135 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc. v. PJM Interconnection, L.L.C.	Docket Nos. EL10-45-000 EL10-45-001
Midwest Independent Transmission System Operator, Inc. v. PJM Interconnection, L.L.C.	EL10-46-000 EL10-46-001
PJM Interconnection, L.L.C. v. Midwest Independent Transmission System Operator, Inc.	EL10-60-000 EL10-60-001

ORDER APPROVING CONTESTED SETTLEMENT

(Issued June 16, 2011)

1. On January 4, 2011, in accordance with Rule 602 of the Commission's Rules of Practice and Procedure,[1] the Midwest Independent Transmission System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) (together, the Settling Parties) filed a Settlement Agreement and Offer of Settlement (Settlement) to resolve two MISO complaints against PJM, and a PJM complaint against MISO. On March 9, 2011, the Settlement Judge reported to the Commission that the Settlement is partially contested.[2] In this order, we approve the Settlement, and accept the proposed tariff revisions, effective the date of this order, subject to a compliance filing.

[1] 18 C.F.R. § 385.602 (2011).

[2] *Midwest Indep. Transmission Sys. Operator, Inc. v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 63,019 (2011). On March 16, 2011, the Chief Judge terminated settlement judge procedures.

I. Background

2. MISO is the regional transmission organization (RTO) that operates and provides reliability coordination for the electric transmission grid in portions of the Midwestern states and the Canadian province of Manitoba. PJM, also an RTO, provides the same functions in portions of the mid-Atlantic and Midwestern states.

3. On March 9, 2010, pursuant to section 206 of the Federal Power Act (FPA),[3] MISO filed two separate complaints against PJM. The complaint filed in Docket No. EL10-45-000 alleged that PJM had failed to initiate the market-to-market redispatch provisions of the Joint Operating Agreement (JOA) between MISO and PJM (Redispatch Complaint).[4] The complaint filed in Docket No. EL10-46-000 alleged that PJM erroneously calculated charges to MISO for market-to-market settlements made from 2005-2009, pursuant to the JOA's congestion management provisions (Billing Complaint). On April 12, 2010, in Docket No. EL10-60-000, PJM filed a complaint against MISO alleging that MISO had improperly used Substitute Flowgates in redispatch procedures and market-to-market settlements under the JOA (Substitute Flowgate Complaint).[5] On June 29, 2010, the Commission consolidated the three complaint proceedings and established hearing and settlement judge procedures.[6]

4. The JOA provides for the RTOs to manage transmission constraints that are significantly impacted by generation dispatch changes in both RTOs' markets so as to adopt the more efficient and lower cost transmission congestion management solution. It provides for employing generation redispatch to resolve congestion at the operating seam

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[3] 16 U.S.C. § 824e (2006).

[4] The JOA, originally approved in 2004, addresses the problems caused by the irregular seam between MISO and PJM. Its purposes are to improve reliability and economic efficiency, and to administer a joint and common market that facilitates both RTOs' operations. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251, at P 1-10, *order on reh'g*, 108 FERC ¶ 61,143, *order on clarification and denying reh'g*, 109 FERC ¶ 61,166 (2004).

[5] Flowgates are facilities or groups of facilities that may act as significant constraint points on the system. JOA, section 2.2.24. A substitute flowgate is one that was not previously identified as being subject to the JOA market-to-market process.

[6] *Midwest Indep. Transmission Sys. Operator, Inc. v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,284 (2010) (June 29, 2010 Order). On July 29, 2010, MISO filed a request for rehearing of the June 29, 2010 Order.

between MISO and PJM on a least-cost basis, with financial settlements through which each RTO compensates the other RTO for redispatch provided by that other RTO. The RTOs have established agreed-upon coordinated flowgates,[7] called Reciprocal Coordinated Flowgates,[8] for which they monitor congestion and redispatch their systems when a particular Reciprocal Coordinated Flowgate is congested or constrained (i.e., the flow on the Reciprocal Coordinated Flowgate exceeds its rating and must be reduced).[9] When a Reciprocal Coordinated Flowgate is congested, the market-to-market coordination process is implemented. One RTO (called the monitoring RTO) will pay the other RTO (called the non-monitoring RTO) to redispatch for the monitoring RTO's congestion relief obligation if that alternative is less expensive than using the monitoring RTO's own resources.

