

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

Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.)	Docket No.	ER05-6-000
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Midwest Independent Transmission System Operator, Inc., <i>et al.</i>)	Docket No.	EL02-111-019
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Ameren Services Company, <i>et al.</i>)	Docket No.	EL03-212-016
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Midwest Independent Transmission System Operator, Inc., <i>et al.</i>)	Docket No.	EL04-135-000
)		

[Not Consolidated]

**NOTICE OF INTERVENTION, INITIAL COMMENTS AND PROTEST OF THE
MICHIGAN PUBLIC SERVICE COMMISSION**

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.211, 212 and 214, the Michigan Public Service Commission (“MPSC”) hereby files a notice of intervention in the above captioned proceedings, initial comments in support of the Unified Plan Offer of Settlement and a protest to the Regional Pricing Proposal (“RPP”) filed by Allegheny Power, Ameren Services Corporation (“Ameren”), American Electric Power Service Corporation (“AEP”), Exelon Corporation (“Exelon”), Illinois Power Company, and LG&E Energy, L.L.C. (“LG&E”) (collectively the “RPP supporters”).

I. INTERVENTION

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II. BACKGROUND

The MPSC has supported the Commission's initiatives in developing Regional Transmission Organizations ("RTO") and competitive energy markets. To this end, the MPSC did not object when AEP and Commonwealth Edison ("ComEd") elected to join PJM despite the fact that Michigan consumers would have been better off had AEP and ComEd joined MISO.

The MPSC's non-objecting status, however, was premised on three presumptions:

- 1) that Michigan consumers were not going to be harmed by AEP and ComEd's decision to join PJM;
- 2) that the issues involving the elimination of through and out rates ("RTOR") would be resolved expeditiously; and
- 3) that a seamless market for energy across both the MISO and PJM RTOs would be in place for the benefit of all consumers.

Instead of an expedited resolution, the process has dragged on to the benefit of AEP and ComEd, through the continued recovery of the RTOR far beyond the original transition period contemplated in the *Illinois Power Company* Settlement approved by the Commission.¹

Specifically, the *Illinois Power Company* Settlement provided for the elimination of the RTOR

¹ *Illinois Power Company, et al*, 95 FERC P 61,183, *order on reh'g*, 96 FERC P 61,206 (2001).

on December 31, 2001 and provided that a lost revenue mechanism, then called the zonal transition adjustment ("ZTA"), would remain in effect until December 31, 2004. Absent rejection of the RPP, ratepayers in Michigan are now faced with the realization that AEP and ComEd will have collected through and out rates through December 1, 2004 and yet ratepayers are still exposed to the possible imposition of a long term pricing proposal that perpetuates for an extended period the recovery of revenue related to the elimination of the RTOR.

On October 1, 2004, two competing long-term pricing proposals for the combined PJM Interconnection, L.L.C. ("PJM") and the Midwest Independent Transmission System Operator, Inc. ("MISO") regions (collectively "Combined Region") were filed with the Commission: the Unified Plan and the RPP. These proposals were filed in response to the Commission's orders eliminating the RTOR between PJM and MISO in Docket Nos. EL02-111 *et al.* and EL03-212 *et al.* Both proposals contemplate an effective date of December 1, 2004.

In the following comments, the MPSC compares and contrasts the competing proposals in light of the Commission's policy objectives. Such analysis demonstrates that the Unified Plan should be accepted, effective December 1, 2004, as it is aligned with the public interest; whereas the RPP should be rejected as unjust and unreasonable.

III. PUBLIC POLICY OBJECTIVES

From a public policy perspective, the MPSC believes that a long-term resolution of transmission pricing must accomplish the following objectives:

- a) promote development of a competitive market for the sale of energy within a large region;
- b) provide for just and reasonable transmission rates;
- c) promote the development of a reliable transmission grid with reduced congestion;
- d) be transparent and administratively easy to understand and implement; and
- e) reflect a cost allocation that balances all of the equities involved in the transition to a seamless marketplace.

As demonstrated herein, the Unified Plan is consistent with these objectives and its acceptance is in the public interest. The RPP, on the other hand, fails completely to satisfy any of the aforementioned policy objectives.

