

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

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.

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.