108 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.	Docket Nos. ER04-375-001 ER04-375-003 ER04-375-005 ER04-375-006

ORDER ON REHEARINGS, CLARIFICATION,
AND COMPLIANCE

(Issued August 5, 2004)

1. This order addresses requests for rehearing and clarification of the Commission's March 18, 2004 Order[1] modifying and conditionally accepting the Joint Operating Agreement (JOA), proposed by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) to enable phased integration of their operations (Docket No. ER04-375-003). It addresses as well the compliance filing, required by the JOA Order (Docket No. ER04-375-001), and Midwest ISO's response to Commission staff's request for further information amplifying the compliance filing (Docket No. ER04-375-005). For the reasons addressed below, we will grant and deny rehearing in part, and accept the compliance filing subject to conditions. This order benefits customers by promoting more effective competition in regional wholesale power markets, assuring non-discriminatory transmission service, and improving reliability.

I. Background

2. Midwest ISO and PJM filed their proposed JOA, on December 31, 2003, to enable the two regional transmission organizations (RTOs) to coordinate their operations more closely. The proposed JOA would permit more efficient and reliable system operation, administration of a joint and common market, and would allow additional utilities to integrate into the PJM markets. The proposed JOA was one of four, related,

[1] Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 106 FERC ¶ 61,251 (2004) (JOA Order).

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

December 31, 2003 filings pertaining to increased coordination between PJM and Midwest ISO, and to integration into PJM of Commonwealth Edison Company (ComEd) and certain operating companies of the American Electric Power Corporation (AEP).

3. The filing most pertinent to the JOA proceeding and to these instant proceedings is Docket No. ER04-364-000. There, ComEd and AEP jointly proposed a plan to hold utilities in Michigan and Wisconsin harmless from adverse effects of loop flows and congestion caused by AEP's and ComEd's choosing PJM as their RTO, a choice geographically separating utilities in Michigan and Wisconsin from their RTO, Midwest ISO.[2]

4. During Phase 1 of the JOA, PJM is to coordinate its market-driven operation with Midwest ISO's non-market operation. This coordination includes: exchange of information and data; calculation of total transmission capability (TTC), available transfer capability (ATC), and available flowgate capability (AFC); coordination of planned outages; joint operation of emergency procedures; coordination of regional transmission expansion planning and of scheduling checkouts; joint reliability coordination and implementation of the reliability plans approved by the North American Electric Reliability Council (NERC); reciprocal coordination of flowgates according to the Seams White Paper;[3] resolution of hold harmless and market monitors' issues; and negotiation and drafting of agreements for additional coordination. PJM also extended operation of its markets over ComEd's transmission system.

5. During Phase 2, which will apply only to the control areas with locational marginal pricing (LMP)-based markets, the two RTOs' additional operational integration will include generation redispatch and coordination to manage congestion; coordination to calculate consistent LMPs; and other actions to which the RTOs agree or that the Commission requires.

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[2] *See* Commonwealth Edison Company, *et al.*,106 FERC ¶ 61,250, *reh'g requested* (2004) (rejecting hold harmless proposal and giving guidance on appropriate proposal).

[3] "Managing Congestion To Address Seams: A Proposal for Congestion Management Coordination; Submitted by PJM-ISO and the Midwest ISO; Version 4.0, August 4, 2003." During the JOA proceeding, entities referred to this document alternatively as the Congestion Management White Paper and the Seams White Paper. Midwest ISO and PJM included this document by reference in the proposed JOA, but omitted it from their December 31, 2003 filing.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

6. In the JOA Order, the Commission conditionally accepted the JOA, with the directives and modifications listed below.

(a) Revise the JOA and Seams White Paper to give consistent definitions and to explain more clearly the process for identifying Coordinated Flowgates and Reciprocal Coordinated Flowgates; include in the revisions a collaborative and inclusive process for identifying flowgates, with clearly outlined provisions stating how parties can propose new flowgates for both RTOs during all phases of the JOA; and, list all flowgates to be coordinated in the JOA or the Seams White Paper (P 36).

(b) Remove discrepancies between the JOA and the Seams White Paper (P 38).

(c) State clearly that reservations granted for firm transmission service with terms of one year or longer retain the rollover rights and reservation priority granted with the original service under the Midwest ISO and PJM OATTs, with the qualification that the RTOs may only limit rollover rights for new long-term firm service if there is insufficient ATC to accommodate rollover rights beyond the initial term, and this limitation is stated explicitly in the service agreement (P 46).

(d) Provide for sharing of the relevant transmission owners' expansion plans, and for coordination between the RTOs as each RTO develops its own regional expansion plan (P 55).

(e) Revise JOA section 9.4.3 to indicate more clearly that cost responsibility for network upgrades will be consistent with the Midwest ISO and PJM tariffs, as those tariffs are modified, pursuant to parties' rights under the Federal Power Act (FPA); provide for inclusion of stakeholder participation in the process of determining cost allocation of network upgrades pursuant to the Coordinated System Plan[4] (P 57).

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[4] Per JOA section 9.3.5.1, the Coordinated System Plan integrates the RTOs' transmission expansion plans, including market-based additions to system infrastructure, and network upgrades and alternatives. It also sets forth actions to resolve impacts caused by system additions or network upgrades, and provides for joint analysis of the combined transmission systems.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

(f) Include the Midwest ISO and PJM restoration plans in each RTO's respective business practice manual; provide for sharing, among local entities that operate and maintain transmission in real-time, of the restoration plans of the local entities with which they are interconnected (P 67).

(g) Add text to JOA section 4.1.1.2 to specify that specific components of real-time and projected operating information are subject to confidentiality (P 70).

(h) Revise the JOA to include provisions for voltage control and reactive power coordination (P 75).

(i) Make acceptance of JOA Phase 2 provisions subject to Midwest ISO and PJM jointly filing, within 60 days of the proposed effective date for Phase 2, a revised JOA, containing more detail about Phase 2 and responding to the concerns raised by intervenors to the JOA proceeding; the effective date for Phase 2 will depend on Commission acceptance of the joint filing and further Commission orders (P 81).