IV. THE MPSC'S EVALUATION OF THE COMPETING PROPOSALS

A. Summary of the Two Plans

1. *The Unified Plan*

Under the Unified Plan, cost responsibility for transmission facilities in the combined MISO-PJM region is divided into three categories: 1) existing facilities; 2) new facilities; and 3) new cross-border facilities. "Existing facilities" include all PJM transmission facilities that would not be subject to PJM's Schedule 12 Transmission Enhancement Charges and all MISO transmission facilities placed in service before December 1, 2004. The revenue requirements associated with existing facilities would be recovered in accordance with the existing Regional Zonal Rate Design structure in PJM and MISO through at least May 31, 2008. "New facilities" include all transmission facilities other than existing facilities. "New cross-border facilities" are transmission facilities for which the associated costs may appropriately be borne (at least in part) by customers in a RTO other than the RTO in which the facilities are constructed. The revenue requirement for new facilities would be recovered from beneficiaries or zones consistent with existing Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM Open Access Transmission Tariff ("OATT") and with comparable policies in MISO that either currently exist and/or will be established by a Regional Expansion Criteria and Benefits ("RECB") Task Force.

The Unified Plan provides for \$108 million of transition payments in the form of Regional Zonal Integration Payments ("RZIP") to be made to AEP, ComEd and Dayton Power and Light ("New PJM members") for a period beginning December 1, 2004 and ending May 31,

2008. Exhibit UPP-10, at 26. The RZIP will be divided between MISO and PJM and applied to the transmission rate through a Regional Zonal Integration Charge ("RZIC"). In MISO, the RZIC will be funded by each pricing zone based on the zone's proximity to ComEd and AEP times its load. For example, a customer in a zone directly connected to the AEP Control Area will pay based on 100% of its load, those in zones one control area removed pay based on 50% of load, those in zones two control areas removed pay based on 25% of load and those in zones three or more control areas removed pay based on 12.5% of load.

2. *The Regional Pricing Proposal*

The RPP proposal incorporates a flow-based component and a highway-byway component and weights them equally for allocating costs and designing rates. Under the flow-based component, each pricing zone would have a two-part load-based access charge consisting of a charge for local transmission facilities and a charge for regional transmission facilities. Both of these charges would be set on an annual basis. This two-part access charge would be assessed on all loads taking transmission service under the OATT. This load-based access charge would be developed using a proprietary, load flow simulation model called GE MAPS. Because of the proprietary nature of this GE MAPS program, the data inputs that generate the model outputs are not readily available for verification or scrutiny.

Under the highway-byway component, the transmission rates would also consist of a highway element equal to the sum of the revenue requirement for highway facilities of all MISO and PJM transmission owners ("TOs") divided by the load in the Combined Region and a byway element equal to the remaining local transmission facilities in each zone divided by the zonal load. The highway-byway component uses a voltage-based cutoff for determining whether the revenue requirement is deemed to be highway or byway related.

B. Comparing the Unified Plan and RPP

1. The Unified Plan promotes the development of a competitive energy market within a large region whereas the RPP detracts from the establishment of a joint and common market for the sale of power.

It is important, in evaluating competing rate designs, not to lose sight of the fact that the basic reason for eliminating the RTOR was to facilitate the creation of a large regional energy market across the MISO/PJM region. Thus, adoption of a rate design that does not advance the development of a competitive energy market would be a step backwards. It is equally important to recognize that the MISO is in the process of implementing its Energy Market Tariff modeled, in large part, on the successful PJM market structure.

In this respect, the Unified Plan appropriately uses the existing PJM transmission rate structure as a reasonable starting point for the MISO transmission rate design. It is proven that the existing PJM rate design, with its use of license plate rates to recover costs of existing facilities and use of Schedule 12 to recover costs of new facilities, is a successful platform for the competitive PJM energy market. Following the well-used axiom, "if it's not broken, don't fix it," the Unified Plan proponents have wisely chosen the PJM transmission rate structure as the optimum platform for launching the MISO energy market and a joint and common market between MISO and PJM. In sum, there is substantial, undisputed evidence to support a finding that the Unified Plan will promote the development of a competitive energy market across the MISO-PJM region.

