Substation. This decision is consistent with BPA's Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 1995). The project is proposed by Westward Energy, LLC, and involves construction and operation of a 520-megawatt natural-gas-fired, combined-cycle generating facility to be located in Columbia County, Oregon, about 4.5 miles north of Clatskanie, Oregon.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Dawn Boorse, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; direct telephone number 503–230–5678; fax number 503–230–5699; or e-mail *drboorse@bpa.gov*.

Issued in Portland, Oregon, on July 25, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–19709 Filed 8–1–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL02–111–000 and EL03–212–000]

Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell; Order on Initial Decision

Issued: July 23, 2003.

Midwest Independent Transmission System Operator, Inc.; 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 Power & Light Company; Conectiv; Detroit Edison Company; Duke Power Company; Florida Power & Light Company; GPU Energy; Northeast Utilities Service Company; Old Dominion Electric Cooperative; 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 Co.; 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; and Northern Indiana Public Service Company.

1. This order addresses an initial decision issued in the above proceeding, where the Presiding Judge determined that he had no precedential authority that would permit him to eliminate the Regional Through and Out Rates (RTORs) between the expanded Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and expanded PJM Interconnection, L.L.C. (PJM) under the circumstances of this case. The order disagrees with the Presiding Judge's finding and concludes that the Midwest ISO and PJM RTORs, when applied to transactions sinking within the proposed Midwest ISO/PJM footprint, are unjust and unreasonable, and directs PJM and Midwest ISO to make a compliance filing within 30 days eliminating these RTORs effective November 1, 2003.

2. The order also finds that the through and out rates under the tariffs of certain individual former Alliance Companies may be unjust, unreasonable or unduly discriminatory or preferential and initiates an investigation and hearing in Docket No. EL03–212–000 under section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2000) regarding these rates. The Commission will conduct a ''paper'' hearing to determine whether such rates are just, reasonable and not unduly discriminatory or preferential and thus provides parties with an opportunity to explain why the rates are or are not unjust, unreasonable or unduly discriminatory or preferential on or before August 15, 2003.

3. The order also states that the Commission will entertain section 205 filings to establish transitional cost recovery mechanisms once the RTORs are eliminated, and provides guidance in this regard.

Background

July 31 Order

4. On July 31, 2002, the Commission issued an order [1] that conditionally accepted the compliance filings of the former Alliance Companies, under which they proposed to join either Midwest ISO or PJM, as consistent with Order No. 2000,[2] subject to satisfactory compliance with certain conditions, summarized as follows: (1) That a single market across the two Regional Transmission Organizations (RTO) must be implemented by October 1, 2004; (2) that National Grid USA (National Grid) participates in both Midwest ISO as GridAmerica and in PJM, and performs

[1] *See* Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002) (July 31 Order).

[2] Regional Transmission Organizations, Order No. 2000, 65 FR 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 FR 12088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 Snohomish County Washington, et al.*, v. *FERC*, 272 F.3d 607 (D.C. Cir. 2002) (Order No. 2000).

the same functions, consistent with the allocation of functions to independent transmission companies (ITCs) provided in the April 25 Order [3] and *TRANSLink*,[4] in both RTOs for Day One operations; (3) that there be pro forma agreements under the respective tariffs of Midwest ISO and PJM that provide for participation of ITCs consistent with the delegation of functions provided for in the April 25 Order and *TRANSLink*; (4) that the agreement to form an ITC between National Grid, American Electric Power Service Corporation, on behalf of certain of its public utility affiliates [5] (collectively, AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd), Dayton Power and Light Company (DP&L), and PJM must be filed within 30 days of the July 31 Order; (5) that the North American Electric Reliability Council (NERC) must approve the Reliability Plans pursuant to which PJM and Midwest ISO will coordinate their operations under the new configuration; (6) that a solution addressing the through and out rates between Midwest ISO and PJM must be developed; (7) that certain of the former Alliance Companies seeking to join PJM, along with PJM and Midwest ISO, provide a solution which will effectively hold utilities in Wisconsin and Michigan harmless from any loop flows or congestion that results from the proposed configuration; (8) that PJM and Midwest ISO must each file a statement agreeing to the conditions within 15 days of the July 31 Order, an implementation plan for achieving a common market by October 1, 2004, within 45 days, and frequent progress reports thereafter; and (9) that Commission Staff participate in the process.[6]

5. The Commission explained that the former Alliance Companies' choices, standing alone, appeared to produce unjust and unreasonable rates, terms and conditions for transmission services, but that these conditions would ensure just and reasonable rates, terms, and conditions for transmission services. The July 31 Order also noted that these conditions reflected 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.[7]

6. The Commission particularly found that one of the primary obstacles to RTO formation has been rate pancaking for transactions crossing RTO borders, and that both Midwest ISO and PJM agreed that this was an issue. The Commission stated that, in light of the former Alliance Companies' RTO choices and in view of the comments, the resolution of inter-RTO rates was fundamental to its decision to accept the choices of Illinois Power, ComEd, and AEP to join PJM, and that resolving inter-RTO rates was fundamental to establishing a single common market. Therefore, the July 31 Order also instituted an investigation and hearing of inter-RTO rates under Section 206 of the FPA before an administrative law judge in Docket No. EL02–111–000, with regard to the rates for through and out service in the Midwest ISO/PJM region and with respect to the protocols relating to the distribution of revenues associated with such through and out service.[8]

7. The Commission also stated that it was mindful that any solution may need to be revised once a common market across the Midwest ISO/PJM region is fully developed, and would be subject to the Commission's final determination on Standard Market Design in Docket No. RM01–12–000.[9] In addition, we stated that any such solution must result in rates that are designed in a reasonable fashion and do not favor participants in one RTO over those in the other. We noted that, while we were instituting a Section 206 proceeding, we nevertheless encouraged Midwest ISO and PJM to develop a solution to eliminate rate pancaking between the organizations on their own as expeditiously as possible, and we allowed them a period of time to do so.

Order on Rehearing of the July 31 Order

8. In the order on rehearing and clarification of the July 31 Order,[10] the Commission denied rehearing of the Commission's findings that the former Alliance Companies' RTO choices could not be accepted without the conditions set forth in the July 31 Order. The Commission stated that, given the record in this proceeding, without the conditions ordered the choices of some of the former Alliance Companies to join PJM would result in inappropriate RTO configuration. Moreover, the Commission found that, given the locations of the former Alliance Companies and their links with other neighboring utilities, outright acceptance of their RTO choices, without any conditions, would not have been just and reasonable. In this regard, the Commission stated that, for example, given the locations of the New PJM Companies [11] and Illinois Power [12] in the heart of the Midwest ISO region and the tight links between these companies and their neighboring utilities in the Midwest ISO region, we could not accept their joining PJM as just and reasonable without the conditions we adopted.[13]

9. The Commission disagreed with the parties' contention that the record did not support the July 31 Order's conditions. We stated that the record in this proceeding indicated that the RTO choices, as proposed (and as accepted albeit with conditions) were problematic when considered in light of Order No. 2000. The Commission found that the proposed RTO choices and

[3] Alliance Companies, *et al.*, 99 FERC ¶ 61,105 (2002) (April 25 Order).