(j) File, for Commission acceptance, the Seams White Paper, as incorporated into the JOA, and any revisions or amendments thereto (P 90).[5]

(k) File, as a prerequisite to Commission establishment of an effective date for Phase 1 of the JOA, the outcome of NERC's review of the RTOs' reliability plans, along with any conditions imposed by NERC or any changes to the JOA required by NERC's actions (P 95).[6]

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[5] The Commission included a precatory condition, that the RTOs utilize their stakeholder process in developing modifications to the JOA and the Seams White Paper.

[6] On April 6, 2004, PJM and Midwest ISO filed a report describing the review by NERC of their reliability plans and included NERC's approval resolutions (Docket Nos. ER04-375-002 and ER04-521-001). Commission acceptance of this report, on April 27, 2004, fulfilled one condition for a May 1, 2004 effective date for the JOA. The remaining condition was fulfilled when the Commission accepted, in the same order, PJM's and Midwest ISO's new hold harmless plan (Docket No. ER04-718-000), subject to hearing and refund. *See* PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc., *et al*., 107 FERC ¶ 61,087 (2004), *reh'g requested* (April 27 Order).

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

(l) Require each RTO's market monitoring unit to watch the situation along that RTO's seam with AEP for gaming or other inappropriate actions; within 90 days after integration of ComEd into PJM, the market monitoring units are to file a report identifying potential for gaming, the actual experience, and proposed solutions to prevent opportunities for gaming (P 100).

(m) Midwest ISO and PJM are to make informational filings, on or about every 60 days, with detailed description of their progress in implementing each section of the JOA; such report should include explanation of how JOA implementation is resulting in efficient and reliable operation of their combined transmission systems, modifications that would improve efficient and reliable operation of their combined transmission systems, and the RTOs' plans to adopt such modifications, with appropriate filings to the Commission (P 103).

7. The JOA Order required the filing of revisions to the JOA within 15 days. Midwest ISO and PJM made the required compliance filing on April 2, 2004 (Compliance Filing). The Compliance Filing include the April 2, 2004, revised Seams White Paper, now titled "Congestion Management Process, Version 4.01" (CMP).

II. Parties Making Filings

A. Rehearing of the JOA Order

8. The parties requesting rehearing or clarification of the JOA Order (Docket No. ER04-375-003) are: Cinergy Services, Inc. (Cinergy); Consumers Energy Company (Consumers Energy); GridAmerica LLC (GridAmerica); International Transmission; and the Public Utilities Commission of Ohio (Ohio Commission). GridAmerica and International Transmission joined in an additional rehearing request with the Michigan Electric Transmission Company (Michigan Electric) and American Transmission Company LLC (American Transmission), a non-party to this proceeding, and the group styled itself as the Midwest Stand-Alone Transmission Companies (Stand-Alone Companies). American Transmission moved for leave to intervene late, pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2003).

B. The Compliance Filing and the Data Response

9. Notice of Midwest ISO's and PJM's April 2, 2004 Compliance Filing of JOA revisions (Docket No. ER04-375-001) was published in the *Federal Register*, 69 Fed. Reg. 19,999 (April 15, 2004), with comments, protests, and interventions due on or before April 23, 2004. In response, FirstEnergy Service Company (FirstEnergy) and International Transmission filed comments. No protests or interventions were filed.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

10. International Transmission's comments raised issues about available firm transmission capacity for Michigan customers during summer 2004. Specifically, International Transmission's largest customer, Detroit Edison Company (Detroit Edison), reported that it has been unable to obtain firm transmission capacity on Michigan systems for summer 2004 whereas, in 2003, it had successfully reserved summer capacity. International Transmission ascribed the lack of transmission capacity in part to Midwest ISO, for the first time, calculating its available summer capacity pursuant to the JOA. Accordingly, International Transmission concludes that the JOA capacity allocation method produces unreasonable results and must be modified.[7]

11. Because Staff could not address International Transmission's comments with just the information in the Compliance Filing, on May 17, 2004, Staff requested further information from Midwest ISO. On May 28, 2004, Midwest ISO filed its response (Data Response) (Docket No. ER04-375-005). The Secretary's June 3, 2004 notice of the Data Response was published in the *Federal Register*, 69 Fed. Reg. 32,532 (June 10, 2004), with comments, protests, and interventions due on or before June 11, 2004.[8] In response, Midwest ISO and Detroit Edison filed joint and supplemental comments, and Consumers Energy and Exelon Corporation (Exelon)[9] each filed comments. On June 30, 2004, Detroit Edison filed a motion for leave to answer Exelon's comments, accompanied by the substantive answer.

12. On June 14, 2004, International Transmission submitted a request for a 25-day comment extension to evaluate Midwest ISO's Data Response. On June 16, 2004, the Commission issued notice granting International Transmission a 10-day comment extension until June 25, 2004. On June 21, 2004, International Transmission filed its request for rehearing of this notice.

13. In Midwest ISO and Detroit Edison's jointly filed supplemental comments, the companies correct a misstatement in Midwest ISO's Data Response, and state that Detroit Edison had, at no time, rejected a specific offer from Midwest ISO to use flowgate redispatch. Additionally, Midwest ISO and Detroit Edison state that, on April 26, 2004, Detroit Edison elected to confirm the unconditionally granted portion of its request (624

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[7] International Transmission's April 23, 2004 filing at 4-5 & n.3.

[8] Because the federal government was closed on June 11, 2004, the last filing date for comments became June 14, 2004.

[9] Exelon is the parent company of Commonwealth Edison, which had integrated into PJM on May 1, 2004. *See* P 2, *supra*.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

MW), while electing to pursue other options for its remaining capacity shortfall (251 MW). Currently, Midwest ISO and Detroit Edison are working to secure the availability of sufficient firm transmission capacity for the upcoming summer season.

14. On July 9, 2004[10], International Transmission filed outoftime comments, which it clarified on July 12, 2004. On July 15, 2004, Exelon filed an answer in response to Detroit Edison's June 30, 2004 answer.

III. Discussion

A. Procedural Matters

1. Late Intervention

15. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and the burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.[11] American Transmission has not met this burden here. It advances no reason for its failure to intervene in a timely fashion. Accordingly, American Transmission's motion for late intervention in Docket No. ER04-375-003 is denied, and it is not a party to this proceeding. However, the Commission will consider the arguments raised by Stand-Alone Companies because the other three entities requesting rehearing are parties.

