

UNITED STATES OF AMERICA 96 FERC ¶ 61,052
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:

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

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. 2000¹,

¹Regional 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),

(continued...)

and also submitted an open access transmission tariff (OATT) under section 205 of the Federal 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. 2000.² 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

¹(...continued)

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.).

²On 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.

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 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.³ Alliance Companies' filing also contains a Section 203 request for the transfer of control of jurisdictional facilities on behalf of NIPSCO to Alliance,⁴ 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.⁵ 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

³Relying 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.

⁴Alliance 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.

⁵Supplemental Filing at 1-4.

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.

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.⁶

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,⁷ 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.⁸ 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

⁶We 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.

⁷These parties are listed in Appendix A.

⁸95 FERC ¶ 61,182 (2001).

Alliance Companies and the Midwest ISO which was accepted by the Commission.⁹ Finally, other issues are not yet ripe for review since they are the subject of future filings. Therefore, it is our intent in this order only to discuss issues which are relevant here and not the subject of other orders or future filings.¹⁰

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.¹¹ 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

⁹See 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.

¹⁰At 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.

¹¹See 94 FERC at 61,302.

invest in Alliance, and thereby make Newco the managing member of Alliance, at least for a transitional period of several years.¹²

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 Companies state that they will separately act to incorporate Newco.¹³ 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.¹⁴

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.¹⁵

¹²RTO Filing at 13-15.

¹³Id. at 14.

¹⁴18 C.F.R. § 35.34 (2000).

¹⁵We 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.

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 Consumer¹⁶ protests the proposed delay in the issuance of an IPO for the Publico. Pennsylvania Consumer requests that the Commission 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.¹⁷

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.¹⁸

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

¹⁶Ohio Consumer's Protest at 3.

¹⁷Pennsylvania Consumer's Protest at 6-12.

¹⁸Williams' Comments at 10-12.

be rejected; or that, at a minimum, Alliance must provide additional detail to demonstrate the independence of the Newco and Alliance Transco.¹⁹

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.²⁰

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 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,²¹ 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

¹⁹Midwest Customers' Protest at 4-6; Illinois Consumers' Protest at 3.

²⁰NCEMC's Protest at 8-11.

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

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.²²

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.²³ 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 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.²⁴

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

²²Alliance Companies' Answer at 4-8.

²³Supplemental Filing at 4.

²⁴Id. at 7-11.

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.²⁵

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 Committee, and to establish an independent Managing Member.²⁶ 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.²⁷ 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."²⁸

In their Answer, the Alliance Companies assert that they will comply with the Commission's independence characteristic, consistent with the Commission's prior

²⁵Edison Companies' Comments at 2-6.

²⁶State Commissions' Protest at 18-20.

²⁷State 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.

²⁸State Commissions' Protest at 35-37.

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 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.²⁹ 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.

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.³⁰ 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

²⁹See, e.g., American Electric Power Company, et al., 85 FERC ¶ 61,201 (1998).

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

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.³¹

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.³²

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 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.³³

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. 2000.³⁴

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.³⁵ For example, many of the intervenors

³¹Order No. 2000 at 31,067.

³²See Alliance Companies' answer at 12.

³³95 FERC at 61,627.

³⁴RTO Filing at 26.

³⁵See Midwest Customers' Protest at 8-9, Coalition's Protest at 13-15, Virginia

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.³⁶ Finally, Midwest Customers argue that scope and configuration are still not adequate as members can withdraw at any time from Alliance.³⁷

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. RT01-88.³⁸

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 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.³⁹

³⁵(...continued)

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.

³⁶See Williams' Comments at 13 and Illinois Commission's Comments at 8.

³⁷Midwest Customers' Protest at 8.

³⁸95 FERC at 61,646.

³⁹Id. at 61,635.

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.⁴⁰

Williams state that Alliance Companies' proposal strikes an acceptable balance between RTO responsibilities and the market decisions of transmission owners, and supports this proposal.⁴¹ Coalition seeks more information on the operational audit process developed by Alliance Companies, and questions why Alliance is not using an independent entity.⁴² 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 make analyses and pursue the consolidation of control area functions and the centralization of control area operator functions.⁴³

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. 3.⁴⁴ Moreover, no party filed a request for rehearing on the issue raised by Coalition. Indeed, we addressed Illinois Commission's

⁴⁰94 FERC at 61,308; 95 FERC at 61,629.

