UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Illinois Power Company	)	**Docket No. ER01-123-000**
	)	
Commonwealth Edison Company	)	**Docket No. ER01-780-000**
	)	
Ameren Corporation)	**Docket No. ER01-966-000**	
	)	
Alliance Companies:	)	
Ameren Corporation)		
American Electric Power Service Corporation	)	**Docket No. ER99-3144-000**
Consumers Energy Company	)	
Exelon Corporation	)	
FirstEnergy Corp.	)	**Docket Nos. EC99-80-000**
Illinois Power Company	)	**and**
Northern Indiana Public Service Company)		
The Dayton Power and Light Company	)	**Docket No. RT01-88-000**
The Detroit Edison Company	)	
Virginia Electric and Power Company	)	
		(Not Consolidated)

INITIAL COMMENTS OF THE STATE OF MICHIGAN AND THE MICHIGAN PUBLIC SERVICE COMMISSION, THE ILLINOIS COMMERCE COMMISSION, THE PUBLIC UTILITIES COMMISSION OF OHIO, THE INDIANA UTILITY REGULATORY COMMISSION, THE IOWA UTILITIES BOARD, THE MISSOURI PUBLIC SERVICE COMMISSION, THE PUBLIC SERVICE COMMISSION OF WISCONSIN, THE PENNSYLVANIA PUBLIC UTILITY COMMISSON, THE KENTUCKY PUBLIC SERVICE COMMISSION AND THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ON THE MARCH 21, 2001 SETTLEMENT AGREEMENT BETWEEN THE ALLIANCE COMPANIES, MIDWEST ISO, INC. AND CERTAIN TRANSMISSION OWNERS IN THE MIDWEST ISO

To: Chief Administrative Law Judge Curtis L. Wagner, Jr.

On March 21, 2001, the Midwest Independent Transmission System Operator, Inc., ("Midwest ISO" or "MISO"), certain transmission owners in the Midwest ISO, and the Alliance Companies filed a Settlement Agreement in the above-captioned proceedings. Pursuant to Rule 602 and the Order of Chief Judge Curtis Wagner establishing dates for initial and reply comments, the State of Michigan and the Michigan Public Service Commission, the Illinois Commerce Commission, the Public Utilities Commission of Ohio, the Indiana Utility Regulatory Commission, the Iowa Utility Board, the Missouri Public Service Commission, the Wisconsin Public Service Commission, the Pennsylvania Public Utilities Commission, the Kentucky Public Service Commission and the Public Service Commission of West Virginia (hereinafter "State Commissions") hereby submit their initial comments concerning the Settlement Agreement. Although, as discussed below, the State Commissions have concerns about various provisions of the Settlement Agreement, the State Commissions are non-contesting parties within the meaning of Rule 602.[1]

Introduction

The State Commissions intervened in these proceedings with several goals. We sought seamless wholesale power markets over the largest possible geographic area in the Midwest, consistent with economic efficiency and physical practicality; and a business and regulatory climate conducive to the timely

1 Consequently, the State Commissions are not "parties to the Settlement" as stated in the Commission's rehearing order of March 26, 2001 in Docket No. ER01-123-001. Moreover, with respect to the Commission's statement in that same order, that "[o]n March 21, 2001, a formal Stipulation and Agreement (Settlement) was filed with the Commission that would resolve all of the issues in this proceeding," the State Commissions respectfully refer the Commission to Section 9.1of the Settlement Agreement, which contains a more precise description of those issues that were resolved in the above-captioned proceedings.

and efficient construction of generation and transmission facilities. We also had serious concerns about the adverse effects that the proposed departures of Illinois Power, Ameren and Commonwealth Edison might have on seams, RTO financial stability, governance, independence and operations. Finally, we have had concerns about many provisions of the Alliance RTO agreements that appeared to be at odds with the principles of Order No. 2000.

