

100 FERC ¶ 61, 137  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Alliance Companies

Docket Nos. EL02-65-000, -001, -002,  
-003,-004, -005, -006, -007, and -008

Ameren Services Company  
On behalf of:

Union Electric Company  
Central Illinois Public Service Company

American Electric Power Service Corporation  
On behalf of:

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

Dayton Power and Light Company

Exelon Corporation  
On behalf of:

Commonwealth Edison Company  
Commonwealth Edison Company  
of Indiana, Inc.

FirstEnergy Corporation

On behalf of:

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

Illinois Power Company

Northern Indiana Public Service Company

and

National Grid USA

Alliance Companies

Docket Nos. RT01-88-000, -016, -018,  
-019, -020, and -021

Ameren Services Company

On behalf of:

Union Electric Company  
Central Illinois Public Service Company

American Electric Power Service Corporation

On behalf of:

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

Consumers Energy Company and  
Michigan Electric Transmission Company

Dayton Power and Light Company

Exelon Corporation  
On behalf of:

Commonwealth Edison Company  
Commonwealth Edison Company  
of Indiana, Inc.

FirstEnergy Corporation  
On behalf of:

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

Illinois Power Company

Northern Indiana Public Service Company

Virginia Electric and Power Company

Alliance Companies

Docket Nos. RT01-88-014, ER99-  
3144 -018, and EC99-80-018

Ameren Services Company  
On behalf of:

Union Electric Company  
Central Illinois Public Service Company

American Electric Power Service Corporation  
On behalf of:

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

Ohio Power Company  
Wheeling Power Company

Consumers Energy Company and the  
Michigan Electric Transmission Company

Dayton Power and Light Company

Detroit Edison Company and  
International Transmission Company

Exelon Corporation  
On behalf of:

Docket No. ER01-2992-002

Commonwealth Edison Company  
Commonwealth Edison Company  
of Indiana, Inc.

FirstEnergy Corporation  
On behalf of:

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

Illinois Power Company

Docket Nos. RT01-84-003, ER01-123-  
007, and ER01-2999-002

Northern Indiana Public Service Company

Docket No. RT01-26-003

Virginia Electric and Power Company

Docket No. ER01-2993-002

Dayton Power and Light Company

Docket No. RT01-37-003 and ER01-  
2997-002

American Electric Power Service Corporation      Docket No. ER01-2995-002  
On behalf of:

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

Midwest Independent System Operator      Docket No. EL02-111-000

PJM Interconnection, L.L.C.

And all Transmission Owners  
(including the entities identified below)

Union Electric Company

Central Illinois Public Service Company

Appalachian Power Company

Columbus Southern Power Company

Indiana Michigan Power Company

Kentucky Power Company

Kingsport Power Company

Ohio Power Company

Wheeling Power Company

Michigan Electric Transmission Company

Dayton Power and Light Company

Commonwealth Edison Company

Commonwealth Edison Company  
of Indiana, Inc.

American Transmission Systems, Inc.

Illinois Power Company

Northern Indiana Public Service Company

Virginia Electric and Power Company

IES Utilities, Inc.

Interstate Power Company

Aquila, Inc. (formerly UtiliCorp United, Inc.)

PSI Energy, Inc.

Union Light Heat & Power Company

Dairyland Power Cooperative

Great River Energy

Hoosier Energy Rural Electric Cooperative

Indiana Municipal Power Agency

Indianapolis Power & Light Company

Louisville Gas & Electric Company

Kentucky Utilities Company

Lincoln Electric (Neb.) System

Minnesota Power, Inc. and its subsidiary  
Superior Water, Light & Power Company

Montana-Dakota Utilities

Northwestern Wisconsin Electric Company

Otter Tail Power Company

Southern Illinois Power Cooperative

Southern Indiana Gas & Electric Cooperative

Southern Minnesota Municipal Power Agency

Sunflower Electric Power Corporation

Wabash Valley Power Association, Inc.

Wolverine Power Supply Cooperative

International Transmission Company

Alliant Energy West

Xcel Energy Services, Inc.

MidAmerican Energy Company

Corn Belt Power Corporation

Allegheny Electric Cooperative, Inc.

Atlantic City Electric Company

Baltimore Gas & Electric Company

Delmarva Power & Light Company

Jersey Central Power & Light Company

Metropolitan Edison Company

PECO Energy Company

Pennsylvania Electric Company

PPL Electric Utilities Corporation

Potomac Electric Power Company

UGI Utilities, Inc.

Allegheny Power

Carolina Power & Light Company

Central Hudson Gas & Electric Corporation

Central Power & Light Company

Conectiv

Detroit Edison Company

Duke Power Company

Florida Power & Light Company

GPU Energy

New York Electric & Gas Corporation

Niagara Mohawk Power Corporation

Northeast Utilities Service Company

Ohio Power Company

Old Dominion Electric Cooperative

PECO Energy Company

Public Service Company of Colorado

Public Service Electric & Gas Company

Public Service Company of Oklahoma

Rockland Electric Company

South Carolina Electric & Gas Company

Southwestern Electric Power Company

Cincinnati Gas & Electric Company

Missouri Public Service

WestPlains Energy

Cleco Corporation

Kansas Power & Light Company

OG+E Electric Services

Southwestern Public Service Company

Empire District Electric Company

Western Resources

Kansas Gas & Electric

**ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILINGS, PROVIDING  
GUIDANCE ON MIDWEST ISO AND PJM STRUCTURE, AND INSTITUTING  
SECTION 206 INVESTIGATION**

(Issued July 31, 2002)

1. This order conditionally accepts the compliance filings of the Alliance Companies<sup>1</sup> under which they propose to join either the Midwest Independent Operator System, Inc. (Midwest ISO) or PJM Interconnection, L.L.C. (PJM), as consistent with Order No. 2000.<sup>2</sup> In addition, this order institutes, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (1994), an investigation of inter-RTO rates.

### **Introduction**

2. Today, we are acting on two interrelated orders which recognize the importance of moving quickly to establish a joint and common market spanning both the Midwest ISO and PJM. The orders balance the business objectives of the respective companies with the need to move forward. Additionally, the orders support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella which 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 these actions, we make findings and provide guidance that we conclude best serve the interest of customers in the Midwest and PJM. However, because such orders are preliminary in nature, and details are forthcoming, our actions are not intended to prejudge the outcome or bind the Commission to a particular outcome other than to the extent stated herein.

