

Exhibit No.  
Witness:  
Type of Exhibit:  
Sponsoring Party:  
  
Case No.

James R. Dauphinais  
Rebuttal Testimony  
Missouri Industrial  
Energy Consumers  
EO-2001-684

**Before the  
Missouri Public Service Commission  
Case No. EO-2001-684**

---

**UNION ELECTRIC COMPANY  
d/b/a AmerenUE**

---

Rebuttal Testimony of

**James R. Dauphinais**

On Behalf of

**Missouri Industrial Energy Consumers**

September 2001  
Project 7686

**FILED<sup>3</sup>**  
SEP 12 2001

Missouri Public  
Service Commission



BRUBAKER & ASSOCIATES, INC.  
ST. LOUIS, MO 63141-2000

**Non-Proprietary**

Before the  
Missouri Public Service Commission  
Case No. EO-2001-684

**UNION ELECTRIC COMPANY / AMERENUE**

STATE OF MISSOURI       )  
                                  )  
COUNTY OF ST. LOUIS    )       SS


**Affidavit of James R. Dauphinais**

James R. Dauphinais, being first duly sworn, on his oath states:

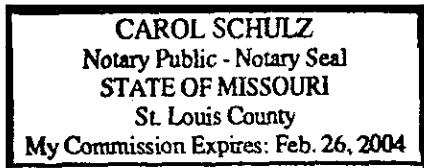
1. My name is James R. Dauphinais. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 1215 Fern Ridge Parkway, Suite 208, St. Louis, Missouri 63141-2000. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.

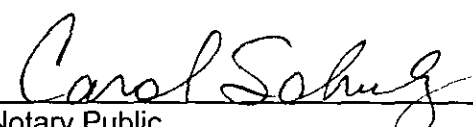
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony and schedules which were prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. EO-2001-684.

3. I hereby swear and affirm that the testimony is true and correct and that the schedules show the matters and things they purport to show.

  
\_\_\_\_\_  
James R. Dauphinais

Subscribed and sworn to before this 12th day of September, 2001.



  
\_\_\_\_\_  
Notary Public

My Commission Expires February 26, 2004.

Before the  
Missouri Public Service Commission  
Case No. EO-2001-684

**Rebuttal Testimony of James R. Dauphinais**

1    **I. INTRODUCTION**

2    **Q      PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3    **A      James R. Dauphinais. My business address is 1215 Fern Ridge Parkway, Suite 208;**  
4           **St. Louis, Missouri, 63141.**

5    **Q      WHAT IS YOUR OCCUPATION AND BY WHOM ARE YOU EMPLOYED?**

6    **A      I am a consultant in the field of public utility regulation. I am employed by the firm of**  
7           **Brubaker & Associates, Inc., energy, economic and regulatory consultants.**

8    **Q      PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

9    **A      This information is included in Appendix A to my testimony.**

10   **Q      HAVE YOU EVER TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE**  
11       **COMMISSION (MPSC) IN REGARD TO AMERENUE'S PARTICIPATION IN AN**  
12       **INDEPENDENT SYSTEM OPERATOR (ISO) OR REGIONAL TRANSMISSION**  
13       **ORGANIZATION (RTO)?**

14   **A      Yes. I testified on behalf of The Doe Run Company and the Missouri Industrial**  
15       **Energy Consumers in MPSC Case No. EO-98-413. That case involved AmerenUE's**

1 (Ameren) request for the MPSC to authorized it to participate in the Midwest  
2 Independent Transmission System Operator, Inc. (MISO).

3 **Q ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

4 A I am appearing on behalf of the Missouri Industrial Energy Consumers (MIEC). The  
5 MIEC group in this proceeding consists of Anheuser-Busch, Inc., Ford Motor  
6 Company, General Motors Company, Hussman Refrigeration, MEMC Electronic  
7 Materials and Adam's Mark Hotels and Resorts.

8 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 A The purpose of my testimony is to respond to the request of Ameren for an order from  
10 the MPSC authorizing it to withdraw from the MISO and participate in the Alliance  
11 RTO (ARTO).

12 The fact an issue is not addressed in this testimony should not be construed  
13 as an endorsement of any party's position.

14 **Q PLEASE SUMMARIZE YOUR TESTIMONY.**

15 A From my review of Ameren's testimony and its response to data requests in this  
16 proceeding, I conclude that the ARTO may not necessarily be a better choice for  
17 Ameren's retail customers in Missouri. In addition, I conclude that Ameren's decision  
18 to move from the MISO to the ARTO was principally driven by the desire to preserve  
19 transmission revenues for its shareholders.

1    **Q     WHAT ARE YOUR RECOMMENDATIONS TO THE COMMISSION?**

2    **A**     First, the Commission should not approve Ameren's proposed transfer of control over  
3           its transmission facilities to the ARTO at this time. Second, I recommend the  
4           Commission not permit Ameren to effectuate the transfer until the FERC has declared  
5           the ARTO as meeting all of FERC's requirements that are applicable on the startup  
6           date of the ARTO. Third, if and when Ameren transfers control of its assets to the  
7           ARTO, that Ameren abide by the terms and conditions of the Commission-approved  
8           stipulation agreement in Case No. EO-98-413 as if the ARTO was the MISO. Fourth,  
9           if the FERC does not declare the ARTO as meeting all of the startup requirements of  
10          Order No. 2000 by December 31, 2002, AmerenUE must immediately at that time  
11          withdraw from the ARTO and return to the MISO. Fifth, the Commission should not  
12          permit AmerenUE to recover any portion of the \$12.5 million payment it made to the  
13          MISO under the FERC-approved settlement in Docket No. ER01-123-001, et al.  
14          unless AmerenUE demonstrates comparable savings for its retail customers in  
15          Missouri was provided by switching from the MISO to ARTO. Finally, the  
16          Commission should address in Case No. EC-2002-1 whether AmerenUE has any  
17          excess transmission revenues that should be shared with retail customers in  
18          Missouri.

19   **Q     PLEASE PROVIDE SOME BACKGROUND FOR THIS CASE.**

20   **A**     In an MPSC-approved stipulation agreement in Case No. EM-96-149, AmerenUE was  
21          required to file or join in the filing of a Regional Independent System Operator  
22          proposal at the Federal Energy Regulatory Commission (FERC) that would eliminate  
23          pancaked transmission rates and be consistent with the ISO guidelines set out in  
24          FERC Order No. 888.

1 In Case No. EO-98-413, AmerenUE requested the MPSC authorize it to  
2 participate in the MISO in order to meet the requirements of the stipulation agreement  
3 in Case No. EM-96-149. On May 13, 1999, the MPSC issued an order approving a  
4 stipulation agreement in Case No. EO-98-413. This latter stipulation agreement, to  
5 which MIEC was a party, placed certain conditions on AmerenUE's participation in the  
6 MISO. One of the conditions in the EO-98-413 stipulation agreement was that, "[i]n  
7 the event that AmerenUE seeks to withdraw from its participation in Midwest ISO  
8 pursuant to Article five or Article Seven of the Midwest ISO agreement, the Company  
9 shall file a Notice of Withdrawal with the Commission, and with any other applicable  
10 regulatory agency, and such withdrawal shall be effective when the Commission, and  
11 such other agencies, approve or accept such Notice or have otherwise allowed it to  
12 become effective." (Stipulation Agreement at Pages 2-3.)

13 On November 9, 2000, the MISO was notified of Ameren's intention to  
14 withdraw from the MISO as a transmission-owning member. In that notice, Ameren  
15 asked for an effective date of November 1, 2001 for the withdrawal.

16 On May 8, 2001 in Docket No. ER01-123-000, et al., the FERC accepted a  
17 settlement offer that would permit Ameren, Commonwealth Edison Company, Illinois  
18 Power Company to withdraw from the MISO and join the ARTO. Critical components  
19 of the settlement agreement included:

- 20 • Elimination of pancaking of rates between the two RTOs by establishing a  
21 super regional rate that will allow for the delivery of energy from any source  
22 from within the ARTO and MISO regions to any load located within the regions  
23 at a single rate.
- 24 • Providing the basis for a seamless market throughout the ARTO and MISO.
- 25 • Establishing a process for stakeholder involvement in the ARTO.
- 26 • Permitting Ameren, Illinois Power Company, and Commonwealth Edison  
27 Company to withdraw from the MISO and to participate in the ARTO by  
28 collectively paying an exit fee of \$60 million of which AmerenUE's share is  
29 \$12.5 million.

1 Key to implementing a seamless market was the execution of an Inter-Regional  
2 Coordination Agreement (IRCA) by the Alliance Companies (including Ameren), the  
3 MISO and certain MISO transmission owners. The MPSC offered comments to the  
4 FERC on the settlement. In the comments, the MPSC neither supported nor opposed  
5 the settlement agreement.

6 On May 15, 2001, AmerenUE paid the MISO an exit fee of \$12.5 million. In a  
7 May 16, 2001 letter from Mr. James P. Torgerson, President and CEO of the MISO,  
8 the MISO indicated that Ameren's membership application with the MISO was  
9 deemed withdrawn concurrent with the FERC's order in Docket No. ER01-123-000  
10 dated May 8, 2001. (See JRD Schedule 1)

11 On June 8, 2001, AmerenUE filed its application with the MPSC that initiated  
12 this proceeding.

13 **Q YOU NOTED THAT AMEREN'S WITHDRAWAL FROM THE MISO WAS DEEMED**  
14 **EFFECTIVE BEFORE AMEREN'S FILING WITH THE MPSC. IS THIS**  
15 **CONSISTENT WITH THE REQUIREMENTS OF THE COMMISSION-APPROVED**  
16 **STIPULATION IN CASE NO. EO-98-413?**

17 **A** Counsel has advised me that AmerenUE's request for approval of its withdrawal from  
18 the MISO after it had already effectuated that withdrawal may be in violation of the  
19 stipulation agreement.

20 **Q IS AMEREN'S PARTICIPATION IN THE ARTO ALREADY EFFECTIVE?**

21 **A** No, not entirely. Section 4.10 of FERC-approved settlement in FERC Docket No.  
22 ER01-123-000, et al. does not permit Ameren to withdraw from the ARTO until

1 December 31, 2002. However, Ameren has not yet transferred control of its  
2 transmission facilities to the ARTO.

3 **Q HAS AMEREN DEMONSTRATED THAT A SWITCH FROM THE MISO TO THE**  
4 **ARTO WILL BE BENEFICIAL TO ITS RETAIL CUSTOMERS IN MISSOURI?**

5 **A** No, it has not. In its surrebuttal, Ameren needs to quantify why they believe the  
6 ARTO is better than the MISO for AmerenUE's retail customers in Missouri.

7 **Q ON PAGE 19 OF MR. DAVID A. WHITELEY'S DIRECT TESTIMONY, HE**  
8 **INDICATES THAT AMERENUE BELIEVES THE \$12.5 MILLION EXIT FEE PAID**  
9 **TO THE MISO WAS A PRUDENTLY INCURRED REGULATORY EXPENSE THAT**  
10 **SHOULD BE RECOVERED FROM ALL USERS OF THE TRANSMISSION**  
11 **SYSTEM. HOW DO YOU RESPOND?**

12 **A** Ameren has not demonstrated that the \$12.5 million exit fee was a prudently incurred  
13 regulatory expense. To make such a demonstration, AmerenUE needs to show that  
14 at the time of its choice to pay the \$12.5 million, it could reasonably expect at least  
15 \$12.5 million of savings for the users of its transmission system by joining the ARTO  
16 rather than remaining in the MISO. AmerenUE has made no such showing.

17 **Q WERE THERE OTHER MAJOR UTILITIES WHO SERVE CUSTOMERS IN**  
18 **ILLINOIS THAT CHOSE TO REMAIN IN THE MISO?**

19 **A** Yes. Central Illinois Light Company.



1 Q IS CENTRAL ILLINOIS LIGHT COMPANY AND ITS RETAIL CUSTOMERS  
2 ELIGIBLE FOR THE BENEFITS OF THE SUPER REGIONAL RATE AND IRCA  
3 EVEN THOUGH CILCO DID NOT WITHDRAW FROM THE MISO?

4 A Yes.

5 Q IS THERE A REASONABLE LIKELIHOOD THE FERC SETTLEMENT WOULD  
6 HAVE OCCURRED EVEN IF AMEREN CHOSE TO REMAIN IN THE MISO?

7 A Yes. The settlement discussions ordered by the FERC were in response to Illinois  
8 Power Company's notice of withdrawal from the MISO. It is quite possible the  
9 settlement agreement could have been effectuated with only the withdrawal of  
10 Commonwealth Edison Company and Illinois Power Company. Ameren's choice to  
11 give notice of its intention to withdrawal from the MISO and to agree to pay a \$12.5  
12 million exit fee was its own.

13 Q IN YOUR OPINION, WILL THE ARTO PROVIDE MORE BENEFITS TO RETAIL  
14 CUSTOMERS IN MISSOURI THAN THE MISO?

15 A No. It is my opinion the ARTO will provide comparable benefits to the MISO provided  
16 the Alliance Companies fully comply with all of the requirements placed upon them by  
17 the FERC and the Alliance Companies fully comply with the requirements of the  
18 settlement agreement in FERC Docket No. ER01-123-000, et al.

19 Q ARE THE ALLIANCE COMPANIES IN FULL COMPLIANCE WITH THE FERC  
20 REQUIREMENTS AT THIS TIME?

21 A No. There are many examples that could be offered, but the most blatant example is  
22 in regard to the FERC's July 12, 2001 order requiring the Alliance Companies to  
23 immediately establish an independent board to manage the business of the ARTO

1 (see **JRD Schedule 2** at 13). As of the date of the filing of this testimony, the Alliance  
2 Companies have not established an independent board. Largely in response to this  
3 failure, several stakeholders, including the state utility commissions in Virginia,  
4 Michigan, and West Virginia, have filed a protest with the FERC calling for an  
5 immediate stay of further start-up operations by the Alliance Companies. (See **JRD**  
6 **Schedule 3**)

7 **Q HAVE THE ALLIANCE COMPANIES COMPLIED WITH THE SETTLEMENT**  
8 **AGREEMENT?**

9 **A** No. The most troubling example is in regard to transmission congestion  
10 management. The settlement in part calls for seamless congestion management  
11 systems. Yet, the Alliance Companies continue to pursue development of a long-  
12 term congestion management system through its own Market Develop Advisory  
13 Group (MDAG) rather than jointly with the MISO Congestion Management Working  
14 Group (CMWG). Due to its complexity, I do not see how long-term seamless  
15 congestion management can occur in the MISO and ARTO regions unless it is  
16 developed on a joint basis.

17 **Q SHOULD THE COMMISSION PERMIT AMERENUE TO TRANSFER CONTROL OF**  
18 **ITS TRANSMISSION ASSETS TO ARTO?**

19 **A** Not at this time. The Commission should not act on AmerenUE's request to  
20 participate in the ARTO until the FERC has declared the ARTO is in full compliance  
21 with all of the FERC's requirements applicable at the time of RTO startup.

1 Q HAVE YOU BEEN ABLE TO DETERMINE WHAT DROVE AMERENUE'S  
2 DECISION TO PURSUE MOVING FROM THE MISO TO THE ARTO?  
3 A Yes. Preservation of point-to-point transmission revenues for shareholders was  
4 Ameren's overriding concern that drove its decision-making process. Point-to-point  
5 transmission revenues are those revenues Ameren collects under its FERC Open  
6 Access Transmission Tariff (OATT) for providing point-to-point transmission service to  
7 itself, its affiliates and third parties.

**BEGINNING OF HIGHLY CONFIDENTIAL INFORMATION**





**END OF HIGHLY CONFIDENTIAL INFORMATION**

1    **Q     WHAT DO YOU RECOMMEND?**

2    **A     I recommend that the Commission in Case No. EC-2002-1 carefully consider whether**  
3           **AmerenUE is earning excess transmission revenues that should be shared with retail**  
4           **customers in Missouri.**

1 Q DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

2 A Yes, it does.

### **Qualifications of James R. Dauphinais**

1    **Q     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2    A     James R. Dauphinais. My business mailing address is P. O. Box 412000, 1215 Fern  
3     Ridge Parkway, Suite 208, St. Louis, Missouri 63141-2000.

4    **Q     PLEASE STATE YOUR OCCUPATION.**

5    A     I am a consultant in the field of public utility regulation with the firm of Brubaker &  
6     Associates, Inc., energy, economic and regulatory consultants.

7    **Q     PLEASE    SUMMARIZE    YOUR    EDUCATIONAL    BACKGROUND    AND**  
8     **EXPERIENCE.**

9    A     I graduated from Hartford State Technical College in 1983 with an Associate's Degree  
10    in Electrical Engineering Technology. Subsequent to graduation I was employed by  
11    the Transmission Planning Department of the Northeast Utilities Service Company as  
12    an Engineering Technician.

13            While employed as an Engineering Technician, I completed undergraduate  
14    studies at the University of Hartford. I graduated in 1990 with a Bachelor's Degree in  
15    Electrical Engineering. Subsequent to graduation, I was promoted to the position of  
16    Associate Engineer. Between 1993 and 1994 I completed graduate level courses in  
17    the study of power system transients and power system protection through the  
18    Engineering Outreach Program of the University of Idaho. By 1996 I had been  
19    promoted to the position of Senior Engineer.



1           In the employment of the Northeast Utilities Service Company I was  
2 responsible for conducting thermal, voltage and stability analyses of the Northeast  
3 Utilities' transmission system to support planning and operating decisions. This  
4 involved the use of load flow and power system stability computer simulations.  
5 Among the most notable achievements I had in this area include the solution of a  
6 transient stability problem near Millstone Nuclear Power Station, and the solution of a  
7 small signal (or dynamic) stability problem near Seabrook Nuclear Power Station. In  
8 1993 I was awarded the Chairman's Award, Northeast Utilities' highest employee  
9 award, for my work involving stability analysis in the vicinity of Millstone Nuclear  
10 Power Station.