The Settlement Agreement contains several features that are consistent with the State Commissions' public interest goals. Chief among them is the commitment to develop a single transmission rate to govern transactions within the Alliance and MISO regions, a rate referred to as the "Super-region" rate. Other provisions of the Settlement Agreement, as discussed below, are more problematic, and if not improved upon during the transition period will conflict with these goals. Procedural safeguards included in the Settlement Agreement afford State Commissions and consumers some protection from these problems. Examples are provisions that require the Alliance Companies and MISO to file joint proposals to govern congestion management, market monitoring, and regional planning, and that preserve parties' full rights to protest if such filings are incompatible with the development of seamless markets or are otherwise unreasonable. It is these protections, assuming their full implementation, as well as the right under Section 9.1(b) of the Settlement Agreement to protest future Order No. 2000 compliance filings, that have allowed the State Commissions to conclude that we will not contest this Settlement Agreement.[2]

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[2] Several states choose not to contest the settlement for another reason: their state statutes will require them to review, and approve or disapprove, certain requests by their jurisdictional utilities, such as a requests to recover amounts paid to the MISO, and to transfer control of transmission assets to the Alliance. Also, one utility, as part of obtaining State Commission authorization to join the MISO, agreed to seek that State Commission's authorization to withdraw from the MISO. By choosing not to contest this settlement, these State Commissions should not be deemed to have prejudged issues

coming before them, and instead are reserving judgment until such time as the matters come before them in state proceedings.

Given this mixed review, the State Commissions are now relying on the process initiated here, and the Commission's careful supervision of it, to achieve their goals. The success of the Settlement Agreement is contingent on steady and swift progress toward, and achievement of, each aspiration set forth in the Settlement Agreement.

Our comments have two main parts. **Part I** describes certain aspects of the Settlement Agreement that, if implemented diligently and timely, will further the State Commissions' goal of seamless markets. **Part II** discusses other aspects of the Settlement Agreement that make the prospect of achieving seamlessness uncertain, absent further action beyond full implementation of the terms of the Settlement Agreement.

I. Certain Aspects of the Settlement Agreement, If Implemented Diligently and Timely, Will Further the State Commissions' Goal of a Seamless Market

The Settlement Agreement contains provisions that, if carried out diligently and timely, will advance the goal of a seamless market in the so-called "Super-Region." For example:

A. Single Alliance-Midwest ISO Super Region Rate

Section 5.1 of the Settlement Agreement commits the MISO and Alliance to fashion a single, non-pancaked rate within the Alliance-Midwest ISO Super Region (Super-Region rate). This feature of the settlement, if implemented timely and for the long term, will have two positive effects. It will remove artificial cost impediments to regional transactions caused by previous pancaking. And, it can reduce "RTO-shopping," where transmission owners who also own generation "move to the other side of the seam," thus basing their RTO membership decisions on the pecuniary and anticompetitive goal of protecting their generation from competition from those who would have to pay an extra transmission charge.

B. IRCA Process

Attached to the Settlement Agreement is an Inter-Regional Cooperation Agreement ("IRCA"). The process described in the IRCA for initiating and carrying out operational coordination will, if implemented timely, for the long term and consistent with Order No. 2000, facilitate trading over a large market region. The process will include, inter alia, (1) ATC determination, (2) congestion management, (3) independent market monitoring, (4) real-time balancing markets, (5) business practices and (6) dispute resolution procedures. Critical to the settlement is (a) the IRCA's establishment of timetables for the filing of agreements governing these subjects and (b) the right, if the Alliance Companies and the Midwest ISO are unable to reach agreement, of either of them -- or any party -- to make a unilateral filing with FERC under Section 205. This mechanism ensures that stalemate among the RTOs will not prevent the filing and implementation of common or compatible congestion management methodologies, effective regionwide market monitoring, coordinated regionwide transmission planning, and other prerequisites for seamlessness, all of which are critical to achieving the goals of Order No. 2000 for the Super-Region. The Settlement Agreement also protects the rights of parties to protest any filings made pursuant to the IRCA if those parties believe the filings are inconsistent with Order No. 2000 or the Settlement Agreement's commitment to development of seamless markets, or are otherwise unjust and unreasonable.