### **Background**

3. On April 25, 2002, in Alliance Companies, et al., 99 FERC ¶ 61,105 (2002) (April 2002 Order), the Commission directed the Alliance Companies to file compliance filings within 30 days from the date of the order describing which regional transmission organization (RTO) they plan to join and whether such participation will be collective or individual. The Commission also stated that should the Alliance Companies decide to join the Midwest ISO, they must in the compliance filing detail their plans for the timing of such filing under Appendix I of the Midwest ISO Agreement taking into consideration

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<sup>1</sup>The companies that make up the Alliance Companies are identified below.

<sup>2</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, — F.3d — (D.C. Cir. 2001).

the guidance in that order and the companion TRANSLink order (see TRANSLink Transmission Company, LLC, et al., 99 FERC ¶ 61,106 (2002)). Id. at 61,430, 61,450.

### **Compliance Filings**

4. On May 28, 2002, in Docket Nos. EL02-65-002 and RT01-88-019, Virginia Electric and Power Company (VEPCO) filed in compliance with the April 2002 Order. VEPCO states that on March 5, 2002, it filed a statement indicating that it was continuing the process of consulting with the States of Virginia and North Carolina to determine their support for VEPCO joining the Alliance Companies within the Midwest ISO umbrella, or other RTO efforts. VEPCO adds that it is also actively working with PJM individually, and has participated in the discussions that the Alliance Companies have had with PJM.

5. On May 28, 2002, in Docket Nos. EL02-65-003 and RT01-88-020, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (ComEd) filed in compliance with the April 2002 Order. ComEd states that it plans to join PJM and to be incorporated into PJM West as part of an independent transmission company (ITC). ComEd adds that, should a definitive agreement for the ITC not be developed within 45 days, however, ComEd will join PJM as an individual transmission owner within PJM West.

6. On May 28, 2002, in Docket No. EL02-65-000, et al., Illinois Power Company (Illinois Power) filed in compliance with the April 2002 Order. Illinois Power states that it will join PJM as a transmission owner or via ITC participation. Illinois Power explains that its reasons for participating in PJM are three-fold: (1) Illinois Power has substantial transmission interconnectivity with AEP and ComEd; (2) participation in PJM brings significant value to Illinois Power's transmission customers by providing them with access to what Illinois Power characterizes as the most advanced and fully developed market in the Eastern Interconnection; and (3) in Illinois Power's judgment, participation in PJM will result in the most expeditious integration of Illinois Power's transmission system into an RTO-operated market as either a transmission owner or as part of an ITC.

7. On May 28, 2002, in Docket No. EL02-65-000, et al., Dayton Power & Light Company (DP&L) filed in compliance with the April 2002 Order. DP&L states that it believes that PJM offers it the opportunity to participate in a mature RTO that serves an existing energy market, and thus plans to enter into a final agreement with PJM.

8. On May 28, 2002, in Docket No. EL02-65-000, et al., Northern Indiana Public Service Company (NIPSCO) filed in compliance with the April 2002 Order. NIPSCO states that it is currently involved in negotiations with certain other Alliance Companies,

National Grid, and the Midwest ISO with the goal of forming an ITC that will participate in Midwest ISO.

9. On May 28, 2002, in Docket No. EL02-65-000, Consumers Energy Company (Consumers) filed in compliance with the April 2002 Order. Consumers states that it sold its transmission owning subsidiary Michigan Electric Transmission Company LLC (Michigan Transco LLC), the successor to Michigan Electric Transmission Company (METC). Consumers states that as a result of METC's merger into Michigan Transco LLC on April 30, 2002, METC was dissolved, and Consumers served notices of withdrawal from all Alliance agreements. Consumers adds that since it no longer owns a transmission system, it has no present intention to join an RTO.

10. On May 28, 2002, in Docket No. EL02-65-004, FirstEnergy Corporation (FirstEnergy), on behalf of its wholly-owned transmission subsidiary, American Transmission Systems, Inc. (ATSI) filed in compliance with the April 2002 Order. FirstEnergy states that ATSI entered into a Memorandum of Understanding (MOU) with Midwest ISO, and that under the MOU, ATSI will apply for membership in Midwest ISO within 30 days either as an individual transmission owner or as part of a group of other Alliance Companies.

11. On May 28, 2002, in Docket No. EL02-65-005, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company, the operating companies of American Electric Power System (collectively, AEP), filed in compliance with the April 2002 Order. AEP states that on May 7, 2002, it entered into an MOU with PJM indicating AEP's intent to participate in PJM, either individually or in conjunction with other Alliance Companies. AEP also states that to foster such joint participation, AEP is engaged in active negotiations with ComEd, Illinois Power, National Grid USA (National Grid), and PJM, of an MOU leading to participation in PJM as an ITC consisting of the above companies, and possibly one or more Alliance Companies, and that AEP expects that this MOU will be finalized shortly.

12. On May 28, 2002, in Docket No. EL02-65-006, Ameren Services Company (Ameren), as agent for and on behalf of Union Electric Company and Central Illinois Public Service Company, filed in compliance with the April 2002 Order. Ameren states that it will join Midwest ISO, and that Ameren and Midwest ISO executed an MOU on May 24, 2002. Ameren states that it will apply for membership in Midwest ISO on or before June 23, 2002, either as an individual transmission owner or as part of an ITC. Finally, Ameren states that within 60 days of receipt of Commission approval, Midwest ISO shall return to Ameren, with interest, the \$18 million payment that Ameren made to

Midwest ISO to exit Midwest ISO and join the Alliance RTO under the terms of the settlement accepted by this Commission in Illinois Power Company, et al., 95 FERC ¶ 61,183, reh'g denied, 96 FERC ¶ 61,026 (2001).

