

UNITED STATES OF AMERICA 108 FERC ¶ 61,313
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.,

Docket No. EL04-135-000

PJM Interconnection, L.L.C.,

and

All Transmission Owners Providing Access to Their Transmission Facilities under
Midwest Independent Transmission System Operator, Inc. or PJM Interconnection,
L.L.C. Tariffs and All Other Public Utility Transmission Owners in These Regions
(including the entities identified below):

Alliant Energy Corporate Services, Inc. on behalf of:
Interstate Power and Light Company
Ameren Services Company on behalf of:
Union Electric Company and
Central Illinois Public Service Company
Central Illinois Light Company
Aquila, Inc. (formerly UtiliCorp United, Inc.)
Cinergy Services, Inc.
Cincinnati Gas & Electric Company
PSI Energy, Inc.
Union Light Heat & Power Company
City Water, Light & Power (Springfield, IL)
Dairyland Power Cooperative
FirstEnergy Corporation on behalf of:
American Transmission Systems, Inc.
Great River Energy
GridAmerica LLC
Illinois Power Company
Indiana Municipal Power Agency
Indianapolis Power & Light Company
International Transmission Company
Hoosier Energy Rural Electric Cooperative

Lincoln Electric (Neb.) System
LG&E Energy Corporation on behalf of:
 Kentucky Utilities Company
 Louisville Gas & Electric Company
Michigan Electric Transmission Company, LLC
Michigan Public Power Agency
Minnesota Power, Inc.
Montana-Dakota Utilities Company
Northern Indiana Public Service Company
Northwestern Wisconsin Electric Company
Otter Tail Power Company
Southern Illinois Power Cooperative
Southern Indiana Gas & Electric Cooperative
Southern Minnesota Municipal Power Agency
Superior Water, Light & Power Company
Sunflower Electric Power Corporation
Wabash Valley Power Association, Inc.
Wolverine Power Supply Cooperative
Xcel Energy Services, Inc. on behalf of:
 Northern States Power Company (Minnesota)
 Northern States Power Company (Wisconsin)

Allegheny Electric Cooperative, Inc.
Allegheny Power
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
Atlantic City Electric Company
Baltimore Gas & Electric Company
Dayton Power and Light Company
Delmarva Power & Light Company
Dominion Virginia Power Company
Exelon Corporation on behalf of:
 Commonwealth Edison Company
 Commonwealth Edison Company of Indiana, Inc.
Jersey Central Power & Light Company
Metropolitan Edison Company
Old Dominion Electric Cooperative

PECO Energy Company
Pennsylvania Electric Company
Public Service Electric & Gas Company
PPL Electric Utilities Corporation
Potomac Electric Power Company
Rockland Electric Company
UGI Utilities, Inc.

ORDER INSTITUTING SECTION 206 PROCEEDING

(Issued September 27, 2004)

1. In this order, we are instituting a Federal Power Act section 206¹ proceeding to implement a new long-term transmission pricing structure intended to eliminate seams in the PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator System, Inc. (Midwest ISO) regions, and establish a refund effective date of December 1, 2004. This order will provide the mechanism by which the Commission will implement a new pricing structure to replace existing through and out rates. This order benefits customers by ensuring a smooth transition in eliminating seams.

I. Background

2. In earlier orders in this proceeding, the Commission ordered the elimination of regional through and out rates between PJM and Midwest ISO regions effective April 1, 2004,² and also found unjust and unreasonable the through and out rates of individual public utilities that had not yet become members of PJM or the Midwest ISO effective April 1, 2004.³ The Commission directed compliance filings to eliminate the through and out rates for new transactions, and allowed two-year transitional lost revenue recovery mechanisms, so-called Seams Elimination Charge/Cost Adjustments/Assignments (SECAs), to be put in place effective April 1, 2004.⁴ On December 17, 2003, the Commission clarified that the through and out rates were eliminated for reservations

¹ 16 U.S.C. § 824e (2000).

² Midwest Independent Transmission System Operator, Inc., *et al.*, 104 FERC ¶ 61,105, *order on reh'g*, 105 FERC ¶ 61,212 (2003).

³ Ameren Services Company, *et al.*, 105 FERC ¶ 61,216 (2003).

⁴ *See supra* notes 1-2.

pursuant to requests made on or after November 17, 2003, for service commencing on or after April 1, 2004.⁵

3. Subsequently, the Commission provided time for the parties to participate in a stakeholder process to develop these transitional lost revenue recovery mechanisms. On February 6, 2004, noting that it had already allowed the parties some additional time for a stakeholder process, the Commission also established settlement judge procedures to further aid the parties in developing these transitional lost revenue recovery mechanisms.⁶

4. On February 4, 2004, the Chief Judge filed a report with the Commission on the parties' progress in the ongoing discussions, along with their agreement that the date for elimination of the through and out rates should be extended from April 1, 2004 to May 1, 2004, (but with the transition period continuing to run from April 1, 2004, *i.e.*, effectively shortening the transition period).⁷ On February 6, 2004, the Commission accepted this agreement to extend the date for elimination of through and out rates to May 1, 2004, and so allowed the parties additional time to resolve matters consensually.⁸

