate. The arguments of Allegheny Power and the Virginia Commission are premature and outside the scope of the Settlement negotiations.

Docket No. ER01-123-000

-32-

E. Indemnification Provisions

Wabash objects to the Settlement's indemnification provisions and requests the Commission to clarify that Article IV of the Settlement does not apply to Wabash and other Midwest transmission owners that have not executed the Settlement. The Chief Judge points out that as a transmission-owning member of the Midwest ISO, Wabash will receive substantial benefits from the Settlement, including benefits associated with the \$60 million payment by the departing companies, which will allow the Midwest ISO to remain viable; the Super-Region pricing structure; and the intangible benefits of the IRCA. Wabash's position, if upheld by the Commission, would be detrimental to the remaining Midwest ISO transmission owners who would presumably be forced to assume Wabash's share of the indemnification liability. Moreover, Wabash's concerns raise contract issues that the Commission need not address now in its approval of the Settlement.

F. Imbalance Markets and Congestion Management

Several participants request modification of the IRCA provisions on imbalance markets (Section 3.6) and congestion management (Section 4.2). These IRCA provisions provide that the Midwest ISO and the Alliance RTO will cooperate in the development of compatible programs for energy imbalance and congestion management, and will develop procedures and protocols for the same. The Midwest Stakeholders have suggested changes to these provisions which would provide flexibility for the Midwest ISO and the Alliance RTO to develop separate (but compatible) programs or to develop joint programs. The Alliance Companies indicate in their reply comments that these changes are acceptable to them and would have no objection to incorporating them into the IRCA, if the Midwest ISO agrees, when the IRCA is filed with the Commission.

G. Real-Time Energy Markets

Some participants complain that the Settlement fails to provide for the development of a real-time energy markets. The Chief Judge notes that Order No. 2000 does not require that an RTO operate a real-time energy market, and that the Alliance has conditional approval under Order No. 2000 without the formation of an energy market within its plans. Moreover, establishing an energy market is an extremely complex task which is beyond the reasonable objectives of the settlement process mandated by the Commission in these proceedings.

H. Independence of Market Monitoring

Docket No. ER01-123-000

-33-

A number of commenters raised concern with the market monitoring provisions of the Settlement. They note that the IRCA provides for a Market Monitoring Committee (MCC) composed of one representative appointed by each RTO. The MMC would be responsible for interfacing with the Independent Market Monitor (IMM). Commenters are concerned that having the IMM report to a two-person board appointed by the two entities it is charged to supervise would not promote effective or objective market monitoring. The MMC is intended to be a body that will interface with the IMM and determine the appropriate level of data collection, evaluate the need for remedies, propose new activities, and receive requests for investigations. The MMC will not possess the unilateral power and authority to nullify or dilute the IMM's functional responsibilities or compromise its effectiveness. The Midwest ISO points out in its reply comments that it has no objection to the possibility of using professional technical staff members with expertise in market design and commodity market behavior as the persons serving on the MCC.

I. Scope and Configuration Requirements

A number of participants assert that the Settlement fails to address and resolve fully scope and configuration and other seams issues. The Chief Judge agrees that the Settlement may not resolve fully and finally all existing and future issues involved in the creation of a virtual single market for the Midwest, but as all participants are aware, this would have been an impossible accomplishment in the thirty days allowed by the Commission for discussion among over one hundred parties. However, the Settlement does provide a good platform by which the issues raised by these participants can be resolved in a thoughtful and cooperative manner. In fact, the Chief Judge believes that the configuration provided for in the Settlement and in the IRCA more than satisfies the Order No. 2000 scope and configuration requirements.

J. Parallel Path Flows

Enron complains that the Settlement and the IRCA do not sufficiently address the need to eliminate parallel path flows that may persist as a result of having two RTOs continue in operation in the Midwest region. Contrary to Enron's position, Article VI of the IRCA adequately addresses this issue. Under Paragraph 6.1, each of the Cooperating RTOs will adopt, prior to commencement of operations, transmission scheduling and pricing policies that will internalize most, if not all, parallel path flows within its own region. Paragraph 6.2 commits the Cooperating RTOs to work with NERC to address parallel path flows within the Eastern Interconnection. Finally, paragraph 6.3 requires the Cooperating RTOs to comply with Function 3 of Order No. 2000 between their

Docket No. ER01-123-000

-34-

respective systems on or before December 15, 2004. In addition, Order No. 2000 requires that parallel path flows be eliminated between regions within three years.²⁷

K. The ENRON Opposition

As pointed out before herein, Enron is the only one of the numerous parties and participants in these settlement negotiations opposing the Settlement and requesting that it be rejected. Enron refuses to look at the benefits—too numerous to spell out—that the Settlement brings to the electric energy industry and the consuming public in the areas served by the Alliance RTO and the Midwest ISO. Rather, Enron insists on a single RTO for the two regions or for two RTOs with joint operating procedures, a real-time energy market, the elimination of all pancaked rates, and the involvement of stakeholders in the development of a congestion management plan. The Enron requests go far beyond the Order No. 2000 RTO requirements and the scope of the settlement proceedings. A merger between the Alliance RTO and the Midwest ISO was not the goal of the settlement negotiations nor were the parties directed to consider that issue by the Commission.

A single RTO for the two regions is simply not achievable, at least at this point in time, and it may never be. At the same time, the Settlement provides two financially and operationally viable RTOs with a single Super-Regional rate that removes all seams and pancakes between the two RTOs, and preserves the different business preferences of the participants. The Settlement also provides for negotiations between the Alliance Companies, the Midwest ISO, and PJM to extend the seamless market. For these and other reasons spelled out in other sections herein, Enron's opposition is without merit.

CONCLUSION AND CERTIFICATION

The Chief Judge finds that the Settlement certified herewith constitutes a complete resolution of the issues involved, not only in this proceeding, but in the many related dockets identified on Page 1. It represents a fair and reasonable compromise among the many competing interests, and it results in the expeditious resolution of the myriad of issues in contention. As discussed in this certification, the Settlement provides for two RTOs with a single, Super-Regional rate which removes all seams and pancakes between and within the two RTOs, an agreement to negotiate with PJM for a joint through-and-out rate, the approval of Illinois Power, Commonwealth Edison, and Ameren to

²⁷See FERC Stats. & Regs. ¶ 31,089 at 31,129-30.

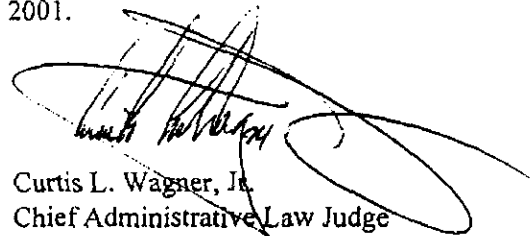
Docket No. ER01-123-000

-35-

withdraw from the Midwest ISO with a combined payment of \$60 million, an IRCA between the Alliance RTO and the Midwest ISO which results in two financially and operationally viable RTOs to serve the involved areas. The Chief Judge finds that the Settlement is fair, reasonable, in the public interest, and he recommends that it be approved by the Commission.

Accordingly, pursuant to 18 C.F.R. § 385.602(g)(1), the Chief Judge hereby certifies to the Commission:

- The Settlement Agreement filed on March 21, 2001.
- Initial comments filed on March 30, 2001.
- Reply comments filed on April 4, 2001.



Curtis L. Wagner, Jr.
Chief Administrative Law Judge