13. On June 20, 2002, in Docket Nos. EL02-65-007 and RT01-88-021, Ameren, FirstEnergy, Northern Indiana Public Service Company (NIPSCO), and Midwest ISO filed a joint compliance filing. They state that this compliance filing sets forth in detail the plans of the GridAmerica Three<sup>3</sup> to form GridAmerica LLC (GridAmerica), and that GridAmerica will be an ITC and will join Midwest ISO. They state that their proposal fully complies with the April 2002 Order and with Order No. 2000, and they add that National Grid joins this filing in order to provide complete support for the proposal.

14. On June 25, 2002, in Docket No. EL02-65-008, AEP, ComEd, and Illinois Power (collectively, Participants in the ITC) filed an MOU among and between PJM, National Grid, and the Participants in the ITC. They state that the filing is intended to supplement the information provided in the reports filed by AEP, ComEd, and Illinois Power on May 28, 2002 in this proceeding, where each company indicated its intent to join PJM through participation in an ITC with National Grid as the independent managing member (GridCo). They state that the attached MOU reflects the culmination of that effort and reflects the agreement of AEP, ComEd, and Illinois Power to join PJM through participation in GridCo and become signatories to the PJM West Agreement, subject to the conditions set forth in the MOU. They state that if the conditions necessary for formation of GridCo under PJM are not satisfied, the companies agree to join PJM as individual transmission owners and to sign the PJM West Agreement, as modified as necessary, consistent with each company's May 28 statement in this proceeding. They note that DP&L and VEPCO have participated in the discussions to form the ITC under PJM, and are continuing to participate in the discussions.

15. On July 15, 2002, in Docket Nos. EL02-65-007 and RT01-88-021, AEP, ComEd, DP&L, Illinois Power, and VEPCO filed an update on the status of their efforts to finalize agreements for their collective participation within an ITC operating under PJM or individually under PJM. They state that they are proceeding to implement the Joint MOU and the VEPCO MOU without delay, but the parties do not intend to incur costs associated with integrating the companies into PJM without the Commission's affirming the companies' decision to join PJM. They state that the Commission's expeditious

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<sup>3</sup>Ameren, FirstEnergy, and NIPSCO are jointly referred to as the GridAmerica Three, and the GridAmerica Participants are Ameren, FirstEnergy, NIPSCO, and National Grid.

affirmation of each of the Alliance Companies' RTO decisions is critical to keeping BridgeCo<sup>4</sup> afloat financially, and to complete the final phase of operational development for the systems, which is critical to the timely integration into PJM. Therefore, they ask that the Commission immediately affirm their decisions to join PJM.

### **Commission Meetings**

16. In response to various concerns surrounding operational, reliability, rate and seams issues, the Commission believed it to be necessary to invite the relevant parties to address these issues directly before the Commission. At three successive on-the-record Commission meetings, the Commission heard from, and questioned, representatives of Midwest ISO, PJM, National Grid, the Alliance Companies and the North American Electric Reliability Council (NERC). These discussions enabled the Commission to gain more information regarding issues resulting from the individual RTO elections.

17. At the June 12, 2002 Commission meeting PJM and Midwest ISO discussed their ongoing efforts at developing a common electric market.

18. At the June 26, 2002 Commission meeting all of the Alliance transmission owners provided an update as to why each company opted for PJM or Midwest ISO.

### **Request for Additional Information**

19. On July 3, 2002, by letter order issued pursuant to delegated authority, the Commission requested more information from NERC, its substituent members, Mid-America Interconnected Network (MAIN) and East Central Area Reliability Coordination Agreement (ECAR), and National Grid, Illinois Power, ComEd, PJM, Midwest ISO, and AEP to address the reliability and operational concerns regarding the Alliance Companies' proposals to join PJM and Midwest ISO. The concerns, among other things, surrounded potential operational and reliability issues with the proposed configuration. Responses were subsequently filed to the request for additional information.

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<sup>4</sup>AEP, ComEd, DP&L, Illinois Power, and VEPCO state that BridgeCo is the company originally established by the Alliance Companies as the vehicle for developing the systems and infrastructure for the start-up of the Alliance RTO.

20. At the July 17, 2002 Commission meeting Midwest ISO, PJM, National Grid, the Alliance Companies, and NERC either made presentations or provided further explanation of their responses to the Commission's request for additional information.

### **Comments**

21. Parties, such as West Virginia Commission and Edison Companies support certain Alliance Companies' decisions to join PJM.<sup>5</sup>

22. West Virginia Commission strongly supports AEP's decision to join PJM as both logical and consistent with the Commission's goals for RTO development, and urges the Commission to approve the decision without delay. West Virginia Commission believes that it would strengthen the commitment of PJM and Midwest ISO to create a common electric market sooner than otherwise would have been the case.<sup>6</sup>

23. Edison Companies note the Commission's concerns regarding potential seams in the Midwest, but states that negotiations are continuing to provide the solution to that dilemma through the proposed market integration between PJM and Midwest ISO. Edison Companies state that, as planned, this initiative will create a single electric market by the end of 2005, which should mitigate the Commission's concerns.<sup>7</sup>

24. Parties such as the Wisconsin Commission, Coalition of Users, WEPCO, MidAmerican, Coalition of Customers, and Illinois Industrial oppose certain Alliance Companies' decision to join PJM.<sup>8</sup>

25. Indiana Municipal Power Agency (IMPA) notes that, as a result of the Alliance Companies' choices, both its members and its generation will be spread among the Midwest ISO, the GridAmerica portion of the Midwest ISO, and PJM. As a consequence, among other recommendations, IMPA is particularly concerned that the

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<sup>5</sup>West Virginia Commission's Comments at 2; Edison Companies' Comments at 4.

<sup>6</sup>West Virginia Commission's Comments at 1-2.

<sup>7</sup>Edison Companies' Comments at 5.

<sup>8</sup>Wisconsin Commission's Comments at 4; Coalition of Users' Protest at 2; WEPCO's Protest at 7; Coalition of Customers' Protest at 6; Illinois Industrial's Protest at 3.

Commission condition any acceptance of the Alliance Companies' choices on achievement of a common market across the Midwest ISO and PJM, and also that the Commission address the issue of rate pancaking between the Midwest ISO and PJM.

