

97 FERC ¶ 61, 326
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

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

ORDER GRANTING RTO STATUS AND
ACCEPTING SUPPLEMENTAL FILINGS

(Issued December 20, 2001)

On January 16, 2001, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing in accordance with Order No. 2000.¹ Subsequent events led Midwest ISO to amend its compliance filing on August 31, 2001. Midwest ISO states that under its current structure, as supported by the Inter-RTO Cooperation Agreement with Alliance Companies (IRCA), it satisfies all of the required characteristics and functions of a Regional Transmission Organization (RTO) under Order No. 2000.

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

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

We believe that a properly formed RTO in the Midwest will greatly benefit the public interest by enhancing the reliability of the Midwest electric grid and facilitating and enhancing competition. It will accomplish this primarily through its standardization of the rates, terms, and conditions of transmission service over a broad region. With this order, and others that we are issuing concurrently, we hope to help Midwest ISO achieve substantial benefits for Midwestern customers.

I. Introduction

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

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

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

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

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

II. Background

By order issued September 16, 1998, the Commission conditionally approved the formation of the Midwest ISO.² On October 13, 2000, Dynegy Inc. filed on behalf of Illinois Power Corporation (Illinois Power) a notice of Illinois Power's intent to withdraw

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

from Midwest ISO. Subsequently, Ameren Corporation (Ameren) and Commonwealth Edison Company (ComEd) announced their intent to leave Midwest ISO. This prompted the Commission to order settlement judge procedures, which resulted in a Settlement agreement (Settlement) among the Midwest ISO, Alliance Companies, and certain transmission owners (TOs) in the Midwest ISO. On May 8, 2001, in Illinois Power Company, et al.,³ the Commission accepted the Settlement, which, among other things, allowed Illinois Power, Ameren and ComEd to withdraw from Midwest ISO, and in conjunction with the IRCA, provided guidance to facilitate the development of a seamless Midwest market. In Illinois Power, the Commission stated its expectation that Midwest ISO would supplement its original RTO compliance filing to reflect the effect of subsequent events since the time of its initial compliance filing.⁴

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

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

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

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

⁴Illinois Power at 61,647.

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

Order No. 2000

In Order No. 2000, the Commission recognized that there continue to be important transmission-related impediments to a competitive wholesale electric market. These impediments include the engineering and economic inefficiencies inherent in the current operation and expansion of the transmission grid and the continuing opportunities for transmission owners to unduly discriminate in the operation of their transmission systems to favor their own or their affiliates' power marketing activities.⁶ The engineering and economic inefficiencies the Commission identified and sought to address in Order No. 2000 resulted from the lack of regional coordination of an interconnected transmission grid.⁷ The Commission concluded that a properly structured RTO could provide significant benefits in the operation of the transmission grid. A successful RTO would, through transmission grid management, improve grid reliability, remove remaining opportunities for discriminatory transmission practices, improve market performance, and facilitate lighter-handed regulation.⁸ These efficiencies would include, among other things, regional transmission pricing, improved congestion management of the grid, more accurate calculation of total transmission capability (TTC) and available transmission capability (ATC), more effective management of parallel path flows, reduced transaction costs, and facilitation of state retail access programs.⁹

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

⁶Order No. 2000 at 31,003.

⁷Id. at 31,004.

⁸Id. at 31,017.

⁹Id. at n. 99.

(8) participate in interregional coordination of reliability practices.¹⁰

Subsequent RTO-Related Actions

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

First, during the week of October 15 through 19, 2001, the Commission held a public conference on RTO issues, which consisted of 10 sessions on various topics involving RTOs and the need for clear, appropriately standardized transmission tariffs and market rules. In addition, at the October 24, 2001 Commission meeting, we considered status reports on RTO efforts in various regions of the country, including the Midwest. On November 7, 2001, we issued an order which provided generic guidance on the continued processing of RTO filings and, among other things, stated that we intended to issue future orders addressing the pending filings and providing specific guidance and time lines to continue progress within the various RTO regions.¹¹ On November 9, 2001, we issued an order which recognized that we must work closely with state commissions to create a seamless national wholesale electricity market and which stated our intent to create state-federal regional RTO panels to discuss issues related to RTO status and development.¹²

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

¹⁰Id. at 30,993-94.