[4] TRANSLink Transmission Company, L.L.C., *et al.*, 99 FERC ¶ 61,106 (2002) (*TRANSLink*).

[5] Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.

[6] *See* July 31 Order at P 35–57.

[7] *Id.* at P 35–36.

[8] *Id.* at P 49–50.

[9] Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, FERC Stats & Regs. ¶ 32,563 (2002) (SMD NOPR).

[10] Alliance Companies, *et al.*, 103 FERC ¶ 61,274 (2003) (Rehearing Order).

[11] On December 11, 2002, in Docket No. ER03–262–000, AEP, ComEd, DP&L, and Virginia Electric Power Company (collectively, the New PJM Companies) and PJM filed an application under Section 205 of the FPA to include the New PJM Companies as transmission owners within PJM. On April 1, 2003, the Commission accepted the filing related to ComEd's and AEP's joining PJM, effective as of the date of the transfer of control of AEP's and ComEd's facilities to PJM. *See* American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 (2003); *see also* American Electric Power Service Corporation, 103 FERC ¶ 61,009 (2003).

We also note that the Virginia Legislature recently passed a bill that prohibits Virginia utilities (which would include AEP) from joining an RTO before July 1, 2004, and requires them to obtain prior approval form the Virginia State Corporation Commission. In contrast, on March 14, 2003, the Pennsylvania Public Utility Commission, the Michigan Public Service Commission, and the Ohio Public Utilities Commission filed a motion in Docket No. EC98–40–000, *et al.*, requesting, among other things, that the Commission direct AEP to join an established RTO, as earlier required in that proceeding.

[12] In the Rehearing Order, we noted that, in an application pending before the Commission in Docket No. EC03–30–000, *et al.*, Illinois Power has proposed to transfer its transmission system to Illinois Electric Transmission Company, LLC (IETC), an indirect subsidiary of Trans-Elect, Inc. As part of that proposed transaction, IETC commits to make all of the necessary filings with the Commission to facilitate transfer of functional control of the transmission system to Midwest ISO. Such commitment is contingent on the sale to IETC, which has yet to be authorized by the Commission or consummated. We note that Illinois Power has terminated its Asset Purchase Agreement with Trans-Elect, Inc and Illinois Electric Transmission Co., LLC. *See* Illinois Power's Company Filing (Form 8K) with the Securities and Exchange Commission (July 9, 2003), available at *http://www.sec.gov*.

[13] Rehearing Order at P 20–21.

resulting configuration, without conditions, would frustrate the realization of the goals of RTO formation such as resolution of loop flow issues, effective management of congestion, and enhanced reliability and efficiency.[14]

Initial Decision

10. On March 31, 2003, in *Midwest Independent System Operator, et al.*, 102 FERC ¶ 63,049 (2003) (Initial Decision), the Presiding Judge issued his Initial Decision. The Presiding Judge found no precedential authority that would permit him to eliminate the RTORs between Midwest ISO and PJM under the circumstances of this proceeding, and he declined to do so. The Presiding Judge added that if in a change in policy the Commission were to order it, he would recommend that the Commission adopt, without requiring the filing of new rate cases, a mechanism such as one of the Seams Elimination Charge/Cost Adjustment/Assignment (SECA) proposals by the parties to prevent cost shifting between customers of the two RTOs. Furthermore, the Presiding Judge stated that the Commission should decide whether to consider the impact and equities vis-a-vis retail rate caps when it fashions the SECA.[15]

11. The Presiding Judge found that eliminating the RTORs without a SECA will improperly shift costs from Midwest ISO's native load to PJM's native load.[16] The Presiding Judge also found that if the RTORs are eliminated, a SECA could prevent unwarranted cost shifts between the RTOs without violating any rules against retroactive ratemaking.[17]

12. The Presiding Judge also recommended that the SECA should not be phased out until another method is placed into effect to prevent cost shifting, and also stated that the Michigan and Wisconsin customers should be permitted to opt out of the SECA and continue to be subject to the PJM RTOR. In addition, the Presiding Judge stated that the SECA should be calculated using 2002 as the test year rather than 2001, and that the starting period for any SECA should be after a final Commission order, allowing enough time for the filing of compliance filings. The Presiding Judge added that the SECA should replace only through and out charges on transactions that sink in either the expanded PJM or the expanded Midwest ISO and either source in or wheel through the other RTO. Finally, the Presiding Judge stated that the Commission should decide, as a matter of policy, whether a SECA should be adopted for each pricing zone, or alternatively, whether there should be a sub-zone option that the entities within a pricing zone can choose.[18]

Discussion

Procedural Matter

13. On April 17, 2003, the Wisconsin Commission filed a motion to intervene out-of-time. The Wisconsin Commission states that, since it participated in the proceeding in Docket No. EL02–65–000, and the instant proceeding was instituted in Docket No. EL02–65–000, it assumed it was unnecessary to separately intervene in the instant proceeding. The Wisconsin Commission continues that, while it monitored the hearing in this proceeding and felt it unnecessary to actively participate, the Initial Decision raised issues that required the filing of a brief on exceptions in order to protect its regulatory interest in matters pertaining to Midwest ISO.

14. On May 7, 2003, the New PJM Companies and PECO filed an answer opposing the Wisconsin Commission's motion to intervene and asking that the Commission deny the Wisconsin Commission's request and strike its brief on exceptions. They contend that the Wisconsin Commission chose to ''wait and see'' what transpired in the hearing and the outcome of the Presiding Judge's decision before seeking intervention and filing a brief on exceptions, and that the Wisconsin Commission has not demonstrated good cause for its request and granting the intervention would unduly burden the parties.

15. On May 12, 2003, Detroit Edison Company (Detroit Edison) filed an answer opposing the New PJM Companies and PECO's motion to strike. Detroit Edison claims that no party is unduly prejudiced because parties will have an opportunity to respond to the Wisconsin Commission in briefs opposing exceptions. Detroit Edison also asserts that the Wisconsin Commission is the only party representing ratepayers in Wisconsin.

16. On May 13, 2003, the Wisconsin Public Service Corp. (WPSC) filed an answer opposing the New PJM Companies and PECO's motion to strike, arguing that the Wisconsin Commission has regulatory jurisdiction for the retail ratepayers of Wisconsin whose interests will be significantly impacted by the Commission's resolution of the issues in this proceeding.

17. On May 14, 2003, the Wisconsin Commission filed an answer to the New PJM Companies and PECO's motion to strike. The Wisconsin Commission asks that the Commission deny the motion because: (1) The Commission did not set a deadline for interventions; (2) the movants filed their answer and motion to strike out of time; (3) the Commission should construe the Wisconsin Commission's motion to intervene as a timely filed notice of intervention; and (4) the Commission should not strike its brief on exceptions because its motion to intervene satisfies the standards for late intervention.

18. Under Rule 214 of the Commission's Rules of Practice and Procedure,[19] we will deny the Wisconsin Commission's untimely, opposed motion to intervene. Under the facts presented, we do not believe that it would be in the public interest to permit the Wisconsin Commission's motion to intervene in this proceeding at this late date. We think, however, that participation as amicus curiae would serve the purposes of the Wisconsin Commission to carry out its responsibilities and would contribute to our consideration of the issues in this case. Therefore, we will deny the Wisconsin Commission's request for intervention but we will permit it to file its brief and deny New PJM Companies and PECO's motion to strike.[20]

The Justness and Reasonableness of the RTORs

Presiding Judge's Ruling

19. The Presiding Judge claimed that there was no precedential authority that would permit a finding, under the circumstances of this proceeding, that the RTORs between the expanded PJM and the expanded Midwest ISO are unjust and unreasonable. He concluded that, while the Commission has encouraged the elimination of rate pancaking between RTOs, it has never required it.