2. Late Filings

16. Although styled as answers, Detroit Edison's June 30, 2004 filing and Exelon's July 15, 2004 filing are more accurately characterized as additional comments. As such, they are untimely filed. We will deny Detroit Edison's motion for leave to file comments and will therefore reject those comments. We will also reject Exelon's untimely comments. Similarly, International Transmission's July 9, 2004 comments are untimely and are rejected.

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[10] July 9, 2004 would have been the end of the 25-day period that International Transmission originally sought as the extended comment deadline.

[11] *See, e.g.*, Jupiter Energy Corporation, 106 FERC ¶ 61,170 (2004).

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

B. Rehearing Issues

1. Transmission Capacity Allocation

a. Parties' Positions

17. On rehearing, International Transmission and Consumers Energy object to how Midwest ISO will allocate transmission capacity under the JOA.

18. International Transmission says that the use of historic flows to allocate flowgate capacity may unduly discriminate against certain customers and regions. It refers to Detroit Edison's report that, unlike the 2003 summer, when Detroit Edison was able to reserve 1,605 MW of capacity, during the coming 2004 summer, Detroit Edison will not be able to obtain firm transmission capacity on Michigan's transmission system and will rely on non-firm transmission capacity to import 875 MW of merchant capacity from western Michigan. International Transmission ascribes the lack of transmission capacity to a few factors, including Midwest ISO, for the first time, calculating its available capacity pursuant to the JOA. It continues that Michigan customers no longer have capacity available for summer 2004, caused, in part, by the JOA "firming up" historic loop flows, and by the 500 MW Pathway and related west-to-east transactions taking capacity that otherwise would have been available to Michigan customers.

19. International Transmission says that the Commission's findings, at P 78 of the JOA Order,[12] are incorrect; use of historic network native load (NNL) to allocate capacity on coordinated flowgates does not allow both RTOs to maintain the capacity that they used prior to the JOA, and does not allow market participants to protect the service that they used prior to JOA implementation. It says that use of historic NNL to allocate capacity on coordinated flowgates grandfathers certain transactions, giving them priority, so that loop flows caused by west-to-east transactions for new PJM customers and service to Canadians will bump in-state transactions that, in past summers, were used to serve Michigan load.

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[12] "We believe that the use of historic [network native load] to allocate capacity on Coordinated Flowgates represents a fair methodology that allows both RTOs to maintain the capacity that they used prior to the JOA, and considers how the transmission system is actually used to deliver energy and which facilities are impacted. Using a historic allocation allows market participants to protect the service that they used prior to the implementation of the JOA. It also represents an equitable way to allocate the use of remaining capacity over those flowgates for future needs of both RTOs, since the remaining capacity will be available on a non-discriminatory, first-come, first-served basis pursuant to the RTOs' OATTs." JOA Order, 106 FERC ¶ 61,251 at P 78.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

20. Consumers Energy objects similarly to the use of historic NNL to allocate capacity on coordinated flowgates. It says that this is likely to result in an increase in PJM firm capacity allocation on Midwest ISO flowgates, and denial of capacity to Midwest ISO load-serving entities.

b. <u>Commission Response</u>

21. In the Data Response, Midwest ISO states that the AFC allocation process in the JOA had no impact on the denial of Detroit Edison's request for firm transmission service in March 2004 because the AFC allocation process did not become effective until May 1, 2004.[13] Therefore, International Transmission's concern that the JOA AFC allocation process was responsible for denial of any of Detroit Edison's transmission service requests is incorrect. We note that Detroit Edison and Midwest ISO state, in their joint and supplemental comments, that they are working to ensure the availability of sufficient firm transmission capacity for the upcoming summer season, including possible flowgate redispatch options.[14] We expect Midwest ISO to continue working with Detroit Edison to explore options for meeting Detroit Edison's firm transmission service requirements.

22. We will deny International Transmission's request for rehearing of our acceptance of the use of historic NNL to allocate flowgate capacity in the JOA because it is based on International Transmission's incorrect belief that Midwest ISO denied Detroit Edison's transmission service requests because of the JOA allocation process. As explained above, the JOA allocation process did not influence the denial of Detroit Edison's requests, and, International Transmission's request for rehearing on this issue is unsupported.

23. Similarly, Consumers Energy's objection is unsupported and its request for rehearing is denied. Consumers Energy does not explain its allegation that AFC allocation based on historic NNL will result in an increase in PJM firm capacity allocation on Midwest ISO Coordinated Flowgates and denial of capacity to Midwest ISO load-serving entities. Use of historic NNL to allocate transmission capacity on Coordinated Flowgates under the JOA ensures that the capacity formerly available in

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[13] Midwest ISO states that after initially denying four of Detroit Edison's transmission service requests on March 26, 2004, it subsequently granted three and part of the fourth, on March 31, 2004, giving Detroit Edison 624 MW out of the 875 MW that Detroit Edison had originally requested for firm imports for summer 2004. Data Response at 3.

[14] Midwest ISO's and Detroit Edison's joint and supplemental comments at 4-5.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

each RTO prior to the JOA will still be available for that RTO's future transactions. Historic NNL also accounts for actual system usage by recognizing the impact of transactions (loop flow) in one RTO on another RTO.[15]

2. Flowgates

a. Parties' Positions

24. Consumers Energy objects that, in the JOA Order, the Commission should have specifically required Midwest ISO and PJM to revise the JOA to state that PJM will consider all the flowgate categories in Appendix F of the Seams White Paper for purposes of redispatch during Phase 1 of the JOA.

25. Consumers Energy raised the same argument in its protest to the original, December 31, 2003 filing of the proposed JOA. Its rehearing request presents no new argument or evidence. Thus, we are unconvinced to revisit this aspect of the JOA Order. We are satisfied that the directive requiring Midwest ISO and PJM to revise the JOA and the Seams White Paper to give consistent definitions of relevant flowgates, to explain more clearly the process for identifying coordinated flowgates and reciprocal coordinate flowgates, and to provide for parties to propose new flowgates[16] sufficiently addresses Consumers Energy's concern.