26. The Midwestern State Commissions are concerned that the seams between the Midwest ISO and PJM created by the Alliance Companies' choices may adversely affect reliability and markets, given that utilities with transmission systems within one RTO's so-called footprint will become members of another RTO. They object to the Alliance Companies' choices in the absence of what they characterize as a clear and compelling demonstration that the public interest is being served by such choices. They urge the Commission to take steps to eliminate the inter-RTO seams, and in particular to ensure that a seamless common market (with no rate pancaking and standardized market rules) be established.

27. Coalition of Customers view the compliance filings as "an RTO direction that is off course" and they view the Alliance Companies' choices as inconsistent with the Commission's previous guidance. They also express concern with potential loop flows that they believe will result from these choices. They recommend that AEP, in particular, provide to the Midwest ISO information available through its state estimator (which simulates real-time operation of the transmission grid), and that the Commission revoke the market-based power sales pricing authority of Midwestern transmission owners and their affiliates where any RTO-related commitments they may have made have not been fulfilled.

28. Cinergy Services, Inc. (Cinergy) urges the Commission to ensure that reliability and seams-related issues that result from the Alliance Companies' choices be addressed expeditiously, and that mechanisms are put in place to ensure that this occurs. If this cannot be done, Cinergy states, the Commission should deny the requests of those Alliance Companies that seek to join PJM. More specifically, Cinergy first urges the Commission to eliminate rate pancaking between the Midwest ISO and PJM through adoption of a super-regional rate, and that this be done immediately as there is a serious problem now. Cinergy also recommends that the Commission make NERC an integral part of the process of managing seams between the two organizations to ensure reliability, and that there be a single security coordinator over the two organizations for the same reason. Cinergy additionally requests that the Commission make a single, LMP-based market (with standardized rules) across the two organizations a condition, to manage congestion. Finally, Cinergy asks that the Commission put in place a process, with specified deadlines, to ensure that the substantive conditions Cinergy has enumerated are put in place (and also that the Commission create an FPA section 206 proceeding to establish a super-regional rate). Alternatively, if the Commission does not

adopt Cinergy's recommendations, Cinergy asks that the Commission reject the choices of certain of the Alliance Companies' to join PJM.

29. Madison Gas & Electric, Missouri River Energy Services, and Wisconsin Public Power, *e.g.*, protest the compliance filings of AEP, ComEd and Illinois Power because their choices will isolate Michigan from the rest of Midwest ISO and undermine the ability of Midwest ISO and PJM to carry out their RTO functions. They assert that ComEd's participation in PJM creates: (1) a void at the center of Midwest ISO; and (2) a seam at the southern interface of the already-constrained Wisconsin Upper Michigan System (WUMS). They state that the creation of such a seam presents significant obstacles to the effective planning and construction needed to widen this bottleneck and impedes management of loop flows and congestion.<sup>9</sup>

30. Parties such as Ohio Commission, MidAmerican, Joint Protestors, Mirant, Steel Dynamics, Northeast Utilities Services, Virginia Commission, and TRANSLink express concerns regarding seams issues, but take no definitive position either opposing or supporting certain Alliance Companies' proposed participation in PJM.<sup>10</sup>

31. Joint Protestors ask that the Commission impose the following minimum conditions: (1) require Illinois Power, ComEd, and AEP to hold parties harmless from increased transmission costs resulting from the new seam; (2) require that any discount or reduction in the Midwest ISO and/or the PJM West through and out rate must be made equally available to each of the Joint Protestors; and (3) require meaningful and timely conditions to eliminate rate pancaking and other seams issues between Midwest ISO and PJM West.<sup>11</sup> Cities are concerned that they will pay pancaked rates as a result of the decisions of certain of the Alliance Companies to join PJM, and also adopt and support the arguments and remedies of the Joint Protestors.<sup>12</sup>

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<sup>9</sup>Madison Gas & Electric, Missouri River Energy Services, and Wisconsin Public Power's Protest at 3.

<sup>10</sup>Ohio Commission's Comments at 2-7; MidAmerican's Comments at 5; Joint Protestors Protest at 4; Mirant's Comments at 3; Northeast Utilities Services' Comments at 3-5; Steel Dynamics' Motion to Intervene at 2-3, Virginia Commission's Comments at 3-7; Translink's Comments at 6-10.

<sup>11</sup>Joint Protestors' Protest at 4-8.

<sup>12</sup>Cities' Protest at 3

32. Mirant states that approval of Alliance Companies' proposals to join either PJM or Midwest ISO must be conditioned upon a determination by the Commission that each individual company's participation will foster a seamless market in the Midwest. Specifically, Mirant asks that the Commission: (1) order the so-called "PJM/Midwest ISO/SPP single market design forum" to continue under active Commission oversight; (2) direct PJM and Midwest ISO to develop a joint tariff to address seams issues; (3) direct Midwest ISO to reexamine aspects of its tariff, especially transmission rate design issues; (4) impose a deadline for completing Alliance Companies' MOUs with PJM so as to allow Midwest ISO to have sufficient certainty with respect to its membership that it can establish Day 2 operations for SPP, MAPP, and ATC by May 2003 and for ECAR and MAIN by November 2003; and (5) establish additional meetings where the Commission can seek input and consult with Midwest regulators on the appropriate scope and configuration of Midwest ISO.<sup>13</sup>

33. Midwest ISO states that it and PJM are working together towards a common market which will promote Order No. 2000's objectives by providing for one-stop shopping over a large geographic area, and that they plan to implement this common market by the end of 2005. Midwest ISO states that a common market will reduce seams issues and address in part, if not entirely eliminate, the transmission-related issues that must be addressed by an RTO. Midwest ISO adds that the Commission should promote RTOs that cover a logical and uniform geographic region and that it is concerned with the choices of certain Alliance Companies, but notes that Order No. 2000 was not prescriptive as to scope. Midwest ISO adds that to promote RTOs with logical and appropriate configuration, the Commission must address inter-RTO rate pancaking. Midwest ISO explains that minimizing or eliminating shifting economic interests would promote stability, thus allowing RTOs to focus on the fundamental issues for which they were created.<sup>14</sup>

## **Discussion**

### **Preliminary Matters**

34. The notices of intervention and the timely, unopposed motions to intervene serve to make the intervenors listed in the Appendix parties to this proceeding. See 18 C.F.R. § 385.214 (2002). Given the early stage of this proceeding and the absence of undue

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<sup>13</sup>Mirant's Comments at 7.