20. The Presiding Judge stated that, if the proposed incorporation of the New PJM Companies into PJM would create seams that result in islanding a significant portion of the Midwest ISO load so that it would have to pay pancaked rates to have power transmitted to it from generation

[14] Rehearing Order at P 24–30.

[15] Initial Decision at P 7, 101.

[16] Initial Decision at P 68–86.

[17] Initial Decision at P 87–90.

[18] Initial Decision at P 91–100.

[19] 18 CFR 385.713(d)(2) (2003).

[20] *See* Transwestern Pipeline Company, 35 FPC 334, 335 (1966); *see also* Transcontinental Gas Pipe Line, 88 FERC ¶ 61,155 at 61,521 (1999); Texas Eastern Transmission Corporation, 88 FERC ¶ 61,167 at 61,559 (1999).

elsewhere in Midwest ISO, then the RTORs would be unjust and unreasonable. However, the Presiding Judge found that the choices of the New PJM Companies to join PJM did not create any new seams because seams already exist between Midwest ISO and New PJM Companies; rate pancaking currently exists across the seams between the individual former Alliance Companies joining PJM and Midwest ISO because the Midwest ISO members are currently required to pay through and out rates to the individual New PJM Companies and Illinois Power under their individual-company OATTs. The Presiding Judge noted that, after these companies join PJM, the Midwest ISO members will pay the PJM RTOR instead of the individual-company through and out rates, and he found no evidence that replacing the individual-company through and out rates with the PJM RTOR was unjust and unreasonable.

21. However, while the Presiding Judge stated that he could not find the RTORs unjust and unreasonable under the circumstances, he did find that no credible evidence was presented that would suggest that rate pancaking across the proposed border is any less detrimental to short-term efficiency than rate pancaking in general (*i.e.*, rate pancaking within an RTO). He also rejected arguments that the RTORs were a reasonable basis for reflecting a distance factor in rates, so that long-term efficiency is enhanced. He found that the anomalous seam configuration that would exist between Midwest ISO and PJM argues very persuasively against that and suggested that, if a distance factor should be incorporated into transmission charges, it should be done directly, not imperfectly reflected in the seams charges.[21]

Briefs on Exceptions

22. Many parties except to the Presiding Judge's decision to not eliminate the existing RTORs due to a lack of precedential authority, and/or his conclusion that the choice of the New PJM Companies to join PJM did not create new and irrational seams.[22] They argue that the through and out rates are unjust and unreasonable and should be immediately eliminated. Many argue that there is, in fact, sufficient evidence and precedential authority to warrant the elimination of these through and out rates.

23. Several parties contend that the Commission has already decided the issue of the justness and reasonableness of the RTORs in the July 31 Order.[23] These parties argue that the Commission would not have set the through and out rates for hearing in the first place if it did not believe the Presiding Judge held the authority to find them unjust and unreasonable and order their elimination.

24. Several parties also except to the Presiding Judge's finding that the choices of the New PJM Companies and Illinois Power do not create irrational seams.[24] They contend that the choices of these companies to join PJM did in fact create the inter-RTO seam problem being addressed in this proceeding. The excepting parties assert that, since the irrational nature of this seam increases the number of transactions that must pay pancaked rates, the RTORs are unjust and unreasonable. Edison Mission argues that the sheer inefficiencies and market distortions that result from the RTORs are reason alone to warrant their elimination.[25] The Michigan Commission notes that the resulting ''Swiss cheese'' configuration leads to some members of PJM being west of certain of the Midwest ISO members, with some of these Midwest ISO members being in the inequitable position of having to pay RTORs to access their own generation.[26]

25. Some parties argue that the Presiding Judge erred by failing to eliminate the RTORs for other reasons. For example, the excepting parties claim that the Presiding Judge erroneously failed to eliminate the RTORs even after agreeing that they promote inefficiency and acknowledging that the unusual seam configuration will exacerbate the adverse impacts of the through and out rates.[27] They contend that the Presiding Judge has an inherent responsibility to promote the public interest, yet neglected to do so by failing to eliminate the RTORs.

Briefs Opposing Exceptions

26. A number of parties agree with the Presiding Judge that there is no precedent for eliminating the RTORs at this time.[28] They state that many parties excepting to the Presiding Judge on the issue of precedent do not provide any citations to cases in which the Commission determined that it was unjust and unreasonable to charge for through and out service. The New PJM Companies and Classic PJM companies contend that the July 31 Order did not require the elimination of the RTORs; otherwise a hearing would not have been needed.[29] The New PJM Companies and PECO argue that the Commission's April 28, 2003 White Paper in Docket No. RM01–12–000 [30] would allow PJM transmission owners to recover contributions to their transmission cost of service from Midwest ISO through access fees or export fees because of notable imbalances in the exports and imports between the expanded PJM and the expanded Midwest ISO.[31]

27. Several parties question the benefits of eliminating the RTORs. JCA contends that evidence in the record indicates that there may be no overall efficiency gains from eliminating the RTORs, which it argues may increase constraints between the two RTOs and allow customers to hoard transmission capacity.[32] JCA also argues, as do the Classic PJM Companies, that elimination of the RTORs would remove the distance component from rates, which could distort the market.[33] The Classic PJM Companies admit that the inefficiencies associated with the RTORs are likely to be significant once the common market is operational. They argue that the inefficiencies associated with the RTORs are likely to be much less during the period before the common market is operational, and they maintain that the RTORs should not be eliminated before such time.[34]

[21] Initial Decision at P 62–63.

[22] *See, e.g.*, Trial Staff, Edison Mission, Consumers, Michigan Agencies, Michigan Commission, Ohio Commission, Wisconsin Commission, MidAmerican, WEPCO, WPSC/UPPC, Madison, GridAmerica, TRRG, Cinergy, Illinois Power, Midwest ISO.

[23] *See* Ohio Commission Brief on Exceptions at 2, Michigan Agencies Brief on Exceptions at 10, MidAmerican Brief on Exceptions at 9, Midwest ISO Brief on Exceptions at 4.

[24] *See, e.g.*, Trial Staff, Michigan Agencies, Michigan Commission, WEPCO, Cinergy, Illinois Power, and Midwest ISO.

[25] *See* Edison Mission Brief on Exceptions at 10.

[26] *See* Michigan Commission Brief on Exceptions at 6.

[27] *See, e.g.*, MidAmerican Brief on Exceptions at 14, stating that ''the Initial Decision declines to eliminate seams charges for lack of perceived precedential authority, but it nonetheless identifies deficiencies with those seams charges as they now exist.''

[28] *See e.g.*, Classic PJM Companies, JCA, Maryland and Pennsylvania Commissions, New PJM Companies and PECO.

[29] *See* New PJM Companies Brief Opposing Exceptions at 11, Classic PJM Companies Brief Opposing Exceptions at 5.

