

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).