⁴¹Williams' Comments at 14-15.

⁴²Coalition's Comments at 17.

⁴³Illinois Commission's Comments at 8-10.

⁴⁴94 FERC at 61,308.

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.⁴⁵ 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.⁴⁶ 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.⁴⁷ 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 agreements which, among other things, will require generators to redispatch their units when feasible and for the appropriate compensation.⁴⁸

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

Discussion

⁴⁵Id.

⁴⁶95 FERC at 61,629.

⁴⁷94 FERC at 61,308-309.

⁴⁸RTO Filing at 32.

⁴⁹Williams' Comments at 18; American Forest's Comments at 2-3.

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.⁵⁰ 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.⁵¹ 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.

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-

⁵⁰94 FERC at 61,327.

⁵¹See Supplemental Filing at 8-10.

Regional" rate methodology, as described in the Alliance/Midwest ISO settlement, is more fully explained and approved by the Commission.⁵²

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.⁵³ Joint Midwest Intervenors recommend that the Commission set a final date of August 15, 2001 for Alliance Companies to address all remaining compliance issues.⁵⁴

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.⁵⁵ 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 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 Intervenors 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 Intervenors' proposal.

F. RTO Function No. 2: Congestion Management

⁵²Williams' 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.

⁵³Joint Midwest Intervenors' Protest at 31.

⁵⁴See also State Commissions' Protest at 24-25.

⁵⁵Alliance Companies' Transmittal Letter at 11.

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.⁵⁶ 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.⁵⁷

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.⁵⁸ Other intervenors argue that the Commission should

⁵⁶94 FERC at 61,314.

⁵⁷RTO Filing at 36-38.

⁵⁸See, 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
(continued...)

adopt a uniform nation-wide RTO congestion management strategy and state that approval should be deferred until seams issues are resolved.⁵⁹

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.⁶⁰

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.⁶¹ 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.⁶² State Commissions argue that insufficient progress on congestion management has been made and questions whether Alliance will be prepared to perform required RTO functions and duties.⁶³ 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

⁵⁸(...continued)

Protest at 19-24, and Dynegey's Comments at 5-7.

⁵⁹Williams' Comments at 20-24.

⁶⁰Alliance Companies' Answer at 9.

⁶¹Supplemental Filing at 13-14.

⁶²Virginia Commission's Protest at 15.

⁶³State Commissions' Protest at 37.

"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."⁶⁴ Therefore, there are no competitive concerns because bids from jurisdictional entities must be based on Commission-approved charges.

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

⁶⁴Alliance 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.

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, 2004.⁶⁵ 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.⁶⁶

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.⁶⁷

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.⁶⁸

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 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

⁶⁵94 FERC at 61,314.

⁶⁶RTO Filing at 38-39.

⁶⁷Williams' Comments at 25-26.

⁶⁸Supplemental Filing at 7.

60 days from the commencement of operations by Alliance, i.e., October 14, 2001.⁶⁹ 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.⁷⁰

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.⁷¹ As such, we believe it is inappropriate at this time to address ITC's concerns.⁷²

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 filings before the Commission.⁷³ Accordingly, we will defer ruling on this function until Alliance Companies make the appropriate filing to

⁶⁹ITC's Protest at 11-12, 21-22.

⁷⁰Coalition's Protest at 19-20.

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

⁷²ITC'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.

⁷³95 FERC at 61,650.

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.⁷⁴

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.⁷⁵

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

⁷⁴In 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.

⁷⁵94 FERC at 61,315-316.

⁷⁶95 FERC at 61,633.

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.⁷⁷

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 Filing⁷⁸ 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 prevented. Intervenors also contend that Alliance has not explained the corrective measures it plans to take against entities that schedule inadequately. Intervenors request that Alliance submit its proposal anywhere from immediately, to

⁷⁷RTO Filing at 39-41.

⁷⁸Steel 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.

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 be 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.⁷⁹ 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.⁸⁰

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.⁸¹ 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 efforts to insure that all stakeholders have adequate input in the

⁷⁹Ormet's Protest at 5.

⁸⁰Ormet's Protest at 5-6.