[30] *See* Wholesale Market Platform White Paper (White Paper), Appendix A at 6.

[31] *See* New PJM Companies and PECO Brief Opposing Exceptions at 5 and Classic PJM Companies Brief Opposing Exceptions at 5–6.

[32] *See* JCA Reply Brief on Exceptions at 11 (citing testimony of Rodney Frame, Classic PJM Companies witness). Mr. Frame testified that elimination of the RTOR charges could result in hoarding of capacity across the inter-ties since there would be no payment for use ofthis capacity. *Id.*

[33] *Id.*

[34] *See* Classic PJM Companies Brief Opposing Exceptions at 26.

Commission Decision

28. We disagree with the Presiding Judge's conclusion that he did not have the authority to find the through and out rates for transactions crossing the proposed RTO boundary unjust and unreasonable. We would not have instituted an investigation, and established hearing procedures, pursuant to section 206 of the FPA, if the Presiding Judge lacked the authority to conclude that the rates were unjust and unreasonable. Moreover, the RTORs in the Midwest ISO/PJM region perpetuate seams that prevent the realization of more efficient and competitive electricity markets in the region, and thus violate a central tenet of the Commission's RTO policy.

29. Although the Presiding Judge correctly stated that Order No. 2000 does not require the elimination of rate pancaking between RTOs, Order No. 2000 also requires that RTOs meet certain minimum characteristics, including proper scope and configuration. Order No. 2000 also requires that RTOs eliminate rate pancaking within a region of appropriate scope and configuration.[35] Order No. 2000 emphasizes that this is a central goal of the Commission's RTO policy because rate pancaking restricts the amount of generation that can be economically delivered to any customer, thereby frustrating the realization of competitive and efficient bulk power markets.[36] In addition, Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will consider the extent to which the proposal would encompass one contiguous area, encompass a highly interconnected portion of the grid, and recognize trading patterns.[37] When we find that a proposed RTO does not meet the scope and configuration requirements of Order No. 2000, as we did with respect to the organizations resulting from certain former Alliance Companies' decisions to join PJM, the Commission must impose conditions on its acceptance of those decisions, such as requiring inter-RTO coordination agreements and/or the elimination of inter-RTO rate pancaking, in order to mitigate otherwise inappropriate RTO configuration.[38] While the Commission has not required the elimination of inter-RTO rate pancaking before, the Commission has not had to address the issue before; the circumstances presented in this proceeding are unprecedented.

30. The former Alliance Companies are uniquely situated in relation to two operating regional transmission organizations such that elimination of the seam between Midwest ISO and PJM is necessary to promote more efficient and competitive electricity markets and to meet the requirements of Order No. 2000. Some of the former Alliance Companies, including Illinois Power and the New PJM Companies, are located in the heart of the Midwest ISO region and have close links with their neighboring utilities in Midwest ISO. The Commission recognized the critical position of these companies vis-a-vis Midwest ISO when it granted the Midwest ISO RTO status. Specifically, the Commission originally noted that Midwest ISO had a configuration on its eastern border that was inconsistent with the scope and configuration requirements of Order No. 2000, and found that the problem would be solved by successful integration of some or all of the former Alliance Companies into Midwest ISO.[39]

31. Correspondingly, other former Alliance Companies are located along the western border of PJM. In the Commission's initial order on PJM's RTO proposal, the Commission found that PJM exhibited insufficient scope to meet the requirements of Order No. 2000 and encouraged PJM to continue its efforts to expand in the region.[40]

32. Thus, by virtue of their location and ties to their neighbors, the former Alliance Companies, through their failure to join RTOs, and also through their proposed RTO choices, create a barrier that obstructs more efficient and competitive electricity markets and the realization of adequate RTO scope and configuration in the region, thereby denying the benefits of more efficient and competitive regional electricity markets to customers in 21 states and one Canadian province.

33. As noted in the July 31 Order and the Rehearing Order, the choice of Illinois Power and the New PJM Companies to join PJM results in a long and irregular RTO border that perpetuates Midwest ISO's configuration problems. Specifically, as we discussed in the Rehearing Order, evidence indicates that the proposed RTO configuration would divide a highly interconnected portion of the grid, leaving in place an elongated and irregular seam across which significant trading activity takes place.[41] For example, 10,700 MVA transfer capability exists between Midwest ISO and the New PJM Companies and Illinois Power, while only 3,300 MVA of transfer capability exists between PJM and New PJM Companies and Illinois Power. Additionally, there is 66,500 MVA of tie line capacity between Midwest ISO and the New PJM Companies and Illinois Power, while only 6,000 MVA of tie line capacity exists between PJM and New PJM Companies and Illinois Power.[42] Notwithstanding their closer ties to Midwest ISO, the New PJM Companies and Illinois Power have opted to join PJM. Further, during a one-year period commencing June 1, 2001, AEP received 4,400 requests for transmission service into the Midwest ISO footprint for a total of 48,800 MW-years of transmission service, while AEP received only 1,500 requests for transmission service into PJM for a total of 12,500 MW-years of transmission service.[43] Again, notwithstanding the close ties to Midwest ISO, AEP has opted to join PJM. Thus, accepting the former Alliance Companies' RTO choices unconditionally would result in fewer benefits from one-stop shopping or the elimination of rate pancaking than if, for example, AEP joined Midwest ISO.[44] Other evidence indicates that, due to the entry of the New PJM Companies and Illinois Power into PJM, Michigan and Wisconsin would remain only partially contiguous with the rest of Midwest ISO, and companies in Michigan and Wisconsin would be required to pay pancaked rates in order to wheel power through PJM from elsewhere in Midwest ISO.[45] In addition, the record indicates that various other market participants will be adversely affected by continued rate

[35] *See* Order No. 200 at 31, 173.

[36] *Id.*

[37] *Id.* at 31,082–84.

[38] *See* Order No. 2000 at 31,083; *see also* Rehearing Order at P 31. As we explained in the July 31 Order, the alternative to accepting the former Alliance Companies' compliance filings with conditions was rejecting them. *See* July 31 Order at P 38.

[39] Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001). As explained in the Rehearing Order, our granting of RTO status to Midwest ISO, despite this configuration problem, was entirely consistent with Order No. 2000's provision that RTO status would not be categorically denied or RTO start-up delayed where transmission owners representing a large majority of the facilities in a region are ready to move forward, even though agreement by a few transmission owners in the region has yet to be obtained. *See* Rehearing Order at P 43 n.36, Order No. 2000 at 31,086.

[40] On rehearing, the Commission found that PJM's planned expansion to incorporate some of the former Alliance Companies, as conditionally accepted in the July 31 Order, alleviated concerns regarding the possible insufficient scope of PJM as an RTO. PJM Interconnection, LLC *et al.*, 96 FERC ¶ 61,061 (2001), *order on reh'g,* 101 FERC ¶ 61,345 (2002).

[41] Rehearing Order at P 26–30.

[42] *Id.* at P 29, n.27.

[43] *Id.* at P 27.

[44] *Id.* at P 28.