<sup>14</sup>Midwest ISO's Comments at 2-6.

delay or prejudice, we find good cause to grant the untimely, unopposed interventions by certain parties.

### **Alliance Companies' Compliance Filings**

35. The Alliance Companies, in their compliance filings at issue here, have indicated which RTO – PJM or Midwest ISO – they have chosen to join. We will conditionally accept their choices, subject to satisfactory compliance with the conditions discussed below.<sup>15</sup> We find that the Alliance Companies' choices, standing alone, appear to produce unjust and unreasonable rates, terms, and conditions for transmission services. The conditions we are adopting below, however, will ensure that the rates, terms, and conditions are just and reasonable.

36. The conditions following, in essence, reflect areas which NERC concluded needed to be addressed as well as commitments made by the parties in order to further the goal of reaching a region-wide common market as soon as possible. These conditions will also be part of any section 203 or section 205 authorization needed by the Alliance Companies to transfer control of jurisdictional facilities to either the Midwest ISO or PJM.<sup>16</sup>

37. As noted above, certain parties oppose the choices by the Alliance Companies to join either PJM or Midwest ISO, raising reliability and operational concerns. Others support the Alliance Companies' decisions to join either PJM or Midwest ISO, noting that establishing a single market for the Midwest ISO/PJM region will provide benefits and alleviate any operational or reliability concerns. After an extensive review of, among other things, the responses to the July 3 data request and the presentations made during the Commission meetings of June 12, 26 and July 17, 2002, we believe that with the expeditious creation of a single market spanning a geographic area from New Jersey in the East to the Rocky Mountains in the West, and with the other conditions imposed below, the Alliance Companies' proposed choices should not have any substantial adverse effect

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<sup>15</sup>Given the circumstances that now exist and our action here, the issues raised in the request for rehearings of the Commission orders in Alliance Companies, et al., 97 FERC ¶ 61,327 (2001) (December 2001 Order), and Alliance Companies, et al., 99 FERC ¶ 61,105 (2002) (April 2002 Order), are now moot. Accordingly, we will dismiss those requests for rehearing.

<sup>16</sup>At such time as the Alliance Companies seek to make effective their choices they should file pursuant to section 203 to transfer operational control.

on customers.<sup>17</sup> To the contrary, the creation of such a single market should benefit customers.

38. In short, we are presented with two options, accepting each of the former Alliance Companies RTO selections and having a single common market over the entire Midwest ISO/PJM region, or, rejecting at least some of the former Alliance Companies RTO selections and having two appropriately configured RTOs with a more geographically contiguous boundary. We are opting for the former with conditions that must be met to address the significant concerns raised by the protestors. The latter would be consistent with the scope and configuration requirements of Order No. 2000, the former (with conditions) will be consistent with Order No. 2000, once the organizations achieve a common market. In the interim, and in order for the parties to move forward, the conditions discussed below need to be addressed.

### **Common Market**

39. The protestors' concerns are relevant during the transition to a single market and should be obviated with the establishment of that single market. Our belief is that the benefits of the single market are so significant that one important focus for this Commission and that of the parties should and must be directed towards ways of minimizing the transition period.

40. Our conditional acceptance of this arrangement, in large part, is based upon our (as well as NERC, ECAR and MAIN's) belief that a common market will minimize any seams issues and will allow parties to manage seams more efficiently.<sup>18</sup> Moreover, we cannot ignore the substantial cost savings associated with having a common market across both regions. The transition period must be as short as absolutely possible. Therefore, in order to hasten these benefits, as well as to ensure as short a transition period as possible, we will require Midwest ISO and PJM to form a functional common market across the two organizations by October 1, 2004. This is consistent with Midwest ISO's commitment to

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<sup>17</sup>Indeed, we believe that, absent these conditions, there could be significant adverse operational and reliability effects leading to the proposed choices not being in the public interest.

<sup>18</sup>See July 15, 2002 NERC, ECAR and MAIN joint response to request for information (NERC Response) at 5 ("Once Midwest ISO and PJM have achieved a single market, the elections by the former Alliance Companies should no longer matter. Having market-to-market interfaces should make it easier to assign costs to various necessary reliability actions.").

have an LMP-based market in place by the end of 2003 for its region. We believe that an additional nine months beyond the end of 2003 is ample time to allow both organizations to overlay the market across the entire region.

41. We expect that our October 1, 2004 deadline for implementing a common market will be met. To ensure that this deadline is met, we remind the parties that we have available to us a wide range of remedies that we can employ if it appears that, from our review of the status reports that will be filed with us, this deadline may not be met.

### **ITC Participation**

42. We have long recognized the value that ITCs bring to bear on RTO development. We are encouraged that National Grid, which will be participating in both PJM and Midwest ISO, will bridge both organizations and help to manage the seams between PJM and Midwest ISO. The Ohio Commission makes this point when it states that "National Grid is capable of playing a significant role in operational RTO development and could, for instance, be an overarching entity, in the 'larger Midwest' region to aid in finding solutions to 'mend the seams'."<sup>19</sup> We agree with the Ohio Commission.

43. One mitigating factor in approving the RTO choices of the Alliance Companies is the ability of National Grid to possibly bridge both organizations and manage the seams between Midwest ISO and PJM until a common market is developed. While we have the benefit of the ITC filing in Midwest ISO and are conditionally accepting that in a companion order today, PJM has not yet filed to modify its tariff to permit ITCs to operate under PJM as Midwest ISO does. Furthermore, we are concerned that the proposed delegation of functions in the MOU with PJM may not be consistent with those permitted in the April 2002 Order and the TRANSLink Order. As we stated in the TRANSLink Order, the delegations permitted by that order are intended to be applicable no matter which RTO the participants ultimately join. Our concern is that while we believe that an ITC can mitigate effectively seams between the two organizations, this ability could be compromised (and lead to additional seams) if the functions allocated to the ITC differ on either side of the seam. In order for us to accept the Alliance Companies' choices, PJM must revise its tariff to permit ITCs to operate under PJM as

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<sup>19</sup>Ohio Commission Comments at 8. The Ohio Commission also notes that National Grid, "as the common thread" joining the seams between Midwest ISO and PJM, will play a valuable role in needed investment which will lessen congestion between the two. Id. at 10.

