

organizations (RTOs); other states have opposed or barred these efforts by the same utilities. The Commission and some of the Midwest and Mid-Atlantic state commissioners expressed concerns about the current uncertainty regarding RTO formation in the Midwest and requested Commission action to resolve this uncertainty. In this order, the Commission announces an inquiry into RTO issues related to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection LLC (PJM) to be conducted by the Commissioners, participated in by advisory staff, and facilitated by a presiding administrative law judge in the above-captioned proceedings. The purpose of this process is to gather sufficient information for moving forward in resolving the voluntary commitment made by several entities to increase regional coordination by joining RTOs and establish a joint and common market in the Midwest and PJM region. These entities include American Electric Power Company (AEP), Ameren Services Company (Ameren), Commonwealth Edison Company (ComEd), Dayton Power and Light Company (DP&L) and Illinois Power Company (Illinois Power). While these companies have voluntarily agreed to join either Midwest ISO or PJM, they have not yet fulfilled their commitments.

2. By taking this action, the Commission intends to explore ways to resolve the interstate disputes referenced above and enhance regional coordination to establish a joint and common market in the Midwest and PJM region.

Background

3. On July 31, 2002, the Commission issued two interrelated orders² which were designed to help establish a joint and common market in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions in the Commission's Order No. 2000.³ In these orders, the Commission approved

the voluntary commitments of certain utilities in the Midwest to either join Midwest ISO or PJM. Because of the necessity for close regional coordination in the Midwest, the Commission also required that Midwest ISO and PJM develop a joint and common market in 2004 that would provide for a seamless market in the Midwest.

4. By order issued April 1, 2003,⁴ in Docket No. ER03-262-000, *et al.*, the Commission conditionally accepted for filing, suspended and set for hearing revisions to the PJM Open Access Transmission Tariff (OATT) that would allow AEP, ComEd, DP&L, and Virginia Electric and Power Company to join PJM. Subsequently, however, the Kentucky Public Service Commission denied transfer of AEP's transmission facilities to PJM.⁵ AEP has also asserted that recently-enacted Virginia law prohibits any firm that is a public utility in Virginia from transferring ownership or control of, or operational responsibility over, any transmission system to "any person" before July 1, 2004 and thereafter prohibits such a transfer without prior approval of the Virginia State Corporation Commission.⁶ At the same time, state legislation in Ohio and Michigan requires that AEP join an RTO. Also, by order issued March 15, 2000,⁷ in Docket No. EC98-40-000, *et al.*, the Commission conditionally approved the merger between AEP and Central and South West Corporation (CSW), provided that AEP fulfill its commitment, set forth in that proceeding, to join an RTO.⁸ The uncertainty concerning AEP joining PJM has also resulted in uncertainty in the timing for ComEd and DP&L joining PJM. Requests for rehearing and compliance filings are pending in these proceedings.

5. Illinois Power had originally proposed to join PJM. However, it subsequently has indicated that it may instead seek to join Midwest ISO. Illinois Power currently does not have an application on file with the Commission to join either RTO.

6. Finally, Ameren had proposed to join Midwest ISO as part of GridAmerica LLC (GridAmerica). The Commission has recently received an application for GridAmerica to join Midwest ISO on October 1, 2003.⁹ However, at that time, GridAmerica would not include the facilities of Ameren.

Discussion

7. The Commission will hold an inquiry into RTO issues related to the Midwest ISO and PJM to be conducted by the Commissioners, participated in by advisory staff, and facilitated by a presiding administrative law judge. As noted above, the purpose of this inquiry is to gather sufficient information to move forward in resolving the commitment made by several entities to establish a joint and common market in the Midwest and PJM region.¹⁰

8. With regard to these utilities, this inquiry will explore the impediments to these utilities in joining Midwest ISO or PJM and proposals for resolving those impediments. We note that the uncertainty regarding the Midwest-PJM participants is delaying the benefits to customers of greater voluntary coordination among utilities, and thus hindering the timely development of a joint and common market in the Midwest and PJM region, and the benefits of reliability that will result from such a market. Order No. 2000 adopted initially a voluntary approach to RTO formation which allows capturing reliability benefits, including regional infrastructure planning.

9. We direct Midwest ISO, PJM, North American Electric Reliability Council, AEP, Ameren, ComEd, DP&L and Illinois Power to have a senior company official who can represent these entities as well as make decisions on behalf of the company present at the inquiry. We invite representatives from the affected states, including state commissions, to this inquiry. We invite Canadian parties who will be impacted by the common market to this inquiry, as well.

10. We direct AEP, Ameren, ComEd, DP&L and Illinois Power to submit the following information in the form of pre-filed testimony by one or more witnesses by September 23, 2003: specify the impediments to their voluntary commitments to join RTOs;

² Ameren Services Company, *et al.*, 100 FERC ¶ 61,135 (2002) and Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002), *order on reh'g*, 103 FERC ¶ 61,274 (2003).

³ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), *appeal dismissed*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (DC Cir. 2001) (Order No. 2000).

⁴ American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 (2003).

⁵ See Answer of Edison Mission Energy, *et al.*, to Exelon Corporation's Comments on AEP Responses to FERC Data Requests, filed August 1, 2003.

⁶ See AEP's Report on Compliance with Transmission-Related Merger Conditions, filed February 28, 2003 (AEP's February 28 Compliance Report).

⁷ American Electric Power Company and Central and South West Corporation, 90 FERC ¶ 61,242 (2000).

⁸ See Stipulation of American Electric Power Co., Central and South West Corp. and Commission Trial Staff at 2-4, Docket Nos. EC98-40-000 *et al.*, (May 24, 1999).

⁹ See Filing by GridAmerica Participants and Midwest ISO dated August 28, 2003, in Ameren Services Company *et al.*, Docket No. ER02-2233-010, *et al.*

¹⁰ At this time, we intend to focus on the Midwest and the gaps in the Midwest. Thus, because Virginia Electric and Power Company is not in the Midwest, we are not including them as part of this inquiry at this time.