3. Role of ITCs

a. Planning Committee Membership

26. GridAmerica, Stand-Alone Companies, and Ohio Commission request rehearing of the Commission's decision against directing PJM and Midwest ISO to provide expressly for the membership of independent transmission companies (ITCs) on the Joint RTO Planning Committee (JRPC).[17] Ohio Commission urges inclusion of an operational entity, such as GridAmerica, for purposes of inter-regional planning, especially for seams issues, because the ITC business model is appropriate for objective inter-regional

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[15] Our understanding of the JOA AFC allocation process using historic NNL is that the transmission capacity related to past transactions will be allocated and available to each RTO, but specific past transactions are not necessarily guaranteed use of that capacity. Each RTO's use of its allocated capacity is governed by the RTO's OATT.

[16] JOA Order, 106 FERC ¶ 61,251 at P 36.

[17] *Id*. at P 52.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

planning and transmission system expansion. GridAmerica says that the Commission's decision is inconsistent with previous orders finding that ITCs should have a more significant role in transmission planning than non-independent transmission owners, that it limits GridAmerica's planning role with regard to the facilities GridAmerica manages on the Midwest ISO-PJM border, that it is contrary to the expectations of the former Alliance Companies that decided to join Midwest ISO, and that it discourages transmission owners from joining ITCs. Stand-Alone Companies urge inclusion of both ITCs and stand-alone transmission companies on the JRPC for transmission issues.

27. We will deny rehearing. The Commission considered this issue in the JOA Order. After reviewing the requests for rehearing, we continue to find it inappropriate for any stakeholder, even one we know to be independent of market participants, to expressly have membership on the JRPC, thus receiving equal status with the RTOs. The RTOs have the unique responsibility for looking at and planning for the entire region. While we have allowed ITCs to assume certain responsibilities from RTOs, the planning duties of RTOs for their entire regions correctly remain with the regional entities, *i.e.*, the RTOs. The latitude that we may grant an ITC in the creation of its own system plan, which non-independent transmission owners do not have, recognizes the value that an ITC brings to the planning process with respect to its own system. However, the RTOs' ultimate authority for planning facilities with regional and inter-regional impacts assumes an orderly regional planning process and a coherent decisional plan. Although, under this determination, an ITC does not receive membership on the JRPC, this does not diminish the important and unique role that an ITC can play in the management of its transmission system, and in providing information about the system to assist the RTO in exercising its authority with respect to regional and inter-regional planning.

b. ITC's as Market Participants

28. GridAmerica, Stand-Alone Companies, and Ohio Commission request clarification or rehearing concerning the statement, in the JOA Order at P 52, "The Commission does not believe that ITCs should be singled out as the only market participants to have membership status on the JRPC." These parties are concerned that the JOA Order conveyed the Commission's determination that the ITCs are market participants. We grant clarification that the JOA Order does not find that an ITC is a market participant, other than by virtue of its owning electric transmission facilities. Thus, the JOA Order does not change the status of an ITC.

c. ITCs' Rights and Commission Policy

29. Ohio Commission asks the Commission to confirm that the JOA does not diminish or ignore the rights and responsibilities of ITCs under applicable contracts and rate schedules. It requests clarification that a for-profit ITC, such as GridAmerica, Ohio's transmission planner, must remain independent and not be a market participant. It also

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

requests clarification that the Commission's policy and views on ITCs have not changed, and specifically that the Commission believes that a single operational entity can bridge the gap between Midwest ISO and PJM.

30. As we stated, in the JOA Order, nothing in the JOA diminishes or ignores the current rights and responsibilities of ITCs under applicable contracts and rate schedules.[18] We take this opportunity to clarify that we continue to support an ITC's ability to bridge the seam between Midwest ISO and PJM.[19] When an approved ITC operates on both sides of a seam, what would otherwise be inter-RTO impacts will necessarily be internal to the ITC. In such a case, the ITC might be better able to manage the seam that is situated within the ITC's footprint, especially since the ITC will have comprehensive information about its own facilities in both RTOs' regions, although not a market participant. While the JOA neither diminishes nor alters the important role of an ITC that bridges a seam, we will require the two RTOs, when an ITC bridges a seam, to make a filing within 60 days that specifies the role of that ITC in relation to the planning process outlined in the JOA. We will also require the two RTOs to propose any changes to the JOA that are appropriate to recognizing the value of having an ITC on both sides of a seam.

4. Information Sharing

a. Control Area Operator Information

31. During the JOA proceeding, International Transmission protested that the proposed JOA would reduce the grid information available to control area operators. In response, Midwest ISO and PJM first identified International Transmission's two concerns, that certain information currently available to control area operators would no longer be collected, and that control area operators would be unable to review much of the information that the RTOs will collect. Then, the RTOs stated, "The JOA does not diminish the information available to Control Area Operators. The RTOs anticipate that, within the bounds of confidentiality, these operators will have access to such information as appropriate to assist their operations."[20]

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[18] *Id*. at P 48.

[19] *See Alliance Companies*, 100 FERC ¶ 61,137 at P 42-43 (2002).

[20] Midwest ISO's and PJM's joint February 5, 2004 filing at 18.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

32. International Transmission took issue with the RTOs' response. It objected that, while the RTOs will share with each other increased real-time and projected information about their systems, including flow calculations formerly made by the Interchange Distribution Calculator, the RTOs will make available to control area operators only the results of their calculations and not the underlying data, which had previously been available on a real-time basis. International Transmission objected further to the RTOs limiting the information they would share by their determination of confidentiality needs and only as appropriate. International Transmission again asked the Commission to require control area operators and RTOs to continue to share at least the same information as currently exchanged.[21]

33. In the JOA Order, the Commission found International Transmission's concerns unfounded. Relying on the RTOs' February 20, 2004 response, the Commission found that the JOA does not diminish in any way the information available to control area operators. The Commission found that, except for the bounds of confidentiality and the Commission's Standard of Conduct, the RTOs had agreed to provide real-time data to control area operators, and that there was no reason for the RTOs not to provide information on neighboring systems to optimize emergency procedures.[22]

34. On rehearing, International Transmission says that the Commission's recognition of the RTOs' confidentiality limitation on sharing any data with control room operators is inappropriate and unexplained. It asks for full sharing of all Intercontrol Area Center Communications Protocol data and other data relevant to control room operations. It points out that Midwest ISO has not yet taken over control room operations on its entire footprint, and that separate local operating entities still largely operate the Midwest ISO grid.