Midwest ISO does. To the extent that PJM's tariff does not permit ITCs it is unjust and unreasonable, and allowing ITCs would address this concern.

44. Further, we will require any ITC agreement with PJM to mirror the allocation of functions provided for in the April 2002 Order and the TRANSLink Order. In this regard, there should be no stand-alone agreements. Rather, there should be pro forma agreements under the respective tariffs of the Midwest ISO and PJM that provide for participation of new members and the delegation of functions to an ITC.

45. In addition, we will require the agreement to form an ITC between National Grid, AEP, ComEd, DP&L and PJM as detailed in the MOU to be filed within 30 days of the date of this order.<sup>20</sup> Upon filing of this agreement, other concerns raised by various protestors can be raised and addressed.

### **Reliability and Operational Issues**

46. One of the Commission's concerns with the RTO choices made by the Alliance Companies was the impact on reliability. We thus share the concerns of many parties that question the impact of the configurations resulting from the decisions of Alliance companies. In particular, we note that four concerns were identified and discussed at NERC's meeting with MAIN, ECAR, Midwest ISO and PJM representatives on July 11, 2002: (1) parallel flows - ATC/AFC calculation; (2) contract tie capacity and electrical peninsulas; (3) differing definitions and procedures between RTOs; and (4) facilities in close electrical proximity under different RTOs.

47. According to NERC, the Reliability Plans are expected to be filed by mid-September 2002 and will address reliability issues contained in the July 3 request for additional information. NERC will provide the Commission with a report of its findings.<sup>21</sup>

48. As stated in its July 15 response, NERC's position on the proposed configuration is contingent on satisfactory solutions to the significant reliability issues identified by Midwest ISO and PJM. NERC expects the respective organizations to address these issues in the Reliability Plans to be presented to NERC by Midwest ISO and PJM in

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<sup>20</sup>We remind the parties that National Grid's participation as a Managing Member is contingent on National Grid's demonstration of its independence.

<sup>21</sup>NERC Response at 8.

September 2002. Thus, our conditional acceptance is subject to NERC approval of the updated Reliability Plans. As discussed more fully below, we will also require Midwest ISO and PJM to file a joint operational agreement detailing how they will operate at the seams during the transition period.

### **Through and Out RTO Rate Design**

49. One of the primary obstacles to RTO formation has been rate pancaking for transactions crossing RTO borders. Both Midwest ISO and PJM agree that this is an issue.<sup>22</sup> In light of the Alliance Companies' RTO choices and in view of the comments, the resolution of inter-RTO rates is fundamental to our decision to accept the choices of Illinois Power, ComEd, and AEP to join PJM. Resolution of inter-RTO rates is fundamental to establishing a single, common market.

50. Pursuant to section 206 of the FPA, the Commission will initiate an investigation and hearing before a presiding administrative law judge with regard to the rates for through and out service under the Midwest ISO and PJM tariffs and with respect to the protocols relating to the distribution of revenues associated with through and out service in the PJM, PJM West, and Midwest ISO Transmission Owners Agreements. Where, as here, the Commission initiates a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date anywhere from 60 days after publication in the Federal Register of notice of its intent to initiate a proceeding to 5 months after the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,<sup>23</sup> we will establish the refund date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the investigation is published in the Federal Register.

51. Section 206(b) also requires that if no final decision is rendered in the Commission's investigation by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earliest, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission in advance of that date. Here, however, we will

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<sup>22</sup>July 17, 2002 Commission Meeting, Tr. at 89.

<sup>23</sup>See, e.g., Canal Electric Company, 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

allow the parties until September 16, 2002 to reach agreement on a proposed solution, and so we cannot follow our usual procedure. Although we do not have the benefit of a presiding judge's report, given the nature of the issue being set for investigation and hearing as well as the need to resolve this matter expeditiously, we expect that if this matter does go to hearing, and assuming it does not settle, the presiding judge should be able to render a decision by February 28, 2003. If the presiding judge is able to render a decision by that date, and assuming that the matter does not settle, we estimate that we will be able to issue our decision within approximately three months of the filing of briefs on and opposing exceptions or by July 31, 2003.

52. We are mindful that any solution may need to be revised once a common market is fully developed, and is subject to the Commission's final determination on Standard Market Design in Docket No. RM01-012-000. Moreover, any such solution must result in rates which are designed in a reasonable fashion and do not favor participants in one RTO over those in the other. While we are instituting a section 206 proceeding, we nevertheless encourage Midwest ISO and PJM to develop a solution to eliminate rate pancaking between the organizations on their own as expeditiously as possible (and we are allowing them until September 16, 2002 to do so). While we are not prescribing a specific solution at this time, we believe that the IRCA developed as part of the Illinois Power Settlement, see Illinois Power Company, 95 FERC ¶ 61,183, reh'g denied, 96 FERC ¶ 61,026 (2001), provides useful guidance.

### **Connectivity Issue in Michigan and Wisconsin**

53. Various parties contend that the choices of AEP, ComEd and Illinois Power will isolate Michigan and Wisconsin from the rest of Midwest ISO and undermine the ability of both organizations to carry out their RTO functions. Protesters assert that ComEd's participation in PJM creates: (1) a void at the center of Midwest ISO; and (2) a seam at the southern interface of the already constrained Wisconsin Upper Michigan System (WUMS) and that seam presents significant obstacles to the effective planning and construction needed to widen this bottleneck and impedes management of loop flows and congestion.<sup>24</sup> We agree, and are also mindful of the partial electrical stranding of Wisconsin and Michigan given the RTO participation choices conditionally accepted. Illinois Power, in fact, recognized the potential to become electrically isolated during the discussion at the July 17 meeting:

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<sup>24</sup>See, e.g., Madison Gas & Electric, Missouri River Energy Services, and Wisconsin Public Power's Protest at 3.

