

UNITED STATES OF AMERICA 96 FERC ¶ 61,026
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, Linda Breathitt,
and Pat Wood, III.

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| Illinois Power Company | Docket No. ER01-123-003 |
| Commonwealth Edison Company | Docket No. ER01-780-001 |
| Ameren Corporation | Docket No. ER01-966-001 |
| Alliance Companies: Ameren Corporation American Electric Power Service Corporation Consumers Energy Company Exelon Corporation First Energy Corporation Illinois Power Company Northern Indiana Public Service Company The Dayton Power and Light Company The Detroit Edison Company Virginia Electric and Power Company | Docket Nos. ER99-3144-010, EC99-80-010 and RT01-88-002 (not consolidated) |

ORDER DENYING REHEARING

(Issued July 6, 2001)

In this order, we will deny the request for rehearing filed by the MidAmerican Energy Company (MidAmerican), Nebraska Public Power District (NPPD) and Omaha Public Power District (OPPD) (collectively, the Parties) of the Commission's order issued in this proceeding on May 8, 2001.¹

Background

In the May 8 Order, the Commission accepted, with clarifications and modifications, the Chief Judge's Certification of a Stipulation and Agreement

¹Illinois Power Company, 95 FERC ¶ 61,183 (2001) (May 8 Order).

(Settlement) between the Midwest Independent System Operator, Inc. (Midwest ISO) and Alliance Regional Transmission Organization (Alliance). The Commission approved, inter alia, Article V of the Settlement which provides for the development and application of a single (non-pancaked) rate methodology for Alliance and the Midwest ISO. Section 5.1(b) of the Settlement states:

The Alliance-Midwest ISO Super Region shall encompass the transmission systems and the electrically metered NERC-certified control areas of the Alliance Companies that have signed the Alliance Agreement as of February 28, 2001 and the transmission systems and the electrically metered NERC-certified control areas of the Midwest ISO Transmission Owners (including the ATC LLC Companies) that have signed the Midwest ISO Agreement as of February 28, 2001. The rate methodology may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO and 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.

The Parties indicate that they are working towards creating an independent transmission company (ITC) consisting of Alliant Energy Corporation (Alliant-West), MidAmerican, NPPD, OPPD, Corn Belt Electric Cooperative and Xcel Energy Inc. The Parties intend for the proposed ITC to become a part of the Midwest ISO pursuant to Appendix I of the Midwest ISO Agreement.

Request for Rehearing

On rehearing, the Parties raise two arguments. First, the Parties claim that the Commission failed to engage in reasoned decision-making and summarily rejected objections to the February 28, 2001 cut-off deadline.² The Parties argue that by approving the Settlement, the Commission has acted inconsistently with prior orders in which the Commission directed power pools to eliminate tariff provisions related to member-restricted services.³ Second, the Parties claim that the Settlement's rate structure hinders efforts to bring about non-pancaked, non-discriminatory transmission access across a wide geographic region.

²The Parties' Rehearing Request at 2.

³See Mid-Continent Area Power Pool (MAPP), 87 FERC ¶ 61,075 (1999). See also Southwest Power Pool, Inc., 82 FERC ¶ 62,267, modified, 82 FERC ¶ 61,285, order on reh'g, 85 FERC ¶ 61,031 (1998).

Discussion:

We will deny the Parties' request for rehearing. Our decision to accept the February 28, 2001 cut-off date was for the following reasons. In the May 8 Order, we determined that, given the significant amount of lead time needed to implement the Settlement and the Cooperation Agreement by the deadline for RTO operation, it was reasonable to require entities to sign the Alliance Agreement or the Midwest ISO Agreement by February 28, 2001. Furthermore, we noted that the cut-off date was necessary to allow a preliminary calculation of lost transmission revenues as part of the revenue requirement. We also concluded that the provisions of the Settlement and Cooperation Agreement regarding future expansion of the Super Region should alleviate some of the disadvantages of making February 28, 2001 the cut-off date.⁴ Thus, we accepted the February 28, 2001 cut-off date.

In response to the Parties' arguments on rehearing, we reiterate that inclusion of the cut-off date was acceptable to further facilitate the settling parties' compliance with Order No. 2000 by December 15, 2001 for the reasons noted above. In any event, the February 28, 2001 deadline does not preclude parties that come into existence later from negotiating similar terms as existing members who joined prior to the deadline. Any concerns related to terms and conditions of membership can be addressed when the Parties' proposed ITC applies for membership.

We believe that the May 8 Order is not inconsistent with MAPP because the circumstances in MAPP were different than those here. In MAPP, we addressed the power pool's compliance filings, including its rates, under Order No. 888.⁵ MAPP was operating as a loose power pool (as defined in Order No. 888) and, on compliance, it proposed rates and services for members that were not comparable for non-members.

⁴95 FERC at 61,643.

⁵Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Statutes and Regulations, regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom., Transmission Access Policy Study Group, et al. V. FERC, 225 F. 3d 667 (D.C. Cir. 2000), cert. granted, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809) and cert. denied, Id. (No. 01-800) (U.S. February 26, 2001).

By contrast, the circumstances addressed in the May 8 Order relate to formation of new regional organizations to remedy discrimination. And, as yet, no rate or terms and conditions of service have been filed with the Commission. However, we note that, once developed, the Super Region rate will be applicable to members as well as non-members whose transactions (source and sink) are within the Super Region.⁶

With respect to the Parties' claim that the Settlement's rate structure hinders efforts to bring about non-pancaked, non-discriminatory transmission access across a wide geographic region, we disagree. The Settlement does not preclude the Parties from seeking application of the Super Region rate methodology to their transmission systems. The settling parties contemplate expanded membership.⁷ This is contrary to the Parties' assumption that the initial members will not accept the Parties transmission facilities as part of the Super Region. However, as noted earlier, the parties have yet to apply for membership, which is the first step to acceptance in the Super Region.

Accordingly, we will deny the Parties' request for rehearing.

The Commission orders:

The Parties' request for rehearing is hereby denied.

By the Commission. Commissioner Wood concurred with a separate statement attached.

(S E A L)

David P. Boergers,
Secretary.

⁶See Settlement at Article V.

⁷95 FERC at 61,642.

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WOOD, Commissioner, concurring:

I write separately only to indicate to parties my reading of very clear language in Section 5.1(b) of the Settlement:

The rate methodology may be applied to additional transmission systems and NERC-certified control areas of the Midwest ISO and 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.

Today, I can think of no instance when I would not support an order applying a consistent rate methodology to later-joining members of the MISO/Alliance regional rate, in the unlikely case that the Settling Parties (MISO and Alliance) would not both agree to it.

It is of paramount importance to the success of RTOs that the facilities of all transmission-owning entities, including public power, are included. I am pleased to see that likelihood being contemplated here and wanted to signal my strong support for actions by RTO-forming parties and the Commission which facilitate and speed their inclusion.

Respectfully submitted,

Pat Wood, III
Commissioner