

the same functions, consistent with the allocation of functions to independent transmission companies (ITCs) provided in the April 25 Order³ 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 affiliates⁵ (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 Companies¹¹ and Illinois Power¹² 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

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 from 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.

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).