And my concern about [Illinois Power] being left behind [in] Midwest ISO and ComEd and AEP going to PJM is, we've become almost stranded at this point because we have to rely on going through Ameren to get any where into Midwest ISO with any significant ties, and there's not any capacity available, because it's already sold out to third parties. We're not going to be able to get imports or exports in without having to pay huge fees that occur sometimes at the borderlines of RTOs.<sup>25</sup>

Therefore, we direct AEP, ComEd, Illinois Power, Midwest ISO and PJM to propose a solution which will effectively hold harmless utilities in Wisconsin and Michigan from any loop flows or congestion that results from the proposed configuration. Such a solution is to be part of an overall joint operational plan to be filed by Midwest ISO and PJM under which both organization will manage seams and any reliability or operational issues thereunder.

54. PJM has offered its expertise for a more detailed review of the challenges of loop flows and congestion management with neighboring control areas.<sup>26</sup> In view of the operational and financial impact from the configuration that can result from the RTO selections by parties, it is imperative that PJM and Midwest ISO analyze the operational and financial impact on market participants of adding new member(s) to their respective organizations. We believe that, at a minimum, PJM and the Midwest ISO must analyze changes in loop flows and congestion (FTRs/TLRs) and post the expected financial and operational impacts (in addition to all underlying studies) prior to adding new members and provide adequate time for market participants to digest the impact and make alternative business arrangements, to the extent possible. We direct PJM and Midwest ISO to post on their websites the above required information within 45 days of the date of this order. Prompt attention to this issue will help move parties toward a common market while giving existing market participants some measure of the impact of an expanding RTO/ISO.

## **Reports**

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<sup>25</sup>July 17, 2002 Commission Meeting, Tr. 114.

<sup>26</sup>Declaration of Andrew Ott on Behalf of PJM Interconnection, L.L.C. at 2.

55. In order to adequately monitor progress, we will require Midwest ISO, PJM and National Grid to file for informational purposes, within forty-five days of the date of this order, an implementation plan, including a time line with specific deadlines, for achieving a common market by October 1, 2004. As part of the implementation plan, National Grid, Midwest ISO, and PJM must describe in detail how they intend to optimize the use of technology or introduce technology (e.g., wide area measurement systems, enhanced power device monitoring, direct system state sensors, and improved state estimator models) that enhances their ability to monitor and manage the grid and expedite the development of a common market. We further direct the above parties to file, for informational purposes, progress reports every sixty days after the filing of the implementation plan.

56. Finally, in an effort to facilitate this process, Commission Staff will be made available in order to aid the parties in implementation.

### **Conclusion**

57. We believe that with the conditions discussed above (and as summarized below), that the choices of the Alliance Companies are satisfactory and can expeditiously create in a short time a robust common market covering a significant portion of the United States. Therefore, we will conditionally accept the Alliance Companies' compliance filings, subject to the following conditions: (1) a single market must be implemented by October 1, 2004; (2) National Grid participates in both Midwest ISO as GridAmerica and in PJM, and performs the same functions pursuant to the same requirements in both for Day One operations; (3) the PJM ITC MOU must satisfy the delegation of functions as provided for in the April 2002 Order and the TRANSLink Order; (4) the agreement to form an ITC between National Grid, AEP, ComEd, DP&L and PJM be filed within 30 days of the date of this order; (5) NERC must approve the Reliability Plans; (6) a solution addressing the "through and out" rates between Midwest ISO and PJM must be developed; (7) the Alliance Companies seeking to join PJM must address issues raised by the protestors regarding the "island" problem in Wisconsin and Michigan; (8) parties must file an implementation plan and frequent progress reports; and (9) Commission Staff participation in the process.

### **The Commission orders:**

(A) The Alliance Companies' compliance filings are hereby conditionally accepted, subject to the conditions discussed in the body of the order.

(B) The requests for rehearing of the December 2001 Order and the April 2002 Order are hereby dismissed as moot, as discussed in the body of the order.

(C) Midwest ISO and PJM are hereby directed to file statements indicating their agreement to the above conditions within 15 days of the date of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL02-111-000 concerning the justness and reasonableness of Midwest ISO's and PJM's rates, as discussed in the body of this order. However, the hearing will be held in abeyance for until September 16, 2002 in order to allow the parties an opportunity, on their own, to propose a solution to the disparity between the rates.

(E) Should the parties not have proposed a solution to the disparity between the rates in the time provided by the Commission, i.e., by September 16, 2002, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately 15 days of September 16, 2002, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The refund effective date in Docket No. EL02-111-000, established pursuant to section 206(b) of the FPA, shall be 60 days following publication in the Federal Register of the notice.

(G) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding in Docket No. EL02-111-000.

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

( S E A L )

Linwood A. Watson, Jr.,  
Deputy Secretary.

### Appendix

Listed parties have filed notices of intervention or motions to intervene in Docket No. EL02-65-000, et al. Short-hand references to parties referred in the order are indicated in parenthesis after the name. Late interventions are indicated by an asterisk.

#### Company Name

AES NewEnergy, Inc. (NewEnergy)  
Affected Midwestern Transmission Users  
Ameren Energy Marketing Company, the Illinois Municipal Electric Agency, and  
Wabash Valley Power Association, Inc. (Joint Protestors)  
American Electric Power Service Corporation, Commonwealth Edison Company, Illinois  
Power & Light Company, Virginia Electric Power Company, and Dayton Power and  
Light Company (Alliance Companies)  
American Transmission Company, LLC  
American Municipal Power-Ohio, Inc. (AMP-Ohio)  
Baltimore Gas and Electric Company (BG&E)  
Calpine Central, L.P.  
Calpine Corporation  
Cities of Batavia and St. Charles, Illinois (Cities)\*  
Coalition of Municipal and Cooperative Users of Alliance Companies' Transmission and  
American Municipal Power-Ohio, Inc. (Coalition of Users)  
Coalition of Midwest Transmission Customers & Industrial Energy Users-Ohio, PJM  
Industrial Customer Coalition (Coalition of Customers)  
Constellation Power Source, Inc. (Constellation)  
Consumers Energy Company (Consumers)  
Detroit Edison Company (Detroit Edison)  
DTE Energy Company and International Transmission Company  
Dynergy Inc. (Dynergy)  
Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest  
Generation EME, LLC (Edison Companies)

