

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

The New PJM Companies:)	
American Electric Power Service Corporation)	
On behalf of its operating companies)	
Appalachian Power Company)	
Columbus Southern Power Company)	
Indiana Michigan Power Company)	
Kentucky Power Company)	
Kingsport Power Company)	
Ohio Power Company, and)	
Wheeling Power Company)	
)	Docket No. ER03 -262-000
Commonwealth Edison Company and)	
Commonwealth Edison Company of)	
Indiana, Inc.)	
)	
The Dayton Power and Light Company)	
)	
Virginia Electric Power Company)	
)	
and)	
)	
PJM Interconnection, L.L.C.)	
)	

**NOTICE OF INTERVENTION AND PROTEST OF THE STATE OF MICHIGAN
AND THE MICHIGAN PUBLIC SERVICE COMMISSION**

Pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure, the State of Michigan and the Michigan Public Service Commission (collectively "Michigan") hereby file a motion to intervene, a notice of intervention and protest in the above-captioned proceeding. In support of its intervention, Michigan states the following.

I. Communications

1. Copies of all pleadings and correspondence in the proceedings should be addressed to:

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II. Basis for Intervention

2. The MPSC is an agency of the State of Michigan, created by 1939 Pub. Acts 3, Mich. Comp. Laws Ann. § 460.1 *et seq.*, as the Michigan regulatory agency having jurisdiction and authority to control and regulate, rates, charges, and conditions of service for the retail sale of electricity in the State. The MPSC intervenes in this matter pursuant to the authority conferred by applicable state statutes, rules, and procedures.

3. Michigan is a sovereign state of the United States and intervenes in its *parens patriae* capacity to preserve and protect the health, safety and welfare of its citizens; and in its proprietary capacity as a substantial purchaser of electricity.

4. The State of Michigan submits that through its intervention in this proceeding it will represent interests that cannot be represented adequately by any other party and that its participation herein will be in the public interest.

III. Description of Filing

5. On December 11, 2002, the PJM Interconnection and the New PJM Companies jointly submitted a filing to include the New PJM Companies as transmission owners within PJM, to revise the PJM West Transmission Owners Agreement, the PJM Transmission Owners Agreement, the PJM Operating Agreement and the PJM Open Access Transmission Tariff, and to request approval of PJM as a Regional Transmission Organization.

6. On December 23, 2002, the Commission issued a Notice of Filing in this proceeding,

which established January 9, 2003, as the deadline for submitting interventions and comments in this proceeding. On December 26, 2002, the Commission issued a Notice of Extension of Time extending the comment date to January 17, 2003.

IV. Protest

7. Michigan supports the development of a geographically large and seamless wholesale market in the Midwest under the auspices of the Midwest ISO. The tortured history of the process in achieving this goal over the past several years is well known to the Commission.

8. The Commission took a major and decisive step towards removing the barriers to the development of a seamless market for the Midwest when it issued its July 31, 2002 Order (i) approving the membership of the New PJM Companies in PJM; (ii) initiating a Section 206 proceeding to settle issues relating to through and out rates for transmission service between PJM and the Midwest ISO; and (iii) ordering the New PJM Companies, PJM and the Midwest ISO to develop a solution that would "Hold Harmless" utilities in Wisconsin and Michigan from the effects of the membership of the New PJM Companies in PJM.¹

9. The Hold Harmless condition is particularly important to Wisconsin and Michigan. Since the July 31 Order was issued, Michigan has actively participated as a member of the Wisconsin/Michigan Coalition in an effort to resolve the Hold Harmless issue. Michigan is concerned that the approvals sought by PJM and the New PJM Companies in this proceeding could have an adverse effect on efforts to hold Michigan ratepayers harmless from the New PJM Companies' decision to join PJM instead of the Midwest ISO.

10. The Commission should not allow the Hold Harmless protections in the

¹ Order Conditionally Accepting Compliance Filings, Providing Guidance on Midwest ISO and PJM Structure and Instituting Section 206 investigation, 100 FERC ¶61,137.

July 31 order to be affected by this filing. Therefore, the Applicants should not be granted the reliefs sought in this filing until the conditions set forth in the July 31 order are met.

11. In addition, the Applicants' proposal to change the through -and-out rates appear to be an effort to circumvent the Commission's ongoing Section 206 investigation into whether the existing through -and-out rates are unjust and unreasonable in light of the New PJM Companies' decision to join PJM rather than the Midwest ISO.² The Applicants' proposal to change the PJM Border Rate for through -and-out transactions has not been shown to be just and reasonable and should be suspended and made subject to refund and the outcome of the proceedings in Docket EL02-111-000. If, as a result of the proceeding in Docket No. EL02-111-000, through -and-out rates between MISO and PJM are eliminated, that decision should result in the summary elimination of the through -and-out rates proposed by the applications herein, retroactive to the dates such rates go into effect, after suspension.

² In its July 31, 2002 Order, the Commission stated that "[o]ne of the primary obstacles to RTO formation has been rate pancaking for transactions crossing RTO borders.... In light of the Alliance Companies' RTO choices and in view of the comments, the resolution of inter-RTO rates is fundamental to our decision to accept the choices of Illinois Power, ComEd, and AEP to join PJM." *Id.* at P49. The Regional through -and-out rates of both the MISO and PJM are supposed to be the subject of a Section 206 hearing to consider elimination of the respective transmission provider's through -and-out rates, and, therefore, the Applicants' proposal in this filing is premature until they are found just and reasonable in that proceeding.

V. Conclusion

Michigan respectfully requests that the Commission subject any approvals granted in this proceeding on the satisfactory resolution of the Hold Harmless issue.

Respectfully submitted,

**STATE OF MICHIGAN AND THE MICHIGAN PUBLIC
SERVICE COMMISSION**

By their attorneys:

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Dated: January 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2003, I served copy of the foregoing document by first class United States mail, postage prepaid, to all parties listed on the official service list compiled by the Secretary in this proceeding.

/s/Carrie L. McGuire
Carrie L. McGuire

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