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

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

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

Midwest State Commissions' Responses

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

Joint Commissions were unanimous in their support for a single RTO to administer the transmission system in the Midwest. Joint Commissions argue that multiple RTOs managed through seams agreements "[h]as not worked and will not work" in the Midwest.¹⁴ For instance, Joint Commissions argue that little progress has been made to date on implementing the IRCA agreement between the Midwest ISO and Alliance Companies, and that only the Midwest ISO has the infrastructure in place necessary to assume control over transmission facilities.¹⁵ Moreover, Joint Commissions contend that the lack of independence in the Alliance Companies proposal as well as the pending merger between the Southwest Power Pool and Midwest ISO have further

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

¹⁴Joint Commissions at 2.

¹⁵Id.

complicated implementation of the IRCA.¹⁶ Joint Commissions also caution that, while Appendix I of the Midwest ISO agreement may provide a useful framework to begin to analyze how functions could be shared under a hybrid RTO, such an approach should be evaluated on a case-by-case basis rather than in generic determination.¹⁷

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

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

The Indiana Commission states that it cannot participate due to a pending case before it. Likewise, the Missouri Commission states that, due to a pending case, it cannot express its view on the number and boundaries of RTOs in the Midwest but notes that over the past several years, it "[h]as worked toward promoting a single RTO environment in the Midwest."²⁰

The West Virginia Commission agrees with the Joint Commissions that a seamless Midwest region "[c]an be efficiently achieved through a single RTO."²¹ However, while

¹⁶Id.

¹⁷Id. at 10; see also, Missouri Commission at 6-7.

¹⁸Id. at 14.

¹⁹Michigan Commission at 2.

²⁰Missouri Commission at 1-2.

²¹West Virginia Commission at 3.

the West Virginia Commission agrees that there has been little progress to date in implementing the IRCA, it believes that with, among other things, guidance from the Commission it could possibly work.²²

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

III. Notice of Filing and Interventions

Notice of filing in Docket No. RT01-87-000, as amended in Docket No. RT01-87-001, was published in the Federal Register, 66 Fed Reg 47,200 (2001), with comments, protests or interventions due on or before September 21, 2001. Notices of the filings in Docket Nos. ER02-106-000 and ER02-108-000 were published in the Federal Register, 66 Fed. Reg. 54,001 and 54,002 (2001), with comments, protests or interventions due on or before November 5, 2001. Motions to intervene, comments and

²²Id.

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

²⁴Illinois Commission (Commissioners Hurley and Kretschmer) at 2.

²⁵Ohio Commission at 1-2.

²⁶Id. at 2-3

²⁷Id.

protests were filed by the parties listed in the appendix. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely, unopposed motions to intervene and the notices of intervention by state Commissions serve to make the intervenors listed in the appendix parties to this proceeding. Further, we find good cause to grant the motions to intervene out-of-time because they do not prejudice any party or cause undue delay in the proceeding.

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

IV. RTO Characteristics

RTO Characteristic No. 1: Independence

The RTO must be independent of any market participant

1. Midwest ISO's Proposal

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

²⁸See 18 C.F.R. § 385.213(a)(2) (2001).

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

the independent right to amend the Midwest ISO Tariff.³⁰ In addition, Midwest ISO states that it has exclusive and independent control over recovery of its own costs, subject to Commission approval, making it financially self-sufficient regarding on-going operations.

2. Intervenors' Comments

WEPCO³¹ asserts that Midwest ISO has met the Commission's independence requirements. WPPI, on the other hand, argues that certain issues remain to be resolved. In this regard, WPPI objects to the limitations on Midwest ISO's ability to make revisions affecting pricing or revenue distribution, and supports modifying the Midwest ISO Agreement to provide Midwest ISO with exclusive authority to make section 205 filings to modify rates. The Illinois Commerce Commission makes a similar point. Additionally, Calpine asserts that the continued existence of local control areas within the Midwest ISO region undermines the Midwest ISO's ability to meet the Commission's independence requirements. Calpine contends that, despite assurances that each local control area is merely implementing the real-time decisions of the RTO, these local control area operators will have routine access to the competitive information of their competitors and, therefore, a single ISO-wide control area would be ideal. Calpine recognizes that the voluntary formation process of the Midwest ISO requires compromises to preserve scope and contends that Midwest ISO can only meet the independence requirements of Order No. 2000, while still maintaining multiple control areas, by requiring that the local control areas be operated by personnel who are independent of, and unaffiliated with, the TOs.