Illinois Industrial Energy Consumers (Illinois Industrial)  
Illinois Municipal Electric Agency  
Iowa Utilities Board, Minnesota Department of Commerce, and the Iowa Office of  
Consumer Advocate (Iowa Board, Minnesota Department, and Iowa Advocate)  
Indiana Office of Utility Counselor (Indiana OUCC)\*  
Indiana Utility Regulatory Commission, Michigan Public Service Commission,  
Oklahoma Corporation Commission (Midwest State Commissions)\*  
Kansas City Power & Light Company  
Mirant Americas Energy Marketing, LP, Mirant Neenah, LLC, and Mirant Zeeland, LLC  
(Mirant)  
Midwest ISO Transmission Owners (Midwest ISO TOs)  
Missouri Joint Municipal Electric Utility Commission (MJMECC)  
Missouri Office of the Public Counsel (Missouri Counsel)  
NRG Companies  
Office of the People's Counsel of the District of Columbia (DC OPC)\*  
Ohio Consumers' Counsel (Ohio Counsel)\*  
Ohio Rural Electric Cooperatives, Inc. and Buckeye Power, Inc. (Ohio Cooperatives and  
Buckeye)\*  
Pennsylvania Office of Consumer Advocate (Pennsylvania Advocate)  
PSEG Companies\*  
Public Service Commission of Wisconsin (Wisconsin Commission)\*  
Steel Dynamics, Inc. (Steel Dynamics)\*  
Trans-Elect, Inc.  
TRANSLink Development Company LLC and TRANSLink Participants (TRANSLink)  
West Penn Power Company, Monongahela Power Company, and the Potomac Edison  
Company (Allegheny Power)  
Public Utilities Commission of West Virginia (West Virginia Commission)  
Wisconsin Electric Power Company (WEPCO)  
Public Service Commission of Wisconsin (Wisconsin Commission)\*  
Wisconsin Public Service Corporation and Upper Peninsula Power Company

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Alliance Companies, et al.

Docket No. EL02-65-000, et al.

( Issued July 31, 2002)

Breathitt, Commissioner, dissenting in part:

I am pleased to support this order's acceptance of the former Alliance companies' decisions to join either PJM or MISO. This order hopefully will conclude the uncertainty brought about by abrupt changes in Commission directives with RTO formation in the Midwest. It should also provide certainty in the goal of establishing a joint and common market for an area spanning from the Mid-Atlantic beaches to the Rocky Mountains. MISO has stated that this single market could potentially eliminate many seams issues and that it should be operational by 2005. Consequently, there are real benefits which will derive from today's action. The parties in this area are also endeavoring to implement, in a timely manner, many of the concepts found in our SMD NOPR as well as from Order No. 2000.

I am also enthusiastic about the ITC developments in this region. I have long been a proponent of the ITC model. I believe that for-profit entities will have incentives to bring critical infrastructure to the market. As the GridAmerica order notes, there are very significant benefits that ITCs can bring to bear including such areas as seams management. It is also important to me that there be room in RTO development for different models or structures. Thus, I am encouraged that ITC's will be allowed to develop in MISO as well as in PJM.

However, I am dissenting, in part, on several of the conditions imposed through this order. The concern I have is that the parties have told us that a single market can be operational by 2005. However, if the common market does not develop by October 1, 2004, the parties would be faced with potential penalties. Thus, even if they meet the 2005 date, the utilities in this region could be faced with a reduction in their return on equity. This is not the right time to be adding uncertainty and risk to the marketplace by

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threatening uncertain penalties such as rate of return or others. I think that, at a time when we want investment in transmission assets, we need to provide a steady hand and not hand uncertainty in the form of unknown penalties over the heads of entities which have already spent millions of dollars trying to comply with FERC.

I am also concerned about the arbitrary and irrational nature of the dates set forth in this mechanism. The parties have stated that they will have a common market developed by 2005. I would have preferred to have the parties provide us with a implementation plan as to how they will meet the 2005 date prior to making judgements as to the timeliness of the parties' plans. I understand the desire to get to a single market as quickly as possible. I believe that desire is shared by MISO, PJM and National Grid. These parties have worked hard and have spent millions of dollars to overcome obstacles to get to this point and I am sure they will continue to actively implement their plan. As a result, I would have deferred action on any mechanism until we have time to review the plan for implementation. It is premature to do otherwise.

I am troubled by several of the other conditions imposed through this order. While some of these conditions make sense, I question the basis for others. Specifically, the order takes action under Section 206 on the through and out rates charged for transmission service in the region. I understand the desire to have this rate issue addressed as expeditiously as possible. MISO has acknowledged that this is a problem and has taken steps to address the situation. Specifically, as is noted in the Grid America order, for service through and out of the MISO system, it discounts its current rate so as to maximize revenues while minimizing the charges applicable to this service. Perhaps MISO and PJM could do more to address this rate issue, but the fact remains that the Commission does not even have an answer to the cost shifts that will occur by reducing the through and out charge. I am also not comfortable with the condition that the parties file reports every sixty days on the progress on the implementation plan.

Finally, I am concerned about the total number of conditions that are imposed on the parties. The majority is requiring so much process and so many conditions that the business at hand - joining RTO's, forming ITC's, addressing seams, implementing a common market, almost becomes secondary to meetings, reports, 206 investigations and the like. Consequently, I question whether these conditions are appropriate. As I stated earlier, these organizations and their individual utilities will be actively pursuing the vision laid out in our SMD NOPR. I do not believe the rather onerous conditions is the majority imposes a precedent that others around the country will find inviting. In addition, I find it troublesome that we may be penalizing the very entities that we should be congratulating or encouraging for their efforts toward creating to a

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joint and common market. Lastly, I believe the Midwest as a region would have been better off had the majority left well enough alone last December<sup>27</sup>, and put its significant power and muscle behind the Interregional Cooperation Agreement and the independent duties of National Grid.<sup>28</sup> For these reasons I am dissenting in part on this order.

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Linda K. Breathitt  
Commissioner

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<sup>27</sup> Alliance Companies, et al., 97 FERC ¶ 61,327 (2001).

<sup>28</sup> Illinois Power Company, 95 FERC ¶ 61,183, reh'g denied, 96 FERC ¶ 61,026 (2001).