35. Our understanding of the RTOs' response, upon which the JOA Order relied, is as follows. Concerning data or information that traditionally has been available to control room operators, the RTOs will provide this data or information to the control area operators in the same manner that the control room operators received this data or information before May 1, 2004, to the extent that the RTOs have or can readily obtain this data or information. Concerning new data or information that had not traditionally been provided, the RTOs will make this new data and information available, consistent with confidentiality protections, as set forth in JOA section 18.1(Confidentiality) and the Commission's Standards of Conduct.

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[21] International Transmission's February 20, 2004 filing at 8-12.

[22] JOA Order, 106 FERC ¶ 61,251 at P 65.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

36. We will require Midwest ISO and PJM to state, in a compliance filing, to be submitted within 30 days of the date of this order, whether they agree that the JOA's and the CMP's provisions concerning sharing data and information with control room operators comport with the Commission's understanding of these provisions. If the RTOs disagree, we will require them to submit conforming amendments or else to explain why they maintain such amendments should not be submitted.

37. Additionally, we recognize that the RTOs' standards for holding confidential some new information and data need clarification. Therefore, we will require Midwest ISO and PJM to describe, for our review, the categories or kinds of data and information, from Intercontrol Area Center Communications Protocol data or otherwise relevant to control room operations, that the RTOs deem confidential, under JOA section 18.1, or otherwise inappropriate to share with control area operators.

b. <u>Restoration Plans</u>

38. During the JOA proceeding, Consumers Energy said that JOA section 8.1.7.1 (Power System Restoration) needed additional text to optimize network restoration procedures. Because local operating entities (including control area operators) within the Midwest ISO footprint are still responsible for real-time transmission operation and maintenance, Consumers Energy says that these local operating entities need access to Midwest ISO's and PJM's restoration plans and to the black start plans[23] of systems to which these local operating entities are interconnected.

39. Midwest ISO and PJM responded that they, "expect that the practice for the sharing of restoration plans and access to black start plans with Control Area Operators will be contained in the business practice manuals [which] . . . are updated periodically and will be available for Control Area Operator review as appropriate."[24]

40. In the JOA Order, the Commission agreed with the need for sharing restoration plans and black start plans with control area operators. Relying on the RTOs' commitment to provide these plans in their business manuals, the Commission found that

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[23] Black start plans refer to starting up generation that has been idled. Restoration plans refer to bringing customers back on-line after a transmission outage.

[24] Midwest ISO's and PJM's February 5, 2004 filing at 19.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

the JOA needed no change to allow the continued sharing of these plans with appropriate local entities (those operating and maintaining transmission in real-time). It directed that such sharing be included in the respective RTO business practice manuals.[25]

41. On rehearing, Consumers Energy expresses misgivings that, without Commission oversight and revision of the JOA, the information shared may be insufficient. It requests the Commission to require the sharing of restoration plans and black start plans with local operating entities as part of the JOA.

42. Upon consideration, we will grant Consumers Energy's request. While it seems unlikely that Midwest ISO and PJM would decline to make available their power system restoration plans, or that local operating entities would be denied access to black start plans of interconnecting systems, we understand the benefits of including this obligation in the JOA, which must be filed with the Commission. We will require the RTOs to amend the JOA to state that they will make readily available to local operating entities the current RTO restoration plans and the black start plans of interconnecting entities. We will leave the methods of access to these plans to the RTOs, requiring only that these methods be included in their business practice manuals.

5. Phase 2 Filing

43. International Transmission points out that the JOA Order directed the RTOs to file revised Phase 2 provisions within 60 days of the effective date of Phase 2.[26] International Transmission asks whether the Commission intended to permit the filing to be made after the effective date, so long as it was within 60 days. International Transmission requests the Commission to clarify that it intended the filing to be made from 60 to 120 days prior to the effective date of Phase 2, consistent with the Commission's regulations for other tariff filings.[27]

44. Cinergy requests clarification that the JOA Order approved only Phase 1 of the JOA and withholds Commission approval of Phase 2 until after future substantive review. Cinergy gives its opinion that for Midwest ISO to operate an efficient and reliable LMP

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[25] JOA Order, 106 FERC ¶ 61,251 at P 67.

[26] Id. at P 81.

[27] *See* 18 C.F.R. § 35.3 (2004). *See also* section 205(d) of the FPA, 16 U.S.C. § 824d(d) (2000).

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

market along its eastern boundaries, AEP must be fully integrated into a structured market subject to Phase 2 coordination. Cinergy also points out that the JOA order did not address intervenors' concerns about AEP's future integration into PJM.

45. We will grant the requested clarifications. We will require Midwest ISO and PJM to comply with the Commission regulations and to file the Phase 2 provisions of the JOA at least 60 days and no more than 120 days before the proposed effective date. We clarify that the JOA Order made an effective date only for Phase 1, and that the further proceedings, described at P 81 of the JOA Order, are required before the Commission will establish an effective date for Phase 2. AEP's integration into PJM and the relationship of this integration to Phase 2 are issues for future proceedings.

6. Hold Harmless Requirement

46. Consumers Energy cites the Commission's requirement that a joint operational agreement include a proposed hold harmless solution. On rehearing, it asks the Commission to reject the JOA as substantially defective because the document lacks adequate resolution of hold harmless issues. The Commission's April 27 Order accepted, suspended, and set for hearing ComEd's and PJM's hold harmless plan. The requirement of having an adequate hold harmless solution in effect at the commencement of Phase 1 of the JOA has been fulfilled.[28] We will deny rehearing on this point.