C. MISO Continuation

The settlement creates at least temporary assurance that the MISO can become operational without immediate additional financing. This stability arises because the settling parties agreed to the principle that those who originally committed to an RTO, and caused the RTO and its members to make capital investments, should have to defray those investments.

D. Incentive to Cooperate

The Settlement Agreement contains an important incentive for Alliance and MISO to become operational RTOs, by limiting the period during which they can collect the zonal transition adjustment should they not meet the Dec. 15, 2001 deadline set by Order No. 2000.

E. Stakeholder Process

The settlement also commits the Alliance, in consultation with stakeholders, to establish and implement a stakeholder process that will be filed with the Commission no later than May 15, 2001. Although no formal process can substitute for a real commitment to incorporate the views of stakeholders in RTO design, the Settlement Agreement, with its enforceable deadlines, should assist in developing a process that will facilitate the timely airing of positions. The two RTOs, and the Commission as necessary, therefore must move without delay to implement a stakeholder process during these formative stages, rather than wait for the Alliance RTO organizational structure to be in place.

F. Single Through and Out Rate for Transactions Involving MISO, Alliance and PJM

The Settlement Agreement commits the Alliance Companies and MISO to negotiate with PJM to develop a single "through and out rate" to govern transactions that traverse the three regions. If no agreement can be reached, the Settlement Agreement permits any of the three entities to file such a single rate unilaterally under Section 205 of the Federal Power Act ("FPA").

II. Other Aspects of the Settlement Agreement Make the Prospect of Achieving Seamlessness Uncertain Without Further Action

As a vehicle for moving from the status quo to a seamless Midwestern market, the settlement leaves some distance to travel. Eleven examples follow.[3]

A. Exclusion of Outside Generators From the Super-Regional Rate

The single Super-Region rate is not available to transactions in which the generation source is located outside the combined MISO-Alliance region and the customer load is located inside the combined region. Therefore, a generator located outside the Super Region must pay a rate to the ISO in which it is located, a rate through the Midwest ISO and a third rate to the Alliance to move its generation across both RTOs.

This exclusion protects the generation within the combined region from competition from generation outside the region. Most of that protected generation is owned by vertically integrated utilities who are parties to the settlement. This result is not easily reconcilable with the public interest generally or seamless wholesale competition specifically. It is a form of discrimination without a clear rationale, one that would make it "due" discrimination rather than "undue" discrimination. Further, the continuance of rate pancaking is inconsistent with the goals of Order No. 2000. The Commission should look closely at this issue.

[3] In presenting these examples, we are not addressing the question of consistency between the final Settlement Agreement and the Term Sheet attached to the Settlement Judge's order of February 23, 2001, Illinois Power Company, 94 FERC ¶ 63,012 (2001); instead we are emphasizing the need for close Commission review of the process now set in motion, to assure it reaches the intended results.

Nor does this result appear to be necessary to preserving the essential natures of either the MISO or the Alliance. Exclusion of outside generators is not necessary to the MISO's "survival;" nor is it necessary to the Alliance's "business model." If it were, one would have to question whether either of these two goals was compatible with the public interest. Indeed, the origin of power is irrelevant to a pure transmission business. Neither the MISO nor the Alliance can legitimately assert that the "settlement will dissolve" unless they have the ability to exclude generation from outside the region.

B. No Guarantee to the Super-Region Rate Post December 31, 2004

As explained above, the single Super-Region rate is an important aspect of the Settlement Agreement because the Super-Region rate, if implemented timely and *for the long term*, will (1) remove artificial cost impediments to regional transactions caused by pancaking and (2) reduce "RTO-shopping." However, the Settlement Agreement does not guarantee the Super-Region rate for the long term, but instead allows the Alliance RTO to make a filing with the Commission pursuant to section 205 of the FPA to supersede the super-regional rate as soon as December 31, 2004. Specifically, the Settlement Agreement provides that the single Super-Region rate remains in effect unless superseded by a filing by the Alliance RTO accepted by the Commission, but in no event prior to December 31, 2004. See Settlement Agreement, §5.3.