[45] *Id.* at P 28 & n.26.

pancaking across the proposed seam, effects that would be eliminated had certain of the former Alliance Companies joined Midwest ISO instead of PJM.[46]

34. These facts thus indicate that the proposed RTO configuration would: (1) Preserve an elongated and irregular seam that divides a highly interconnected portion of the grid and a natural market; (2) leave portions of Midwest ISO barely contiguous with the rest of the region; and (3) subject a significant number of transactions in the region to continued rate pancaking. In addition, as we noted in the July 31 Order, decisions as to which RTO to join may be affected by inter-RTO rate pancaking. That is, transmission owners may be driven by the interests of their merchant function, rather than motivated by a desire to achieve the most rational and efficient RTO configuration, resulting in inappropriate RTO configuration that places the transmission owner's merchant function at a competitive advantage relative to other similarly situated market participants. Indeed, in this proceeding, one transmission owner stated that Midwest ISO's through and out rate was a factor in its decision to join PJM,[47] and both Midwest ISO and PJM agreed that this is an issue.[48]

35. In sum, the choices of the former Alliance Companies as to which RTOs they join: (1) Exacerbate rate pancaking across the proposed seam for transactions sinking within the RTOs, thereby obstructing more efficient and competitive electricity markets in the region; (2) violate the fundamental requirement of Order No. 2000 that RTOs eliminate rate pancaking over a region of appropriate scope and configuration; and (3) result in unjust, unreasonable, unduly discriminatory or preferential RTO rates.[49] Indeed, given Order No. 2000's requirement that RTOs eliminate rate pancaking over a region of appropriate scope and configuration, rate pancaking across the proposed seam is incorrectly characterized as *inter*-RTO rate pancaking; rather, it constitutes intra-RTO rate pancaking which is unequivocally prohibited under Order No. 2000. The solution is to eliminate the RTORs, *i.e.*, eliminate the through and out rates that constitute the rate pancaking, and in a very real sense constitute the seam.

36. We disagree with the New PJM Companies and PECO that eliminating the RTORs is inconsistent with the Commission's recently-issued White Paper. As an initial matter, we note that parties to this proceeding are in agreement that the RTORs must be eliminated when the common market becomes operational, in order to realize the goal of truly efficient and competitive electricity markets in the region. (As discussed above, it is due to the proposed RTO configuration that the Commission finds that Midwest ISO and PJM RTORs are unjust and unreasonable and directs Midwest ISO and PJM to eliminate these charges.) Furthermore, we note that, while the White Paper contemplates use of an export fee in situations where there is an imbalance between imports to and exports from a region, the White Paper reaffirms the RTO scope and configuration requirements of Order No. 2000.[50] Indeed, the replacement of RTORs with inter-regional allocation of transmission revenue requirements is consistent with the transmission pricing concepts advanced in the SMD NOPR and the White Paper.[51]

37. We also disagree with arguments that rate pancaking across the proposed seam provides beneficial price signals by incorporating an element of distance into transmission rates.[52] As we explain above, rate pancaking across the proposed seam obstructs more efficient and competitive electricity markets and thus violates Order No. 2000's goal and requirement that RTOs eliminate rate pancaking within regions of appropriate scope and configuration. Moreover, in Order No. 2000, the Commission rejected similar arguments that the Commission allow rate pancaking within RTOs in order to reflect distance in rates. In doing so, the Commission essentially rejected rate pancaking based on corporate boundaries as a supportable distance-based rate methodology.[53] Rate pancaking across the proposed seam suffers from the same flaw.[54] Because the RTORs are based on embedded transmission costs, they can have a distorting effect on economic choices.[55] Thus, we disagree that the RTORs provide beneficial price signals. In this regard, we affirm the Presiding Judge's finding that the configuration of the seam argues against relying on rate pancaking across the seam to incorporate an element of distance in rates.[56]

38. With respect to the concerns expressed by JCA and the Classic PJM Companies that eliminating the RTORs may result in hoarding of capacity, we agree with Cinergy that there are other, better means to discourage hoarding of transmission capacity than to perpetuate unjust and unreasonable rates. We will direct the market monitors of PJM and Midwest ISO to assess the potential for, and to look for signs of, hoarding of transmission capacity. Should they detect any, they should notify us and their respective RTOs immediately, and the RTOs should promptly file a proposal to rectify the matter.

39. Accordingly, the Commission finds that the PJM and Midwest ISO RTORs, when applied to transactions sinking within the proposed Midwest ISO/PJM footprint, are unjust and unreasonable and must be eliminated. As discussed below, we will eliminate them effective November 1, 2003,[57] in order to provide sufficient time for the parties to prepare the appropriate filings and the Commission to review those filings.[58]

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[46] *See, e.g.*, Exhibit No. CAS–1 at 13–18.

[47] June 26, 2002 Commission Meeting, Tr. at 321.

[48] July 17, 2002 Commission Meeting, Tr. at 176–77.

[49] We note that only four parties in this proceeding object to the elimination of the through and out rates (New PJM Companies and PECO, JCA, Classic PJM Companies, and the Maryland and Pennsylvania Commissions). However, even certain of these parties recognize inefficiencies related to the through and out rates and benefits of eliminating them. *See* Tr. at 185 (where a witness for the New PJM Companies recognizes that elimination of rate pancaking would represent an improvement); Exhibit No. Certain Classic PJM TOs–1 at 24 (recognizing that through and out rates are inefficient and should be eliminated when a common market is implemented).

[50] *See* White Paper, Appendix A at 3.

[51] *Id.* at 6; SMD NOPR at P 183–89.

[52] JCA Brief on Exceptions at 13.

[53] *See* Order No. 2000 at 31,174–75. However, the Commission clarified that it would be receptive to distance-sensitive rates that can be justified.

[54] Indeed, the record indicates that, due to the irregular contour of the proposed seam, rate pancaking across it does not accurately incorporate distance into rates. *See* Tr. at 212–14 (indicating that a hypothetical transaction sourcing in Richmond, Virginia and sinking in Chicago, Illinois would not be subject to pancaked rates, while a transaction sourcing in Gary, Indiana and sinking in Chicago would be subject to pancaked rates).

[55] *See* Exhibit No. CAS–1 at 9.

[56] Initial Decision at P 63.

[57] We disagree with the Classic PJM Companies that the Commission should not eliminate the RTORs before the common market is operational. As discussed above, the RTORs violate Order No. 2000 and are unjust and unreasonable. This is true regardless of whether the common market has become operational. While we expect the most benefits in terms of more efficient and competitive markets once the common market is operational, the elimination of the RTORs during the transition to a common market will accelerate the realization of those benefits.

[58] Further, we note that ComEd plans to be fully integrated into PJM on November 1, 2003. *See* Press Release, PJM Interconnection, Market Implementation Date for Northern Illinois Region Confirmed for November 1 (July 11, 2003), available at *http://www.pjm.com/contributions/news-releases*. On July 11, 2003, in a status report filed in Docket No. ER02–22–002, *et al.*, GridAmerica indicated that it is on schedule to become operational under the Midwest ISO as of October 1, 2003.