11           From 1990 to 1997 I represented Northeast Utilities on the New England  
12 Power Pool Stability Task Force. I also represented Northeast Utilities on several  
13 other technical working groups within the New England Power Pool (NEPOOL) and  
14 the Northeast Power Coordinating Council (NPCC), including the 1992-1996 New  
15 York-New England Transmission Working Group, the Southeastern  
16 Massachusetts/Rhode Island Transmission Working Group, the NPCC CPSS-2  
17 Working Group on Extreme Disturbances and the NPCC SS-38 Working Group on  
18 Interarea Dynamic Analysis. This latter working group also included participation  
19 from a number of ECAR, PJM and VACAR utilities.

20           In addition to my technical responsibilities, I was also responsible for oversight  
21 of the day-to-day administration of Northeast Utilities' Open Access Transmission  
22 Tariff. This included the creation of Northeast Utilities' pre-FERC Order No. 889  
23 transmission electronic bulletin board and the coordination of Northeast Utilities'  
24 transmission tariff filings prior to and after the issuance of FERC Order No. 888. I  
25 was also responsible for spearheading the implementation of Northeast Utilities' Open  
26 Access Same-Time Information System and Northeast Utilities' Standard of Conduct

1 under FERC Order No. 889. During this time I represented Northeast Utilities on the  
2 Federal Energy Regulatory Commission's "What" Working Group on Real-Time  
3 Information Networks. Later I served as Vice Chairman of the NEPOOL OASIS  
4 Working Group and Co-Chair of the Joint Transmission Services Information Network  
5 Functional Process Committee. I also served for a brief time on the Electric Power  
6 Research Institute facilitated "How" Working Group on OASIS and the North  
7 American Electric Reliability Council facilitated Commercial Practices Working Group.

8 In 1997 I joined the firm of Brubaker & Associates, Inc. The firm includes  
9 consultants with backgrounds in accounting, engineering, economics, mathematics,  
10 computer science and business. Since my employment with the firm, I have  
11 presented testimony before the Federal Energy Regulatory Commission in  
12 Consumers Energy Company, Docket No. OA96-77-000, Midwest Independent  
13 Transmission System Operator, Inc., Docket No. ER98-1438-000, Montana Power  
14 Company Docket No. ER98-2382-000 and Inquiry Concerning the Commission's  
15 Policy on Independent System Operators, Docket No. PL98-5-003. I have also  
16 presented testimony before the Illinois Commerce Commission, the Kentucky Public  
17 Service Commission, the Michigan Public Service Commission, the Missouri Public  
18 Service Commission, the Wisconsin Public Service Commission and various  
19 committees of the Missouri State Legislature. I have also participated on behalf of  
20 clients in the Southwest Power Pool Congestion Management System Working  
21 Group, the Alliance Market Development Advisory Group and several working groups  
22 of the Midwest Independent Transmission System Operator, Inc.

23 In addition to our main office in St. Louis, the firm also has branch offices in  
24 Kerrville, Texas; Plano, Texas; Denver, Colorado; and Chicago, Illinois.





MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.

James P. Torgerson  
President & CEO

DIRECT DIAL 317-249-5430

DIRECT FAX 317-249-5945

E-MAIL - jorgerson@midwestiso.org

Copy to T.R. Voss Original to J.L. Waters  
D.B. Hennen  
DAW File ✓  
Corp File - MISO

VIA FACSIMILE

May 16, 2001

Ms. Elizabeth A. Moler  
Senior Vice President  
Exelon Corp.  
10 South Dearborn Street  
Chicago, IL 60603

Ms. Kathryn Patton  
Vice President and General Counsel  
Illinois Power Company  
500 South 27<sup>th</sup> Street  
Decatur, IL 62525

Mr. David A. Whiteley  
Vice President Energy Delivery  
Ameren Services Company  
One Ameren Plaza  
1901 Chouteau Avenue  
P.O. Box 66149  
St. Louis, MO 63166-6149

Re: Membership Withdrawal

Dear Ms. Moler, Ms. Patton, and Mr. Whiteley:

This correspondence will serve as confirmation by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") that Commonwealth Edison Company, Illinois Power Company, and The Ameren Companies (on behalf of Union Electric Company, Central Illinois Public Service Company, Ameren Services Company, and Ameren Energy Company) have effectuated their membership withdrawal pursuant to the provisions of Article Five of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation on file with the Federal Energy Regulatory Commission ("FERC") as Midwest ISO FERC Electric Tariff, First Revised Rate Schedule No. 1.

Concurrent with the FERC Order dated May 8, 2001, the membership applications of Commonwealth Edison Company, Illinois Power Company and The Ameren Companies are hereby deemed withdrawn. No certificates of membership were completed by the Midwest ISO therefore none need to be returned nor destroyed.

The Midwest ISO looks forward to ongoing relationships with your companies and further discussions regarding the development of the super region and completing service agreements and other necessary documents for transmission service under the Midwest ISO Open Access Transmission Tariff for service beginning December 15, 2001.

Sincerely,

  
James P. Torgerson  
President & CEO

RECEIVED

MAY 21 2001

D.A. WHITELEY



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Companies

Ameren Corporation on behalf of:	Docket Nos. RT01-88-000, RT01-88-001, RT01-88-003, ER99-3144-009, ER99- 3144-011, EC99-80-009, and EC99- 80-011
Union Electric Company	
Central Illinois Public Service Company	

American Electric Power Service Corporation  
on behalf of:

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

Consumers Energy  
and Michigan Electric Transmission Company

Exelon Corporation  
on behalf of:

Commonwealth Edison Company  
Commonwealth Edison Company of Indiana, Inc.

FirstEnergy Corp.  
on behalf of:

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

Pennsylvania Power Company  
The Toledo Edison Company

The Detroit Edison Company  
and International Transmission Company

Virginia Electric and Power Company

Illinois Power Company

Docket No. RT01-84-000

Northern Indiana Public Service Company

Docket No. RT01-26-000

The Dayton Power and Light Company

Docket No. RT01-37-000

## ORDER ON RTO FILING

(Issued July 12, 2001)

This order conditionally approves Alliance Companies' RTO filing subject to the conditions discussed below.

### I. Background

On December 20, 1999, the Commission conditionally authorized the transfer of ownership and/or functional control of the jurisdictional facilities of certain transmission-owning public utilities (Alliance Companies) to the Alliance regional transmission organization (Alliance). See Alliance Companies, et al., 89 FERC ¶ 61,298 (1999) (Alliance I Order). On May 18, 2000, the Commission found that Alliance Companies' compliance filing to the Alliance I Order was deficient and directed further filings. See Alliance Companies, et al., 91 FERC ¶ 61,152 (2000) (Alliance II Order). On September 15, 2000, Alliance Companies filed a revised proposal which proposed to create a for profit transmission company or transco in compliance with Order No. 2000<sup>1</sup>, and also submitted an open access transmission tariff (OATT) under section 205 of the Federal

---

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

Power Act (FPA). On January 24, 2001, the Commission found that Alliance Companies' filing basically met the four characteristics and most of the functions discussed in Order No. 2000, but directed further modifications. See Alliance Companies, et al., 94 FERC ¶ 61,070 (2001) (Alliance III Order).

On May 8, 2001, the Commission denied rehearing and provided clarification of the Alliance III Order. See Alliance Companies, et al., 95 FERC ¶ 61,182 (2001). (Alliance IV Order). Concurrently with this order, the Commission issued an order addressing a Settlement among the Midwest Independent System Operator (Midwest ISO), certain transmission owners in the Midwest ISO, Alliance Companies, and other parties. Among other things, the Settlement allows Illinois Power Company (Illinois Power), Ameren Corporation (Ameren), and Commonwealth Edison Company (ComEd) to withdraw from the Midwest ISO in exchange for paying a combined exit fee of \$60 million; provides for the negotiation of a joint rate among the Midwest ISO, Alliance, and PJM Interconnection L.L.C. (PJM); and provides an Inter-RTO Cooperation Agreement (Cooperation Agreement) to develop a seamless market throughout Alliance and the Midwest ISO. See Illinois Power Company, et al., 95 FERC ¶ 61,183 (2001) (Settlement Order).

## II. RTO Filing and Supplemental Compliance Filing

On January 16, 2001, Alliance Companies submitted their Order No. 2000 compliance filing (RTO Filing) in Docket No. RT01-88-000, which they assert demonstrates that the proposed Alliance satisfies the minimum functions and characteristics for an RTO under Order No. 2000.<sup>2</sup> Accordingly, they request that the Commission expeditiously issue an order finding that the proposed Alliance satisfies the functions and characteristics of an RTO, and they note that this approval is critical to the ability of Alliance to become operational by December 15, 2001. Alliance Companies state that because the FPA filings necessary for implementation of Alliance have been previously submitted, the instant filing is submitted primarily for informational purposes to demonstrate Alliance Companies' satisfaction of the RTO requirements of Order No. 2000. Alliance Companies also include amendments to admit DP&L, ComEd, Commonwealth Edison Company of Indiana, Inc., Illinois Power and Ameren Union Electric Company and

---

<sup>2</sup>On October 16, 2000, Northern Indiana Public Service Company (NIPSCO) and Dayton Power & Light Company (DP&L) each submitted individual Order No. 2000 compliance filings, in Docket Nos. RT01-26-000 and RT01-37-000, respectively. On January 16, 2001, Illinois Power filed an individual Order No. 2000 compliance filing in Docket No. RT01-84-000. We find that these individual RTO filings and any issues raised by protestors are now moot since NIPSCO, Illinois Power, and DP&L have now joined Alliance Companies' RTO Filing in Docket No. RT01-88-000.



Ameren Central Illinois Power Company as parties to the Alliance Agreement and Section 203 requests, on behalf of these members, for authorization to transfer ownership and/or functional control of transmission facilities to Alliance.

On May 15, 2001, Alliance Companies filed a supplemental compliance filing in Docket No. RT01-88-000 (Supplemental Filing), which they assert complies with the non-rate directives contained in the Alliance III Order and supplements their January 16, 2001 initial RTO Filing.<sup>3</sup> Alliance Companies' filing also contains a Section 203 request for the transfer of control of jurisdictional facilities on behalf of NIPSCO to Alliance,<sup>4</sup> identifies additional details for the proposed energy imbalance service, and contains other minor supplements to the initial RTO Filing. Alliance Companies also include descriptions of the on-going advisory process and the proposed modifications to the Alliance Transco Advisory Committee.<sup>5</sup> Alliance Companies further state that any directives from the Alliance III Order not addressed by this filing will be addressed on or before the date of the rate filing for Alliance's OATT. On June 15, 2001, Alliance Companies amended their Supplemental Filing to include a list of transmission facilities to be transferred by Ameren to Alliance.

Alliance Companies filed answers to various requests for relief and protests in Docket Nos. RT01-88-000 and RT01-88-001. Alliance Companies also filed a separate answer in Docket No. RT01-88-001 responding to the protest of ITC.

---

<sup>3</sup>Relying on GridFlorida, (GridFlorida, et al., 94 FERC ¶ 61,363 (2001)) Alliance Companies propose to allow financial institutions to own more than 5 percent of the Managing Member of Alliance Transco, and will include provisions consistent with GridFlorida in the appropriate corporate documents filed with the Commission upon execution of an Alliance Transco LLC Agreement. See May 15 Supplemental Filing at 18-19.

<sup>4</sup>Alliance Companies state that the Commission authorized Detroit Edison Company to transfer substantially all of its integrated transmission facilities to its affiliate, the International Transmission Company (ITC) in DTE Energy Company, et al., 91 FERC ¶ 61,317 (2000), and that the Commission authorized Consumers Energy to transfer ownership and operational control of its transmission system to its affiliate, Michigan Electric Transmission Company (Michigan Transco) in Consumers Energy Company, et al., 94 FERC ¶ 61,018 920001). Alliance Companies note that under the Alliance Agreement ITC and Michigan Transco have assumed the rights and obligations of Detroit Edison Company and Consumers Energy regarding the transferred facilities.

<sup>5</sup>Supplemental Filing at 1-4.

### III. Discussion

#### Procedural Matters

The notices of intervention of the state commissions and the timely, unopposed motions to intervene serve to make the intervenors listed in Appendices A and B parties to these proceeding. See 18 C.F.R. § 385.214 (2000). Given the early stage of these proceeding, and the absence of undue delay or prejudice, we find good cause to grant the untimely, unopposed interventions of Ontario Operator, Ormet, Wolverine, and the State Commissions.<sup>6</sup>

Although the Commission's Rules of Practice and Procedures do not generally permit answers to protests and answers to answers (see 18 C.F.R. § 385.213(a)(2) (2000)), given the complex nature of this proceeding and because the answers aided in clarifying certain issues, we will accept Alliance Companies' answers filed in Docket Nos. RT01-88-000 and RT01-88-001, and ITC's answer to Alliance Companies' answer.

#### Characteristics and Functions

While numerous parties have filed comments and/or protests to Alliance Companies' RTO filing,<sup>7</sup> due to a timing issue Alliance Companies did not have the benefit of the Alliance III Order when they made their RTO filing. As a result, many of the issues raised in Alliance Companies' RTO filing and, therefore, parties' concerns on those issues, are moot by our action in the Alliance III Order and subsequent order denying rehearing.<sup>8</sup> Additionally, many other issues (i.e., all issues raised by the numerous parties to the Settlement) have become moot by the recent settlement filed by Alliance Companies and the Midwest ISO which was accepted by the Commission.<sup>9</sup> Finally, other issues are not yet ripe for review since they are the subject of future filings. Therefore, it is our intent in this

---

<sup>6</sup>We provide short-hand references to parties in this order. Appendices A and B list the full name of parties with short-hand references in parenthesis after the full names.

<sup>7</sup>These parties are listed in Appendix A.

<sup>8</sup>95 FERC ¶ 61,182 (2001).

<sup>9</sup>See Illinois Power Company, 95 FERC ¶ 61,183 (2001). We noted that while the Settlement provided that protests on certain issues in the RTO Filing be deemed withdrawn, we found that non-signatories were not bound by this provision and thus we will discuss these issues below as necessary. See 95 FERC at 61,647.

order only to discuss issues which are relevant here and not the subject of other orders or future filings.<sup>10</sup>

A. RTO Characteristic No. 1: Independence

In the Alliance III Order we described Alliance Companies' plan for the establishment of RTO structured as a two-tiered entity - the parent firm as a publicly-traded corporation, and the subsidiary firm as a Delaware limited liability company.<sup>11</sup> The parent firm, Alliance Transmission Co. Inc. (Publico), would be the managing member of Alliance; as such, Publico would be the single-purpose, exclusive manager of the Alliance's facilities and services. Investment in and control over Publico would be subject to the Commission's independence requirements, including benchmarks concerning active and passive interests, and Publico would have exclusive authority to direct all of the activities of the transmission owners.

In their RTO Filing Alliance Companies state that their overall corporate organization and governance plan has not changed, but that an interim step in the development of their for-profit transco will be necessary for financial reasons. Alliance Companies believe that any effort to immediately constitute Publico as a publicly-traded corporation would not be successful because an initial public offering (IPO) of Publico's securities so early in the development of the Alliance might not be accepted by the capital markets and would therefore fail or not adequately capitalize Alliance. Consequently, Alliance Companies identify two options to address this concern. First, Alliance Companies propose to involve a strategic investor (Newco) to both manage and invest in Alliance, and thereby make Newco the managing member of Alliance, at least for a transitional period of several years.<sup>12</sup>

Alternatively, Alliance Companies note that they may succeed in attracting a financial-only investor, which would be a strategic investor in Alliance, but would not manage the system nor become Publico, the managing member. In that event, Alliance

---

<sup>10</sup>At the onset, we note that the RTO Filing and the Supplemental Filing and the issues raised are limited in their nature. We anticipate more filings as a result of directives in previous Alliance orders which have not yet been met and also from various commitments that Alliance Companies have made including those made in Article 3 of the Settlement filed in Docket No. ER01-123-000.

<sup>11</sup>See 94 FERC at 61,302.

<sup>12</sup>RTO Filing at 13-15.

Companies state that they will separately act to incorporate Newco.<sup>13</sup> According to the RTO Filing, Alliance Companies will not select as Newco any entity which is a market participant under the Commission's RTO regulations.<sup>14</sup>

Alliance Companies state that if the financial investor option is chosen, they will rely on an independent search firm to select a slate of potential directors who meet qualification and experience requirements, with the final choice of directors to be made by Alliance's investors and not by any market participant. Under this structure, Alliance's directors will serve for staggered terms; none will represent any market participant; and the Chief Executive Officer will be selected by a vote of the other directors and will be a voting director.

According to Alliance Companies, their revised proposal for the start-up of their RTO complies with the Commission's RTO independence requirements. Alliance Companies state that the RTO, its employees, and any non-stakeholder directors will not have financial interests in any market participant; that the RTO will have a decision making process that is independent of control by any market participant or class of participants; that the RTO will, after a transition period ending no later than December 31, 2004, have exclusive and independent authority under Section 205 of the FPA, to propose rates, terms and conditions of transmission service provided over the facilities it operates.<sup>15</sup>

Because market participants in Alliance will possess both active and passive interests in the RTO, Alliance Companies commit that a compliance audit of the independence of the RTO's decision making process will be performed two years after approval of Alliance, and every three years thereafter, unless otherwise provided by the Commission.

Pennsylvania Consumer and Ohio Consumer<sup>16</sup> protests the proposed delay in the issuance of an IPO for the Publico. Pennsylvania Consumer requests that the Commission

---

<sup>13</sup>Id. at 14.