II. The Settlement

5. In the Settlement, the Settling Parties agree to a review of existing procedures for implementing the JOA and a process for reviewing future changes to implementation procedures. Specifically, the Settlement provides for: (1) an initial baseline review, by an independent third party, of the means and processes pursuant to which MISO and PJM implement the market-to-market process under the JOA; (2) continued biennial reviews of any changes to those processes; and (3) a process for the Settling Parties to follow in the event either RTO desires to modify any processes that affect the implementation of the market-to-market process, including the determination of market-to-market settlements under the JOA (Change Management Process). In addition, the Settling Parties agree to provide each other with enhanced access to data that will enable each RTO independently to verify the results of the calculations that determine the market-to-market settlements under the JOA.

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[7] Coordinated flowgates are those that one of the RTOs has subjected to four specific tests (specified in Attachment 2 to the JOA) and thereby determined the impact of the flows that the RTOs' operations place on the flowgates. JOA, section 2.2.12.

[8] A Reciprocal Coordinated Flowgate is either a coordinated flowgate affected by the transmission of energy by both RTOs or a flowgate that both RTOs mutually agree should be a coordinated flowgate and for which reciprocal coordination will occur. JOA, section 2.2.54.

[9] The JOA includes a Congestion Management Process and an Interregional Coordination Process to establish the process by which the parties manage Reciprocal Coordinated Flowgates.

6. The Settling Parties have further agreed to JOA revisions reflecting guiding principles that clarify how market-to-market coordination will be achieved under the JOA.[10] Pursuant to the Settlement, market-to-market coordination will be initiated whenever a specified flowgate is constrained and will take place on the most limiting flowgate and, in some cases, be subject to after-the-fact review with the two RTOs exchanging data to facilitate such review.[11] Substitute flowgates may be used under certain specified conditions.

7. The Settlement establishes a one-year limit for billing adjustments and resettlements under the JOA, and prohibits any adjustments or rebillings with respect to a particular month if more than a year has elapsed since the date when the invoice for that month was rendered. The Settlement provides that no resettlements will be made for any claims asserted under the JOA for the period prior to the date of the filing of the Settlement (January 4, 2011).

8. The Settlement provides that it shall become effective as of the date on which the Commission approves or accepts the Settlement in its entirety, including the proposed revisions to the JOA. The Settlement also provides that approval and/or acceptance by the Commission of the Settlement shall constitute the release and discharge forever of each and every participant (including all intervenors, members of MISO, members of PJM, MISO, and PJM) in this consolidated proceeding from any and all claims, demands, damages, amounts owed, actions, causes of actions, or suits of any kind or nature whatsoever, known or unknown, foreseen or unforeseen, that arose or could have arisen under the JOA for events that occurred prior to the date of the filing of the Settlement. As a consequence of the mutual releases by the Settling Parties and the Commission's approval and/or acceptance of the Settlement, the Settlement provides that there shall be no rebillings or resettlements of any kind regarding activities conducted under the JOA for any time prior to the date of the filing of the Settlement.

9. The Settlement states that the just and reasonable standard governs all future changes to the Settlement by the Parties and the Commission. The Settlement further provides:

> Nothing in this Settlement is intended to impose the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas*

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[10] The purpose of market-to-market coordination is to address regional, not local, congestion issues.

[11] The RTOs should minimize financial harm to one RTO caused by market-to-market coordination initiated by the other RTO.

> *Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), on either the Parties or the Commission, or to prevent the Commission from acting on its own motion with respect to this proceeding.[12]

10. The Settlement resolves all issues set for hearing and settlement procedures. Under the Settlement, MISO agrees to dismiss with prejudice the Redispatch Complaint and the Billing Complaint and to withdraw its pending rehearing request of the June 29, 2010 Order. PJM agrees to dismiss with prejudice the Substitute Flowgate Complaint.