3. Discussion

Order No. 2000 establishes the following independence requirement:

The [RTO] must be independent of any market participant. The [RTO] must include, as part of its demonstration of independence, a demonstration that it meets the following: (i) The [RTO], its employees, and any non-

³⁰During the transition period, unanimous approval of TOs is required before Midwest ISO can make revisions affecting pricing or revenue distribution. After the transition period, three quarters of TOs must vote affirmatively to allow Midwest ISO to make these types of revisions. All other Midwest ISO Tariff rates, terms, and conditions are subject to independent, unilateral revision by the Midwest ISO.

³¹See appendix for list of abbreviations for Intervenors.

stakeholder directors must not have financial interests in any market participant. (ii) The [RTO] must have a decision making process that is independent of control by any market participant or class of participants. (iii) The [RTO] must have exclusive and independent authority under section 205 of the Federal Power Act . . . to propose rates, terms and conditions of transmission service . . .^{32]}

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

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

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

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

³²18 C.F.R. § 35.34(j)(1) (2001).

³³18 C.F.R. § 35.34(j)(1)(iv) (2001).

³⁴Order No. 2000 at 31,075-76.

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

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

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

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

RTO Characteristic No. 2: Scope and Regional Configuration

The RTO must serve an appropriate region.

1. Midwest ISO's Proposal

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

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

³⁷See, e.g., Order No. 888 at 31,655.

³⁸See, Order No. 2000 at 31,104.

Midwest ISO states that the current scope and configuration of the Midwest ISO is adequate to comply with this important RTO characteristic. Midwest ISO points to the indirect effects of the Settlement that helped to provide for the conditional application of several new transmission-owning members to the Midwest ISO. Indianapolis Power & Light, Indiana Municipal Power Agency, Lincoln Electric (Neb.) System, Minnesota Power, Otter Tail Power Company, Sunflower Electric Power Corporation, and UtiliCorp United (including Missouri Public Service, St. Joseph Light & Power and WestPlains Energy-Kansas) all joined the Midwest ISO by February 28, 2001. City Water, Light and Power (Springfield, Ill.) joined soon thereafter. Montana-Dakota Utilities submitted an unconditional application and joined the Midwest ISO on July 12, 2001. Manitoba Hydro, a member of MAPP and a Canadian corporation, executed a Memorandum of Understanding ("MOU") with the Midwest ISO and jointly filed a Coordination Agreement.³⁹ Except for Sunflower Electric Power Corporation, all of these conditional members have since removed all of their prior conditions and are now TOs in the Midwest ISO.

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

The Midwest ISO also points to its pending purchase agreement to acquire substantially all of the assets held by MAPP COR in St. Paul, Minnesota. It states that the new additions of MAPP load joining the Midwest ISO will move the MAPP membership

³⁹See Docket No. ER02-325-000.

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

load up to 65%. With the Commission's approval in Docket No. ER01-479-000,⁴¹ Midwest ISO states that it will close the transaction.

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

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

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

2. Intervenors' Comments

Some intervenors (e.g., Competitive Coalition, IEU-Ohio, WPPI, and Duke Energy) argue that the Midwest ISO does not yet, and likely will not, satisfy the scope and configuration requirements of Order No. 2000, because it is unlikely that the IRCA will be implemented successfully given the current dynamics in the Midwest. The realignment of transmission owners between the Midwest ISO and Alliance Companies poses serious problems for the development of a single energy market for the entire Midwest, given that the Alliance Companies and the Midwest ISO are currently developing separate and distinct markets. To ensure consistency with its rulings in other

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

regions of the country, both IEU-Ohio and Duke Energy contend that the Commission should find that full, effective, and prompt compliance with the IRCA represents the absolute minimum means for Midwest ISO and Alliance Companies to comply with Order No. 2000's scope and configuration characteristic and other characteristics and functions. WPPI argues that the Midwest ISO cannot single-handedly ensure the success of the effort, and time will tell whether Alliance Companies will be able to satisfy the Commission's independence concerns and perform its end of the IRCA-implementation process.