C. Compliance Proceeding

1. Transmission Capacity

47. International Transmission's comments on the Compliance Filing amplify its objections to 2004 summer transmission capacity allocation. It says that, to the extent the JOA "firms up" historic loop flows and allows the 500 MW Pathway and related west-to-east transactions to take capacity that otherwise would have been available to native load customers in Michigan, the JOA capacity allocation method produces unreasonable results and must be modified. It points to the example of Detroit Edison, and asks whether that example is unique or endemic so that other control areas will be affected, also.

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[28] The accepted plan provides for compensation, as determined through a hearing, for the entire hold harmless period. *See* April 27 Order, 107 FERC ¶ 61,087 at P 31-32, P 56.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

48. International Transmission objects to the CMP's definitions of firm flow, historic firm flow and designated resources as unique and not always reflecting common usage. It says that the CMP's definition of historic firm flow is too broad; any impacts from firm service, not necessarily historic firm service or firm service that was actually utilized, are now classified potentially as firm flow, which can include even non-firm, point-to-point transactions. It says that neither the JOA nor the CMP defines designated resources, which makes the CMP's definition of historic firm flow ambiguous. It says that when the CMP describes how to calculate historic firm flow, it uses the term differently from its definition of historic firm flow. It says that while the definition of historic firm flow implies that the calculations will be limited to one control area, the illustration includes impacts related to network services and point-to-point services performed in other control areas. It finds that the "freeze date" of June 3, 2003, used to calculate historic firm flow, introduces three ambiguities: why that date was chosen or whether it represents a particular control area; how the date is used to calculate historic firm flow; and, lack of clarity as to whether designated resources in the control area receive priority only if they are exclusively dedicated to serving the control area and their size does not exceed actual usage of the resources on June 3, 2003.

49. International Transmission states that before the Commission finally determines that the JOA is just and reasonable, parties must know the capacity allocations that will result, and must be given opportunity to review work papers and models that underlie these allocations. It recommends that the RTOs publish this information, to give parties an opportunity to test the grid, and anticipate grid changes and reliability problems.

50. International Transmission refers to the clarification in the JOA between operating entities and market-based operating entities, and points out that this means different rules will apply to Midwest ISO, an operating entity, and PJM, a market-based operating entity, concerning curtailment when capacity is oversold, and redispatch. It cites NERC's rule that Midwest ISO can curtail only transactions with a five percent or greater threshold, and the JOA's provision for including transactions of less than five percent when allocating flowgate capacity. It concludes that Midwest ISO is thus obligated to reserve space for transactions that it may not curtail. International Transmission asks therefore for modification of the JOA to allow Midwest ISO to treat all flows from PJM as one transaction so that they can be subject to NERC curtailment rules. It points out that the JOA may not provide for proper compensation between the RTOs in case PJM uses redispatch to react to the curtailment. International Transmission says that section 6.2 of the JOA needs revision to specify who the party responsible for the flow is and who therefore must bear redispatch costs. It cites, as possibly needing conforming revisions, sections 11.2.13 through 11.2.16 of the JOA, and sections 13.5, 13.6, and 27, and Attachment K, section 5, of PJM's OATT.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

51. We find that many of International Transmission's concerns regarding the Compliance Filing are based on its understanding that Midwest ISO denied certain of Detroit Edison's firm transmission service requests because of the JOA AFC allocation process. International Transmission's understanding is incorrect, as we explained above when addressing International Transmission's rehearing request. Although International Transmission cites the JOA's definitions of firm flow, historic firm flow, and designated resources as possibly contributing to the partial denial of Detroit Edison's request for transmission service, that denial occurred before the AFC allocation process took effect.

52. However, we agree with International Transmission that the Compliance Filing does contain an inconsistency in its description of Historic Firm Flows. The definition of Historic Firm Flow in the Glossary states that it considers impacts from Designated Resources and Point-to-Point service as of the historical freeze date (Original Sheet No. 148). However, the description of the calculation of Historic Firm Flows states that it is the flows that would have occurred if the existing control area structure were maintained and control areas continued to serve their native load with their generation (Original Sheet No. 136-137). The JOA is clear that the objective of the Historic Firm Flow calculation is to determine what Firm Flows would have been in the existing control area structure (Original Sheet No. 136). Those flows would include the Point-to-Point control area-to-control area transactions that occurred historically on the freeze date, as well as transactions from Designated Resources within the control area. Therefore, we will direct Midwest ISO and PJM to eliminate the assumption that "control areas continued to serve their native load with their generation" from the description of the calculation, and replace it with a more accurate description of the inter- and intra-control area transactions that are reflected in the illustrative calculations and in the Glossary definition of Historical Firm Flow. In addition, we agree with International Transmission that the term Designated Resources is undefined. The use of this term indicates that it simply refers to network resources designated under open access transmission tariffs. We will direct Midwest ISO and PJM to include a definition of Designated Resources in the JOA.

53. International Transmission also requests modification of section 6.2 of the JOA to further define who is responsible for redispatch costs, and also to delete the provision that the responsible party will bear those costs only to the extent that those costs can be recovered under the responsible party's OATT. As an initial matter, this request is beyond the scope of the Compliance Filing because it does not address compliance with the JOA Order. However, we share International Transmission's concern, and therefore require Midwest ISO and PJM to modify section 6.2 of the JOA in their forthcoming compliance filing to explicitly define the responsible party and explain how and from whom redispatch costs will be recovered if they cannot be recovered under the responsible party's OATT.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

54. International Transmission's request regarding sections 11.2.13-11.2.16 of the JOA, which relate to Phase 2, are premature. We made clear in the JOA Order that a further filing is required before Phase 2 becomes effective.[29] We therefore will deny International Transmission request that we require modification to PJM's OATT because it is beyond the scope of this compliance filing proceeding.

55. International Transmission's concern regarding the "freeze date" of June 3, 2003, is also based on its mistaken belief that Detroit Edison's transmission requests were denied because of the AFC allocation process. The June 3, 2003 date was clearly indicated in the original JOA, and the modifications we required in this Compliance Filing do not call into question the selection of this date. Also, Midwest ISO explains in the Data Response how the date of June 3, 2003, and a reference year of December 1, 2003, through November 30, 2004, are used to calculate the historic firm flow. We continue to find that this is a fair and equitable way to recognize historic transactions in each RTO for purposes of the AFC allocation process.[30] As for the information that International Transmission requests from Midwest ISO on the AFC allocations for reliability purposes, we direct Midwest ISO to share information with International Transmission such that International Transmission can perform tests that are necessary to prevent reliability problems.