<sup>14</sup>18 C.F.R. § 35.34 (2000).

<sup>15</sup>We note that the rate moratorium applies only to certain specified schedules under the OATT. In their RTO filing, Alliance Companies state: "[e]xcept as limited to preserve the rate design and moratorium during the transition period, the Alliance RTO has the exclusive and independent authority to change the terms and conditions of the Alliance OATT." See RTO Filing at 25.

<sup>16</sup>Ohio Consumer's Protest at 3.

either reject Alliance Companies' proposal to defer its IPO for Publico or require Alliance Companies to file additional data related to its proposal, including documentation of the advice received from the financial advisors and details for the proposed alternative structures. Pennsylvania Consumer asks that the Commission require the Alliance Companies to provide details for these alternative proposals through a collaborative stakeholder process.<sup>17</sup>

Williams support Alliance Companies' overall structure and also support the Alliance interim Newco proposal because control over Alliance will rest with the shareholders of the managing member, rather than a market participant, and therefore satisfies the independence requirements. However, Williams propose that Alliance RTO's initial board of directors should be selected using an independent executive search firm utilizing pre-determined selection criteria, and should then become self-perpetuating.<sup>18</sup>

Midwest Customers and Illinois Consumers claim that the new governance proposal does not comply with Order No. 2000 and fails to assure independence in the event that Alliance chooses to utilize the strategic investor approach. Coalition and Illinois Consumers ask the Commission to require additional details regarding Newco to ensure that any investors are truly unaffiliated with any market participant, and question the selection process for the Board of Directors of Newco. Coalition and Illinois Customers conclude that the vagueness of the new governance proposal requires that it be rejected; or that, at a minimum, Alliance must provide additional detail to demonstrate the independence of the Newco and Alliance Transco.<sup>19</sup>

NCEMC and Virginia Commission state that the Commission should reject the Alliance Companies' proposal to delay Publico's IPO for up to three years; alternatively, it should set for expedited hearing the issue of the delay.<sup>20</sup>

In their answer, Alliance Companies claim that they remain committed to having a publicly-held corporation as a managing member of Alliance Transco, but that they are unwilling to compromise the financial integrity and success of Alliance by insisting upon an immediate IPO. Alliance Companies reassert that they anticipate an IPO within three

---

<sup>17</sup>Pennsylvania Consumer's Protest at 6-12.

<sup>18</sup>Williams' Comments at 10-12.

<sup>19</sup>Midwest Customers' Protest at 4-6; Illinois Consumers' Protest at 3.

<sup>20</sup>NCEMC's Protest at 8-11.

years of the transmission service date. Alliance Companies note that Order No. 2000 does not contain an explicit requirement for an IPO to ensure RTO independence, and therefore, Alliance satisfies the independence requirements regardless of the timing of an IPO of stock of the managing member.

Alliance Companies assert that the Commission has found that the proposed Alliance will satisfy the independence requirement, and the finding was not tied to the occurrence or timing of an IPO. Alliance Companies also claim that intervenors' arguments are also at odds with the Commission's recent order in GridSouth,<sup>21</sup> allowing passive owners to compel the GridSouth Board to effect an IPO after ten years of operation.

Furthermore, Alliance Companies claim that their new proposal for selecting a managing member does not compromise the independence of Alliance, and instead will ensure that the governance structure guarantees that either: (1) the managing member will be an existing entity that is a non-market participant approved by the Commission; or (2) the managing member will be a new corporation that is governed by a non-stakeholder Board of Directors selected by non-market participant investors in Alliance Transco. Alliance Companies state that their proposed selection process for the initial Board is comparable to customary business governance approaches and is consistent with many of the Board selection processes used by existing ISOs, as well as the Board selection process approved in the GridFlorida Order. Alliance Companies claim that their proposal to rely upon non-market participant financial investors to select the initial directors of Newco satisfies the Commission's requirements for independence, because no market participant would select the Board, and financial investors (unlike market participants) do not have competing economic interests when evaluating the qualifications of persons to serve on the Board.<sup>22</sup>

In their Supplemental Filing Alliance Companies submit a Section 203 request seeking authorization to transfer jurisdictional facilities on behalf of its new member, NIPSCO, to Alliance.<sup>23</sup> Alliance Companies also state that they have a customer advisory process in place that is meant to facilitate and broaden communication, and resolve issues in a timely manner prior to Alliance's formation. Alliance Companies state that when Alliance is formed, an Advisory Committee will be established in accordance with Section 6.6 of the pro forma Alliance Transco LLC Agreement. Alliance Companies also include

---

<sup>21</sup>Carolina Power & Light Company, et al., 94 FERC ¶ 61,273 (2001) (GridSouth).

<sup>22</sup>Alliance Companies' Answer at 4-8.

<sup>23</sup>Supplemental Filing at 4.

revisions to the pro forma Alliance Transco LLC Agreement as directed in the Alliance III Order. Specifically, Alliance Companies state that Section 6.6 has been revised to clarify aspects of the customer advisory process, and that Section 7.5 of the pro forma Alliance Transco LLC Agreement has been revised to clarify certain aspects of the independence audit. Finally, Alliance Companies states that Article III, Section 10 of the pro forma Corporate Bylaws has been revised to clarify that advisory directors have no voting power.<sup>24</sup>

In response to Alliance Companies' Supplemental filing, Virginia Commission states that the continuing delay in the formation of Alliance raises serious independence concerns. Virginia Commission is concerned that the continued absence of independent board members or management personnel from the RTO or its managing member in RTO formation activities is adversely affecting the start up of Alliance. Virginia Commission requests that the Commission require Alliance Companies to file reports on all of their RTO formation activities. Virginia Commission states that after reviewing these reports, the Commission should issue an order limiting the start-up activities undertaken by Alliance Companies to those activities that will not adversely impact the future independence of the Alliance.

Edison Companies maintain that input of Advisory Committee representatives is essential now if these market participants are to have the information necessary to develop market strategies. Edison Companies also request that the Commission consider the chilling effect which confidentiality agreements will have on market development, and notes that the requirement that members of the Advisory Committee sign a confidentiality agreement is unique to Alliance.<sup>25</sup>

Coalition asserts that Alliance Companies' deferral of an IPO for Alliance has resulted in indefinitely delaying an independent board and management structure. In Coalition's view, market design issues now being decided by Alliance Companies should be deferred until an independent RTO board and management are in place.

State Commissions assert that Alliance Companies have failed to take required interim steps to establish the independence of Alliance before it becomes operational, such as requiring the establishment of an independent BridgeCo or the appointment of a majority non-owner transition board to oversee start up and to interact with the stakeholder Advisory

---

<sup>24</sup>Id. at 7-11.

<sup>25</sup>Edison Companies' Comments at 2-6.

Committee, and to establish an independent Managing Member.<sup>26</sup> State Commissions claim that National Grid's role as a market participant in nearby regions could influence its judgments as to whether to expand Alliance's boundaries and whether to address seams within those regions.<sup>27</sup> State Commissions also ask that the Section 7.5 of the LLC Agreement be further amended to clarify that the auditor may not have any business relationship with or any financial ties to an "Affiliate of the Company," a "Member of the Company," or a "Non-Divesting Transmission Owner."<sup>28</sup>

In their Answer, the Alliance Companies assert that they will comply with the Commission's independence characteristic, consistent with the Commission's prior orders, by the date Alliance commences transmission service. Alliance Companies state that they are making progress toward their start-up, including forming a bridge company to fund and administer pre-service activities. Alliance Companies state that their task is considerably more complex and involved than other potential RTO start-ups, in that there is no tight pool or ISO to use as a base for RTO development. Alliance Companies claim that they are nonetheless moving with dispatch to ready their proposed RTO for operation.

### Discussion

The Commission remains committed to assuring the independence of RTOs from control by market participants, and has carefully weighed the substantial concerns of intervenors against the need of Alliance Companies to develop initial capital to commence operation. In this respect, the Commission's concern is that the pro-market result - a fully independent RTO - be achieved.

Alliance Companies' revised proposal presents two very different alternatives. Under the first alternative, an outside investor, not yet known or identified, will both own and control transmission facilities within Alliance. If the outside investor is not a market

---

<sup>26</sup>State Commissions' Protest at 18-20.

<sup>27</sup>State Commissions' Protest at 19-20. On May 15, 2001, National Grid USA ("National Grid"), parent of the former New England and Eastern systems and now of the Niagara Mohawk system, petitioned the Commission for a Declaratory Order in Docket No. EL01-80-000 seeking the following specific findings: (1) that National Grid will not be deemed a "market participant" under Commission regulation 35.34(b) with respect to the geographic area served by Alliance; and (2) that National Grid would therefore be eligible, either directly or through a subsidiary, to become the Managing Member of Alliance. National Grid's petition was not filed with the concurrence of the Alliance Companies.

<sup>28</sup>State Commissions' Protest at 35-37.



participant, and if the outside investors and not market participants will actually control Alliance, the Commission's concerns about independence would likely be reduced, depending upon the exact nature of the final proposal made by Alliance Companies. However, Alliance Companies have yet to identify the outside investor, a matter of critical importance to us, and we are therefore unable to rule definitively.

Under the second proposal, Alliance Companies will form the Publico corporation themselves, and seek one or more strategic investors to provide capital investment. If none of the strategic investors is a market participant, and if the strategic investors and not market participants will actually control Alliance, the Commission's concerns about independence would likely be reduced, depending upon the exact nature of the final proposal made by Alliance Companies. As with the first alternative, we believe that this approach may meet the independence requirements of Order No. 2000, under circumstances in which the investor falls outside the category of market participant. However, Alliance Companies have not identified the strategic investor(s) and we are therefore unable to rule definitively.

The Commission has no factual or legal basis to find that the "Newco" strategic investor approach proposed will produce a less independent RTO than an immediate (but, according to Alliance Companies, impossible or undesirable) IPO. In both cases, investors other than market participants would be the operators and principal owners of the RTO.

In addition, under Commission regulations 35.34(d)(1), (2), and (3), any change in control over Alliance Publico - even before it formally commences operations would be subject to prior Commission authorization. Alliance Companies have acknowledged that Alliance Publico will be a public utility holding company; any disposition of control over the holding company constitutes a disposition of the jurisdictional facilities of each public utility affiliate of the holding company, and therefore is subject to the Commission's jurisdiction under FPA section 203 and longstanding Commission precedent.<sup>29</sup> Consequently, the Commission will be in a position to fully resolve intervenor's concerns about the pre-IPO independence of Alliance at that time, when the Alliance formation plans are at a more advanced stage.

With respect to the selection of directors of Newco, we are satisfied that the use of an independent outside search firm, combined with absolute safeguards against the placement of any agent of a market participant on the board, will suffice to produce an independent board. As a general matter, the board selection process described by Alliance Companies is similar to those previously approved by the Commission.

---

<sup>29</sup>Sec. e.g., American Electric Power Company, et al., 85 FERC ¶ 61,201 (1998).

We are concerned that business decisions prior to implementation of an Alliance RTO are being made by Alliance Companies. Therefore, we direct Alliance Companies to decide which of the alternative business plans proposed they intend to implement within 45 days of the date of this order. We further direct that from the date of this order an independent board be established to make all business decisions for the RTO.<sup>30</sup> Until final RTO approval is granted, a stakeholder advisory committee should advise the independent board.

With respect to State Commissions' comments concerning the potential selection of National Grid as Managing Member, we note that the Commission is currently addressing that proposal in Docket No. EL01-80-000. We also decline to direct modification to Section 7.5 of the LLC Agreement. Order No. 2000 requires only that the auditor be independent from the RTO and its transmission owners. Additionally, there are procedures in place should evidence of a problem arise with the auditor.<sup>31</sup>

Finally, regarding Edison Companies' concern about confidentiality requirements, we note that in their answer, Alliance Companies state that they inadvertently failed to delete the requirement that customer advisory committee members execute confidentiality agreements. Alliance Companies commit to make such a change when they file the executed LLC agreement.<sup>32</sup>

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

In the Alliance III Order, the Commission found that Alliance Companies' proposed scope and configuration are consistent with Order No. 2000. This determination was based on a number of significant factors not present in the filings addressed by the Commission in the Alliance I Order or the Alliance II Order where the Commission reserved judgment on this issue. In the Alliance IV Order, the Commission denied rehearing of the determination that Alliance Companies' proposed scope and configuration are consistent

---

<sup>30</sup>GridFlorida LLC, et al., 94 FERC ¶ 61,363 at 62,325 (2001).

<sup>31</sup>Order No. 2000 at 31,067.

<sup>32</sup>See Alliance Companies' answer at 12.

with Order No. 2000. We concluded that significant change with respect to the scope and configuration of Alliance has occurred since the issuance of the Alliance I and II Orders.<sup>33</sup>

In their RTO Filing, Alliance Companies relied on prior assertions made as well as the addition of ComEd, DP&L, Illinois Power, and Ameren to support their contention that Alliance's scope and configuration meet the requirements of Order No. 2000.<sup>34</sup>

Many intervenors request that we defer ruling on scope and configuration until final resolution of the Settlement and/or Supplemental Filing, or have raised issues that are now moot as a result of our accepting the Settlement, or have raised issues which we previously disposed of in prior Alliance orders.<sup>35</sup> For example, many of the intervenors continue to argue that notwithstanding the addition of the new members Alliance's scope and configuration does not meet the requirements of Order No. 2000. Additionally, other intervenors note that scope and configuration could be satisfied by the establishment of a larger RTO covering the areas of Alliance and the Midwest ISO.<sup>36</sup> Finally, Midwest Customers argue that scope and configuration are still not adequate as members can withdraw at any time from Alliance.<sup>37</sup>

### Discussion

In the Settlement Order, the Commission reiterated its finding in the Alliance III Order that Alliances' proposed scope and configuration were consistent with Order No. 2000, but that its final compliance with Order No. 2000 would be determined in Docket No. RT01-88.<sup>38</sup>

Alliance Companies have satisfied our requirements for scope and configuration under Order No. 2000. Our determination is based on the reasons previously stated in the

---

<sup>33</sup>95 FERC at 61,627.

<sup>34</sup>RTO Filing at 26.

<sup>35</sup>See Midwest Customers' Protest at 8-9, Coalition's Protest at 13-15, Virginia Commission's Protest at 6-8, Williams' Comments at 13-14 Illinois Energy's Protest at 3-4, Illinois Commission's Comments at 7-8.

<sup>36</sup>See Williams' Comments at 13 and Illinois Commission's Comments at 8.

<sup>37</sup>Midwest Customers' Protest at 8.

<sup>38</sup>95 FERC at 61,646.

Alliance III Order, and the fact that Alliance grew both physically (with the addition of the new members as well as the departing Midwest ISO members) and contractually (with the execution of the Cooperation Agreement with the Midwest ISO).

Regarding concerns that withdrawal rights may adversely affect scope, we believe that placing restrictions on withdrawal would be contrary to the open architecture requirements of Order No. 2000. Moreover, in the Alliance IV Order we stated that such withdrawal would trigger Section 205 and possible Section 203 filings with the Commission where the appropriateness of the withdrawal could be considered.<sup>39</sup>

While we conclude that RTO Characteristic No. 2 has been satisfied, we remind Alliance Companies of their continuing commitment to explore ways to expand the Cooperation Agreement with neighboring prospective RTOs.

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

In the Alliance III Order we found that Alliance Companies satisfied this characteristic, and in the Alliance IV Order we reiterated that Alliance will have adequate authority to determine which facilities it needs to control.<sup>40</sup>

Williams state that Alliance Companies' proposal strikes an acceptable balance between RTO responsibilities and the market decisions of transmission owners, and supports this proposal.<sup>41</sup> Coalition seeks more information on the operational audit process developed by Alliance Companies, and questions why Alliance is not using an independent entity.<sup>42</sup> Illinois Commission argues that Alliance Companies' proposal preserves the rights of non-divesting transmission-owning utilities to perform the control area operator functions and does nothing to encourage the phase-out of this aspect of Alliance Companies' operational control. Illinois Commission also claims that this hinders Alliance's operating authority and permits utilities to maintain barriers to non-discriminatory transmission access. Therefore, Illinois Commission asks that the Commission clarify that once Alliance is operational, Alliance must have the authority to

---

<sup>39</sup>Id. at 61,635.

<sup>40</sup>94 FERC at 61,308; 95 FERC at 61,629.

<sup>41</sup>Williams' Comments at 14-15.

<sup>42</sup>Coalition's Comments at 17.

make analyses and pursue the consolidation of control area functions and the centralization of control area operator functions.<sup>43</sup>

### Discussion

We disagree with Coalition and Illinois Commission that more information or clarification is needed. In the Alliance III Order, we found that Alliance Companies have satisfied RTO Characteristic No. 3.<sup>44</sup> Moreover, no party filed a request for rehearing on the issue raised by Coalition. Indeed, we addressed Illinois Commission's concerns in prior Alliance Orders. In the Alliance III Order we also stated that if any party believes that it has been subject to undue discrimination, it may file a complaint with the Commission under Section 206 of the FPA.<sup>45</sup> In the Alliance IV Order we noted that under Order No. 2000, no later than two years after it begins operations Alliance must file a report with the Commission which addresses the efficacy of its operational arrangements, and any additional authority needed by Alliance in reference to facilities under its control should be addressed in that report.<sup>46</sup> Therefore, we see no reason to revisit the adequacy of Alliance Companies' proposal as it relates to this characteristic.