If GridAmerica and ComEd meet these targets, the individual-company tariffs of the individual GridAmerica Participants and ComEd will be superseded by the applicable RTO tariff, and rate

40. While we named the through and out rates under the Midwest ISO and PJM OATTs as the rates subject to investigation in Docket No. EL02–111–000, we expected that the inter-RTO seam would be the only seam remaining at the close of Docket No. EL02–111–000. When we conditionally accepted the former Alliance Companies' RTO choices a year ago, we relied upon their express intentions and commitments so that, by acting expeditiously in allowing each company to proceed to join the RTO of its choosing, those choices would be implemented, and the resulting benefits would be realized—quickly. The timely elimination of rate pancaking in this region of the country, which, as we discuss above, is critical to achieving competitive and efficient electric markets, was fundamental to our decision to accept the former Alliance Companies RTO choices.

41. Even with elimination of the Midwest ISO and PJM RTORs, in the near term the region will still be riddled with seams, with the through and out rates under the individual-company tariffs of AEP, Ameren Services Companies on behalf of certain public utility affiliates [59] (collectively, Ameren), ComEd, First Energy Corp. on behalf of certain public utility affiliates (collectively, First Energy),[60] Illinois Power, Northern Indiana Public Service Company (NIPSCO), and DP&L acting as toll gates that impede the realization of more efficient and competitive electricity markets in the region and that preserve a competitive advantage for the non-RTO participants' merchant functions. We find that the through and out rates under the tariffs of these individual former Alliance Companies,[61] for transactions sinking in the proposed Midwest ISO/PJM footprint, may be unjust, unreasonable, and unduly discriminatory or preferential, and, pursuant to section 206 of the FPA, we will initiate an investigation and hearing in Docket No. EL03–212–000. We will provide for a ''paper'' hearing [62] to determine whether the through and out rates contained in the tariffs of AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L are just, reasonable, and not unduly discriminatory or preferential. Given our statutory responsibility to ensure these rates are just and reasonable, we believe that expeditious resolution of this proceeding is critical. Accordingly, the Commission will provide AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO and DP&L, and interested parties, with an opportunity to file, explaining why the rates are or are not unjust, unreasonable or unduly discriminatory or preferential, on or before August 15, 2003.

42. 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 initiation of a proceeding to five months after the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent, 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 in Docket No. EL03–212–000 is published in the **Federal Register**.

43. 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. The Commission expects to issue its final decision in Docket No. EL03–212–000 by October 31, 2003.

SECA Issue

Presiding Judge's Ruling

44. The Presiding Judge stated that if the Commission were to order the elimination of the RTORs, he would recommend that the Commission adopt, without requiring the filing of new rate cases, a mechanism such as one of the SECAs proposed by the parties to prevent cost shifting between customers of the two RTOs.[63] The various SECAs proposed by the parties are generally designed as non-by-passable surcharges to license plate zonal rates for delivery to load within the RTOs.[64] The Presiding Judge found that eliminating the RTORs without a SECA would improperly shift costs from Midwest ISO's native load to PJM's native load.[65] The Presiding Judge took the position that inappropriate cost shifting will occur if RTORs are eliminated absent a lost revenue recovery mechanism because ''the through and out revenues are no longer credited against the cost of service and native load customers assume the burden previously carried by importing customers in the form of an increase in their own rates.'' [66]

Briefs on Exceptions

45. Many parties objecting to a lost revenue recovery mechanism challenge the Initial Decision's position that transmission owners are entitled to a specific amount of revenue related to through and out transactions.[67] The Michigan Agencies assert that the concept of ''lost revenues'' is also faulty since transmission owners are not legally guaranteed any particular stream of revenues. They note that the FPA only allows them to recover costs plus a reasonable return. WEPCO states that, if there is any question as to whether a transmission owner is over-recovering its revenue requirement, then the Commission should review the transmission owners' actual cost of service. WEPCO continues that a SECA-type mechanism would be appropriate for use (for a short period of time) only if the transmission owner can establish that it will be unable to recover its current cost of service without

pancaking over their transmission systems for transactions sinking within the proposed Midwest ISO/PJM footprint will be eliminated.

[59] Union Electric Co. and Central Illinois Public Service Co.

[60] American Transmission Systems, Inc., Cleveland Electric Illuminating Power Co., Ohio Edison Co., Pennsylvania Power Co., Toledo Edison Co.

[61] AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L. *See supra* note 58.

[62] The use of a ''paper'' hearing, rather than a trial-type, evidentiary hearing, has been addressed in previous cases. *See, e.g.,* Public Service Company of Indiana, 49 FERC ¶ 61,346 (1989), *order on reh'g,* 50 FERC ¶ 61,186, *opinion issued,* Opinion 349, 51 FERC ¶ 61,367, *order on reh'g,* Opinion 349–A, 52 FERC ¶ 61,260, *clarified,* 53 FERC ¶ 61,131 (1990), *appeal dismissed, Northern Indiana Public Service Company* v. *FERC,* 954 F.2d 736 (DC Cir. 1992). As the Commission noted in Opinion No. 349, 51 FERC at 62,218–19 & n.67, while the FPA and the case law require that the Commission provide the parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, *i.e.,* where the written submissions do not provide an adequate basis for resolving disputes about material facts.

[63] Initial Decision at P 7.

[64] The proposed SECAs reflect the historical test-year transmission charges that customers in a given pricing zone in one RTO paid for transmission service over the facilities in the other RTO to serve load within the pricing zone, and are designed to collect revenue from each zone in proportion to the benefits that customers serving load within the zone will realize when they no longer pay pancaked rates for transmission service over the facilities in the other RTO.

Transactions under Grandfathered Agreements and transactions that sink outside the combined region are not included in these calculations.

NERC tag data would be used to identify the loads benefitting from particular through and out transactions, and lost through and out service revenues would be assigned to loads on the basis of such analysis.

[65] Initial Decision at P 82.

[66] Initial Decision at P 71.

[67] *See, e.g,.* Michigan Agencies, Michigan Commission, TRRG, WSPC and UPPC, Maryland and Pennsylvania Commissions.

increasing its zonal rates once the RTORs are eliminated.[68] TRRG similarly argues that before the Commission approves any lost revenue recovery, it must determine that each transmission owner requesting lost revenue recovery would otherwise be deprived of its ability to recover its costs and earn a reasonable return on its investment.[69] The Wisconsin Commission argues that the burden should be on the New PJM Companies to demonstrate that they would not over-recover their current cost of service with implementation of a transitional rate mechanism.[70]

46. TRRG states that a cost-based approach to mitigating cost-shifts and eliminating rate pancaking, namely license plate rates with no lost revenue adders, has been used by the Commission in approving rates for the New York Independent System Operator, Inc., ISO-New England and PJM. It suggests that, given the intertwined nature of PJM and Midwest ISO, the Commission should view elimination of the RTORs as involving the elimination of intra-regional rate pancaking, and follow those cases.[71]

47. The Michigan Commission claims that there are legitimate reasons for denying any recovery of lost revenues in this proceeding in light of the former Alliance Companies' RTO choices. The Michigan Commission notes that the former Alliance Companies have continued to charge through and out rates far beyond the seams elimination date prescribed in the Illinois Power Settlement.[72] They argue that this continued recovery of revenues under pancaked rates serves as enough of a transition period and mitigates the need for any further recovery of lost revenues.[73]