⁸¹State Commissions' Protest at 31.

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.⁸² 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.⁸³ Williams support Alliance Companies' proposal with the conditions the Commission imposed in the Alliance III Order to include a system of tests and checks.⁸⁴

⁸²94 FERC at 61,316.

⁸³RTO Filing at 41-42.

⁸⁴Williams' Comments at 28.

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.

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.⁸⁵ Coalition adds that Alliance Companies must file the system of checks and balances they propose to use to verify the accuracy of the data.⁸⁶ State Commissions claim that the adequacy of Alliance Companies' modification is contingent on the proper implementation of the Cooperation Agreement.⁸⁷ 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.⁸⁸

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. 2000.⁸⁹

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

⁸⁵Joint Midwest Intervenors' Protest at 28-29; Coalition's Protest at 18.

⁸⁶Coalition's Protest at 18.

⁸⁷State Commissions' Protest at 33.

⁸⁸Alliance Companies' answer at 10.

⁸⁹Order No. 2000 at 31,145.

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 states that the market monitoring program will be implemented by an independent expert that will report its findings to the Commission.⁹⁰ 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.⁹¹ 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.⁹² Edison Companies states that it is premature to comment on Alliance Companies' market monitoring program.⁹³

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.⁹⁴ 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.

⁹⁰RTO Filing at 42-43.

⁹¹Williams' Comments at 29.

⁹²Coalition's Protest at 27-28.

⁹³Edison Companies' Comments at 5-6.

⁹⁴Alliance Companies' Transmittal Letter at 15.

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.⁹⁵ 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.⁹⁶ 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 (consisting of a representative for Midwest ISO and Alliance) to determine in concert with the market monitor the appropriate data collection and screens.⁹⁷ 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.⁹⁸ 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.⁹⁹

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

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

⁹⁶Coalition's Protest at 25.

⁹⁷Williams' Comments at 6.

⁹⁸State Commissions' Protest at 24.

⁹⁹In 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.

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.¹⁰⁰

K. RTO Function No. 7: Planning and Expansion

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.¹⁰¹ 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.¹⁰²

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

¹⁰¹RTO Filing at 43-44.

¹⁰²Williams' Comments at 31, 33.

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 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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵ 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

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

¹⁰⁴Joint Midwest Intervenors' Protest at 32-33.

¹⁰⁵Wabash Valley's Protest at 5-6 and Ormet's Protest at 6-11.

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.

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.¹⁰⁶

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.

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.¹⁰⁷ Edison Companies assert that it is premature to comment on inter-RTO issues.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ 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

¹⁰⁶94 FERC at 61,319.

¹⁰⁷Williams' Comments at 35.

¹⁰⁸Edison Companies' Comments at 5-6.

¹⁰⁹Dynegy's Comments at 14-15.

¹¹⁰Ontario Power's Comments at 6.

transmission planning, ATC and TTC calculation, security coordination, congestion management, real-time balancing markets, and generation interconnection procedures.¹¹¹

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.¹¹²

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 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.¹¹³ 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

¹¹¹EPSA's Comments at 4.

¹¹²Williams' Comments at 6-7.

¹¹³95 FERC at 61,650.

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.¹¹⁴

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 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.¹¹⁵

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,

¹¹⁴RTO Filing at 47.

¹¹⁵94 FERC at 61,304.

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.¹¹⁶ 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.¹¹⁷ 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.¹¹⁸

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

¹¹⁶See, 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.

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

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

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.¹¹⁹ 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 203¹²⁰ 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 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.

¹¹⁹The 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).

¹²⁰16 U.S.C. § 824b (2000).

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.¹²¹

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.¹²² 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 hearing on the issue.¹²³ 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:

¹²¹See 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).

¹²²See 18 C.F.R. § 2.26(e) (2000).

¹²³Order 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.")

(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.

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

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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 proposals¹ and the Southeast RTO proposals,² 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.

¹Docket Nos. RT01-2-000, RT01-98-000, RT01-10-000, RT01-95-000, RT01-86-000, and RT01-94-000.

²Docket Nos. RT01-74-002 and -003, RT01-77-000, RT01-34-000 and -002, and RT01-75-000 and -003.

To facilitate the timely development of the single Midwest RTO, which our orders today

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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