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

In the Alliance III Order we were generally satisfied that Alliance Companies met our requirements for maintaining short-term reliability of the grid. We approved Alliance Companies' plan for maintaining short-term reliability of the grid subject to Alliance Companies' evaluating the possibility of consolidating control areas within 18 months of commencement of operations.<sup>47</sup> In the Alliance IV Order we noted that no requests for rehearings were filed on this issue. In Docket No. RT01-88-000 Alliance Companies reiterate that they plan to require generators connected to Alliance to sign interconnection

---

<sup>43</sup>Illinois Commission's Comments at 8-10.

<sup>44</sup>94 FERC at 61,308.

<sup>45</sup>Id.

<sup>46</sup>95 FERC at 61,629.

<sup>47</sup>94 FERC at 61,308-309.

agreements which, among other things, will require generators to redispatch their units when feasible and for the appropriate compensation.<sup>48</sup>

Williams and American Forest both seek clarification of certain aspects of Alliance Companies' interconnection requirements.<sup>49</sup> Dynegy protests numerous issues surrounding the interconnection agreements.

### Discussion

In the Alliance III Order we deferred ruling on generator interconnection issues until such time as revised procedures were filed under Section 205 of the FPA.<sup>50</sup> We will continue to defer ruling on this issue until such time as the interconnection procedures are filed under Section 205. However, we expect that many of the issues raised will be moot when the interconnection procedures are filed under Section 205 at least 120 days prior to the transmission service date as Alliance Companies have recently held numerous meeting with all parties, including generators, in an attempt to resolve many of these issues.<sup>51</sup> Moreover, the Commission intends, in the near future, to evaluate the importance of standardizing generation interconnection procedures.

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

In the Alliance III Order protestors complained that the zonal facilities charge (ZFC) may provide for the recovery of revenue losses due to the elimination of pancaked rates. However, Alliance Companies' Pricing Protocol 2.1.1(c) states that: "Unless the affected Transmission Owner agrees, it [the ZFC] shall not provide for recovery of any revenue losses due to the elimination of 'pancaked' rates." We found that the basis for this sentence was unclear and, therefore, directed Alliance Companies to clarify this sentence in their Supplemental Filing.

---

<sup>48</sup> RTO Filing at 32.

<sup>49</sup> Williams' Comments at 18; American Forest's Comments at 2-3.

<sup>50</sup> 94 FERC at 61,327.

<sup>51</sup> See Supplemental Filing at 8-10.

In their RTO filing Alliance Companies proposed the same Tariff Administration and Design as was already filed, i.e., the design consisted of a region-wide tariff for the Alliance Companies. Specifically, Alliance Companies proposed a transitional rate structure that included non-pancaked zonal rates applicable to deliveries to loads within Alliance and a single regional rate applicable to deliveries to load outside Alliance. The proposed rate design is intended to protect Alliance Companies from lost revenues associated with the elimination of rate pancaking within the region.

Williams are concerned that Alliance Companies' proposal will result in an excessive rate differential between the prices of transmission service to loads located within the RTO in comparison to service to loads located outside the RTO. Therefore, Williams reserve their full support of the transitional rate design until the "Super-Regional" rate methodology, as described in the Alliance/Midwest ISO settlement, is more fully explained and approved by the Commission.<sup>52</sup>

Joint Midwest Intervenors state that Alliance Companies' filing does not include their proposed OATT, and does not include many of its provisions that are not rate-related. Therefore, they argue that multiple OATT-related issues remain outstanding.<sup>53</sup> Joint Midwest Intervenors recommend that the Commission set a final date of August 15, 2001 for Alliance Companies to address all remaining compliance issues.<sup>54</sup>

### Discussion

In the Supplemental Filing, Alliance Companies made a minor change to the pricing protocol to respond to the Alliance III Order. Specifically, Alliance Companies amended Section 2.1.1(c) of the Pricing Protocol to delete the last sentence in order to provide clarity.<sup>55</sup> This modification adequately responds to our directive and is accepted.

In response to Williams' concerns regarding rate differentials, we note that in the Alliance III order we discussed the differential between the rates for delivery to loads

---

<sup>52</sup>Williams' Comments at 19-20. We also note that EPRI urges the Commission to encourage RTOs to join and fund EPRI and allow RTOs to recoup the associated costs in their transmission rates. EPRI's Comments at 2. We find that EPRI's request is beyond the scope of this proceeding.

<sup>53</sup>Joint Midwest Intervenors' Protest at 31.

<sup>54</sup>See also State Commissions' Protest at 24-25.

<sup>55</sup>Alliance Companies' Transmittal Letter at 11.

inside Alliance and outside Alliance and, as we indicated, we will rule on Alliance Companies' proposal when it is finalized. Similarly, we agree with Joint Midwest Intervenor that many rate issues remain unresolved. In the Alliance III Order, we directed Alliance Companies to file their actual rates 120 days prior to commencement of operations. We clarify that Alliance Companies' rate filing should address all outstanding tariff issues – both rate and non-rate. Moreover, we anticipate (based on Alliance Companies proposed transmission service date) that the filing will be made in mid-August consistent with Joint Midwest Intervenor's proposal.

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

In the Alliance III Order we found that Alliance Companies had complied with our direction in the Alliance II Order that all generators connected to Alliance's system bid to provide redispatch service. We also found that intervenors' concerns that Alliance Companies' congestion management proposal lacked a detailed market plan was premature. We noted that under Order No. 2000, market mechanisms to manage transmission congestion need only be in place within one year of the commencement of service, and that Alliance Companies committed to have such a program in place. We also stated that, in the interim, Alliance Companies' congestion management plan represented an effective protocol for managing congestion, but we encouraged Alliance Companies to consider the comments of intervenors in designing its final market mechanism congestion plan.<sup>56</sup> No requests for rehearing were filed on this issue.

In their RTO filing, Alliance Companies state that Alliance will have an effective protocol for managing congestion on Day 1 of operations which the Commission already found acceptable. They further state that Alliance Companies are developing a hybrid model for long-term congestion management which combines elements of a flowgate method for managing congestion in the forward market and a locational marginal pricing method for managing congestion in real-time. Alliance Companies state that they intend to present their proposal to stakeholders and receive comments and input before developing a protocol and systems to implement the hybrid model for long-term congestion management. Alliance Companies state that their goal is to have a market-based congestion management program ready for operation prior to the second year of operations of Alliance.<sup>57</sup>

---

<sup>56</sup>94 FERC at 61,314.

<sup>57</sup>RTO Filing at 36-38.



Numerous intervenors protest the proposal. Most address Alliance Companies' long-term market congestion management proposal which must be in place within one year of operations. Disputed issues include: capping bids for congestion; allocation and crediting of congestion revenues; allocation, valuation and auctioning of flowgate rights (FGRs); identification of flowgates; the appropriateness of using the flowgate method on the Alliance system; ability to hedge against operational congestion; and allocation of FGRs for annual load growth.<sup>58</sup> Other intervenors argue that the Commission should adopt a uniform nation-wide RTO congestion management strategy and state that approval should be deferred until seams issues are resolved.<sup>59</sup>

Alliance Companies' respond that concerns over the long-term congestion management program are premature as it is still under development and need only be in place within one year of commencement of services.<sup>60</sup>

In their Supplemental Filing, Alliance Companies indicate that they are continuing to refine their long-term congestion management proposal and expect to provide more detail as part of their filing to be submitted no later than 120 days prior to the transmission service date.<sup>61</sup> Alliance Companies also state that they are working closely with stakeholders through the Market Development Advisory Group (MDAG), as well as the Midwest ISO (in the context of the Cooperation Agreement) to address congestion management issues.

Virginia Commission raises competitive concerns regarding the pricing of mandatory incremental and decremental bids from generators for Day One operations as well as reiterating its previous competitive and operational concerns for long-term congestion management.<sup>62</sup> State Commissions argue that insufficient progress on congestion management has been made and questions whether Alliance will be prepared to

---

<sup>58</sup>See, e.g., Pennsylvania Consumer's Protest at 11-13, Williams' Comments at 20-24, NCEMC's Protest at 11-12, Virginia Commission's Protest at 12-14, Coalition's Protest at 19-24, and Dynegy's Comments at 5-7.

<sup>59</sup>Williams' Comments at 20-24.

<sup>60</sup>Alliance Companies' Answer at 9.

<sup>61</sup>Supplemental Filing at 13-14.

<sup>62</sup>Virginia Commission's Protest at 15.

perform required RTO functions and duties.<sup>63</sup> State Commissions further argue that Alliance Companies' proposal for three (or more) Security Coordinators could diminish the effectiveness of congestion management and/or lead to differences in calculating available transmission capacity (ATC) or instituting transmission line relief procedures (TLRs) which could result in undue market advantages for the utility-Security Coordinators. State Commissions also allege that inconsistent congestion management approaches among PJM, the Midwest ISO, and Alliance will frustrate achieving a "seamless" regional market and, therefore, assert that there should be a single regional approach to congestion management in the Midwest. Finally, State Commissions urge the Commission to order Alliance Companies to actively work with the Midwest ISO to coordinate operational functions to remove any unnecessary impediments to a broad and efficient regional market for the short and long-term.

### Discussion

We continue to find that Alliance Companies' congestion management plan is an effective protocol for managing congestion and is consistent with the requirements of Order No. 2000 for Day One operations. While Alliance Companies have provided more detail regarding their long-term congestion management proposal, the plan is still a work in progress and we simply do not have enough information at this time to rule on this function. Alliance Companies' congestion management plan will be addressed when the completed proposal is filed under Section 205 of the FPA. However, we encourage Alliance Companies to resolve issues raised by protestors in their customer advisory process and as discussed in Section N below, should substantial issues remain, we will institute procedures to resolve such differences.

Virginia Commission's competitive concerns regarding the pricing of mandatory incremental and decremental bids from generators for Day One operations is unsupported as Alliance Companies' proposal calls for compensation for congestion management services to be at the applicable bid prices, which are capped at the party's "authorized charges, if subject to regulatory approval."<sup>64</sup> Therefore, there are no competitive concerns because bids from jurisdictional entities must be based on Commission- approved charges.

---

<sup>63</sup>State Commissions' Protest at 37.

<sup>64</sup>Alliance OATT Attachment K, Section 7. For instance, bids could only be based on market rates if the entity bidding already had market-based rate authority from the Commission. Therefore any competitive concerns should have been raised in the proceeding seeking such market-based rate authority.

G. RTO Function No. 3: Parallel Path Flow

In the Alliance III Order we found that Alliance Companies' proposal to internalize parallel path flows was consistent with Order No. 2000. In this regard, we noted that Alliance will include regional parallel path flows in its ATC calculation, and Alliance's scope is expanding and such expansion will enable increased internalization of parallel path flows in the region. We also noted that Alliance commits to develop and implement procedures to address parallel path flows with other regions. Finally, we noted that Alliance Companies have included a pro forma Cooperation Agreement which would require signatories to have procedures in place to address parallel path flow issues no later than December 15, 2004.<sup>65</sup> No requests for rehearing were filed on this issue.

In their RTO Filing Alliance Companies state that Alliance will internalize parallel path flows among the member systems, and that the addition of the four new members will result in internalization of an even higher level of parallel path flows.<sup>66</sup>

Williams ask the Commission to require Alliance: (1) to have the necessary protocols in place to deal with inter-regional parallel path flows prior to the commencement of its operation rather than within three years; and (2) to develop an ATC coordination calculation agreement with Midwest ISO and PJM within six months.<sup>67</sup>

Alliance Companies do not directly address any further parallel path flow issues in their Supplemental Filing. However, they note that they have a customer advisory process currently in place that is intended to facilitate input, broaden communication, and whenever possible, resolve concerns in a timely manner prior to the formation of Alliance. They note that customers are able to meet with personnel of Alliance Companies in regular open meetings to discuss a number of subjects related to formation of Alliance.<sup>68</sup>

ITC argues that the Supplemental Filing complies with the Alliance III Order except with regard to the issue of flow compensation, and notes that Alliance Companies merely state that they will begin discussions about proposed methods for fairly compensating all transmission owners at a future advisory meeting. ITC maintains that the development and

---

<sup>65</sup>94 FERC at 61,314.

<sup>66</sup>RTO Filing at 38-39.

<sup>67</sup>Williams' Comments at 25-26.

<sup>68</sup>Supplemental Filing at 7.

implementation of a methodology for fairly compensating all transmission owners for the use of their facilities is a critical issue, and asks the Commission to direct Alliance Companies to develop and file with the Commission a methodology based on the framework proposed by the ITC in its protest by no later than 60 days from the commencement of operations by Alliance, i.e., October 14, 2001.<sup>69</sup> Coalition claims that Alliance Companies have not addressed the Commission's directive that required Alliance Companies to provide details of how Alliance will compensate small transmission owners for the use of their facilities.<sup>70</sup>

### Discussion

At the outset, we note that the arguments ITC now raises are inconsistent with the fact that Detroit Edison Company, ITC's affiliate, jointly filed the revenue distribution protocol it now opposes.<sup>71</sup> As such, we believe it is inappropriate at this time to address ITC's concerns.<sup>72</sup>

In contrast, we agree with Coalition that Alliance Companies have not yet addressed their issues and direct Alliance Companies to meet with interested parties to develop a way of compensating small transmission owners for the use of their system. In this regard, we note that Alliance Companies state in their Supplemental Filing that they have a customer advisory process that is designed to deal with these types of issues. Furthermore, in the Settlement Order, we referred to Article IV of the Cooperation Agreement and stated that it dealt with parallel flow issues, and provided that each RTO will adopt scheduling and pricing policies meant to internalize most, if not all, parallel path flows within its own region. We stated that this article provided that the parties to this agreement agreed to have procedures in place to deal with parallel path flows within each system by the start-up date of each RTO, and that we would review the exact details of these procedures in subsequent

---

<sup>69</sup>ITC's Protest at 11-12, 21-22.

<sup>70</sup>Coalition's Protest at 19-20.

<sup>71</sup>ITC, an affiliate of Detroit Edison Company, has assumed the rights and obligations of Detroit Edison Company under the Alliance Agreement.

<sup>72</sup>ITC's reliance on the Commission's finding in the Alliance III Order is misplaced. The language ITC relies upon did not address parallel flows. The Commission was addressing Wolverine's argument that if it joins the RTO it may not operate its own pricing zone and may only receive revenue from the RTO if Consumers and Wolverine can agree to a revenue distribution protocol.

filings before the Commission.<sup>73</sup> Accordingly, we will defer ruling on this function until Alliance Companies make the appropriate filing to address, among other things, intervenor concerns. We expect that Alliance Companies will make such filings in time to have approved procedures in place by Alliance's start-up date.<sup>74</sup>

#### H. RTO Function No. 4: Ancillary Services

In the Alliance III Order we stated that Alliance Companies' proposal to serve as the provider of last resort for all ancillary services and to provide transmission customers with access to a real-time balancing market is consistent with the requirements of Order No. 2000. However, we found that Alliance Companies' proposal lacked sufficient details. We noted that intervenors had raised a number of concerns regarding the operation of the proposed energy imbalance market, and we directed Alliance Companies to address these concerns when they make their compliance filing to the order. We stated, e.g., that Alliance Companies should address concerns regarding the adequacy of competition in the market, and also explain the relationship of the market monitor in connection with ancillary services markets, particularly, the energy imbalance market. We also stated that Alliance Companies must provide detailed support explaining the operation of the real-time balancing market including support for the proposed settlement window of between 5 and 15 minutes.<sup>75</sup>

On rehearing of the Alliance III Order intervenors requested that the Commission address the issues raised in their protests. In response, the Commission stated that we had addressed intervenors' arguments since we directed Alliance Companies to address intervenors' concerns in their May 15 compliance filing. We reiterated that requiring

---

<sup>73</sup>95 FERC at 61,650.

<sup>74</sup>In their answer, Alliance Companies note that they did discuss participation in Alliance by small transmission owners and fair compensation for the use of their facilities at a customer advisory meeting held on June 21, 2001. Alliance Companies state that if these discussions with small transmission owners produce an agreed resolution of these issues, Alliance Companies will submit such resolution to the Commission as soon as possible. Alliance Companies' answer at 7.

<sup>75</sup>94 FERC at 61,315-316.

Alliance Companies to respond to intervenors' concerns for the purpose of developing a more complete record is preferable to ruling now with incomplete information.<sup>76</sup>

In their RTO filing Alliance Companies state that Alliance will be the provider of last resort for ancillary services under Alliance. They note that Alliance Companies' September 15, 2000 compliance filing included a proposal for real-time energy balancing market that Alliance will implement, either directly or with an independent market provider, by its transmission service date.<sup>77</sup>

In their Supplemental Filing Alliance Companies have provided some further details regarding the Energy Imbalance Service (Attachment G). However, Alliance Companies state that further development of the pricing aspects of the proposal and some implementation issues are still ongoing. Alliance Companies state that they are working with customers in the MDAG to evaluate these outstanding issues and commit to submit a complete energy imbalance proposal no later than 120 days before the transmission service date.

Intervenors to the Supplemental Filing<sup>78</sup> raise numerous concerns regarding the ancillary services proposal of Alliance Companies. Intervenors assert that despite the increased detail, Alliance Companies proposed energy imbalance plan is still incomplete, as Alliance Companies acknowledge in their transmittal letter. Intervenors state that the Commission should require that Alliance Companies file information and evidence to support their proposal to permit Alliance to charge market-based prices for Day 1 and Day 2 ancillary services and congestion management services, including all data necessary to assess whether customers in the East End of the Alliance region will be adequately protected if market-based pricing of such services is permitted. Intervenors claim that Alliance Companies continue to propose a 5 to 15 minute imbalance interval without providing support for the time interval, as the Commission required. Intervenors state that Alliance Companies should clarify whether the proposed imbalance market will perform any of the same functions currently provided through regulation and frequency response service, and, if so, how duplicative charges for customers participating in the imbalance market and taking regulation and frequency response service from Alliance will be

---

<sup>76</sup>95 FERC at 61,633.