56. International Transmission is also concerned because of its understanding that the JOA requires Midwest ISO to allocate capacity on Midwest ISO flowgates for all ComEd transactions that impact Midwest ISO flowgates, even those transactions whose impact is less than five percent.[31] According to International Transmission, this uncovers an anomaly in curtailment and redispatch rules, since Midwest ISO will allocate capacity on its flowgates for transactions in ComEd, which impact Midwest ISO flowgates by less than five percent, but Midwest ISO can curtail only transactions that impact the flowgate by five percent or more. To remedy this disparity, International Transmission requests that Midwest ISO be required to treat all flows from ComEd as one transaction for curtailment purposes.

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[29] JOA Order, 106 FERC ¶ 61,251 at P 81.

[30] Data Response at 6-7.

[31] These curtailment procedures will apply to transactions in all of PJM once Midwest ISO's market becomes effective or PJM further expands.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

57. International Transmission's concern seems to be based on a misunderstanding of how NERC will treat transactions in ComEd for curtailment purposes.[32] Midwest ISO confirms in its Data Response that the impact of market flows (*i.e.*, transactions without NERC e-tags within ComEd) are considered a single transaction for curtailment purposes since the NERC IDC receives a single market flow amount for each flowgate and it directs the amount of market flow relief that must be accomplished for each flowgate. Therefore, International Transmission's request is already in practice. No change in the JOA is necessary.

2. 60-day Reports

58. FirstEnergy asks to have the 60-day reports required by the JOA Order provide detailed description of the progress that Midwest ISO and PJM are making in implementing each section of the CMP as well as each section of the JOA. FirstEnergy asks that these reports include detailed information so the Commission can validate and confirm that: (1) the calculation of the base NNL flows are accurate and incorporate all firm commitments; (2) the four study requirements that will determine which external flowgates the operating entities will monitor and help control[33] are sufficient for this determination; and (3) the Real-time Operations Process described in section 5 of the CMP (Market-Based Operating Entity Congestion Management), which encompasses complex state estimator modeling, vast data exchange, dynamic data population of the IDC, and coordination of TLR actions, is being implemented as described.

59. We find that FirstEnergy's requests for information are reasonable and necessary to demonstrate that implementation of the JOA is resulting in reliable and efficient operation of the two RTOs' combined transmission systems. We direct the RTOs to include additionally, in the 60-day reports, detailed descriptions of their progress in implementing each section of the CMP, including the specific information requested by FirstEnergy, as listed above.

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[32] According to International Transmission, when NERC calls a TLR on a Midwest ISO flowgate, Midwest ISO would be required to do a transaction-by-transaction analysis of all of the separate nominations made by transmission customers on both Midwest ISO and PJM and determine which nominations have a five percent or greater impact and which have a lesser impact on each flowgate. Those that have less cannot be curtailed. However, NERC does not treat transactions within ComEd that impact the Midwest ISO flowgate needing relief as discreet transactions, but rather as one market flow transaction on the Midwest ISO flowgate.

[33] *See* section 3 of the CMP at Original Sheets Nos. 119-120.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

D. NERC's Testing and Audits

60. Citing the importance of the IDC's accurate calculations, upon which the CMP relies, FirstEnergy asks the Commission to condition its acceptance of the CMP on rigorous testing by NERC of the IDC's capabilities, as outlined in the CMP, and on NERC audit of population of the IDC with data from market-based operating entities. FirstEnergy also asks the Commission to require Midwest ISO and PJM and, prospectively, other parties to reciprocal agreements, to submit to NERC audits at regular intervals to ensure that the information exchanged, pursuant to section 6 of the CMP (Reciprocal Operations) and JOA Article VI (Reciprocal Coordination of Flowgates) is accurate and validated.

61. We will deny FirstEnergy's requests. We note that NERC, by its April 2, 2004 resolutions approving Midwest ISO's and PJM's reliability plans, already requires follow-up audits of these plans and reserves the right to impose additional conditions and changes to the plans. As to NERC's further oversight of Midwest ISO's and PJM's integration, we point out that NERC's mission is to ensure that the bulk electric system in North America is reliable, adequate and secure. We are confident that NERC will fulfill its mission.

E. Other Issues

62. International Transmission asks the Commission to delay approval of the JOA, the CMP, and integration of ComEd into PJM because further policy changes are still needed, including changes that will be submitted to NERC for approval. International Transmission relies on Appendix B of the CMP (NERC Policy Impacts), which states that the Midwest ISO/PJM Policy Review Task Force is studying what policy changes may be necessary to enable expansion of the LMP market over the PJM Operating Entity footprint, and that Appendix B will be modified as necessary to address impacts noted by the task force, and that policy changes will be provided to NERC for approval. International Transmission says that before final approval of the JOA, the Commission should require the RTOs to explain fully the remaining steps that must be finalized. It adds that the CMP is not ready for implementation because it is still being finalized.

63. International Transmission also cites the JOA's and the CMP's various references to the need to enter into reciprocity agreements with other parties. International Transmission asks whether the JOA and the CMP is such a reciprocity agreement and whether any further agreements are needed. It requests that the JOA's implementation date be delayed until the filing of the necessary further agreements.

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

64. First Energy emphasizes its concern for enhanced reliability of the bulk power grid throughout the Eastern Interconnection.[34] It recommends that all transmission facilities that are electrically significant to one another be under some form of common operational control. It asks the Commission to require entities in the Eastern Interconnection that possess such transmission facilities to enter into reciprocal agreements that provide for at least the same amount of coordination as provided by section 6 of the CMP.

65. We find that International Transmission's requests to delay approval of the JOA and ComEd's integration into PJM pending future policy changes are beyond the scope of this compliance filing proceeding because they do not deal with the issue of whether the Midwest ISO and PJM complied with the requirements of the JOA Order. Rather, they effectively request rehearing of the original order accepting the JOA. However, neither party raised these issues on rehearing. Therefore, the protests are rejected as being beyond the scope of this compliance filing. In any event the Commission sees no basis for delaying the implementation of the JOA, which provides important coordination benefits to all participants in both PJM and the Midwest ISO. The fact that the parties are continuing to examine additional issues is to be encouraged and does not provide a basis to delay the implementation of the JOA.[35] As for delaying our approval of the CMP, we anticipate that the CMP will undergo continual change as experience or future events dictate. We see no need to delay approval of the CMP.