III. Initial and Reply Comments

11. Initial Comments were submitted by: the Commission's Trial Staff (Trial Staff); the Independent Market Monitor (IMM) of MISO (MISO IMM); Northern Indiana Public Service Company (NIPSCO); the Indiana Utility Regulatory Commission and the Public Service Commission of Wisconsin (together, the State Commissions); the Allegheny Energy Companies (Allegheny);[13] J.P. Morgan Ventures Energy Corporation (J.P. Morgan); DC Energy, LLC and DC Energy Midwest, LLC (collectively, DC Energy). Certain utilities in the PJM region joined together to submit comments as the Supporting PJM Members, namely: Exelon Corporation (Exelon); the PPL Parties;[14] Dominion Resources Services, Inc. (Dominion);[15] Baltimore Gas and Electric Company (BG&E); the PSEG Companies;[16] the GenOn Companies;[17] the Dayton Power and Light Company

[12] Settlement at P 43.

[13] Allegheny Power is a trade name for Monongahela Power Company, the Potomac Edison Company, and West Penn Power Company, along with Allegheny Energy Supply Company, LLC, which collectively are considered the Allegheny Energy Companies.

[14] The PPL Parties are PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; and Lower Mount Bethel Energy, LLC.

[15] On behalf of its affiliates: Virginia Electric and Power Company; Dominion Energy Marketing, Inc.; Elwood Energy, LLC.; Fairless Energy LLC; State Line Energy, LLC; Kincaid Generation, LLC; and Dominion Energy Kewaunee.

[16] The PSEG Companies are Public Service Electric and Gas Company and PSEG Energy Resources & Trade LLC.

(Dayton); American Electric Power Service Corporation (AEP);[18] Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation).[19]

12. Reply Comments were submitted by the Settling Parties, Supporting PJM Members,[20] Old Dominion Electric Cooperative (ODEC), NIPSCO, the Organization of MISO States (OMS),[21] and Trial Staff.[22]

IV. Discussion

13. When a settlement is contested in whole or in part, as here, the Commission must make an "independent finding supported by substantial evidence on the record as a whole, that the proposal will establish just and reasonable rates for the area."[23] The Settlement includes proposed revisions to the JOA to address specific concerns raised by the complaints in this proceeding, including enhanced access by the RTOs to data, improved disclosure processes, and periodic review procedures. The Commission finds

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[17] The GenOn Companies are GenOn Energy, Inc.; GenOn Energy Management, LLC; GenOn MidAtlantic, LLC; GenOn Chalk Point, LLC; and GenOn Potomac River, LLC.

[18] On behalf of its affiliates: Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company and Wheeling Power Company; AEP Appalachian Transmission Company Inc.; AEP Indiana Michigan Transmission Company Inc.; AEP Kentucky Transmission Company Inc.; AEP Ohio Transmission Company Inc.; and AEP West Virginia Transmission Company.

[19] FirstEnergy Service Company, on behalf of its affiliate operating utility companies, filed a reservation of the right to file reply comments. It did not do so.

[20] For purposes of the Reply Comments, the Supporting PJM Members exclude Constellation.

[21] OMS requested and was granted an extension of time to file reply comments.

[22] Allegheny and NIPSCO filed answers to Trial Staff's reply comments, on February 4 and 11, 2011, respectively.

[23] *Trailblazer Pipeline Company*, 106 FERC ¶ 61,034 at P 16 (2004) citing *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974).

that the JOA, with the proposed revisions to the JOA included in the partially-contested Settlement, will establish just and reasonable rates. For the reasons discussed below, after balancing the interests presented in the comments on the Settlement, the Commission finds that modifications to the Settlement are not necessary. Accordingly, the Commission approves the Settlement.

14. No commenter recommends that the Commission reject the Settlement. DC Energy, J.P. Morgan, and Supporting PJM Members ask the Commission to approve the Settlement without modification. However, several commenters raise concerns and propose modifications to Settlement provisions regarding the limitation on claims, the need for additional audits of the market-to-market process, the disclosure of implementation errors, and the relationship and responsibilities of the monitoring and non-monitoring RTO. We address the specific issues raised by the commenters.