Briefs Opposing Exceptions

48. Several parties support the Presiding Judge's ruling that a lost revenue recovery mechanism is necessary in the event that the Commission decides to eliminate the pancaked rates.[74] GridAmerica Companies and the New PJM Companies agree that transmission owners should be entitled to collect any revenues lost from the elimination of rate pancaking, and further argue that a full cost of service analysis should not be a necessary prerequisite for such recovery. They argue that requiring such filings would be inconsistent with established Commission precedent.[75] Trial Staff also notes that the Commission has previously adopted proposals to collect lost revenues in an effort to remove disincentives to RTO membership without requiring a new, full cost of service.[76] The New PJM Companies argue that if the Commission eliminates the RTORs, then it is obligated under Section 206 of the FPA to establish a just and reasonable alternative.[77]

Commission Decision

49. In prior cases, the Commission has approved the elimination of rate pancaking with a transitional rate mechanism for the recovery of lost revenues when the parties experiencing such lost revenues requested a transitional rate mechanism and demonstrated that it was just and reasonable.[78] On the other hand, the Commission has also approved the elimination of rate pancaking without such transitional rate mechanisms for recovery of lost revenues in cases where parties did not propose them or adequately support them.[79] That is, the Commission is not bound to establish transitional rate mechanisms for recovery of lost revenues.

50. We believe that mechanisms such as the proposed SECAs, if properly structured, can serve as reasonable transition mechanisms to address revenue losses arising from the elimination of rate pancaking due to RTO formation. However, no party to the proceeding has yet made a rate filing under section 205 of the FPA, 16 U.S.C. 824d (2000), either to increase its rates or to adopt a transitional rate mechanism to recover lost revenues.[80] If parties desire to increase their rates or to utilize such a transitional rate mechanism to recover lost revenues, they should file pursuant to section 205 of the FPA. For those filings made prior to November 1, 2003, we will look favorably upon requests to waive the prior notice requirement to allow an effective date of November 1, 2003, the date that the through and out rates will be eliminated.

51. Some parties state that the proper benchmark to use to set rates is the cost of providing service, including expenses and a fair return on investment, not revenue levels under current rates. Consistent with prior rulings,[81] however, we will not require that RTO members file an updated complete cost-of-service in order to justify transitional surcharges to recover lost revenues arising from the elimination of rate pancaking due to RTO formation.[82] Such a requirement could create an unnecessary impediment to RTO formation. However, if customers feel that existing rates and revenues, upon which the transitional surcharges would be based, are no longer just and reasonable, they may file a complaint pursuant to section 206 of the FPA to seek a change in those rates and the corresponding transitional surcharges.[83]

Specific Attributes of the SECA

52. Two SECA proposals were sponsored by parties to the proceeding, one by GridAmerica and one by the Midwest ISO TOs. The Presiding Judge made certain recommendations regarding the specific attributes of the SECA. Specifically, the Presiding Judge recommended that: (1) Calender-year 2002 should be the test period; (2) there should be no phase-out of the SECA until another methodology is devised to ensure that there is no cost shifting to PJM's native load customers; (3) Michigan and Wisconsin customers should be able to opt out of the SECA and continue paying the RTORs; (4) the starting point for the elimination of the RTORs and implementation of any

[68] WEPCO Brief on Exceptions at 27–30.

[69] TRRG Brief on Exceptions at 24.

[70] Wisconsin Commission Brief on Exceptions at 7.

[71] See TRRG Brief on Exceptions at 46.

[72] *See* Illinois Power Company, *et al.,* 95 FERC ¶ 61,183, *order denying reh'g,* 96 FERC ¶ 61,026 (2001).

[73] *See* Michigan Commission Brief on Exceptions at 16. WEPCO makes a similar argument in its Brief on Exceptions at 25.

[74] New PJM Companies and PECO, GridAmerica Companies, Ormet, Trial Staff, Illinois Power, the Midwest ISO TOs.

[75] *See also,* GridAmerica Companies Brief Opposing Exceptions at 19, New PJM Companies and PECO Brief Opposing Exceptions at 34.

[76] *See* Trial Staff Brief Opposing Exceptions at 11.

[77] New PJM Companies and PECO Brief Opposing Exceptions at 34.

[78] *See* Alliance Cos., *et al.,* 94 FERC ¶ 61,070 (2001); *see also* PJM Interconnection, LLC and Allegheny Power Co., *et al.,* 96 FERC ¶ 61,060 (2001).

[79] *See* PJM Interconnection, LLC, 81 FERC ¶ 61,257 (1997); *see also* Midwest Independent Transmission System Operator, Inc., *et al.*, Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh'g,* Opinion No. 453–A, 98 FERC ¶ 61,141 (2002).

[80] Likewise, no party to this proceeding has developed a record sufficient for us to order increased rates or to adopt a particular transitional rate mechanism for any party in this proceeding.

[81] *See* Alliance Companies, *et al.,* 94 FERC ¶ 61,070, *reh'g denied,* 95 FERC ¶ 61,182 (2001); April 25 Order at 61,446; PJM Interconnection L.L.C and Allegheny Power, 96 FERC ¶ 61,060 (2001).

[82] We do not address here whether this same approach, *i.e.,* not requiring an updated complete cost-of-service (as opposed to requiring such a cost-of-service with a demonstration that a party would otherwise be deprived of the ability to recover its cost-of-service due to the elimination of rate pancaking), would be appropriate for a public utility that has not yet joined an RTO.

[83] While parties to this proceeding presented evidence that they claimed demonstrated that the level of certain transmission owners' existing license plate rates was excessive, as the Presiding Judge correctly found, this analysis was hardly free from doubt and did not convincingly show that the existing rates were unjust and unreasonable. Initial Decision at P 74.

SECA should be after a final Commission order, allowing enough time for the filing of compliance filings containing the requisite calculations, and no refunds should be ordered; (5) the SECA should replace only charges for through and out service for transactions that sink in either the expanded Midwest ISO or the expanded PJM and source in or wheel through the other RTO; and (6) the Commission must decide as a matter of policy whether the SECA should be charged to the sink RTO as a whole or whether there should be a sub-zonal option.[84]

53. Most parties supported at least some of the Presiding Judge's recommendations while opposing the other recommendations.

Commission Decision

54. We cannot rule here on the Presiding Judge's recommendations or the parties' various concerns with the mechanics of the SECA. We will examine the specific attributes of any transitional cost recovery mechanisms when parties make section 205 filings, as discussed above.[85] However, based on our experience, we will provide the following guidance in this regard. As a general matter, we believe that any such filing should use NERC tag data and develop lost through and out revenues for the most recent twelve months, with adjustments for known and measurable differences, to most closely reflect future trading patterns. In addition, the transitional period for a SECA should be as short as possible, while allowing enough time for parties to develop a permanent solution to pricing transmission service between the regions. We believe that a two-year transition period for a transition cost recovery mechanism will provide sufficient time for the parties to find a permanent solution for pricing transmission service between regions in the Midwest ISO/PJM footprint. We will also permit charges on a sub-zonal basis, since sub-zonal charges best align the benefits of eliminating rate pancaking with the associated lost revenues. If transactions cannot be traced to load in various zones of the Classic PJM Companies' region, because of operation of the PJM spot market, Classic PJM Companies should address alternative methodologies for evaluating the relative benefits from import transactions between the various zones of the Classic PJM Companies' region.[86] Finally, we encourage those entities that intend to make Section 205 filings to consult with interested parties and each other, to seek creative solutions to the concerns raised in this proceeding and to resolve as many issues as possible prior to making their Section 205 filings.

