

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.<sup>21</sup>

#### 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> The New PJM Companies and PECO argue that the Commission's April 28, 2003 White Paper in Docket No. RM01-12-000<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

<sup>28</sup> See *e.g.*, Classic PJM Companies, JCA, Maryland and Pennsylvania Commissions, New PJM Companies and PECO.

<sup>29</sup> See New PJM Companies Brief Opposing Exceptions at 11, Classic PJM Companies Brief Opposing Exceptions at 5.

<sup>30</sup> See Wholesale Market Platform White Paper (White Paper), Appendix A at 6.

<sup>31</sup> See New PJM Companies and PECO Brief Opposing Exceptions at 5 and Classic PJM Companies Brief Opposing Exceptions at 5-6.

<sup>32</sup> 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 of this capacity. *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See Classic PJM Companies Brief Opposing Exceptions at 26.

<sup>21</sup> Initial Decision at P 62-63.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> See, *e.g.*, Trial Staff, Michigan Agencies, Michigan Commission, WEPCO, Cinergy, Illinois Power, and Midwest ISO.

<sup>25</sup> See Edison Mission Brief on Exceptions at 10.

<sup>26</sup> See Michigan Commission Brief on Exceptions at 6.

<sup>27</sup> 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."