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

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

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

4. Discussion

The Commission finds that, Midwest ISO has adequate scope and configuration to meet the requirements of Order No. 2000. As indicated above, the Midwest ISO has grown considerably over the last several months with the addition of Indianapolis P&L, IMPA, Lincoln, Minnesota Power, Otter Tail, UtiliCorp United, the City Water, Light and Power of Springfield, Ill., Montana-Dakota Utilities and Manitoba Hydro (through the above-referenced Coordination Agreement). In addition, in a concurrently issued order in Docket No. EC01 146-000, the Commission approves International Transmission Company's request to transfer control of its facilities to the Midwest ISO.

The conditional applications for membership from Sunflower, Dairyland, Great River, and SMMPA, together with the TRANSLink proposal, and the acquisition of MAPP COR promise to increase Midwest ISO's scope further in a short period of time.

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

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

RTO Characteristic No. 3: Operational Authority

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

1. Midwest ISO's Proposal

Midwest ISO states that its proposal complies with the operational authority provisions of Order No. 2000. Midwest ISO will have functional control of all networked transmission facilities owned and operated at 100 kV or above. Midwest ISO states that it will serve as the security coordinator for the transmission systems subject to

⁴²This press release is available on Midwest ISO's website.

its functional control and will also have emergency plans and procedures in place in the event of a system emergency. As a result of the Settlement Agreement, there are provisions that require the security coordination function and transmission loading relief protocols to be coordinated between Midwest ISO and Alliance Companies, which include an ongoing exchange of security-related data between the two entities. Midwest ISO notes that in July, the Midwest ISO's Security Plan was approved by the Operating Committee of the North American Electric Reliability Council ("NERC").

2. Intervenors' Comments

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

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

3. Discussion

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

Regarding Calpine's concern, as further discussed in the next section, as security coordinator for all facilities under its functional control, Midwest ISO has superseding authority over all actions of the control area operators to the extent they affect regional reliability. Additionally, as noted above, Midwest ISO recently filed its summary of

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

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

operating and emergency procedures. The Commission addresses that filing in the next section, however, our examination of the filing did not reveal any information that contradicts the idea that Midwest ISO's redispatch will control. Accordingly, we find that, for start-up purposes, the relationship between Midwest ISO's real-time redispatch authority and the control areas' balancing authority is sufficiently clear.

RTO Characteristic No. 4: Short-Term Reliability

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

1. Midwest ISO's Proposal

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

2. Intervenors' Comments

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

3. Discussion

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

ISO. Similarly, Section V(C)3 requires individual owners, users and control areas to comply with emergency actions ordered by Midwest ISO for regional security. Through this hierarchical structure the Midwest ISO has clear authority over redispatch for reliability purposes of generation connected to transmission facilities it operates and, therefore, meets the requirements of this RTO characteristic.

4. Docket No. ER02-106-000

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

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

In its response, Midwest ISO endorses WEPCO's concerns about balancing the equities of managing the grid's security with the amount of control that Midwest ISO will have over the generating resources. Midwest ISO asserts that sufficient detail of the operating and emergency procedures has been achieved to meet the projected start-up date and to permit participants and regulatory authorities to "gain a comfort level" in the ability of Midwest ISO to perform the functions entrusted to it. However, Midwest ISO commits to continuing to work with the Alliance Companies and all Midwest ISO

⁴⁵Ordering Paragraph N states:

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

⁴⁶Transmittal Letter at 2.

participants to fully implement the IRCA. Accordingly, Midwest ISO disagrees with Calpine's and Duke Energy's protest. Midwest ISO also argues that it cannot provide specificity as to how it would unilaterally resolve conflicts between regions because only the Commission can resolve conflicts where a satisfactory accord cannot be reached by mutual consent. Additionally, Midwest ISO asserts that the non-public aspect of its procedures relate to emergency response procedures that are non-public because they could aid terrorists or others seeking to disrupt the Midwest grid. Finally, Midwest ISO argues that this proposed summary is an informational filing only, does not constitute a section 205 submission⁴⁷, and therefore should be accepted as being in full compliance with the September 16 Order.

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

V. RTO Functions

⁴⁷16 U.S.C. § 824d (1994).

⁴⁸The September 16 Order stated:

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

September 16 Order, 84 FERC at 62,159.

⁴⁹16 U.S.C. § 824e (1994).