66. FirstEnergy's request also is beyond the scope of this compliance proceeding since it does not address compliance with the JOA order. However, we recognize that there may well be need for more widespread coordination. As we previously acknowledged, the problems of reliability and accounting for parallel flows are best dealt with over large geographic areas, such as the Eastern Interconnection.[36]

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[34] The Eastern Interconnection comprises essentially all of the interconnected electric systems east of the Rockies, with the exception of parts of the State of Texas and Quebec, Canada.

[35] International Transmission's comments were filed more than 30 days after the date of the JOA Order, and therefore would not be a timely rehearing request in any event. *See* 16 U.S.C. § 313(a) (2000); Rule 713(b) of the Commission's Rules and Regulations, 18 C.F.R. § 385.713(b) (2004).

[36] North American Electric Reliability Council, 85 FERC ¶ 61,353 at 62,361 (1998), *order on reh'g*, 87 FERC ¶ 61,161 (1999).

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

F. Procedural Issue

67. On June 14, 2004, International Transmission filed a motion for a 25-day extension of time for entities to comment on the Data Response. It claimed that it needed additional time to obtain information from Midwest ISO with respect to the summer transmission capacity assigned to Detroit Edison. By a notice of June 16, 2004, the Secretary extended the filing deadline to June 25, 2004 .

68. On June 21, 2004, International Transmission filed for rehearing of the Secretary's notice, claiming that the Commission should have granted the full 25-day request. International Transmission states that with just the data in Midwest ISO's Data Response it cannot determine fully the cause of the differences in available transmission capacity in Michigan (or in its own service territory) between the 203 and 2004 summers.

69. On June 18, 2004, Exelon filed a motion requesting the Commission to require Midwest ISO to share with all parties the data and analyses that Midwest ISO is providing International Transmission to assist that company to evaluate the availability of transmission capacity in Michigan.

70. The Commission denies International Transmission's request for rehearing of the Secretary's extension of time notice. The Commission has substantial discretion to establish its calendar and procedures to balance the interests of all parties and provide for a reasonable resolution of proceedings.[37] It cannot allow the interests of one party to a proceeding to take precedence over the interests of the other parties to have the proceeding resolved. In this proceeding, the parties were provided with 28 days from May 28, 2004, when Midwest ISO made the filing and served it on other parties to submit comments on the data request response. The Commission agrees that this is adequate time to comment on the Data Response with respect to the impact of the JOA on the allocation of transmission capacity.[38] Moreover, International Transmission has not demonstrated substantive harm from this decision, because, as made clear in the Data

[37] *See* City of San Antonio v. CAB, 374 F.2d 326, 329 (D.C. Cir. 1967) (no principle of administrative law is more firmly established than that of agency control of its own calendar, within the bounds of due process); Association of Massachusetts Consumers Inc. v. SEC, 516 F.2d 711, 714 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1052 (1976) ; Consolidation Coal Co. v. Costle, 483 F. Supp. 1003 (E.D. Ohio 1979) (an administrative agency has wide discretion in controlling its calendar). *See also,* Miami General Hospital v. Bowen, 652 F. Supp. 812; 814 (S.D. Fla. 1986) (decision to refuse an extension of time not reviewable).

[38] The extension granted by the Secretary's notice provided a longer time to

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20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

Response, the JOA was not in use at the time of the allocation in question and did not affect the result. Therefore, there is no need to hold up resolution of the JOA issues while International Transmission continues to try to resolve an unrelated issue. International Transmission's concern about the proper allocation of transmission capacity for 2004 can be addressed in an appropriate forum, through a complaint or other appropriate filing.[39]

71. We deny also Exelon's June 18, 2004 motion to require Midwest ISO to establish procedures whereby all parties to the Docket No. ER04-375-005 proceeding may avail themselves of the same assistance, information, data and analyses, as Midwest ISO is providing to International Transmission. Midwest ISO should be able to provide information to one party to help it resolve particular issues without necessarily sharing that information with everyone, particularly, as here, where the information at issue does not bear on the JOA under consideration.

The Commission orders:

(A) The requests for rehearing and clarification filed by the parties to Docket No. ER04-375-003 are hereby granted or denied, as discussed in the body of this order.

(B) Midwest ISO's and PJM's compliance filing in Docket No. ER04-375-001 is hereby accepted, in part, subject to the requirement to file a further compliance filing, within 30 days of the date of this order, amending the JOA and the CMP, as discussed in

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comment than that provided for protests to the initial filing of the JOA. *See* 18 C.F.R. § 35.8 (2004) (protests and interventions to rate filing are filed within 21 days of the rate filing).

[39] The Commission has the authority to determine the proceeding in which issues are to be resolved. *See* FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 143 (1940) (agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties); Nader v. FCC, 520 F.2d 182, 197 (D.C. Cir. 1975) (within agency discretion to consider issue in a second proceeding); Stowers Oil and Gas Company, 27 FERC ¶ 61,001 at 61,001 & n.3 (1984) (Commission is "master of its own calendar and procedures").

20040805-3050 Issued by FERC OSEC 08/05/2004 in Docket#: ER04-375-001

the body of this order.

(C) Midwest ISO and PJM are hereby directed, upon the occurrence of an ITC bridging a seam between the two RTOs, to file, within 60 days of the occurrence, an outline of that ITC's role in relation to the JOA and to propose any necessary changes to the JOA

(D) International Transmission's request, in Docket No. ER04-375-006, for rehearing of the Secretary's notice extending time to comment on Midwest ISO's Data Response is hereby denied.

(E) The motion filed by Detroit Edison, on June 30, 2004, to file comments out of time is denied, and the comments filed by Detroit Edison, on June 30, 2004, by International Transmission, on July 9 and 12, 2004, and by Exelon, on July 15, 2004, are hereby rejected.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.