The RPP rate design, on the other hand, has not been tried or tested. To the contrary, it combines elements of two novel rate designs; a Highway-Byway rate and a so-called "flow-based" model. The RPP contemplates a major shift from traditional cost-based methodology the result of which detracts from the development of the joint and common market by distorting the

price signals associated with the Day Two commodity market. A problem associated with such a flow-based allocation is that it essentially makes forward-looking allocations of costs based on anticipated future system power flows. As explained by Unified Plan's witness, Dr. Roy Shanker,

the allocations begin to resemble an incremental operating cost, potentially distorting the operation of the system, or similarly discouraging future transactions due to a concern about the level of incremental cost allocation that such transactions will pick up."²

By allocating fixed costs to the commodity charge, the RPP distorts the delivered price of energy. From the perspective of economic efficiency, Dr. Shanker explains:

[p]arties would be influenced to change current operations and decisions based on historical sunk costs. This was just the type of problem that the removal of the RTOR was supposed to eliminate.³

In addition, because transmission rates and revenue responsibility change with the flow of electricity, the resulting uncertainty and volatility makes it difficult for marketers to sell power under long-term contracts (i.e., lacks predictability of costs that otherwise benefits the market for long term transactions). This uncertainty serves as a barrier to the development of retail choice programs because marketers will be discouraged from entering into long term contracts if transmission costs are unpredictable.

2. The Unified Plan provides for just and reasonable transmission rates while the RPP produces unjust and unreasonable rates, significant cost shifts and rate shock in Michigan.

The Unified Plan incorporates a traditional cost-based methodology, coupled with zonal, license plate rates, that match cost responsibility for existing facilities to the load for which the facilities were originally built. In addition, the proponents of the Unified Plan are committed to

² Unified Plan Exh. UPP-6 at 31-32.

³ *Id.*

the development of tariff provisions that use a cost-based rate for new transmission facilities that is paid by customers and loads which benefit therefrom.⁴

The RPP proposes a rate design allocation that treats the entire Lower Peninsula of Michigan as one large area (i.e., no break out between METC and ITC) resulting in unjust and unreasonable rate increases and cost shifts within the state associated with massive load based charges. For example, ITC's zone rate will increase on December 1st from \$1.07 to \$1.93 Kw/m⁵ producing a 80% rate increase and METC's rate will increase on December 1st from \$0.98 to \$1.93 reflecting a 97% rate increase.

The RPP's filing alters the benefits contemplated by the MPSC in supporting the development of MISO. These results are directly contrary to the assumption that ComEd and AEP's choice of RTOs would not adversely harm Michigan utilities on either an operational or a financial basis. Instead, the RPP artificially increases the rates in Michigan without any nexus to cost causation principles.

3. The Unified Plan promotes the development of a reliable transmission grid with reduced congestion without disturbing the existing regulatory compact whereas the RPP erects barriers and disturbs the regulatory compact.

The Unified Plan is consistent with existing methodologies (MISO Attachment O and PJM Schedule 12) for recovery of costs and does not disturb the regulatory compact parties justifiably relied upon in complying with RTO principles. Specifically, the Detroit Edison Company and Consumers Energy Company took the extraordinary steps of divesting their transmission assets. The new transmission investors (ITC and METC) purchased these assets in

⁴ While the MPSC recognizes that the RECB Task Force does not yet have a firm plan in writing that provides for new construction, the MPSC is encouraged by the Unified Plan proponents' commitment to expeditiously do so and believes that it is appropriate for the FERC to establish, in this proceeding, a date by which such plan shall be completed.

reliance on the then-existing rules and methodologies (e.g., MISO Attachment O rate mechanism) governing how transmission owners would be adequately compensated. The Unified Plan does not upset these assumptions and will encourage investments in new transmission. Specifically, the Unified Plan will use existing PJM Schedule 12 to allocate costs of new transmission facilities to the customers in zones that benefit therefrom. Similarly, the sponsors of the Unified Plan are committed to the development of procedures for allocating the costs of new transmission facilities within the MISO to those that benefit from such construction.

Under the RPP, however, the volatility and uncertainty in revenue responsibility/recovery could discourage major investments in transmission facilities. Moreover, the RPP does not have procedures for matching cost responsibility for new transmission facilities to the beneficiaries of such facilities. Because the flow-based cost responsibility is recalculated annually based on arbitrary "model" flow assumptions, parties that were initially intended to benefit and pay for the cost of new construction may not be the same parties that will ultimately pay for such costs (i.e., raising intergenerational cost issues). The resulting reallocation of costs jeopardize the regulatory compact upon which investors in independent transmission companies relied.