<sup>77</sup>RTO Filing at 39-41.

<sup>78</sup>Steel Dynamics' Protest, NCEMC's Protest, Virginia Commission's Protest, Chaparral's Protest, Joint Midwest Intervenors' Protest, Coalition's Protest, Williams' Protest, Ormet's Protest, and State Commissions' Protest.

prevented. Intervenor also contend that Alliance has not explained the corrective measures it plans to take against entities that schedule inadequately. Intervenor request that Alliance submit its proposal anywhere from immediately, to within 30 days from the issuance of a Commission Order, or by August 15, 2001, whichever is sooner.

Ormet states that it appears from a literal reading of Attachment G that no imbalances will attributed to bundled native load, and no charges will be levied on the control area utility or its bundled retail customers in connection with imbalances associated with bundled native load.<sup>79</sup> Ormet states that it is unclear whether Alliance Companies' proposal to allocate the costs associated with inadvertent energy equitably to all control area scheduling entities means only those parties scheduling power across the control area boundary (either in or out) or whether costs will also be allocated to entities serving load in the control area, including bundled native loads served by control area generation. Ormet insists that if no costs associated with inadvertent energy are to be allocated to loads that are not scheduled (*i.e.*, the bundled native load of the control area), this would be improper, because in a typical control area bundled load predominates and most inadvertent energy arises in connection with service to bundled native load.<sup>80</sup>

State Commissions contend that many of the Alliance transmission owners own substantial generation facilities in their transmission service territories and some are the dominant generators in their service territories, and, therefore, they would gain from any supra-competitive auction prices they obtained for their generation under the energy imbalance service auction rules they set up for Alliance.<sup>81</sup> State Commissions are also concerned that the software protocols for the RTO's Day One Energy Imbalance Service are being written under Alliance Companies' supervision without meaningful stakeholder input, and assert that by the time Alliance Companies make their actual rate filing it may be too late to make any changes to these protocols.

### Discussion

As noted above, Alliance Companies recognize that their ancillary services proposal is a work in progress and commit to finalize it when they make their tariff filing 120 days prior to the Alliance transmission service date. We are encouraged by the progress that Alliance Companies have made thus far and direct Alliance Companies to step up their

---

<sup>79</sup>Ormet's Protest at 5.

<sup>80</sup>Ormet's Protest at 5-6.

<sup>81</sup>State Commissions' Protest at 31.

efforts to insure that all stakeholders have adequate input in the development of the final proposal. Although State Commissions request that we direct Alliance Companies to file their proposal before the 120 days period mentioned above, we will not do so. Such a requirement may hinder the MDAG process and be counterproductive. Instead, we will highlight the matters that the filing must address. In particular, Alliance Companies' final proposal must: (1) assure that entities that submit market-based bids have the authority to do so; (2) support its 5 to 15 minute imbalance settlement period; (3) address whether the bundled retail load of the Alliance Companies or their affiliates is subject to the energy imbalance requirements described in Attachment G to the Supplemental Filing; (4) clarify how the market monitor will monitor the ancillary services market; and (5) continue to address intervenors' other issues as previously directed. We reiterate that it is imperative that Alliance Companies work within the MDAG immediately so that it can present a complete ancillary services proposal 120 days prior to its projected transmission service date.

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

In the Alliance III Order we found that Alliance Companies' proposal complied with RTO Function No. 5. However, we directed Alliance Companies to file Alliance's system of tests and checks, which will ensure customers of coordinated and unbiased data for calculating ATC and TTC, when Alliance Companies make their compliance filing.<sup>82</sup> No requests for rehearing were filed on this issue.

In their RTO Filing Alliance Companies state that Alliance will operate a single OASIS site and will independently calculate TTC and ATC. They state further that Alliance Companies have reached an agreement in principle with the Midwest ISO and the Southwest Power Pool (SPP) for implementation of consistent TTC/ATC values across interfaces.<sup>83</sup> Williams support Alliance Companies' proposal with the conditions the Commission imposed in the Alliance III Order to include a system of tests and checks.<sup>84</sup>

In their Supplemental Filing Alliance Companies revised Section 3.1.1 of their Operating Protocol to clarify that if Alliance relies on data supplied by others to calculate ATC, it will ensure that the data is coordinated and unbiased.

---

<sup>82</sup>94 FERC at 61,316.

<sup>83</sup>RTO Filing at 41-42.

<sup>84</sup>Williams' Comments at 28.



Joint Midwest Intervenors and Coalition argue that Alliance Companies' modification is not a proposed system of tests and checks, and therefore does not comply with Commission's directive in the Alliance III Order to provide a description of their proposed method for verifying ATC/TTC-related data.<sup>85</sup> Coalition adds that Alliance Companies must file the system of checks and balances they propose to use to verify the accuracy of the data.<sup>86</sup> State Commissions claim that the adequacy of Alliance Companies' modification is contingent on the proper implementation of the Cooperation Agreement.<sup>87</sup> In their answer, Alliance Companies argue that as revised, Section 3.1.1 meets the requirements of the Alliance III Order because it ensures that any data supplied by others is coordinated and unbiased.<sup>88</sup>

### Discussion

We agree with Joint Midwest Intervenors and Coalition that Alliance Companies' modification in the Supplemental Filing does not comply with the Alliance III Order since it is not the proposed system of tests and checks we directed. Therefore, we again direct Alliance Companies to file the system of tests and checks to ensure the reasonableness of data they propose to use consistent with the requirements of Order No. 2000.<sup>89</sup>

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

In the Alliance III Order we concluded that the Alliance Companies market monitoring plan lacks sufficient details on the program and scope of the market monitor's authority. We encouraged Alliance Companies to meet with interested parties to craft a plan which satisfies the requirements of Order No. 2000. We directed Alliance Companies to resubmit their market monitoring plan.

In their RTO Filing Alliance Companies refer to their September 15 compliance filing which included a market monitoring program for Alliance that provides for the objective monitoring of markets operated, and services provided, by Alliance (i.e., transmission and ancillary services, and the energy imbalance market). Alliance Companies

---

<sup>85</sup>Joint Midwest Intervenors' Protest at 28-29; Coalition's Protest at 18.

<sup>86</sup>Coalition's Protest at 18.

<sup>87</sup>State Commissions' Protest at 33.

<sup>88</sup>Alliance Companies' answer at 10.

<sup>89</sup>Order No. 2000 at 31,145.

states that the market monitoring program will be implemented by an independent expert that will report its findings to the Commission.<sup>90</sup> Williams assert that Alliance Companies' proposal lacks sufficient detail, and oppose the requirements that an RTO undertake a market monitoring role, arguing instead that existing federal antitrust laws and Commission oversight are sufficient.<sup>91</sup> Williams also contend that the proposal lacks detail regarding the duties and authority of the market monitor. Coalition asks that the Commission defer ruling until Alliance Companies make their May 15 filing in compliance with the Alliance III Order's directives on this issue.<sup>92</sup> Edison Companies states that it is premature to comment on Alliance Companies' market monitoring program.<sup>93</sup>

In their Supplemental Filing Alliance Companies state that as part of the settlement with Midwest ISO, they are actively engaged in procuring the services of an independent market monitor (along with Midwest ISO) that would monitor the markets across the combined regions. Alliance Companies expect the independent market monitor to be selected this summer.<sup>94</sup> Finally, Alliance Companies indicate that the Settlement also provides for a market monitoring committee which will interface with the independent market monitor to monitor the markets and report to the Commission in periodic reports.

Intervenors argue that the proposal continues to lack detail and that Alliance Companies have failed to comply with the directives in the Alliance III Order.<sup>95</sup> They note that the lack of detail includes, among other things, the type of data to be collected and the role of the market monitor to identify problems and/or propose solutions. Coalition requests that the Commission direct Alliance Companies to provide, within 20 days, the detailed market monitoring plan required in the Alliance III Order.<sup>96</sup> Williams are concerned about the independence of the market monitor because a provision in the Cooperation Agreement with Midwest ISO calls for the market monitoring committee

---

<sup>90</sup>RTO Filing at 42-43.

<sup>91</sup>Williams' Comments at 29.

<sup>92</sup>Coalition's Protest at 27-28.

<sup>93</sup>Edison Companies' Comments at 5-6.

<sup>94</sup>Alliance Companies' Transmittal Letter at 15.

<sup>95</sup>See, e.g., Chaparral's Protest at 4-5, Joint Midwest Intervenors' Protest at 30, Coalition's Protest at 24 and Williams' Comments at 6 .

<sup>96</sup>Coalition's Protest at 25.

(consisting of a representative for Midwest ISO and Alliance) to determine in concert with the market monitor the appropriate data collection and screens.<sup>97</sup> Williams request assurance that this does not preclude the market monitor from independently identifying additional data requirements or developing other market screens as it deems necessary. Finally, State Commissions complain about the lack of a true stakeholder process which they claim has slowed development of a market monitoring plan.<sup>98</sup> Specifically, State Commissions argue that the selection of the joint market monitor creates at least the appearance of a lack of independence as the independent market monitor chosen acted as a consultant to the Alliance Companies for the initial filing.<sup>99</sup>

### Discussion

We find that most of the intervenors' concerns are premature at this time, since Alliance Companies have not refiled their market monitoring proposal with the necessary detail, as we directed in the Alliance III Order. We realize that Alliance Companies' market monitoring proposal must take into consideration the recent Settlement with Midwest ISO. Therefore, we will not grant Coalition's request that the Commission direct Alliance Companies to file this proposal in 20 days. Rather, we direct Alliance Companies to refile their market monitoring proposal when they make their compliance filing at least 120 days prior to the transmission service date. In this filing, we also direct Alliance Companies to address the Williams' concerns regarding the independence of the market monitor from the market monitoring committee. Alliance Companies should also address State Commissions' concerns regarding the selection of the market monitor. Finally, Alliance Companies should require that the market monitor submit its reports and analyses to the Commission without review or changes by Alliance.<sup>100</sup>

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

---

<sup>97</sup>Williams' Comments at 6.

<sup>98</sup>State Commissions' Protest at 24.

<sup>99</sup>In their answer, Alliance Companies report that they, along with Southwest Power Pool and Midwest ISO chose Potomac Economics as the independent market monitor for the three regions. Alliance Companies' answer at 9.

<sup>100</sup>California Independent System Operator Corporation, 86 FERC ¶ 61,059 (1999).

In the Alliance III Order we found that Alliance Companies' Planning Protocol did not state how or by whom the members of the Planning Advisory Committee (PAC), the Reliability Planning Committee (RPC), and the Operational Planning Committee (OPC) will be appointed, what their terms or constituencies will be, nor did the Planning Protocol set forth the grounds for removing them, if any. We found that this information was necessary to establish the vitality and openness of the planning process. We directed Alliance Companies to revise the Planning Protocol to include this information in their compliance filing. No requests for rehearing were filed on this issue.

In their RTO filing Alliance Companies state that Alliance will be responsible for planning the transmission system, and that it will adopt a planning process that will be open and transparent. They state that expansion of the transmission system will be done in the most efficient manner without regard to ownership of transmission, distribution, or generation facilities.<sup>101</sup> Williams assert that RTOs should be given federal eminent domain authority in order to expand facilities. In addition, they argue that there should be a process in place to foster merchant transmission investor participation, and stakeholder input should not be limited to membership on the PAC, as the Commission directed in the Alliance III Order, but should extend to the RPC and OPC.<sup>102</sup>

In the Supplemental Filing Alliance Companies revised the Planning Protocol to delete references to the OPC and to change the RPC to the Reliability Planning Group (RPG). Alliance Companies also expanded on the criteria for how or by whom the members of the remaining committees, PAC and RPG, will be determined and what their terms or constituencies will be.

According to Alliance Companies, the PAC is modeled after open meeting structures and is open to all stakeholders, including transmission owners, load serving entities, other market participants, and state and federal regulatory authorities. They state that meetings will be open to the public and no confidentiality agreement will be required. Alliance Companies have also revised the protocol to clarify that customer groups may determine their own rules with respect to participation in the PAC and that no membership fees will be required. Finally, Alliance Companies state that the Commission's Standards of Conduct will apply to participants on the PAC. Regarding the RPG, Alliance Companies state that it will be open to transmission owners of Alliance, load serving entities and local distribution utilities (as well as other interested parties as long as a reasonable interest or

---

<sup>101</sup>RTO Filing at 43-44.

<sup>102</sup>Williams' Comments at 31, 33.

case-specific involvement is demonstrated). They add that Standards of Conduct as well as non-disclosure agreements will apply, and there will be no membership fees.<sup>103</sup>

Joint Midwest Intervenors argue that the Planning Protocol is deficient because it fails to mention the joint planning responsibilities called for under the Cooperation Agreement and the Settlement between Alliance Companies and the Midwest ISO.<sup>104</sup> Joint Midwest Intervenors also seek clarification regarding the provision under the RPG allowing for participation of other interested parties that have a "reasonable direct interest" in the projects under consideration. Wabash Valley and Ormet are concerned that revisions to the Planning Protocol will jeopardize the independence required by Alliance for planning purposes.<sup>105</sup> Ormet argues that due to membership restrictions for the RPG, primarily only transmission and distribution owners and RTO staff will be able to have an impact on many of the transmission planning activities assigned to the RPG. Additionally, Ormet contends that as structured, transmission owners will retain much of the authority in the planning process. Therefore, Ormet requests that the Commission direct Alliance Companies to limit the role of transmission owners and expand the role of customers and regulators in the planning process.

### Discussion

Alliance Companies have modified Section 2.2 of their Planning Protocol to allow customers to determine their own rules with respect to participation in the PAC. We find that this change complies with our directive in the Alliance III Order. However, Alliance Companies have failed to support eliminating the OPC and revisions made to the RPC. We find that these revisions are outside the scope of what we directed in the Alliance III Order and are thus rejected. Therefore, we direct Alliance Companies to refile the Planning Protocol without those changes or with the necessary support detailing the reasons for eliminating the OPC and how the RPG will ensure adequate representation for all stakeholders. Moreover, we are troubled by the requirement that other interested parties must demonstrate "a reasonable direct interest in projects" that are under consideration by the RPG. We believe that all interested grid users should have an opportunity to participate in reliability planning under the RPG.

---

<sup>103</sup>While not assessing fees for the PAC and RPC, Alliance may seek funds from participants to defray costs associated with meetings and reports.

<sup>104</sup>Joint Midwest Intervenors' Protest at 32-33.

<sup>105</sup>Wabash Valley's Protest at 5-6 and Ormet's Protest at 6-11.

We find that Williams' request that RTOs be given federal eminent domain authority in order to expand facilities is outside the requirements of Order No. 2000 and indeed outside of our authority. Additionally, with respect to merchant transmission investor participation in the planning process, we direct the parties to continue to use the stakeholder process and, as stated below in Section N, we expect parties to resolve their differences in a timely manner. In response to Joint Midwest Intervenors, we do not agree that the Planning Protocol is deficient because it does not mention the joint planning responsibilities called for under the Cooperation Agreement. The Planning Protocol is not a product of the Settlement and involves Alliance individually. To the extent that joint planning with the Midwest ISO affects the Planning Protocol, we expect that Alliance Companies will amend the Planning Protocol accordingly under Section 205.

L. RTO Function No. 8: Interregional Coordination

In the Alliance III Order the Commission noted that although Alliance Companies had filed a pro forma Inter-RTO Agreement that was developed to provide a basis for interregional coordination, this agreement was not filed as a final executed agreement. Therefore, the Commission stated that while we are not acting on the agreement at this time, we reiterated the importance of the Midwestern entities reaching an agreement on seams issues. We added that the development of a properly functioning regional energy market required an arrangement that provided a seamless market over a large geographic area. Accordingly, the Commission noted that in Illinois Power Company, Docket No. ER01-123-000, we had directed the Chief Administrative Law Judge to facilitate discussions among the Midwestern entities. We also noted that neighboring utilities had urged that the Commission endorse the concept of inter-regional cooperation and requested that the Commission direct that they negotiate further instead of ruling on this initial draft agreement. Therefore, we directed Alliance Companies to continue discussions with other entities within the region to further develop resolutions to seams issues, and stated that we would not act on this agreement at this time.<sup>106</sup>

In their RTO filing Alliance Companies state that they have been actively engaged in discussions with other existing and planned regional transmission entities to coordinate activities and address seams issues between Alliance and its neighbors. They further state that Alliance Companies, the SPP, and the Midwest ISO have reached agreement on issues critical to inter-regional coordination, such as ATC calculation and Day 1 congestion management, and that these three RTOs are also developing compatible long-term congestion management solutions.

---

<sup>106</sup>94 FERC at 61,319.

Williams assert that the Commission should defer ruling on this issue until an agreement is approved between Alliance and Midwest ISO which provides for seamless Midwest trading.<sup>107</sup> Edison Companies assert that it is premature to comment on inter-RTO issues.<sup>108</sup> Dynegy states that the lack of consistent rules from one transmission owner to the next and from one ISO to the next is one of the largest impediments to the creation of large, regional markets, and asks that the Commission hold a technical conference on this function.<sup>109</sup> Ontario Power raises concerns about the slow progress in developing solutions to resolving the significant seams problems that restrict the ability of Midwest participants to transact energy in the most efficient and reliable manner.<sup>110</sup> EPSA asks the Commission to direct Midwest ISO and Alliance Companies to commit to developing a common market design that encompasses a single set of protocols for transmission planning, ATC and TTC calculation, security coordination, congestion management, real-time balancing markets, and generation interconnection procedures.<sup>111</sup>

### Discussion

Alliance Companies did not further address inter-regional coordination in their Supplemental filing. However, we note that Williams filed comments to the Supplemental filing that address, among other things, inter-regional coordination. Williams assert that even though the Commission accepted the Inter-Regional Coordination Agreement between Alliance and the Midwest ISO, the details as to how they will coordinate ATC calculations, TLR procedures, imbalance markets, congestion management, and other seams issues have yet to be finalized. Although Williams state that they are optimistic that the upcoming Commission Technical Conference to discuss implementation of this function will be useful, Williams request that the Commission defer ruling on Alliance's inter-regional coordination function proposal in the interim.<sup>112</sup>

We note that in the Settlement accepted by the Commission, the parties filed an executed Cooperation Agreement between Alliance and Midwest ISO which provides the

---

<sup>107</sup>Williams' Comments at 35.