Accordingly, while the Settlement Agreement preserves parties' rights to protest and comment on the features of any future section 205 filing by the Alliance RTO, including any filing's proposal to re-impose a pancake between the MISO and Alliance RTO, under section 5.3 of the Settlement Agreement the prospect exists that the single Super-Region rate could terminate while the MISO and Alliance organizations continue their separate existences indefinitely. Therefore the main feature of the settlement that allows two

RTOs to serve the same region without creating a "tollgate" between them is not guaranteed into the future. The possibility that a tollgate will appear after three years will surely affect (a) the desirability of constructing new generation; and (b) the willingness of parties to enter into long-term power supply contracts involving existing generation. A "transition" period may make sense as a settlement concept, but it is not readily reconcilable with the real world of power supply acquisition. Market participants, especially non-incumbents, need to know that the rules of the game will not change midstream.

C. New Members

The Settlement Agreement limits the Alliance-Midwest ISO Super Region, and hence the applicability of the single Super-Region rate, to those entities that had signed the Alliance Agreement or the Midwest ISO Agreement by February 28, 2001. See Settlement Agreement, §5.1(b). Section 5.2 of the Settlement Agreement then states that the Super Region rate methodology "may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO and of the Alliance RTO upon the mutual written agreement of the Midwest ISO and the Alliance RTO (or, prior to its creation, the Alliance Companies) or by order of the Commission." Thus, whether new entities can obtain the single rate and other benefits of the Super Region rate depends on the approval of the MISO and the Alliance RTO, or "an order of the Commission."

The two RTOs should not have undefined discretion to reject a member. Rather, the Commission should require the MISO and Alliance to allow in new transmission-owning utility members absent a demonstration of harm to the public. Where a dispute does have to reach the Commission, the State Commissions urge the Commission to consider use of expedited procedures, including arbitration, to resolve disputes over eligibility for the single rate. This will avoid the necessity for excluded applicants to pursue a

complaint process before the Commission that could encounter substantial delays during a period when the market requires rapid responses.

D. Uncertainty in the Absence of MISO-Alliance Agreement

The IRCA states laudable goals and contains deadlines for discussions and filings by the two RTOs. But if the two RTOs do not agree on solutions, there is some uncertainty as to when a definite result will emerge. The rationale for allowing two RTOs to serve this region, and for allowing the withdrawing companies to withdraw, is that there will be seamlessness. It therefore is necessary that all parties know that the process will produce a result. The IRCA's deadlines address only when discussions should occur and filings are to be made, not when results must be in place.

On this point, the Settlement Agreement includes an important tool: where the MISO and Alliance RTOs cannot agree on an IRCA matter, either RTO, and other parties, may file a proposal under Section 205. Under this process, the Commission could place any such proposal in effect subject to modification later. Although a party could object to such a proposal based on the "just and reasonable" and nondiscrimination standards of Section 205, the party could not object to the Commission's power to put the proposal into effect. This provision thus empowers the Commission to accept new proposals, and to order results, even where the parties cannot achieve them voluntarily. The State Commissions urge the Commission to stand ready to use this power.

E. PJM-MISO-Alliance Relations

Article VI of the Settlement Agreement commits the Midwest ISO, Alliance RTO, Alliance Companies, and the Midwest Transmission owners to "negotiate in good faith with PJM and all PJM Transmission owners to develop a joint rate methodology for transactions involving all three RTOS." See

Explanatory Statement, p. 7; Settlement Agreement, Art. VI. Again, absent agreement any party can make a Section 205 filing and have such filing accepted by the Commission. See Section 6.2. However, limiting this joint rate only to transactions involving all three RTOs, rather than any two, diminishes its value.

The State Commissions also are troubled by the fact that under Section 6.2 an Alliance/MISO/PJM joint rate proposal "may not seek to alter existing or planned congestion management programs within any of the RTOs." This provision seems to preclude the party filing the joint rate from proposing provisions that might have an ancillary effect on "planned congestion management programs" of any of the other RTOs, or allowing one party to block the filing of another, even if such an effect was necessary to the development of a sound joint rate. This provision seems to erect an unnecessary and potentially counterproductive limitation on the flexibility of the filing party. The State Commissions' concerns are potentially mitigated by another feature of the Settlement Agreement: the absence of any limit on (a) a party other than Alliance, MISO or PJM to protest the reasonableness of any joint rate filed or (b) the Commission's ability to consider and act on such protests. On receiving such protests, the Commission must be prepared to review them, and the related congestion management programs, closely to assure effective implementation of the three-RTO joint rate.