5. On March 5, 2004, the Chief Judge filed a report and an agreement among the parties, noting that the parties had participated in fourteen full days of formal settlement negotiations (often involving over 100 participants), and that there had been numerous meetings involving individual participants or groups of participants. This resulted in an agreement, supported or joined in by 84 parties (some representing more than one utility) that was accepted by the Commission.⁹

6. This agreement established the going-forward principles and procedures that, would shorten the transition to the elimination of the through and out rates by seventeen months. This agreement retained the through and out rates until December 1, 2004, at

⁵ Midwest Independent Transmission System Operator, Inc., *et al.*, 105 FERC ¶ 61,288 (2003).

⁶ Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,105 (2004).

⁷ Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 63,010 (2004).

⁸ Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,106 (2004).

⁹ Midwest Independent Transmission System Operator, Inc., *et al.*, 106 FERC ¶ 61,262 (2004) (March 19 Order).

which time they would be eliminated entirely. The agreement also provided for negotiations to continue to develop a long-term transmission pricing structure that eliminates seams in the PJM and Midwest ISO regions. The agreement provided that either one proposal or, if the parties were unable to agree to a single proposal, multiple proposals would be filed with the Commission on October 1, 2004, with a December 1, 2004 effective date.

7. On September 3, 2004, the Chief Judge issued a report¹⁰ indicating that after further settlement and stakeholder conferences there was an impasse between two major groups of parties. The Chief Judge stated that it appeared there will be two competing proposals filed with the Commission on October 1, 2004. The Chief Judge added that additional meetings and conferences are planned in an attempt to come to further agreement. On September 16, 2004, the Chief Judge issued a further report¹¹ indicating that a further settlement conference had been held. He explained that, while the parties' discussions have successfully narrowed the issues and successfully narrowed the range of proposals to two, further discussions would not be productive. Accordingly, he terminated the settlement judge procedures.

II. Discussion

8. In its March 19 Order, which accepted the parties' agreement on going-forward principles and procedures, the Commission stated that "in no event will through and out rates remain in place beyond December 1, 2004 irrespective of whether there is an agreed-upon long-term transmission pricing structure." In addition, the Commission "obligate[d] itself to choose a replacement and to put that replacement in place on December 1, 2004 (subject to refund, if appropriate)."¹²

9. As noted above, the Chief Judge has reported that two alternative proposals for a long-term transmission pricing structure will likely be filed. However, the Commission anticipates that ultimately it will adopt a single long-term transmission pricing structure across the entire PJM and Midwest ISO regions. Consequently, in order to allow the Commission to adopt a single long-term transmission pricing structure, the Commission

¹⁰ Midwest Independent Transmission System Operator, Inc., *et al.*, 108 FERC ¶ 63,034 (2004).

¹¹ Midwest Independent Transmission System Operator, Inc., *et al.*, 108 FERC ¶ 63,039 (2004).

¹² March 19 Order, 106 FERC ¶ 61,262 at P 19. The Commission also stated that it was "not obligated to adopt any particular long-term transmission pricing structure over another." *Id.* at P 19 n.19; *accord id.* at P 13 n.17.

is instituting this section 206 proceeding to establish a just and reasonable long-term transmission pricing structure and is establishing a refund effective date of December 1, 2004. Doing so will ensure that the Commission has adequate authority to implement a long-term transmission pricing structure for all parties across the PJM and Midwest ISO regions. Following the filing of the two alternative proposals and comments on the proposals, the Commission will take further action in this proceeding.

10. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the *Federal Register*, and no later than five months subsequent to the expiration of the 60 day period. In order to give maximum protection to customers, and consistent with our previous commitments on this matter, we will establish a refund effective date in Docket No. EL04-135-000 of December 1, 2004, the previously established effective date of the long-term transmission pricing structure.

11. Section 206 also requires that, if no final decision is rendered 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 earlier, the Commission shall state the reasons why it failed to do so and shall state its best estimate of when it reasonably expects to make such a decision. In the circumstances of this proceeding, given that the parties' alternative proposals have not yet been filed, we cannot resolve this matter at this time. However, we estimate that we will be able to issue our initial order on these filings and in this proceeding prior to December 1, 2004, and, if we are not able to resolve this matter in that initial order, we estimate that we will be able to resolve this matter by July 31, 2005.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402 of the Department of Energy Organization Act and by 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), an investigation is hereby instituted in Docket No. EL04-135-000 concerning the justness and reasonableness of a long-term transmission pricing structure for the PJM and Midwest ISO regions that will be the successor to through and out rates, as discussed in the body of this order.

(B) The Secretary shall promptly publish a copy of the Commission's order in Docket No. EL04-135-000 in the *Federal Register*.

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(C) The refund effective date in Docket No. EL04-135-000, established pursuant to section 206(b) of the Federal Power Act, will be December 1, 2004.

(D) Notices of intervention and motions to intervene in Docket No. EL04-135-000 are due on or before October 15, 2004.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.