<sup>108</sup>Edison Companies' Comments at 5-6.

<sup>109</sup>Dynegy's Comments at 14-15.

<sup>110</sup>Ontario Power's Comments at 6.

<sup>111</sup>EPSA's Comments at 4.

<sup>112</sup>Williams' Comments at 6-7.

basis for the development of a seamless market throughout Alliance and Midwest ISO (See Attachment A to the Settlement). In the order addressing the Settlement, the Commission noted that both the Settlement and Cooperation Agreement merely provide steps on a path to arrive at a seamless Midwest market, and that various mechanisms will be developed and filed for review by the Commission and interested parties.<sup>113</sup> Therefore, we will defer ruling on this issue until final mechanisms have been agreed upon.

#### M. Open Architecture

In their RTO filing Alliance Companies state that Alliance is based upon an open architecture structure that permits Alliance Companies and other transmission owners to adjust to changes in the electric industry's landscape by deciding whether and when to divest their transmission assets. Alliance Companies also state that open architecture is also contained in the proposed protocols and pro forma agreements for Alliance such that Alliance will have the flexibility to adopt practices and procedures for improving efficiency consistent with the RTO minimum characteristics and requirements. They state that the pro forma agreements and protocols, and the transition period rate structure, are also designed to facilitate the addition of new members, including members not subject to the Commission's plenary jurisdiction, as evidenced by the recent additions of DP&L, ComEd, Illinois Power, and Ameren. Therefore, Alliance Companies state that Alliance satisfies the Order No. 2000 requirement for open architecture.<sup>114</sup>

#### Discussion

We will continue to defer ruling on open architecture until after Alliance Companies' protocols and agreements are finalized.

#### N. Other Issues

##### Customer Advisory Process

In the Alliance III Order, the Commission stated that

The processes that stakeholders can use to communicate and consult with an RTO should be developed in consultation with stakeholders. If RTOs are to be responsive to the needs of the market, there must be a meaningful and efficient process for

---

<sup>113</sup>95 FERC at 61,650.

<sup>114</sup>RTO Filing at 47.



communication and consultation that serves not only the needs of the RTO, but also the needs of stakeholders. We believe that requiring Alliance to unilaterally propose these processes and having the Commission direct changes in processes based on the comments of stakeholders is not the best way to develop workable processes for stakeholder communication and consultation. We believe that a better approach is for the Alliance Companies to develop an advisory process in consultation with stakeholders, and to describe that advisory process and identify the participants. Only if they cannot will the Commission step in.<sup>115</sup>

Alliance Companies state that they have adopted a customer advisory process that will remain through the implementation of the RTO, and upon its formation, be replaced by the advisory process in Section 6.6(a) of the pro forma LLC Agreement. They state that the customer advisory process currently in place is intended to facilitate input, broaden communication and, wherever possible resolve concerns in a timely manner prior to the formation of Alliance. They note that these meetings are noticed on Alliance's website and documents prepared for the meetings, or prepared as a result of the meetings, are posted on the website as well.

In Docket No. RT01-88-000, several parties filed protests regarding Alliance Companies' stakeholder involvement processes.<sup>116</sup> Since that time Alliance has had many meetings with stakeholders. While it appears that many of the concerns that were raised in the RTO Filing have been met, several parties still contend that significant problems still exist. In their protests of Alliance Companies' supplemental compliance filing Edison Companies, Coalition, Joint Midwest Intervenors, Ormet, Reliant Energy, and State Commissions maintain that Alliance Companies have again proposed a defective stakeholder process.<sup>117</sup> Joint Midwest Intervenors, Reliant Energy, and State Commissions request that the Commission remedy the Alliance Companies' refusal to act in consultation with stakeholders to establish and implement an effective process for stakeholder input.<sup>118</sup>

---

<sup>115</sup>94 FERC at 61,304.

<sup>116</sup>See, e.g., Illinois Commission's Comments at 12, EPSA's Comments at 6, Dynegy's Comments at 5, Duke's Comments at 5, and Williams' Comments at 12.

<sup>117</sup>Edison Companies' Comments at 2-6, Coalition's Protest at 7-11, Ormet's Protest at 6-11, Reliant Energy's Comments at 3-9

<sup>118</sup>Joint Midwest Intervenors' Protest at 21-24, Reliant Energy's Comments at 8-9, State Commissions' Protest at 13-16.

In particular, State Commissions point out that: (1) the stakeholder process was not the product of collaboration; (2) there was no opportunity for meaningful stakeholder input and involvement; and (3) that a formal stakeholder process must be in place before the RTO becomes operational.

Although we note that Alliance Companies have made significant progress as evidenced by the information on its website, we still have serious concerns over the effectiveness of the stakeholder processes. Stakeholders should have input into aspects of RTO formation necessary to ensure that the RTO develops practices that produce a seamless, well-functioning marketplace. While we do not wish to micro manage the stakeholder process, Alliance must have a useful stakeholder process. Since the stakeholder processes are the key to resolving many of the issues which are still facing Alliance Companies, Alliance Companies must resolve this issue immediately. We agree with intervenors that there are many significant issues outstanding which need to be resolved in a timely manner. While resolution of some of these issues is not required for Day One operations, they do involve significant market-related matters that should not be decided without input from all affected stakeholders.

Therefore, we reiterate that if the parties cannot develop an acceptable stakeholder process, the Commission will step in. To aid the parties in this endeavor, we are making available the Commission's Office of Dispute Resolution.<sup>119</sup> We direct Alliance Companies and the parties to resolve the concerns raised by commentors/protestors, and to incorporate these changes in Alliance Companies' compliance filing to be made at least 120 days prior to the commencement of service date.

#### O. Section 203

As part of the RTO Filing, Alliance Companies include amendments to admit DP&L, ComEd, Commonwealth Edison Company of Indiana, Inc., Illinois Power and Ameren Union Electric Company and Ameren Central Illinois Power Company as parties to the Alliance Agreement and Section 203<sup>120</sup> requests, on behalf of these members, for authorization to transfer ownership and/or functional control of transmission facilities to Alliance. On January 30, 2001, the Commission's Staff sought further information concerning these proposed dispositions of facilities, to which Alliance Companies

---

<sup>119</sup>The Director of the Commission's Dispute Resolution Service is Richard L. Miles, who can be contacted at (202) 208-0702 or 1(877) FERC-ADR (1 (877) 337-2237).

<sup>120</sup>16 U.S.C. § 824b (2000).

responded on March 1, 2001. Additionally, as part of Alliance Companies' Supplemental Filing, NIPSCO sought authorization under Section 203 of the FPA to transfer control of its transmission facilities to Alliance.

In the Alliance I Order, the Commission conditionally authorized Alliance Companies to transfer control over their jurisdictional transmission facilities to Alliance. The Commission is encouraged by the continued expansion and extension of Alliance, and finds these proposals, subject to the conditions below, consistent with the public interest. Therefore, the Commission will likewise conditionally authorize the new applicants for membership in Alliance to effect dispositions of their transmission facilities to Alliance.

In order to effect that authorization, certain of the Alliance Companies must supplement their March 1, 2001 applications so as to comply with our Revised Filing Requirements Under Part 33 of the Commission's Regulations.<sup>121</sup>

Each public utility that proposed to join Alliance in the January 16 and May 15 filings must provide the Commission with a final list of all of its transmission and other jurisdictional facilities, control over which it proposes to transfer to Alliance, together with information about its customers, and the contracts, tariffs, and service agreements being transferred, and must do so no later than 60 days prior to the transmission service date, to permit customers and the Commission to ensure there is no harm to rates.

The Commission requires that parties to transactions subject to Section 203 jurisdiction commit to comply with the Commission's restrictions on intra-system transactions whenever a registered public utility holding company system will be created or survive as a result of any transaction.<sup>122</sup> Alliance Companies should therefore either: (1) commit that, if the formation of Alliance involves the creation of a registered public utility holding company system, then all of its public utility members shall comply with the requirements of this Commission concerning intra-system transactions; or (2) seek a

---

<sup>121</sup>See Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, III FERC Stats. & Regs. ¶ 31,111 (2000); reh'g denied, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

<sup>122</sup>See 18 C.F.R. § 2.26(e) (2000).

hearing on the issue.<sup>123</sup> Alliance Companies must advise us of their compliance with this requirement no later than 60 days prior to the transmission service date.

The Commission orders:

(A) Alliance Companies' filings are hereby accepted to the extent discussed in the body of this order, and Alliance Companies are directed to submit further filings as discussed in the body of this order.

(B) The individual Order No. 2000 compliance filings of NIPSCO, DP&L, and Illinois Power in Docket Nos. RT01-26-000, RT01-37-000, and RT01-84-000 are hereby moot, as discussed in the body of this order, and those dockets are terminated.

(C) We hereby direct Alliance Companies to file the proposed business plan they intend to implement within 45 days of the date of this order.

(D) We hereby direct that Alliance Companies establish an independent board to make all the business decisions for the RTO, and until final RTO approval is granted, a stakeholder advisory committee should advise the independent board.

By the Commission. Commissioner Massey concurred with a separate statement attached.

( S E A L )

David P. Boergers,  
Secretary.

---

<sup>123</sup>Order No. 642 at 31,914 ("We conclude that, as proposed in the NOPR, for all merger applications involving public utility subsidiaries of registered holding companies, applicants must include a commitment to abide by the Commission's policies with respect to intra-system transactions within the holding company structure or be prepared to go to hearing on the issue of the effect of the proposed registered holding company structure on effective regulation by the Commission.")

## Appendix A

Listed parties have filed notices of intervention or motions to intervene in Docket No. RT01-88-000. Short-hand references to parties referred to in the order are indicated in the parenthesis after their names. Late interventions are indicated by an asterisk.

Company Name

American Forest & Paper Association (American Forest)  
American Transmission Company LLC (American Transmission)  
Citizen Power, Inc. (Citizen Power)  
Citizens Action Coalition of Indiana, Inc., Izzak Walton League of America, Inc., and  
Midwest Office of Environmental Law and Policy Center of the Midwest (Public  
Interest Organizations)  
Coalition of Midwest Transmission Customers (Midwest Customers)  
Coalition of Municipal and Cooperative Users of Alliance Companies' Transmission  
(Coalition)  
Corn Belt Energy Corporation (Corn Belt)  
Dairyland Power Cooperative (Dairyland)  
Duke Energy North America, LLC (Duke)  
Dynergy Power Marketing, Inc. (Dynergy)  
Edison Mission Energy, Edison Mission Marketing & Trading, Inc., & Midwest  
Generation EME, LLC (Edison Companies)  
Electric Power Research Institute (EPRI)  
Electric Power Supply Association (EPSA)  
Enerstar Power Corporation (Enerstar)  
Enron Power Marketing, Inc.(Enron)  
Illinois Commerce Commission (Illinois Commission)  
Illinois Industrial Energy Consumers (Illinois Consumers)  
Indiana & Michigan Municipal Distributors Association (Indiana & Michigan  
Distributors)  
Indiana Office of Utility Consumer Counselor (Indiana Consumer)  
Maryland Office of the People's Counsel (Maryland Counsel)  
Michigan Public Service Commission (Michigan PS)  
Mid-Atlantic Power Supply Association (Mid-Atlantic Power)  
Morgan Stanley Capital Group, Inc. (Morgan Stanley)  
North Carolina Electric Membership Corporation (NCEMC)  
Norton Energy Storage L.L.C. (North Energy)  
Ohio Consumer's Counsel (Ohio Consumer)\*  
Ontario Independent Electricity Market Operator (Ontario Operator)\*

Ontario Power Generation, Inc. (Ontario Power)\*  
Ormet Primary Aluminum Corporation (Ormet)\*  
Pennsylvania Office of Consumer Advocate (Pennsylvania Consumer)  
PG&E National Energy Group, Inc. (PG&E Energy)  
Public Utilities Commission of Ohio (PUC Ohio)  
Shell Energy Services Company, L.L.C. (Shell)  
Southeastern Power Administration (Southeastern Power)  
Southwestern Electric Cooperative (Southwestern Electric)  
Tractebel Energy Marketing & Tractebel Power, Inc. (Tractebel Companies)  
Virginia State Corporation Commission (Virginia Commission)  
Williams Companies (Williams)  
Wolverine Supply Cooperative, Inc. (Wolverine)

Appendix B

Listed parties have filed notices of intervention or motions to intervene in Docket No. RT01-88-001. Short-hand references to parties referred to in the order are indicated in the parenthesis after their names. Late interventions are indicated by an asterisk.

Company Name

Association of Business Advocating Tariff Equity, Coalition of Midwest Transmission Customers, Indiana Office of Utility Consumer Counselor, Missouri Office of the Public Counsel, Ohio Consumers' Counsel, and Public Interest Organizations (Joint Midwest Intervenors)

Chaparral (Virginia) Inc. (Chaparral)

Coalition

Edison Companies

Illinois Commerce Commission, Indiana Utility Regulatory Commission, Iowa Utilities Board, State of Michigan and Michigan Public Service Commission, Missouri Public Service Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Virginia State Corporation Commission, and Public Service Commission of West Virginia (State Commissions)\*

Illinois Consumers

International Transmission

NCEMC

Michigan PS

Ormet\*

Reliant Energy Power Generation, Inc. (Reliant Energy)

Southwestern Electric

Steel Dynamics, Inc. (Steel Dynamics)

Virginia Commission

Wabash Valley Power Association, Inc. (Wabash Valley)

Williams

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Companies

Ameren Corporation  
on behalf of:

Union Electric Company  
Central Illinois Public Service Company

Docket Nos. RT01-88-000, RT01-88-001,  
RT01-88-003, ER99-3144-009, ER99-  
3144-011, EC99-80-009, and EC99-  
80-011

American Electric Power Service Corporation  
on behalf of:

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

Consumers Energy  
and Michigan Electric Transmission Company

Exelon Corporation  
on behalf of:

Commonwealth Edison Company  
Commonwealth Edison Company of Indiana, Inc.

FirstEnergy Corp.  
on behalf of:

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

The Detroit Edison Company  
and International Transmission Company



Virginia Electric and Power Company

Illinois Power Company

Docket No. RT01-84-000

Northern Indiana Public Service Company

Docket No. RT01-26-000

The Dayton Power and Light Company

Docket No. RT01-37-000

(Issued July 12, 2001)

MASSEY, Commissioner, concurring:

In orders issued today addressing the Northeast RTO proposals<sup>1</sup> and the Southeast RTO proposals,<sup>2</sup> the Commission adopts as its firm objective a single RTO for the Northeast, one for the Southeast, one for the Midwest, and one for the West. We state this objective for four RTOs covering the entire nation. With this clear statement, we at long last provide much needed guidance to the industry for getting RTOs in place and delivering their benefits to the nation's electricity consumers. This guidance is long overdue. I have long advocated providing such guidance, and believe we could have saved valuable time by articulating it eighteen months ago instead of now. But better late than never. I am pleased that we are moving ahead today.

We show a new resolve today also by directing the parties in the Northeast and those in the Southeast to formal mediation in order to establish a plan for forging a single RTO for their regions and a timetable for doing so. I strongly support this approach. A skilled, neutral judge will help resolve the tough issues that will surely arise and will be able to provide trusted advice to the Commission if and when we need to step in. If this job is going to get done in due time, the presence of a mediator is absolutely necessary.

While I am very pleased with the resolve we are showing in the Northeast and the Southeast, I am disappointed that we are not applying that same resolve in all regions. To facilitate the timely development of the single Midwest RTO, which our orders today

---

<sup>1</sup>Docket Nos. RT01-2-000, RT01-98-000, RT01-10-000, RT01-95-000, RT01-86-000, and RT01-94-000.

<sup>2</sup>Docket Nos. RT01-74-002 and -003, RT01-77-000, RT01-34-000 and -002, and RT01-75-000 and -003.

state as a clear objective, I would direct Alliance, the Midwest ISO, and the Southwest Power Pool to a mediation proceeding with the same objective and timetable as that for the Northeast and Southeast RTOs. The settlement that we approved between the Alliance and Midwest ISO was a bold step in the right direction, but those institutions should have been directed toward a single RTO from the outset. And SPP would add even greater scope to the Midwest RTO. In this order, we fail to establish a mediation proceeding for a Midwest RTO. I would have done so and in this order directed Alliance to participate along with SPP and the Midwest ISO. Although I am pleased with the progress we make today, I am somewhat disappointed that we once again miss a golden opportunity to achieve in the Midwest what we insist upon in the Southeast and the Northeast.

Therefore, I concur with today's order.