A. Limitations on Claims

15. The Settlement proposes to revise the JOA by adding new section 18.3.4, "Limitation on Claims."

> No claim seeking an adjustment in the billing for any service, transaction, or charge under this Agreement may be asserted with respect to a month, if more than one year has elapsed since the first date upon which the invoice was rendered for the billing for that month. A Party shall make no adjustment to billing with respect to a month for any service, transaction, or charge under this Agreement, if more than one year has elapsed since the first date upon which the invoice was rendered for the billing for that month, unless a claim seeking such adjustment had been received by the Party prior thereto, provided, however, that no adjustments to billing, or resettlement, shall be made for any claims asserted in the first year following the date of filing of the Settlement Agreement and Offer of Settlement ("Settlement") in Docket Nos. EL10-45 et al. for any time period prior to the date of filing of the Settlement.

1. The Parties' Comments

16. The State Commissions oppose the one-year claim limitation period to seek billing adjustments and ask the Commission to order instead a two-year limit, which, they contend, would better protect consumers. A two-year period, they contend, more reasonably balances certainty of completed monthly transactions and a reasonable opportunity to investigate and negotiate correction of erroneous billings. Because JOA operations are complex and large amounts of money are involved, the State Commissions contend that two years would allow sufficient time for investigation and negotiation of disputed billing issues that can involve other stakeholders, such as the RTOs'

transmission owners, and relevant state commissions. The State Commissions state that, as a consequence of the one-year limit, market participants will file billing claims on a protective basis to avoid the one year limit; a two-year period would delay resort to a complaint filed under section 206 of the FPA. Additionally, the State Commissions contend that a two-year period matches the biennial review process, which scrutinizes for hard-to-detect errors or problems in JOA procedures, the situation of the instant docket. The State Commissions argue that the two-year limit has more benefit than cost and protects the consuming public.

17. NIPSCO supports a claims period limitation if the limitation does not eliminate the right of any party to seek legal or equitable relief from the Commission for, e.g., a rate charge that was contrary to the filed rate under the JOA. NIPSCO cites the tariffs of the California Independent System Operator Corporation and ISO New England, Inc. as having such provisions,[24] and recommends amendment of JOA section 18.3.4 to state, "Nothing in this Section shall abridge the right of any market participant in the MISO or PJM to seek legal or equitable relief under the Federal Power Act with respect to a market-to-market settlements error or other billing error in which a rate other than the filed rate is charged." NIPSCO distinguishes between past claims, for which it supports a limitation period, and future claims, where it asks that the claims limitation period, as applied to an entity, exclude circumstances where the error occurs after the claims limitation period has passed, or the entity could not reasonably have been aware of the error, or is seriously harmed by the error.

18. NIPSCO supports the proposed one-year claim limitation period if the Commission amends the Settlement so that the IMMs for MISO and PJM serve together as auditing parties and report on the implementation and settlement of the market-to-market process under the JOA in each IMM's annual "State of the Market" report. Otherwise, NIPSCO recommends a two-year limitation on claims. NIPSCO reasons that entities, like NIPSCO, do not have access to data to verify the accuracy of the market-to-market settlement statements under the JOA because the data exchanges and settlements occur, appropriately, between only the two RTOs. NIPSCO contends that because such entities do not have the access to data to review the results, nor are they able to monitor the market-to-market process and settlement by the two RTOs, a mechanism other than self-policing should be employed to review and report on operations and settlements under the JOA.

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[24] NIPSCO cites CAISO, Fifth Replacement Tariff, at § 11.29.8.4.6, and ISO-NE Transmission, Markets and Services Tariff, Exhibit ID, "ISO New England Billing Policy," at § 6.2.

19. Trial Staff is concerned that the Settlement's claims limitations provisions, both the prohibition on rebilling or resettlements for any activity conducted prior to the Settlement's filing date and the one-year limitation on any rebilling claim, will apply to third-parties who did not participate in the proceeding and to the Commission. Trial Staff states that the Settlement and the proposed tariff text could be interpreted to impinge on the Commission's ability, under section 206 of the FPA, to investigate transactions beyond the stated time limits, thus placing the Commission at odds with its statutory responsibility to ensure just and reasonable rates.