RTO Function No. 1: Tariff Administration and Design

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

1. The Midwest ISO's Proposal

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

2. Intervenors' Comments

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

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

Basin Electric states that it owns transmission facilities in both the Eastern and Western Interconnections and, in combination with Western Area Power Administration (WAPA) and Heartland Consumers Power District (Heartland), provides transmission service over an integrated system in the Eastern Interconnection that would, if it were incorporated into Midwest ISO, become one rate zone under Midwest ISO's zonal rate structure (the Integrated System Zone). Basin Electric indicates that the cost of this integrated system is currently recovered from both 1,400 MW of native load located on the integrated system and from 900 MW of native load located off of the integrated

system but still within the Eastern Interconnection.⁵⁰ Because of Midwest ISO's current zonal rate structure, Basin Electric states that, if it joined the Midwest ISO, the costs of the integrated system would only be recovered from the 1,400 MW of native load within the Integrated System Zone. Basin Electric contends that this would cause a cost shift among its native load customers of \$40 million per year.⁵¹

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

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

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

3. Responses

Missouri River filed a response to Basin Electric's comments. Missouri River states that the current rates of the integrated system, upon which Basin Electric relies to

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

⁵¹ Additionally, Basin Electric states that under Midwest ISO its 300 MW of native load located in the Western Interconnection would pay the "drive-out" average Midwest ISO rate but only a small portion of the resultant revenue would be allocated back to the Integrated System Zone, thus causing another cost shift.

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

4. Discussion

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

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

We will deny Basin Electric's motion for mediation at this time. While we commend Basin Electric's desire to join Midwest ISO, we are mindful that the possible remedies cited by Basin Electric may interfere with the Midwest ISO's ability to

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

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

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

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

RTO Function No. 2: Congestion Management

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

1. Midwest ISO's Proposal

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

The September 16 Order found that Midwest ISO's congestion management

⁵⁵September 16 Order at 62,167-8.

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

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

Midwest ISO also notes that the Settlement requires that certain activities associated with Day One congestion management be coordinated between Midwest ISO and Alliance Companies. These responsibilities include: (1) jointly developing a bulletin board where generator bids can be posted by market participants and generation shift factors are posted by the RTOs; (2) identifying generators on both sides of an interface that can significantly relieve congestion; and (3) coordinating reservations and schedules that may impact the transmission capacity of constrained interfaces. Midwest ISO and the Alliance Companies have agreed to an initial set of protocols and procedures for the coordination of their Day One Congestion Management mechanisms. A key element of these protocols allows for the redispatch of generation on the adjacent RTO's system in the event of a system contingency. Midwest ISO reports that it and the Alliance Companies are discussing development of bidding rules that will be consistent

between the two RTOs, so that all generators and loads are bidding into the same bulletin board under the same rules.

2. Intervenors' Comments

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

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

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

WEPCO states that the Midwest ISO Tariff does not adequately explain how customers are charged for redispatch or how redispatch providers are ultimately reimbursed, and that, therefore, these aspects of the tariff require greater elaboration and development. WEPCO submits that in order to track cost-causation principles, certain

redispatch costs may be better suited to socialization over subregions within Midwest ISO while other redispatch costs should not be socialized at all.

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

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

3. Discussion

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

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

Several intervenors raise "seams" issues concerning coordination of congestion management practices between the Midwest ISO and Alliance Companies. As we discuss elsewhere in this order, in concurrent orders, we are directing the Alliance Companies to explore membership in Midwest ISO through Appendix I. Intervenors concerns regarding "seams" are rendered premature by that action.

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

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

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

RTO Function No. 3: Parallel Path Flow

The RTO must develop and implement procedures to address parallel path flow issues

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

within its region and with other regions. The RTO must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operation.

1. Midwest ISO's Proposal

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

2. Intervenors' Comments

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

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

3. Discussion

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

RTO Function No. 4: Ancillary Services

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

1. Midwest ISO's Proposal

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

2. Intervenors' Comments

Calpine argues that Midwest ISO's proposal is vague and requires clarification and certain modifications. Calpine contends that, since Midwest ISO's interconnection agreement requires generators to provide some ancillary services, Midwest ISO should clarify that these generators will be appropriately compensated. Calpine also notes that Midwest ISO retains the right to deny scheduling of any request where the required

ancillary services have not been arranged. Calpine feels that this right contradicts the concept of being the provider of last resort and requests that the Commission require Midwest ISO to automatically provide ancillary service to support a transmission service request, even when not requested to do so by the transmission customer.