F. Control Area Operations and Congestion Management

Section 3.1 of the Settlement Agreement commits the Alliance Companies and the Midwest ISO to "develop and implement procedures and protocols" concerning Day 1 and Long Term congestion management "in a manner that provides transmission users seamless access to such markets throughout the regions served by the Alliance RTO and the Midwest ISO." However, the Settlement Agreement does not address the current plans of both the Midwest ISO and the Alliance Companies to retain dispersed control

area operator functions. The parties need to seek and achieve centralization of these critical functions in the RTO, or the operational equivalent, where this result is economic and physically possible; otherwise, effective real-time balancing and congestion management may be unduly hindered, with the resulting market inefficiencies, that Section 3.1 of the Settlement Agreement was intended to eliminate.

Section 3.1 does preserve parties' rights to protest any congestion management filing as inconsistent with the provision in Section 3.1 under which the "Alliance Companies and the Midwest ISO commit, through the IRCA, to develop and implement procedures and protocols as set forth in this Paragraph 3.1 in a manner that provides transmission users seamless access to such markets throughout the regions served by the Alliance RTO and the Midwest ISO as the organizations evolve." The Commission will need to stand ready to address such protests timely.

G. Developing Relationships Among RTOs

The Commission should pay careful attention to the relationship among RTOs, taking care that its precedents applicable to each are consistent. A substantial difference in legal treatment among RTOs could create incentives for transmission owners to shift membership. The resulting uncertainty is not conducive to stable market development. Examples of differences include the extension of favorable rate treatment to one RTO but not another, or the tolerance of seams that advantage generators located in one RTO to the disadvantage of generators located in another RTO. Such policy differences can lead to more withdrawals, thereby substituting artificial boundaries for efficient trading patterns. Already market participants regularly use such analogies as "swiss cheese," "snake," "horseshoe" and "doughnut" to describe the shapes of the emerging market boundaries. A particularly difficult problem arises for states whose jurisdictional utilities join different RTOs whose common seam creates a market barrier between them.

Under these circumstances, the Commission should consider these concerns carefully before making an explicit finding that an RTO satisfies the "scope and configuration" requirement of Order No. 2000. Such a finding in the absence of seamlessness would dilute the value of the requirement. An aspiration to seamlessness is not an achievement of scope and configuration.

H. Absence of Clear Departure Guidelines

Because this proceeding settled short of litigation, the Commission will not have an opportunity to issue clear guidelines as to the circumstances under which a transmission owner's decision to move from one RTO to another is consistent with the public interest. This ongoing uncertainty makes it difficult for all RTOs, not only the MISO, to plan for the future, to secure capital at reasonable cost and to make the public interest decisions that can cause current participants to incur costs or forego benefits to protect the needs of future participants.

I. Potential for Cost Duplication

The existence of two organizations rather than one will impose some cost duplication, both within the two RTOs and with respect to market participants and public interest representatives who must finance monitoring of, and participation in, both. The Commission must assure itself that this cost is exceeded by benefits.

J. ZTA Responsibility

Section 5.2 (ii) provides that “ZTA responsibility for each zone will be calculated on the basis of lost revenues throughout the Alliance-Midwest ISO Super Region and revenues collected from the ZTAs will be distributed between the two RTOs pursuant to the relative sources of the lost revenues, and subsequently allocated among the transmission owners within the RTOs pursuant to their respective revenue distribution

methods." By not contesting the Settlement Agreement, the State Commissions do not give up their rights to comment on or protest the implementation of Section 5.2(ii), including the consistency of that implementation with the settlement language or the calculation of the ZTAs. Most importantly, Section 11.2 of the Settlement Agreement provides that it establishes no ratemaking principles and thus preserves for the State Commissions the right to contest any post-transition period rate methodology that would continue the collection of ZTAs.