---

William L. Massey  
Commissioner



**ORIGINAL**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Alliance Companies )  
  
Ameren Corporation )  
    On behalf of: )  
    Union Electric Company )  
    Central Illinois Public Service Company )  
  
American Electric Power Service Corporation )  
    On behalf of : )  
    Appalachian Power Company )  
    Columbus Southern Power Company )  
    Indiana Michigan Power Company )  
    Kentucky Power Company )  
    Kingsport Power Company )  
    Ohio Power Company )  
    Wheeling Power Company )  
  
Consumers Energy Company )  
and Michigan Electric Transmission Company )  
  
The Dayton Power and Light Company )  
  
The Detroit Edison Company )  
and International Transmission Company )  
  
Exelon Corporation )  
    On behalf of: )  
    Commonwealth Edison Company )  
    Commonwealth Edison Company )  
        of Indiana, Inc. )  
  
First Energy Corporation )  
    On behalf of: )  
    American Transmission Systems, Inc. )  
    The Cleveland Electric Illuminating )  
        Company )  
    Ohio Edison Company )  
    Pennsylvania Power Company )  
    The Toledo Edison Company )  
  
Illinois Power Company )

FILED  
OFFICE OF THE SECRETARY  
01 SEP -6 PM 3:27  
FEDERAL ENERGY  
REGULATORY COMMISSION

Docket Nos. RT01-88-005,  
*et al.*, ER99-3144-013.  
and EC99-80-013.  
(Not Consolidated)

AJ  
**DOCKETED**

010907-0051-1

Northern Indiana Public Service Company )  
 )  
Virginia Electric and Power Company )  
 )

**PARTIAL MOTION TO REJECT, PROTEST, AND  
REQUEST FOR IMMEDIATE STAY OF  
FURTHER START-UP ACTIVITIES BY THE ALLIANCE COMPANIES OF  
THE VIRGINIA STATE CORPORATION COMMISSION, THE MICHIGAN  
PUBLIC SERVICE COMMISSION, WEST VIRGINIA PUBLIC SERVICE  
COMMISSION, THE INDIANA OFFICE OF UTILITY CONSUMER  
COUNSELOR, THE MISSOURI OFFICE OF THE PUBLIC COUNSEL, THE  
OHIO CONSUMERS' COUNSEL, THE COALITION OF MIDWEST  
TRANSMISSION CUSTOMERS, INDUSTRIAL ENERGY USERS-OHIO, WEST  
VIRGINIA ENERGY USERS GROUP, CITIZENS ACTION COALITION OF  
INDIANA, INC., THE IZAAK WALTON LEAGUE OF AMERICA, INC., THE  
ENVIRONMENTAL LAW AND POLICY CENTER, AND THE ASSOCIATION  
OF BUSINESSES ADVOCATING TARIFF EQUITY**

Pursuant to Rules 211 and 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.212, the Virginia State Corporation Commission, the Michigan Public Service Commission, the West Virginia Public Service Commission, the Indiana Office of Utility Consumer Counselor, the Missouri Office of the Public Counsel, the Ohio Consumers' Counsel, the Coalition of Midwest Transmission Customers, Industrial Energy Users-Ohio, the West Virginia Energy Users Group, Public Interest Organizations (Citizens Action Coalition of Indiana, Inc., the Izaak Walton League of America, Inc., and the Environmental Law and Policy Center), and the Association of Businesses Advocating Tariff Equity (together, "Joint Protestors") move the Commission to reject in part and protest the proposed "Alliance Companies' Business Plan," submitted in an August 27, 2001 letter from Becky Bruner filed in the above-captioned dockets ("August 27 Letter"), and respectfully request that the

Commission require an immediate stay of all further Alliance RTO start-up activities by the Alliance Companies until such time that an independent board can manage such start-up activities. In support of their motion, Joint Protestors state the following:

I.

**PARTIAL MOTION TO REJECT AND PROTEST<sup>1</sup>**

A. **Introduction.**

Joint Protestors respectfully request that the Commission reject the Alliance Companies' interim governance proposal for the period before the Alliance Transco is established, and, as discussed in Section II, stay all further RTO start-up activities of the Alliance Companies until such time that an acceptable permanent independent board is in place. While the granting of these requests may result in a brief delay in the short term, the purpose of this motion is to accelerate the long-term development of a truly independent RTO, which will provide buyers and sellers of electricity access to a competitive market for electricity across a broad geographic region.

Moreover, these requests are consistent with the Commission's findings in an order it issued simultaneously with its July 12, 2001 "Order on RTO Filing" in the Alliance dockets, 96 FERC ¶ 61,052 (2001) ("July 12 Alliance Order"). In *GridSouth Transco, LLC, et al.*, 96 FERC ¶ 61,067 (2001) ("*GridSouth*"), the Commission — in terms similar to those it expressed in the companion July 12 Alliance Order, 96 FERC ¶ 61,052 at 61,134-135 — expressed its concern about the lack of an independent board:

Although we previously accepted Applicants' proposal on governance and independence, we are concerned that

---

<sup>1</sup> Each of the Joint Protestors reserves its individual right to file additional pleadings regarding the August 27 Letter in addition to the instant pleading.

certain proposals that are central to independence, including the creation of an independent Board and a Stakeholder Advisory Committee, have not yet been implemented. *As a result, Applicants continue to make important policy decisions that will bind the RTO for the future.* We are mindful that Applicants are forging ahead to meet the December 15, 2001 start-up date. Yet, we are concerned that the GridSouth RTO is not currently independent of Applicants.

...

Accordingly, we direct that the independent GridSouth Board be seated in a timely manner. Moreover, *we direct the independent Board, and not Applicants, to submit a revised compliance filing within 90 days.*

*GridSouth*, 96 FERC ¶ 61,067 at 61,289 (emphasis supplied).

In the July 12 Alliance Order, the Commission similarly ordered the Alliance Companies to seat an independent board "from the date of this order." 96 FERC ¶ 61,052 at 61,135. The Alliance Companies, however, did not do so. Accordingly, on August 8, 2001, five state commissions ("State Commissions") filed a motion for clarification and request for expedited action in these dockets ("August 8 Motion").<sup>2</sup> Specifically, the State Commissions requested that the Commission order the Alliance Companies to commence the Board selection process immediately, and to complete the same on or before August 15, 2001. The State Commissions stated that stakeholders should be permitted to participate in the Board selection process, as the Commission has

---

<sup>2</sup> "Motion for Clarification and Request for Expedited Action, or in the Alternative, Request for Rehearing of the Virginia State Corporation Commission, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Michigan Public Service Commission, and West Virginia Public Service Commission," filed August 8, 2001.

required in other RTO cases.<sup>3</sup> To date, the Commission has yet to act on the August 8 Motion.

The Joint Protesters understand that the Alliance Companies still plan on a December 15, 2001 start-up date, and that they may be financially prejudiced if that date is pushed back, due to the terms of the Inter-RTO Cooperation Agreement between the Alliance and the Midwest Independent System Operator ("IRCA").<sup>4</sup> The Applicants, however, have had full control of the RTO formation and filing process. They informed the Commission in their Order No. 2000 Compliance Filing made on January 16, 2001, that they were no longer planning an immediate initial public offering ("IPO") of the stock of a publicly-held managing member, and that they would instead look for financial and/or strategic investors. They have had since January to develop and file a revised governance structure, gain Commission approval of it, and seat an independent board to supervise the RTO start-up process. After months of indecision by the Alliance Companies, in July the Commission ordered them to seat the board immediately. Now, however, fall beckons, and the Alliance Companies have only now come forward with a proposed governance structure for the Commission to consider. Nonetheless, they essentially ask the Commission to overlook this lengthy delay, allow them to, in effect, start up the Alliance RTO themselves (despite their interest in the outcome as market participants) and present an interim proposal for so-called independent governance which does not permit true independent oversight over the initial practices and policies of the

---

<sup>3</sup> *GridFlorida LLC*, 94 FERC ¶ 61,020, p. 61,046 (2001); *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273, p. 61,988 (2001).

<sup>4</sup> Inter-RTO Cooperation Agreement between the Alliance Companies and the Midwest ISO, § 2.17 ("*Early Ending of Inter-RTO Transition Period*"), approved by the Commission in *Illinois Power Co.*, 95 FERC ¶ 61,183 (2001).



RTO that is slated to commence operation in a very short time. The Commission should not allow the independence provisions of Order No. 2000 to be so subverted. Instead, the Commission should reject the proposed interim governance proposal contained in the August 27 Letter, rule as expeditiously as possible on the issue of the proper permanent governance structure for the Alliance RTO,<sup>5</sup> and require whatever independent board is seated pursuant to that structure to review and amend, as necessary, prior implementation decisions made by the Alliance Companies, including future compliance filings.

**B. The Alliance Companies' Interim Governance Proposal Fails to Comply with the Commission's July 12 Alliance Order and with the Independence Requirement of Order No. 2000.**

In Order No. 2000, the Commission established independence as one of the four characteristics required of an RTO, reaffirming its prior statements that "[a]n RTO needs to be independent in both reality and perception."<sup>6</sup> The Commission has long held that "this principle should apply to all RTOs, whether they are ISOs, transcos or variants of the two."<sup>7</sup>

Joint Protestors submit that the interim governance proposal described in the Alliance Companies' August 27, 2001 Letter does not comport with the independence requirement. Further, the interim governance proposal described in the Alliance

---

<sup>5</sup> In requesting expeditious consideration of the permanent governance proposal, the Joint Protestors do not mean to imply their support of that proposal. Rather, they urge the Commission to take the time necessary to evaluate fully the proposed business plan and its implications for independent governance of the Alliance RTO.

<sup>6</sup> *Regional Transmission Organizations*, III FERC Stats. and Regs. ¶ 31,089 at 31,061 (1999), *order on reh'g*, Order No. 2000-A, III FERC Stats. and Regs. ¶ 31,092 (2000).

<sup>7</sup> *Id.*

Companies' August 27 Letter does not comply with the specific directives in the July 12 Alliance Order, including the requirement that all business decisions for the RTO be made through a framework that includes an independent board as the decision maker, to be advised through an appropriate stakeholder process.<sup>8</sup>

The Commission made clear in the July 12 Alliance Order that it "remains committed to assuring the independence of RTOs from control by market participants." The Commission expressed substantial concern that the Alliance Companies (the transmission-owning applicants in these dockets) were making "business decisions prior to implementation of an Alliance RTO," decisions that would potentially affect the future RTO's ability to conduct its own operations. 96 FERC at 61,134. The Commission ordered the Alliance Companies to take immediate steps to seat an independent Board to make such decisions:

Therefore, we direct Alliance Companies to decide which of the alternative business plans proposed they intend to implement within 45 days of the date of this order. *We further direct that from the date of this order an independent board be established to make all business decisions for the RTO.*

July 12 Alliance Order, 96 FERC at 61,134-135 (footnote omitted).

The Alliance Companies' August 27 Letter, submitted 46 days after "the date of this order," does not comply with this directive. Indeed, the August 27 Letter appears to suggest that the Commission's concern about the ongoing role of the Alliance Companies

---

<sup>8</sup> While the primary focus of this Protest is on independence (or the lack thereof), the Alliance Companies have also displayed intolerance for a meaningful stakeholder process. It appears to Joint Protestants that the Alliance Companies will continue to evade and avoid true compliance with Order No. 2000's independence requirement because they cannot accept that what is required is an independent body with plenary authority, acting with the advice of stakeholder representatives.

is unwarranted. More specifically, the Alliance Companies attempt to placate the Commission by claiming on the one hand that they will not make such business decisions. On the other hand, however, they assert that the Alliance RTO will be operational by December 15, 2001, while attempting to establish conditions that will prevent anyone else from making the decisions that must be made in order for the Alliance RTO to be operational by December 15, 2001. Joint Protestors must ask: without an independent in board in place, who is making these decisions other than the Alliance Companies themselves?

At best, the August 27 Letter is an expression of the Alliance Companies' intent to comply with Order No. 2000 at some future date. In effect, this is a request to further delay compliance with the Commission's directives that they satisfy the independence requirement immediately, so that the Alliance Companies themselves will make no further business decisions regarding RTO formation and development. The Alliance Companies' proposal to establish an interim three-member board of trustees ("Interim Trustees") does not cure this basic deficiency, for the reasons set out below.

Section V of the August 27 Letter (at 14-15) sets out the Alliance Companies' proposal regarding the composition of the Interim Trustees, their selection process and the scope of the Interim Trustees' authority. The Alliance Companies propose to confine the Interim Trustees' authority to "...review[ing] and approv[ing] any actions proposed by the Alliance Companies respecting market design (*i.e.*, long term congestion management, energy imbalance market and the ancillary services markets) that may be required to achieve a December 15, 2001 start date." They also propose to limit the Interim Trustees' scope of review and authority to act with regard to procurement of

systems and adoption of operational practices necessary for initial (Day 1) operation of the Alliance Transco by requiring, among other things, the Interim Trustees to preserve the start-up arrangements already made by the Alliance Companies, absent clear and convincing evidence (to be evaluated by an unnamed person or persons) demonstrating that the arrangements are unduly discriminatory or preferential. August 27 Letter at 14-15.

The Alliance Companies appear to presume that an interim governing structure need not meet the independence requirements of Order No. 2000. This mockery of independence is unacceptable to Joint Protestors. The Alliance Companies' proposed Interim Trustees, if appointed, must have the same degree of authority required to satisfy the independence requirement as would an acceptable permanent independent operator. Indeed, we have some concerns that the Alliance Companies will attempt, either directly or indirectly, to place conditions on their chosen permanent independent governance structure that will compromise that body's ability to function independently of decisions made to date. Based on the Joint Protestors' past efforts to resolve their independence-related concerns with the Alliance Companies, the carefully worded limits on the Interim Trustees that the Alliance Companies propose are specifically intended to guarantee that the Interim Trustees would have no authority to review any prior or pending compliance filings made by the Alliance Companies or to amend the proposed Open Access Transmission Tariff. Further, the Interim Trustees would not have authority to review the implementation of the IRCA, an absolutely vital task in the eyes of the Joint Protestors. By asking the Commission to forego independent oversight of the Alliance Companies'

implementation of the IRCA, the Alliance Companies are unilaterally compromising the actions required to satisfy the seamless market objectives of the IRCA.

For example, the Alliance Companies have actively resisted Joint Protestors' efforts to address important details of their Day 1 congestion management proposal. The market design issues associated with Day 1 operations and the significance of the Alliance Companies' retained control may be better illustrated by a few references to the IRCA.

Section 4.1.2 of the IRCA between the Alliance RTO and the Midwest ISO states:

*The Cooperating RTOs agree to require that generators, to the extent necessary for inter-RTO congestion management objectives, to [sic] provide bids to increase or reduce generation on either or both sides of the interfaces. Cooperating RTOs shall require generators to submit bids to raise or lower generation to relieve transmission constraints related to Inter-RTO congestion. The bids will be submitted initially on a bulletin board operated by an entity that is independent of transmission owners and market participants.*

This provision would require issues regarding contracts, credits and payments on the different tariffs to be resolved. Section 4.1.6 (e) of the IRCA requires the Cooperating RTOs to form a Joint Congestion Management Committee which shall, among other things, "[f]ormulate compatible definitions, terminology, and applications of congestion management systems." Despite the IRCA's requirements for coordination of Day 1 congestion management, the process and settlement mechanisms for redispatch of generation for inter-RTO congestion have not been considered or resolved (for the Alliance Companies' region) by an independent board or by a process that provides for meaningful stakeholder input. The Alliance Companies seek (in their latest proposal) to keep these and other important matters beyond the reach of their proposed Interim

Trustees, thus preserving the Alliance Companies' ability to make or perpetuate decisions on these issues during the proposed life of the Interim Trustees.

For these reasons, Joint Protestors submit that the interim governance proposal contained in the August 27 Letter meets the requirements of neither Order No. 2000 nor the July 12 Alliance Order. Rather than waste the Commission's and the parties' limited resources on debating the terms and conditions of an interim governance structure, the Joint Protestors request that the Commission grant the relief set out in Section II of this pleading, and require the Alliance Companies to institute a permanent RTO governance structure that fully complies with Order No. 2000 as soon as possible.

## II.

### **REQUEST FOR IMMEDIATE STAY OF FURTHER START-UP ACTIVITIES BY THE ALLIANCE COMPANIES**

#### **A. The Commission Should Direct the Alliance Companies to Cease Further Decision-Making Until an Independent Board is in Place, Even if This Means Postponing the December 15, 2001 Implementation Date.**

As noted in Section I above, on August 8, 2001, the State Commissions filed their August 8 motion for clarification and request for expedited action in these dockets in an attempt to ensure that the Alliance Companies complied with the July 12 Alliance Order. Specifically, the State Commissions requested that the Commission order the Alliance Companies to commence the Board selection process immediately, and to complete the same on or before August 15, 2001. The State Commissions stated that stakeholders should be permitted to participate in the Board selection process, as the Commission has

required in other RTO cases.<sup>9</sup> Three weeks have now passed since the State Commissions' proposed deadline for the Board selection process.

In addition to the filing of the August 8 Motion, the State Commissions and stakeholders concerned about the independence of the Alliance RTO have made a good faith effort to resolve the independence issue with the Alliance Companies informally. By letters dated July 30, 2001, and July 31, 2001, eight state commissions formally requested the prompt assistance of the Commission's Office of Dispute Resolution to resolve issues related to the development and implementation of an appropriate Alliance stakeholders' advisory process.<sup>10</sup> These letters explained that the stakeholder advisory process that the Alliance Companies developed and posted (without input from any stakeholders) was inherently flawed because the fundamental purpose of the stakeholder advisory process – to advise the independent RTO board – could not be met, as the Alliance Companies had failed to establish an independent board. (The Alliance's posted process would have had the stakeholders advise the Alliance *Bridgeco* until such time as an independent board is established.) On August 2, 2001, additional stakeholders, including three consumer advocate offices and several business and industrial customer

---

<sup>9</sup> *GridFlorida LLC*, 94 FERC ¶ 61,020, p. 61,046 (2001); see also *Carolina Power & Light Co., et al.*, 94 FERC ¶ 61,273, p. 61,988 (2001).