55. The Presiding Judge explained that efficiencies could only be produced by eliminating rate pancaking after the Commission issues a final order since past behavior cannot be changed.[87] Therefore, he recommended that no refunds should be ordered for past through and out charges. The Presiding Judge also ruled that no refunds should be ordered because the SECA replaces the RTORs with charges of a different form, a non-by-passable surcharge to be added to existing license plate zonal transmission rates but in approximately the same magnitude and imposed on the same groups of ratepayers; customers are not entitled to refunds because they have not overpaid.[88]

56. Consumers argues that, because the Commission set a refund effective date, refunds should be available if the RTORs are found to be unjust and unreasonable. Midwest ISO TOs argue that, if the Commission requires elimination of the through-and-out rates, the elimination should be on a prospective basis, without refunds, and take effect simultaneous with the implementation of the SECA charge.

57. We affirm the Presiding Judge and will not order refunds here. Rather, as discussed above, we will make the elimination of the through and out rates effective on November 1, 2003. We direct PJM and Midwest ISO to make a compliance filing, within 30 days, eliminating the RTORs under their tariffs for transactions that sink in the Midwest ISO/PJM footprint into proposed RTOs, effective November 1, 2003.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part, and reversed in part, as discussed in the body of this order. The through and out rates under the tariffs of Midwest ISO and PJM for transactions sinking within their combined region, are hereby eliminated effective November 1, 2003, as discussed in the body of this order.

(B) The Wisconsin Commission's motion to intervene is hereby denied, but the Wisconsin Commission is hereby granted permission to participate as amicus curiae, as discussed in the body of this order.

(C) 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 by the Federal Power Act, particularly Section Procedure and the 206 thereof, and pursuant to the Commission's Rules of Practice and regulations under the Federal Power Act (18 CFR chapter I), a public hearing shall be held in Docket No. EL03–212–000 concerning the justness and reasonableness of the through and out rates of AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L, as discussed in the body of this order.

(D) AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO and DP&L and other parties may submit to the Commission in Docket No. EL03–212–000 arguments and evidence, as outlined in the body of this order on or before August 15, 2003.

(E) Any interested person desiring to be heard in Docket No. EL03–212–000 should file a notice of intervention to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) on or before August 8, 2003.

(F) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the proceeding in Docket No. EL03–212–000.

(G) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the **Federal Register** of the notice discussed in Ordering Paragraph (F) above.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[84] Initial Decision at P 91–97.

[85] We note that, in the April 25 Order, while we found that a transitional rate mechanism appeared promising in concept, we stated that we would still need to evaluate the resulting rates to ensure that the mechanism produces a reasonable result. Consistent with the April 25 Order, we do not have actual rates before us here, and therefore, will not render a decision on any particular methodology.

[86] We remind the parties that such a methodology will likely be necessary, in any event, for a long-term solution to pricing transmission service between regions.

[87] Initial Decision at P 95.

[88] The Presiding Judge states that the parties which contested the RTOR are not contesting the level of the RTORs. Initial Decision at P 56.

APPENDIX

	Acronym
Cinergy Services, Inc., Cincinnati Gas and Electric Co., PSI Energy Inc., Union Light and Heat Co.	Cinergy.
Certain Classic PJM Transmission Owners	Classic PJM Companies.
Consumers Energy Company	Consumers.
Dairyland Power Cooperative	Dairyland Power.
Edison Mission Energy	Edison Mission.
Grid America Companies	GridAmerica.
Illinois Power Company	Illinois Power.
Joint Consumer Advocates	JCA.
Madison Gas and Electric Company	Madison.
Maryland Public Service Commission and Pennsylvania Public Utility Commission	Maryland and Pennsylvania Commissions.
Michigan Public Power Agency and Michigan South Central Power Agency	Michigan Agencies.
Michigan Public Service Commission and the State of Michigan	Michigan Commission.
MidAmerican Energy Company	MidAmerican.
Midwest Independent System Operator	the Midwest ISO.
Midwest ISO Transmission Owners	Midwest ISO TOs.
New PJM Companies and PECO Energy Company	New PJM Companies and PECO.
Public Utilities Commission of Ohio	Ohio Commission.
Ormet Primary Aluminum Corporation	Ormet.
Commission Trial Staff	Trial Staff.
Transmission Revenue Requirement Group	TRRG.
Wisconsin Electric Power Company	WEPCO.
Public Utilities Commission of Wisconsin	Wisconsin Commission.
Wisconsin Public Service Corporation and Upper Peninsula Power Company	WPSC/UPPC.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03–58–000, et al.]

AEP Texas North Company, et al.; Electric Rate and Corporate Filings

July 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AEP Texas North Company, Appalachian Power Company, Columbus Southern Power Company, Ohio Power Company, Southwestern Electric Power Company

[Docket No. AC03–58–000]

Take notice that on July 17, 2003, the AEP Texas North Company, Appalachian Power Company, Columbus Southern Power Company, Ohio Power Company and Southwestern Electric Power Company (the Companies) made a compliance filing pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations. The Commission directed jurisdictional entities to file journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Comment Date: August 7, 2003.

2. Armstrong Energy Limited Partnership, LLLP and Dominion Energy Marketing, Inc.

[Docket No. EC03–108–000]

Take notice that on July 18, 2003, Armstrong Energy Limited Partnership, LLLP (Armstrong) and Dominion Energy Marketing, Inc. (DEMI) filed an application for an order authorizing the proposed transfer of Armstrong's interest in a Master Power Purchase & Sale Agreement and the underlying Confirmation Letter with Constellation Power Source, Inc. to its affiliate, DEMI.

Comment Date: August 8, 2003.

3. Dominion Nuclear Marketing II, Inc. and Dominion Energy Marketing, Inc.

[Docket No. EC03–109–000]

Take notice that on July 18, 2003, Dominion Nuclear Marketing II, Inc. (DNM II) and Dominion Energy Marketing, Inc. (DEMI) filed an application for an order authorizing the proposed transfer of DNM II's interest in certain wholesale contracts with Constellation Power Source, Inc. to its affiliate, DEMI.

Comment Date: August 8, 2003.

4. Texas-New Mexico Power Company and Southern New Mexico Electric Company

[Docket No. EC03–110–000]

Take notice that on July 21, 2003,Texas-New Mexico Power Company and Southern New Mexico Electric Company (Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Texas-New Mexico Power Company proposes to completely dispose of its jurisdictional facilities in New Mexico to Southern New Mexico Electric Company, a wholly owned subsidiary of Texas-New Mexico Power Company.

Comment Date: August 11, 2003.

5. Liberty Electric Power, LLC, Newco, LLC

[Docket Nos. EC03–111–000 and ER01–2398–005]

Take notice that on July 21, 2003, Newco, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of 100 percent of the indirect upstream membership interests in Liberty Electric Power, LLC (Project Company) to Applicant, a newly created special purpose entity owned by a group of financial institutions. The Project Company owns a 567.7 MW combined cycle gas-fueled electric generating plant located in the Borough of Eddystone, Delaware County, Pennsylvania.

Comment Date: August 11, 2003.