K. Certain IRCA Commitments Not Designed To Create A Seamless Market

As stated above, the State Commissions believe that the IRCA is a beneficial aspect of the Settlement Agreement because it commits the Midwest ISO and the Alliance Companies (and upon its creation the Alliance RTO) to certain processes for initiating and carrying out operational coordination. However, the IRCA also commits those parties to certain processes that the State Commissions do not believe are designed to effectuate operational coordination and, in some instances, are irrelevant to the issue of operational coordination. For example, section 2.3.1 requires those parties to develop and propose to the Commission proposals for "and pricing." By not contesting the Settlement Agreement or specific provisions of the IRCA at this time, the State Commissions do not give up their rights to comment on the filings that the parties who are signatories to the IRCA make with the Commission to satisfy the terms of the IRCA. In fact, the Settlement Agreement expressly reserves parties' rights to do so.

II. Concluding Thoughts

As should be clear from these comments, the State Commissions' decision not to contest this settlement should not be construed as wholehearted support. With respect to a seamless Midwestern market, there remains a significant distance between aspiration and achievement. Issues are certain to arise requiring the parties to work through many details in carrying out the terms of the Settlement Agreement. At least three such issues warrant mention now.

First is the exclusion from the Super-Region rate of (a) entities who otherwise would qualify for membership but did not become members by February 28; and (b) "drive-in" transactions. The Commission will need to consider whether these dividing lines comport with the long-term public interest, as well as the nondiscrimination requirement of the FPA.

Second is the need for new agreements to implement the IRCA, and third is the need to address all aspects of the inter-RTO relationship after this very brief "transition." Certainly there will be additional issues not yet foreseeable. The Commission will need a procedure to resolve them expeditiously and evenhandedly.

Running through these comments has been a common theme: the settlement can achieve its stated goals only through implementation that is conscientious, timely and consistent with Order No. 2000. The Commission must remember that the parties exercising significant influence over these proceedings were transmission owners who owned generation. There is no Alliance RTO; there are only "Alliance Companies," each of whom is a major owner of both generation and transmission. Thus, the positions taken by the "Alliance," unlike the MISO, have been the positions not of independent transmission owners but of generation-owning transmission owners. It has been, and

will continue to be, difficult to achieve the "bedrock" goal of both Order Nos. 888 and 2000 -- the unbundling of generation from transmission -- on a voluntary basis where the parties exercising the most influence in proceedings continue to control both generation and transmission.

But another feature of this process offers more cause for optimism. There has been a high level of commonality and coordination among the states. Notwithstanding differences on such issues as legislative schedule for retail competition, generation mix, transmission cost and transmission dependence, the State Commissions share a common commitment to efficient, reliable and seamless generation markets over the broadest possible geographic area consistent with economic efficiency and physical practicality, and an independent, seamless transmission infrastructure to support them.

In closing, the State Commissions wish to emphasize that the parties expended great effort, time, and cost to reach this goal. There will be more certain progress during the next period if the Commission clearly signals through its orders its continued expectations of achievement of the goal of seamless markets covering the widest possible geographic area.

Conclusion

For the reasons stated above, the State Commissions do not contest the Settlement Agreement.

Respectfully submitted,

STATE OF MICHIGAN AND THE MICHIGAN PUBLIC SERVICE COMMISSION, THE ILLINOIS COMMERCE COMMISSION, THE PUBLICUTILITIES COMMISSION OF OHIO, THE INDIANA UTILITY REGULATORY COMMISSION, THE IOWA UTILITIES BOARD, THE MISSOURI PUBLIC SERVICE COMMISSION, THE PUBLIC SERVICE COMMISSION OF WISCONSIN, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, THE KENTUCKY PUBLIC SERVICE COMMISSION, AND THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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Dated: March 30, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document by first class United States mail, postage prepaid, to all persons listed on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of March, 2001.

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Kelly A. Daly

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