2. Settling Parties' Answers

20. The Settling Parties oppose modification of the one-year claims limitation provision of the Settlement. They contend that this limitation provision is consistent with Commission precedent and policy, and that there is no basis to undermine the ability of the provision to provide market participants with repose and rate certainty. The one-year claims limitation provision, they state, is a result of negotiation and consensus among the participants in the settlement negotiations. It adequately balances the need to provide financial certainty by resolving billing disputes in a timely manner with the need to provide adequate time to discover errors and raise claims.

21. In answer to the State Commissions, the Settling Parties state that the Settlement requires each RTO to provide enhanced access to data that will enable the other RTO to verify independently, as often as on a daily basis, the results of the calculations that determine the market-to-market settlements so as to identify potential errors promptly and investigate them without delay. Moreover, the Settling Parties explain, each RTO has an obligation to inform the other RTO of any potential violations of the JOA that it self-reports to the Commission.

22. In answer to NIPSCO, the Settling Parties state that NIPSCO's requests for a condition affirming the unlimited right of an entity to seek legal or equitable relief from the Commission and for exceptions to the claim limitation period are antithetical to the very purpose of the claims limitation provision. Such requests, they maintain, undermine the limitation provision's ability to provide market participants with repose and financial certainty, the goal stated by the entities participating in these consolidated proceedings. The Settling Parties contend that, because of the enhanced access to data and review provisions and because of the participants' desire for certainty and repose with regard to billings, the one-year claims limitation strikes a reasonable balance between providing sufficient opportunity to bring a claim and protecting market participants from the uncertainty resulting from potential resettlement of past billings.

23. In answer to Trial Staff's concern that the Settlement's limitation period for claims conflicts with the Commission's statutory responsibilities, the Settling Parties cite *Boston Edison Co. v. FERC*[25] and *New York Independent System Operator, Inc*. [26] as holding that the FPA is not undercut when the Commission is barred from providing refunds when claims are raised after the stated limitation period.[27] The Settling Parties contend that this holding protects both the purchaser and the seller from invoice adjustments outside the prescribed time frame.

3. Commission Determination

24. We will not require modification of the one-year claims limitation provisions of the Settlement. The Settlement provides enhanced access to data, often on a daily basis, to enable the RTOs to verify independently the results of the calculations that determine the market-to-market settlements.[28]

25. Neither NIPSCO nor the State Commissions nor Trial Staff point to precedent that prohibits provisions for the limitations on claims. To the contrary, we find that provisions for the limitations on claims are consistent with Commission precedent. Indeed, Trial Staff notes that, in *Southwest Power Pool, Inc.*, the Commission recognized the need for billing certainty for RTO market settlements and stated:

> In the RTO context, we have allowed time limits on disputing invoices. Since RTO billings disputed successfully by one participant, generally must be paid by others, there would be too much uncertainty on billing and settlement issues if a party was allowed to dispute an invoice for months or years after the transmission provider had been paid and it had in turn paid the market participants.[29]

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[25] *Boston Edison Co. v. FERC*, 856 F.2d 361, 372-74 (1st Cir. 1988) (*Boston Edison*).

[26] 128 FERC ¶ 61,086 (2009), *reh'g denied*, 133 FERC ¶ 61,028 (2010).

[27] Settling Parties, February 3, 2011 Reply Comments at 4-5 (citing also *Commonwealth Elec. Co. v. Boston Edison Co.*, 46 FERC ¶ 61,253, at 61,759 (1989); *O'Neil v. Montaup Elec. Co.*, 46 FERC ¶ 61,254, at 61,761 (1989)).

[28] *Id.* at 6.

[29] Trial Staff, January 24, 2011 Comments at 13 (citing *Southwest Power Pool, Inc.*,114 FERC ¶ 61,289, at P 124, *order on reh'g*, 116 FERC ¶ 61,289 (2006)).