<sup>10</sup> In so doing, they were following the suggestion of the Commission itself set out in the July 12 Order ("Therefore, we reiterate that if the parties cannot develop an acceptable stakeholder process, the Commission will step in. To aid the parties in this endeavor, we are making available the Commission's Office of Dispute Resolution."). July 12 Order, 96 FERC at 61,146. See Letter to Richard L. Miles from Jennifer M. Granholm, Attorney General, State of Michigan, the Michigan Public Service Commission, and on behalf of the Indiana Utility Regulatory Commission, Illinois Commerce Commission, Public Utilities Commission of Ohio, Kentucky Public Service Commission, Pennsylvania Public Utilities Commission, and West Virginia Public Service Commission (July 30, 2001); and Letter to Richard L. Miles from Hulihan Williams Moore, Commissioner, Virginia State Corporation Commission (July 31, 2001).

groups, submitted a letter to the Commission's Office of Dispute Resolution supporting the State Commissions' letter.<sup>11</sup>

While the Commission's Office of Dispute Resolution was very responsive and quickly initiated an informal mediation, for which Joint Protestors are appreciative, the ODR's efforts did not yield the results hoped for. Stakeholders who participated in the facilitated meetings remain unconvinced that the Alliance Companies are taking concrete steps to comply with the Commission's directives to establish an independent board with an adequate stakeholder advisory process. Joint Protestors in fact are concerned that the Alliance Companies could use the ODR process to "run down the clock" on the December 15 start-up date.

Joint Protestors have participated in good faith in the ODR process. Although there is no further purpose in the use of this process to secure the Alliance Companies' compliance with the Commission's unambiguous directive to establish an independent RTO board immediately, Joint Protestors will continue to meet to discuss the development of an adequate stakeholder advisory process either in the context of the ODR negotiations or otherwise. The discussions that took place during the initial meetings under the auspices of ODR concerning the appropriate structure of an advisory committee were useful and could provide the basis for further agreement, *if the committee is able to advise a board with the requisite plenary authority to make all business decisions for the Alliance RTO.*

---

<sup>11</sup> Letter to Richard L. Miles from Samuel C. Randazzo (Aug. 2, 2001) on behalf of Association of Businesses Advocating Tariff Equity; Coalition of Midwest Transmission Customers; Industrial Energy Users-Ohio; Missouri Office of the Public Counsel; Indiana office of Utility Consumer Counselor; Ohio Consumers' Counsel, Illinois Industrial Energy Consumers; Citizens Action Coalition of Indiana, Inc.; Izaak Walton League of America, Inc., and Environmental Law & Policy Center.



Joint Protestors therefore respectfully request that the Commission immediately direct the Alliance Companies to cease any further decision-making regarding the future development of their proposed RTO until they have – as they were previously directed – put in place an independent board and an appropriate stakeholder process. Once seated, the Board should undertake a thorough review of all the RTO developmental work of the Alliance Companies and the Alliance Bridgeco undertaken prior to the Board's installation. Such review should be conducted in consultation with a Stakeholder Advisory Committee.<sup>12</sup>

**B. Joint Protestors Can Show That Irreparable Injury Will Result if an Immediate Stay of the Alliance Companies' Start-up Activities Is Not Granted.**

Joint Protestors submit that their request for an immediate stay of the Alliance Companies' start-up activities – until such time that an independent board can supervise such start-up activities – meets the standards the Commission uses in analyzing stay requests. The Commission has stated:

In deciding whether a stay would be appropriate in a particular case, the Commission generally considers several factors: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will not substantially harm other parties; and (3) whether a stay is in the public interest [citation omitted]. The key element in our inquiry is irreparable injury to the moving party. If such party is unable to demonstrate that it will suffer irreparable

---

<sup>12</sup> Joint Protestors presume that any Stakeholder Advisory Committee that is developed will continue to advise the independent Board, or successor governing body of the Alliance RTO, even after the RTO commences operations. This is clearly called for under the Alliance Companies' own RTO proposal. See the Alliance Companies May 15, 2001 Supplemental Compliance Filing in Docket Nos. ER99-3144-004 and EC99-80-004, Attachment D (Section 6.6 of the Pro Forma Alliance Transco LLC Agreement) (Advisory Committee proposed to provide input and advice to the Managing Member).

harm if we do not grant a stay, we need not examine the other factors.<sup>13</sup>

As explained below, Joint Protestors' request for a stay of the Alliance Companies' start-up activities meets these requirements.

To demonstrate irreparable harm, a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.<sup>14</sup> If the Commission does not take the immediate action the Joint Protestors seek, the Alliance Companies will continue to make critical decisions affecting the development of the Alliance RTO without any independent oversight. This would be contrary to the Commission's ruling in *GridFlorida*, cited by the Commission in the July 12 Alliance Order,<sup>15</sup> as well as its contemporaneous *GridSouth* order. Further, if the Commission does not immediately direct the Alliance Companies to cease making RTO-related business and policy decisions until an independent board is in place, such inaction will have an irrevocable effect. Once the Alliance RTO is in operation, it will become extraordinarily difficult and expensive to undo previously-made decisions, and it will certainly be impossible to "unspend" dollars already spent by the Alliance Companies,

---

<sup>13</sup> *Central Hudson Gas & Electric Corporation*, 89 FERC ¶ 61,241 at 61,710 (1999), "Order Granting Rehearing for Purpose of Further Consideration and Denying Stay" (1999); see also *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

<sup>14</sup> *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985).

<sup>15</sup> 96 FERC at 61,135, n. 30. In *GridFlorida*, while determining that leasing office space, setting up employee benefit plans and other infrastructure tasks did not pose independence concerns, the Commission noted concerns about the independence of actions which "involve steps necessary for implementing market design . . . The Commission regards the acquisition of software and other systems implementing market design as significant to the future operation of the RTO and will require that any acquisition of software or other systems implementing market design not be undertaken until the independent Board has been seated and given its approval." *GridFlorida LLC, et al.*, 94 FERC ¶ 61,363 at 62,325 (2001).

including dollars spent on developing the chosen market design. Joint Protestors note that to date, the Alliance Bridgeco has already made decisions that affect market development (e.g., the decision to require all transmission customers to submit balanced schedules, thus potentially hindering the development of a substantial real-time spot market for power; the decision on whom to hire as a market monitor; and the development of interconnection agreements and protocols for the RTO). Joint Protestors have no doubt that if the Commission does not step in at this point, the Alliance Companies will continue to make decisions that affect market development, both short- and long-term, undermining the independence of the nascent RTO and further damaging the confidence of non-Transmission Owner market participants in the Alliance RTO's efficacy and neutrality. The resultant long-lasting damage to what otherwise could be a vibrant competitive market, consistent with what the Commission envisioned in Order No. 2000, would be irreparable.

**C. The Alliance Companies Will Suffer No Irreparable Harm If a Stay Is Granted; Moreover, Any Potential Harm They Might Incur Results Directly From Their Own Action, Or More Correctly, Lack of Action.**

It is not the intention of Joint Protestors to thwart the development of an independent Alliance RTO. Joint Protestors support the formation of fully-functional RTOs that meet the requirements of Order No. 2000 and seek the timely development of an appropriately formed RTO. However, due to circumstances of the Alliance Companies' own making, Joint Protestors now face the prospect that either the Commission's December 15, 2001 deadline will not be met, or the independence of the RTO put in operation on December 15, 2001 will be compromised. Joint Protestors are unwilling to sacrifice the independence of the Alliance RTO, as the risk of critical,

potentially long-lasting decisions being made by those who now exercise generation and transmission market power is too great.

As the State Commissions cautioned in their August 8 Motion, the Commission must exercise extreme care to ensure that the December 15 deadline is not used by the Alliance Companies as a sword in the short term to avoid completing tasks vital to the long-term fairness and effectiveness of the Alliance RTO. The Alliance Companies have known at least since their January 16, 2001 Order No. 2000 Compliance Filing that they were planning to delay an immediate initial public offering by the managing member and that they would need to take concrete steps to establish an entity independent of the transmission owners. To date, they have not done so. Instead, taking advantage of the lack of independent oversight, they have continued to take steps that Joint Protestors must assume serve the Companies' private interests and that may well be inimical to the public interest.

In their August 8 Motion, the State Commissions also expressed concern that the Alliance Companies were using the December 15, 2001 target date to shield vital decision-making from scrutiny, under the guise of rushing to meet the deadline. Given the late submission of the Alliance Companies' most recent crucial filing, in conjunction with their continued insistence that they can meet a December 15 start date, this concern bears repeating. The Alliance Companies were to have made a definitive compliance filing addressing the numerous holes remaining in their proposal by August 17, 2001, a mere 120 days prior to the target start-up date. They did not make this critical filing until August 31, 2001. Yet they remain committed to a December 15 start-up date for the Alliance RTO that, if adhered to, will necessitate the making of myriad important policy

decisions for the RTO in the coming weeks and months. The absence of a fully independent Board to make these decisions with the appropriate input of stakeholders grows more troubling with each passing day and will only ensure continued controversy and litigation before this Commission.

The Alliance Companies' unwillingness to abide by the Commission's directives regarding the seating of an independent board and the establishment of an appropriate stakeholder process is unfathomable, given that they have known since January of this year that they would no longer be proposing to conduct an immediate initial public offering for the stock of a managing member for the Alliance Transco LLC, and hence that other measures, such as the timely seating of an independent Board, would be required under the applicable Commission precedent. It would be most troubling if the Commission were to turn a blind eye to the Alliance Companies' utter disregard for the most fundamental principles of Order No. 2000 and allow the Alliance RTO to move forward without sufficient independent oversight. As noted above, the Joint Protestors attempted to negotiate a solution to this problem with the Alliance Companies, and have only resorted to this action after those efforts failed.

**D. A Stay of the Alliance Companies' Start-up Activities Is in the Public Interest.**

A stay of the Alliance Companies' start-up activities is required to ensure that the goals of Order No. 2000 are met and that the public interest is served. The Joint Protestors are firmly united in the belief that the public interest is not served by allowing the Alliance Companies to put in place a compromised RTO with policies and procedures that were developed without the independent oversight that Order No. 2000 and the Commission's subsequent cases interpreting the independence characteristic require.

### **III.**

#### **CONCLUSION**

**WHEREFORE**, Joint Protestors respectfully request that the Commission: (1) reject the interim governance proposal contained in the Alliance Companies August 27 Letter; (2) direct the Alliance Companies to implement a permanent governance structure that comports with the independence requirements of Order No. 2000; and (3) require an immediate stay of all further start-up activities and decisions of the Alliance Companies until such time as a permanent independent board can supervise such start-up activities through a framework that permits appropriate stakeholder input.

Respectfully submitted,

**VIRGINIA STATE CORPORATION  
COMMISSION**

William Chambliss / by P&C  
William H. Chambliss  
Arlen K. Bolstad  
Virginia State Corporation Commission  
Post Office Box 1197  
Richmond, VA 23218

Susan N. Kelly  
Phyllis K  
Susan N. Kelly  
Phyllis G. Kimmel  
Miller, Balis & O'Neil, P.C.  
1140 Nineteenth Street, NW, Suite 700  
Washington, DC 20036  
Tel: (202) 296-2960  
Fax: (202) 296-0166

**WEST VIRGINIA PUBLIC  
SERVICE COMMISSION**

Richard Hitt / by P&C  
Richard E. Hitt  
General Counsel  
PO Box 812  
Charleston, WV 25323-0812

**MICHIGAN PUBLIC SERVICE  
COMMISSION**

By their counsel:

Jennifer M. Granholm  
Attorney General of the State of  
Michigan

David Voges / by P&C  
David A. Voges (P25143)  
Henry J. Boynton (P25242)  
Patricia S. Barone (P29560)  
Assistant Attorney General  
Michigan Public Service Commission  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911-5984  
Tel: (517) 241-6680

Harvey Reiter / by P&C  
Harvey L. Reiter  
David D'Alessandro  
John E. McCaffrey  
Morrison & Hecker L.L.P.  
1150 18th Street, NW, Suite 800  
Washington, DC 20036  
Tel: (202) 785-9100

**INDIANA OFFICE OF UTILITY  
CONSUMER COUNSELOR**

Robert Mork / By P&K

Robert G. Mork  
Deputy Consumer Counselor for Federal  
Affairs  
Indiana Office of Utility Consumer  
Counselor  
100 N. Senate Avenue, Room N501  
Indianapolis, Indiana 46204-2215  
Tel: (317) 232-2494  
Fax: (317) 232-5923

**MISSOURI OFFICE OF THE  
PUBLIC COUNSEL**

John B. Coffman / By P&K

John B. Coffman  
Deputy Public Counsel  
Missouri Office of the Public Counsel  
200 Madison Street  
P.O. Box 7800  
Jefferson City, MO 65102  
Tel: (573) 751-5565  
Fax: (573) 751-5562

**OHIO CONSUMERS' COUNSEL**

Barry Cohen / By P&K

Barry Cohen  
Assistant Consumers' Counsel  
Ohio Consumers' Counsel  
10 West Broad Street, 18th Floor  
Columbus, Ohio 43215-3485

**COALITION OF MIDWEST  
TRANSMISSION CUSTOMERS,  
INDUSTRIAL ENERGY USERS-  
OHIO, AND WEST VIRGINIA  
ENERGY USERS GROUP**

Samuel Randazzo / By P&K

Samuel C. Randazzo  
MCNEES WALLACE & NURICK LLC  
Fifth Third Center  
17<sup>th</sup> Floor  
21 E. State Street  
Columbus, OH 43215  
Tel: (614) 469-8000  
Fax: (614) 469-4653

Robert A. Weishaar / By P&K


Robert A. Weishaar, Jr.  
MCNEES WALLACE & NURICK LLC  
1200 G Street NW  
Suite 800  
Washington, DC 20005  
Tel: (202) 434-8991  
Fax: (202) 347-0988

Derrick Williamson / By P&K

Derrick Williamson  
MCNEES WALLACE & NURICK LLC  
100 Pine Street  
Harrisburg, PA 17108-1166  
Tel: (717) 237-5446  
Fax: (717) 237-5300

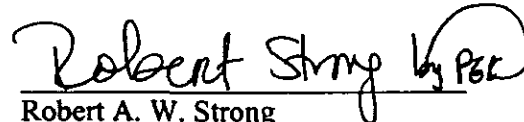


**PUBLIC INTEREST  
ORGANIZATIONS  
(CITIZENS ACTION COALITION  
OF INDIANA, INC., THE IZAAK  
WALTON LEAGUE OF AMERICA,  
INC., AND THE ENVIRONMENTAL  
LAW AND POLICY CENTER)**

  
Daniel W. Rosenblum, Attorney  
Environmental Law & Policy Center  
35 East Wacker, Suite 1300  
Chicago, IL 60601

Terry R. Black, Attorney  
107 Roberts Court  
Alexandria, VA 22314-4664

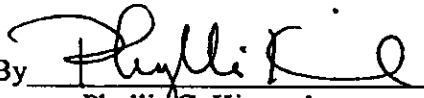
**ASSOCIATION OF BUSINESSES  
ADVOCATING TARIFF EQUITY**

  
Robert A. W. Strong  
Attorney at Law  
Clark Hill  
Suite 301  
255 South Woodward Avenue  
Birmingham, MI 48009  
  
Tel: (248) 988-5861  
Fax: (248) 642-2174

September 6, 2001

### CERTIFICATE OF SERVICE

I hereby certify that I have this 6<sup>th</sup> day of September 2001, served the foregoing document upon all parties shown on the Commission's official service lists in Docket Nos. RT01-88-000, *et al.*, ER99-3144-000, *et al.* and EC99-80-000, *et al.*, by depositing copies in the United States mail, first class postage prepaid.

By   
Phyllis G. Kimmel  
Miller, Balis & O'Neil, P.C.  
1140 19<sup>th</sup> Street, N.W., Suite 700  
Washington, D.C. 20036-6602  
202-296-2960

Before the  
Missouri Public Service Commission  
Case No. EO-2001-684

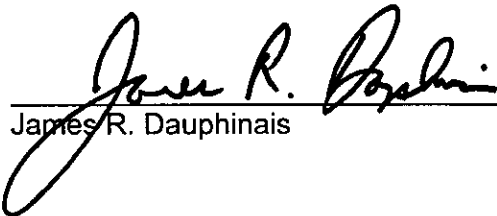
UNION ELECTRIC COMPANY / AMERENUE

STATE OF MISSOURI       )  
                                  )  
COUNTY OF ST. LOUIS    )       SS

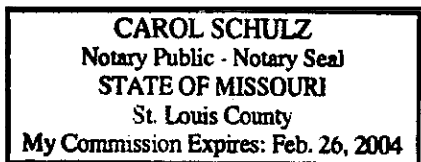
**Affidavit of James R. Dauphinais**

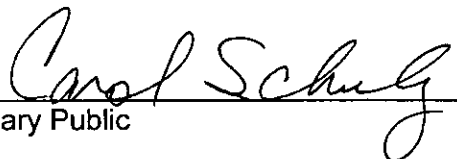
James R. Dauphinais, being first duly sworn, on his oath states:

1. My name is James R. Dauphinais. I am a consultant with Brubaker & Associates, Inc., having its principal place of business at 1215 Fern Ridge Parkway, Suite 208, St. Louis, Missouri 63141-2000. We have been retained by the Missouri Industrial Energy Consumers in this proceeding on their behalf.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony and schedules which were prepared in written form for introduction into evidence in Missouri Public Service Commission Case No. EO-2001-684.
3. I hereby swear and affirm that the testimony is true and correct and that the schedules show the matters and things they purport to show.

  
James R. Dauphinais

Subscribed and sworn to before this 12th day of September, 2001.



  
Notary Public

My Commission Expires February 26, 2004.