

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Midwest Independent Transmission System
Operator, Inc. and
PJM Interconnection, L.L.C.

Docket No. ER04-375-007

ORDER ESTABLISHING BRIEFING SCHEDULE AND
DISMISSING COMPLAINT

(Issued September 17, 2004)

1. On September 3, 2004, Exelon Corporation, American Electric Power Service Corporation, on behalf of certain operating companies of the American Electric Power System,¹ and Ameren Corporation (jointly, Movants) filed a pleading titled, “Motion for Clarification, or in the Alternative, Rehearing and Conditional Complaint of [Movants]” (September 3 filing). The filing concerns the Commission’s August 5, 2004 Order on rehearing, clarification, and compliance (August 5 Order),² and the underlying March 18, 2004 Order that conditionally accepted a Joint Operating Agreement (JOA) between

¹ Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

² Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 108 FERC ¶ 61,143 (2004).

Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) (JOA Order).³ For the reasons discussed below, we will establish a briefing schedule to consider the rehearing and will dismiss the conditional complaint.

2. Pursuant to the JOA Order, Midwest ISO and PJM are taking the first steps towards integrating their operations and administering a joint and common market over their footprints, *i.e.*, geographic regions. Phase 1 of the JOA became effective on May 1, 2004.⁴ Both the JOA Order and the August 5 Order addressed how Midwest ISO and PJM would coordinate operation of flowgates⁵ in their respective regions so as to permit transmission transactions between the two regions, and which flowgates the two regional transmission organizations (RTOs) would coordinate.

3. Movants contend that, when reading together the JOA Order and the August 5 Order, they are in doubt as to whether the JOA's method of allocating capacity on coordinated flowgates using historic network native load applies only to flowgate capacity in current-day operations (the real-time and day-ahead operating timeframes) or also to remaining flowgate capacity for evaluating new requests for transmission service. Movants request clarification that the allocation process does not apply to new requests, saying that otherwise the JOA will unlawfully permit an RTO to hold unused transmission capacity for its customers and deny that capacity to other users of its system.⁶

4. Because the JOA is the first such agreement between two RTOs and could potentially serve as the model for future coordination between other RTOs, and in order to aid our analysis of Movants' arguments, we will, pursuant to Rule 713(d)(2) of the Commission's Rules of Practice and Procedure,⁷ require Midwest ISO and PJM to file

³ Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 106 FERC ¶ 61,251 (2004).

⁴ See PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc., 107 FERC ¶ 61,087 at Ordering Paragraph (B) (2004).

⁵ Flowgates are facilities or groups of facilities that may act as significant constraint points on the regional transmission system.

⁶ Movants' September 3 filing at 9.

⁷ 18 C.F.R. § 385.713(d)(2) (2004).

briefs addressing this issue and will permit briefs from other parties. Briefs must be filed on or before 20 days from the date of issuance of this order, and reply briefs must be filed on or before 10 days thereafter.

5. We will dismiss that portion of Movants' September 3 filing that alternatively requests consideration of the filing as a conditional complaint. The Commission has consistently rejected efforts to combine complaints with other types of filings.⁸ A combined filing does not assure that the procedural and other requirements applicable to the processing of a complaint will be met. Our dismissal of the conditional complaint is without prejudice to Movants filing a separate complaint consistent with Rule 206 of the Commission's Rules of Practice and Procedure.⁹

The Commission orders:

(A) Parties may submit briefs to the Commission concerning the matter raised by Movants' September 3, 2004 filing. All briefs must be submitted on or before 20 days from the date of issuance of this order. Reply briefs must be submitted on or before 10 days thereafter.

(B) That portion of Movants' September 3, 2004 filing filed as a conditional complaint is hereby dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ See Consolidated Edison Company of New York, 97 FERC ¶ 61,241 at 62,092 & n.14 (2001), *citing* Louisiana Power and Light Company, 50 FERC ¶ 61,040 at 61,062-63 (1990); Entergy Services, Inc., 52 FERC ¶ 61,317 at 62,270 (1990) (complaints must be filed separately from motions to intervene and protests). Analogously, the Commission does not permit a motion to intervene and protest to include a petition for declaratory order. See Consumers Power Company, 58 FERC ¶ 61,323 at 62,046 (1992).

⁹ 18 C.F.R. § 385.206 (2004).