Further, in *New York State Electric & Gas Corporation*, the Commission stated, "once invoices are finalized, they should generally remain unchanged, even if later found to contain errors, so that the market participants can rely on the charges contained in the invoices."[30] Additionally, in *Boston Edison*, the court stated, "A reasonable claims limitation clause . . . enhances economic equilibrium by bring certainty to the parties' dealings after the passage of an adequate period of time [and] a balanced incontestability provisions promotes stability."[31]

26. We agree with ODEC that the Settlement balances the need for exchange of information and communication between the RTOs with the realities of the resources and time required to meet these requirements, and that the Settlement strikes an appropriate balance between the ability of the parties to identify and seek remediation for errors or other legitimate claims under the JOA and the need for certainty and finality in the RTO markets and settlement process.[32] We find that a one-year limitation on the time period for seeking an adjustment in the billing for any service, transaction, or charge under the JOA strikes a reasonable balance between providing sufficient opportunity to bring a claim and protecting market participants from the uncertainty resulting from potential resettlement of past billings. Given the complexities of resettlement, we find a one-year claims limitation period is consistent with a just and reasonable market-to-market settlement process.

B. Additional Audits to the Market-To-Market Processes

27. NIPSCO notes that the Settlement provides for an initial Baseline Review and a Biennial Review. NIPSCO recommends that the Settlement also provide for scheduled, periodic reviews or audits of the market-to-market process and settlements in addition to the initial Baseline Review. NIPSCO recommends that the IMMs for the two RTOs serve as the auditing parties for the JOA, and that a report on the implementation and settlement of the market-to-market process under the JOA be included in their annual reports on the state of the markets. In the alternative, because the Biennial Review is limited to a review of process changes, NIPSCO recommends that the scope of the Biennial Review be expanded.

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[30] *New York State Electric & Gas Corporation*, 133 FERC ¶ 61,094, at P 63 (2010) (*NYSEG*).

[31] *Boston Edison*, 856 F2. at 372.

[32] ODEC, February 3, 2011 Reply Comments at 2-3.

28. The Settling Parties oppose modifications to the Settlement that add or expand review processes. They state that the Settlement's review processes are designed to ensure that the JOA processes function efficiently and consistently. They further state that an additional audit layer of review is unnecessary, would be a waste of resources, redundant, and unduly burdensome. The Settling Parties contend that the IMMs should not have any greater authority to audit the market-to-market processes under the JOA than they have to monitor the other PJM or MISO markets.

29. We find that NIPSCO has not adequately supported its claim that additional audits by the RTOs' IMMs are necessary. The Settlement includes both an initial Baseline Review and subsequent review processes by which the RTOs implement the market-to-market process. In addition, as noted below, the Settlement includes enhanced data information sharing. Based on these provisions, we find that the Settlement includes adequate safeguards regarding the processes for implementation of the market-to-market settlement process. We will not require additional modifications to the Settlement.

C. Change Management Process

1. Scope of Change Management Process

30. The MISO IMM is concerned about the effects of the Settlement's proposed tariff revisions on the relationship between the monitoring RTO and the non-monitoring RTO, essentially a customer of the monitoring RTO's transmission system. Specifically, the MISO IMM is concerned that the non-monitoring RTO will have inappropriate authority over decisions that affect the competitiveness, efficiency, and reliability of the monitoring RTO's markets and transmission system such that the non-monitoring RTO will have control or veto power over the monitoring RTO's actions to promote the competitiveness, efficiency, and reliability of its markets and system. NIPSCO and OMS support the MISO IMM's comments.

31. The MISO IMM criticizes proposed JOA article XX as going far beyond the market-to-market process and implementation and applying to any process affecting the determination of market-to-market settlements. The MISO IMM states that, as written, this article potentially affects many market rules, modeling parameters, and operating procedures that can significantly affect the value of congestion on the monitoring RTO interfaces. Although these rules, parameters, and procedures have nothing to do with the implementation of the market-to-market processes under the JOA, they indirectly affect market-to-market settlements, and therefore would be implicated by the proposed Change Management Process provisions. The MISO IMM contends that this would lead to the monitoring RTO being restricted from changing any market rules, modeling parameters, or operating procedures that potentially affect congestion levels on market-to-market restraints without written approval by the non-monitoring RTO, despite stakeholder

approval of the changes.[33] Thus, the MISO IMM recommends amending, and suggests text for, proposed JOA article XX, "Change Management Process."[34]

32. The Settling Parties contend that the purpose of the Change Management Process is to provide a mechanism for the RTOs to coordinate with each other when one RTO desires to change a process used to implement the market-to-market process under JOA. The Settling Parties state that they do not intend, nor does the Settlement text when read in context provide, that the Change Management Process applies to individual RTO rules, modeling parameters, or operating procedures that are not a part of the processes used to implement market-to-market coordination under the JOA. The Settling Parties contend that the modifications proposed by the MISO IMM are not required.