3. Discussion

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

In response to Calpine, we find that the ancillary service terms of Midwest ISO's Tariff (Section I.3 and Schedules 1 through 6) provide ample specificity. In particular, they provide rates for ancillary services and, where the service is generation-related, provide that individual generators are responsible for maintaining FERC-approved charges for providing ancillary services. We find these provisions reasonable.

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

We note that there will be one temporary exception to this rule. On November 30, 2001, in response to comments and protests in Docket No. ER01-3142-002, Midwest ISO requested a temporary suspension of the effective date when Midwest ISO would begin providing the Energy Imbalance and Inadvertent Interchange (Schedule 4) ancillary service. In the interim, Midwest ISO stated that this service will be provided directly by the TOs under their existing ancillary service schedules. While that filing will be addressed in a separate order, we note here that the stated reason for the suspension is to develop, through an inclusive stakeholder process, a revised Schedule 4 which will be more acceptable to stakeholders. Since this inclusive stakeholder process will be temporary, and since customers will have access in the interim to the FERC-approved Schedule 4 services of the TOs, we will not delay RTO approval for this reason.

Accordingly, we find that Midwest ISO's proposal to be the supplier of last resort for all ancillary services meets the requirements of this function. However, Midwest ISO's proposal does not require the RTO or the control area operators to procure ancillary services at least cost. We will require Midwest ISO to amend its tariff to require that ancillary services be provided or procured at least cost.

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

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

1. Midwest ISO's Proposal

Midwest ISO states that it will be the single OASIS administrator for all transmission facilities under its control and will independently calculate TTC and ATC based upon information filed by each TO regarding the physical ratings of the TO's facilities. Midwest ISO notes that in the September 16 Order, the Commission found that the authority set forth in Appendix B attached to the Midwest ISO Agreement was adequate to allow the Midwest ISO to perform an independent verification of ATC.⁵⁹ Midwest ISO also notes that, in case of dispute, the September 16 Order found that Midwest ISO's determination of ATC will govern pending the outcome of ADR proceedings.

2. Intervenors' Comments

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

Calpine asserts that Midwest ISO will maintain its own OASIS separate from that

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

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

3. Discussion

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

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

RTO Function No. 6: Market Monitoring

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

1. Midwest ISO's Proposal

⁶⁰Order No. 2000, at 31,144-45.

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

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

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

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

Midwest ISO states that it has chosen not to include the Plan in the Midwest ISO Tariff because Midwest ISO believes that the Plan does not define any transmission or

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

ancillary service offered by Midwest ISO nor establish a price for any service offered through the Midwest ISO Tariff.

2. Intervenors' Comments

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

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

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

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

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

To the extent that the IMM performs investigations of individual parties, some intervenors argue that the investigations should be confidential. Intervenors also seek

clarification that the IMM will have full authority to monitor ITCs.

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

3. Response

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

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

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

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

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

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

delineated in the Plan will meet this requirement.

4. Discussion

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

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

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

In addition, we find that proper protections should be in place before confidential information is shared and state commission commentors appear to agree that this information must be protected. We also note that the impending merger with SPP, and

⁶²Order No. 2000, at 31,156.

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

our concurrent orders directing Alliance Companies to explore becoming members of Midwest ISO, should result in Midwest ISO's information sharing procedures becoming the only such procedures that Midwestern state regulators must contend with. Of course, to the extent that our Rulemaking on Standard Market Design results in standard information sharing procedures for all RTOs, Midwest ISO's procedures may require further modification to comply with the outcome of that proceeding as well.

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

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

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

⁶⁴See Order No. 614 for guidance on formatting requirements for filed tariff sheets.

⁶⁵Order No. 2000, at 31,156.

⁶⁶See also GridSouth, 94 FERC at 62,006.

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

In Order No. 2000, the Commission did not prescribe a particular market monitoring plan, or the specific elements of such a plan, because market monitoring is evolving as trading markets are created. The Commission provided for a flexible approach and noted that different market monitoring plans may be appropriate for different RTOs.⁶⁷ In addition, the Commission stated that it would periodically assess the need for, and the degree of, market monitoring that should be done. In this proceeding, we accept Midwest ISO's Plan with the understanding that the Commission will periodically assess the need for, and degree of market monitoring; and hereby reserves our authority to issue a supplemental order regarding market monitoring.