4. The Unified Plan provides transparency and predictability and the RPP lacks transparency and predictability.

The Unified Plan 's cost based methodology, which is based on publicly available Form 1 data, is transparent and produces predictable results.

Under the RPP, however, the predictability of the cost-based Attachment O rate formula would be scrapped in favor of a complex, proprietary GE-MAPS model that does not lend itself to an examination of its inputs and assumptions and is therefore incomprehensible to its

⁵ Under the terms of a prior rate settlement, the ITC rate is scheduled to increase on January 1, 2005 to \$1.59 Kw/m which still produces a 32% rate increase.

ratepayers. This lack of transparency is not in the public interest and explains why the RPP is sponsored only by six transmission owners and their subsidiaries. Despite the RPP proponent's contention that this proposal is flow-based, such allegations are misleading at best. The RPP is based on a static model that incorporates gross assumptions on the source to sink information rather than actual power flow paths estimates. These assumptions fail to track the dynamic, hourly changing flows across the grid and therefore are not an actual flow-based model.

5. The Unified Plan is administratively easy to understand and implement and the RPP is exceedingly complicated and difficult to implement.

The Unified Plan incorporates a Commission-approved rate design that is in place today. It is administratively easy to implement. Administrative feasibility is essential, particularly in the context of the upcoming implementation of the MISO proposed Energy Market Tariff, which promises to be a complex undertaking.

The RPP is extremely complex, expensive and administratively difficult to implement. In addition to containing incomplete tariffs, the RPP lacks sufficient details to enable parties to understand its assumptions and to evaluate and critique the benefits and burdens of the proposal. The flow-based component of the RPP is much more difficult to calculate than the Unified Plan because the rate for every entity in each pricing zone would have to be modeled in annual compliance filings.⁶

6. The Unified Plan balances all of the equities whereas the RPP does not

The Unified Plan balances equities and minimizes revenue shifts among customers by matching cost responsibility with the beneficiaries of the services. This objective is achieved by continuing the current zonal license plate rate design for existing facilities and by creating procedures for allocating cost responsibility for new transmission facilities to the parties that

⁶ Unified Plan Exh UPP-10 at 19.

benefit from their construction, regardless of the RTO in which such facilities are constructed. The Unified Plan also provides transitional payments to AEP and ComEd through 2008. The Unified Plan's success in balancing equities is demonstrated by the fact that it is palatable to a large cross section of parties. Specifically, the Unified Plan Proponents represent a broad cross-section of MISO and PJM stakeholder interests including combined region transmission owners, independent transmission companies, large transmission-dependent utilities, municipal and cooperative entities (including distribution cooperatives and generation and transmission cooperatives), independent generators, power marketers, large retail customers, consumer advocates, and state utility commissions

The RPP, on the other hand, overstates the regional contribution of proponents' transmission facilities (and understates the financial burdens RPP places on other parties) by assessing regional revenue requirements only to net importers in each hour modeled. The MPSC realizes that Michigan has been a net importer of power and therefore is a beneficiary of the elimination of through and out rates. However, it must also be recognized that other entities, such as AEP and ComEd, are benefiting significantly from the fact that their generation facilities now have access to the east coast markets and that all customers benefit from having greater access to a larger geographic market. As pointed out by Witness Heintz,

Why only net importers are assumed to benefit from the elimination of the RTORs or benefit from the Combined Regional Energy Markets is simply perplexing in that the Commission has made clear that all loads benefit from participation in the markets, "Clearly, to the extent they use the energy markets and benefit from it, they should share in its costs." *Midwest Indep. Transmission Sys. Operator, Inc.; Public Utilities With Grandfathered Agreements In the Midwest ISO Region*, 108 FERC ¶ 61,163 (2004).⁷

⁷ Exh. UPP-10 at 21.

IV. CONCLUSION

WHEREFORE, for the reasons contained herein, the MPSC requests that the Commission accept the Unified Plan as a just and reasonable resolution in this proceeding.

Respectfully submitted,

THE MICHIGAN PUBLIC SERVICE COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October 2004, 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/ Kelly A. Daly