33. We agree with the Settling Parties that the Change Management Process provisions of the Settlement, when read in context, are consistent with the stated intent of the Settling Parties, and do not support the broader reading suggested by the MISO IMM. The Settlement is just and reasonable as proposed by the Settling Parties. We find that the MISO IMM's suggested modifications to proposed JOA article XX are unnecessary.

2. Implementation of Change Management Process

34. NIPSCO states that the Settlement's Change Management Process provisions could lead to changes in the JOA itself, and contends that such changes must require approval or acceptance by the Commission before going into effect. Therefore, NIPSCO recommends that the JOA recognize this fact and require that changes to the JOA coming out of the Change Management Process be filed with and accepted by the Commission before becoming effective.

35. The Settling Parties agree that, under section 205 of the FPA,[35] any change to the JOA must be filed, and will not become effective until accepted by the Commission. Because of this statutory requirement, the Settling Parties already have the obligation to file any modifications to the JOA and there is no need to amend the Settlement. Further, the Settling Parties note that proposed JOA section 20.4 provides for quarterly posting on

[33] Examples of such affected changes are listed in MISO IMM, January 24, 2011 Comments at 7.

[34] The MISO IMM's amendments to the Settling Parties' proposed JOA article XX are set forth at *id.* at 8.

[35] 16 U.S.C. § 824d(d) (2006).

the RTOs' respective websites of a summary of market-to-market implementation process changes proposed in the prior quarter and the status of such changes.

36. Because the Settling Parties recognize that changes to the JOA must be filed under section 205 of the FPA, and because the Settlement provides for the posting on each RTO's website, every quarter, of proposed process changes to the JOA, which includes those changes that do not require filing with the Commission, we find that the Settlement is just and reasonable, and that no modification is needed to establish just and reasonable rates.

D. Provisions for Disclosure of Implementation Errors

37. NIPSCO contends that neither the Settlement nor the JOA obligates the RTOs to disclose errors, and contends that the Settlement should be amended to require that the JOA include an affirmative obligation for the RTOs to disclose errors that occur in implementing the JOA and market-to-market settlements.

38. The Settling Parties state that it is unnecessary to amend the Settlement to obligate the RTOs to disclose errors. The Settling Parties note that proposed new JOA section 4.2, "Access to Data to Verify Market Flow Calculations," provides:

> Each Party shall provide the other Party with data to enable the other Party independently to verify the results of the calculations that determine the market-to-market settlements under this [JOA]. A Party supplying data shall retain that data for two years from the date of the settlement invoice to which the data relates. . . . The method of exchange and the type of information to be exchanged pursuant to this Section 4.2 shall be specified in writing and posted on the Parties' websites. The posted methodology shall provide that the Parties will cooperate to review the data and mutually identify or resolve errors and anomalies in the calculations that determine the market-to-market settlements. If one Party determines that it is required to self report a potential violation to the Commission's Office of Enforcement regarding its compliance with this [JOA], the reporting Party shall inform, and provide a copy of the self report to, the other Party.

The Settling Parties contend that these obligations ensure that both RTOs are aware of any errors in implementation of the JOA.

39. Based on proposed new JOA section 4.2, we find that the Settlement provides adequate disclosure of information relating to errors in the implementation of the JOA, and therefore that the proposed new section is just and reasonable. Therefore, we will not require any modifications to the Settlement.