RTO Function No. 7: Planning and Expansion

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

1. Midwest ISO's Proposal

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

⁶⁷Order No. 2000 at 31,155-56.

notes that it has developed a Generator Interconnection Agreement that is largely consistent with a similar agreement developed by Alliance Companies.

2. Intervenors' Comments

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

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

3. Discussion

With the modifications discussed below, we find that Midwest ISO's transmission planning and expansion provisions meet the Commission's requirements outlined in Order No. 2000. In PJM,⁶⁸ we emphasized that RTO regional transmission expansion plans must be more than a collection of traditional expansion plans developed by individual TOs and assembled by the RTO after confirming that they serve reliability needs. Midwest ISO's Planning Framework provides that the Midwest ISO planning staff will develop the regional transmission expansion plan consistent with good utility practice and based upon: (1) transmission needs identified in facilities studies; (2) transmission needs identified in the TOs' planning studies; (3) transmission obligations imposed by law; (4) inputs provided by the Planning Advisory Committee;⁶⁹ and (5)

⁶⁸PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 (2001) (PJM).

⁶⁹The Planning Advisory Committee is made up of a cross section of the members of the
(continued...)

inputs, if any, provided by state regulatory authorities having jurisdiction over any of the TOs. Thus, only two aspects of Midwest ISO's proposal require modification in order to fully satisfy our RTO objectives.

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

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

⁶⁹(...continued)

Advisory Committee as defined in Article Two, Section VI.(A) of the Midwest ISO Agreement. As such, both committees include a broad range of stakeholders.

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

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

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

RTO Function No. 8: Interregional Coordination

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

1. The Midwest ISO's Proposal

The Midwest ISO asserts that it has been instrumental in inter-regional coordination and that the IRCA confirms this assertion. The Midwest ISO states that it has been a leader in developing several white papers and has co-authored, with the representatives of the Alliance Companies and SPP, several sets of procedures and protocols as required under the Settlement Agreement. These substantial technical efforts have primarily focused on the elimination of the "seams" between the RTOs. Midwest ISO contends that the IRCA goes beyond the intent of inter-regional coordination as it requires the Midwest ISO and the Alliance Companies to develop compatible protocols and procedures and addresses several seams issues. According to Midwest ISO, this arrangement forces the two start-up RTOs to design compatible market approaches within the RTOs themselves and not just manage the differences at the seams as prescribed by the Commission's Order No. 2000. While several stakeholders would have preferred that the Midwest ISO and Alliance Companies merge, the IRCA allows both business models to coexist side-by-side. The Midwest ISO is steadfastly dedicated to the development of the compatible procedures and protocols and is working to continue to convert these paper agreements into functional reality upon the commencement of full-scale operations in order to meet the needs of market participants.

2. Intervenors' Comments

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

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

3. Discussion

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

As we explained in GridSouth,⁷⁴ the interregional coordination function of Order No. 2000 has two aspects: the integration of reliability practices and the integration of market interface practices. With the impending merger with SPP promising to eliminate

⁷¹Order No. 2000, at 31,167.

⁷²Id.

⁷³Order No. 2000-A, at 31,382.

⁷⁴94 FERC at 62,011.

Midwest ISO's southern seam, the main seams issue remaining involves Alliance Companies. This is confirmed by intervenors' comments on this issue. Our concurrent order directing the Alliance Companies to explore membership in Midwest ISO through Appendix I makes this seams issue moot as well. Accordingly, we find that Midwest ISO meets the requirements of this function.

VI. Other Requirements of Order No. 2000

Open Architecture

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

1. Midwest ISO's Proposal

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

2. Discussion

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

Real-Time Balance Market

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

1. Midwest ISO Proposal

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

2. Discussion

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

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

⁷⁵CPP7 is publicly available on Midwest ISO's website.

The Commission finds:

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

The Commission orders:

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

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

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

By the Commission

Secretary.

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

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

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

Answers

- 1) Missouri River Energy Services (Missouri River)

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

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

Answers

- 1) Midwest ISO

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

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

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

Answers

- 1) Midwest ISO