E. After-the-Fact Review Provisions

40. The MISO IMM criticizes the proposed after-the-fact review provisions as enabling the non-monitoring RTO to avoid the market-to-market settlement because it disagrees with the decisions of the monitoring RTO, such as not to implement a Substitute Flowgate, or not agreeing with the limit that the monitoring RTO has chosen to manage a constraint, operating decisions that are not prohibited. The MISO IMM would remedy this problem by amending the proposed tariff revisions to make clear that the *ex post* changes to market-to-market settlements are limited to instances where one RTO inappropriately used a Substitute Flowgate in the market-to-market process, and provides suggested text.[36]

41. The Settling Parties contend that the MISO IMM misunderstands the purpose of the after-the-fact review. The Settling Parties state that the after-the-fact review verifies whether the monitoring RTO improperly used a substitute flowgate in the market-to-market process. The Settling Parties state that the after-the-fact review does not permit one RTO to avoid paying legitimate market-to-market settlements that are permitted under the JOA. Instead, the after-the-fact review ensures that each RTO acted within the conditions established as part of the Settlement. The Settling Parties also contend that the after-the-fact review is an essential component of the Settlement that resolves disputes between the Parties regarding the use of Substitute Flowgates in the market-to-market process. Accordingly, the Settling Parties urge the Commission to reject the MISO IMM's suggested amendments to the proposed tariff revisions.

42. We find that the proposed, after-the-fact review revisions to the JOA properly establish procedures to identify the inappropriate use of a Substitute Flowgate in the market-to-market process. According to the JOA, the after-the-fact review process is used to identify if and when the use of a Substitute Flowgate results in congestion charges that the parties have agreed, as part of the Settlement, should not be included in the market-to-market settlement of the JOA. Therefore, we find that the proposed tariff revisions allowing for *ex post* changes to the market-to-market settlement when one RTO has inappropriately used a Substitute Flowgate result in just and reasonable rates, and that no modification to the Settlement is necessary.

F. Prospective Claims

43. The Settlement states that it shall become effective as of the date on which the Commission approves or accepts the Settlement in its entirety, including the revisions to

[36] MISO IMM January 24, 2011 Comments at 11-14.

the JOA.[37] Additionally, the Settlement states that these revisions to the JOA shall be effective immediately upon approval or acceptance by the Commission.[38] Allegheny requests two related clarifications: (1) that following Commission approval of the Settlement, no entity, whether a participant in these proceedings or not, may request resettlement or rebilling for any claims under or related to the JOA prior to the filing of the Settlement, and (2) that the implementation and outcomes of the proposed JOA revisions concerning the Baseline Review Report, the Biennial Review, and the Change Management Process will be applied only prospectively and will not be used to seek any rebilling or resettlement prior to the filing of the Settlement or outside the one-year limitation.

44. The Settlement provides:

> Approval and/or acceptance of this Settlement by the Commission shall constitute the release and discharge forever of each and every participant (including all intervenors, members of Midwest ISO, members of PJM, Midwest ISO, and PJM) in this Consolidated Proceeding, their officers, directors, employees, members, successors, and assigns by each and every other participant . . . to the Consolidated Proceeding from any and all claims, demands, damages, amounts owed, actions, causes of actions, or suits of any kind or nature whatsoever, known or unknown, foreseen or unforeseen, that arose or could have arisen under the JOA for events that occurred prior to the date of the filing of the Settlement. . . . [T]here shall be no rebillings or resettlements of any kind regarding activities conducted under the JOA for any time prior to the filing of the Settlement.[39]

45. We find that, as to Allegheny's request for clarification, the Settlement is clear and no further clarification is necessary.[40]

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[37] Settlement at P 42.

[38] *Id.* P 38.

[39] *Id.* P 15-16.

[40] In light of this Settlement, the Commission, through its Office of Enforcement, will not initiate or continue investigations, if any, regarding the specific allegations raised in these dockets by MISO and PJM.

V. Compliance Filing

46. Because the revisions to the JOA are being filed as part of the Settlement and not through the Commission's e-tariff system, the Settlement provides that within 15 business days of the Commission's order approving the Settlement, PJM shall make a compliance filing to incorporate the revisions to the JOA in PJM's Interregional Agreements Tariff.[41] We will approve this Settlement and the revisions to the JOA as proposed, effective the date of this order, subject to PJM submitting in electronic format, a compliance filing of the revisions to the JOA, consistent with the terms of the Settlement.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) The revisions to the JOA are accepted as proposed, subject to PJM submitting in a compliance filing, within 15 business days, the revisions to the JOA in electronic tariff format, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[41] Settlement at P 40.