

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

Midwest Independent Transmission	)	
System Operator, Inc.	)	
	)	
<i>Complainant</i>	)	
v.	)	Docket No. EL10-_____-000
	)	
PJM Interconnection, LLC	)	
	)	
<i>Respondent</i>	)	

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**COMPLAINT OF THE  
MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC.**

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Pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.206 (2009), and Sections 206, 306 and 309 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824e, 825e and 825h, the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”) hereby brings this complaint against PJM Interconnection, L.L.C. (“PJM”). The Midwest ISO and PJM are public utilities and parties to a Joint Operating Agreement (“JOA”).<sup>1</sup>

Pursuant to the JOA the parties employ generation redispatch to resolve congestion at the operating seam between them, as required by the Commission’s regulations and previous orders. PJM is in violation of its Rate Schedule 38 because it refuses to comply with the JOA requirements to engage in market to market redispatch as set forth therein, and has demanded repayment of previous redispatch payments made to the Midwest ISO.

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<sup>1</sup> See Midwest ISO Second Revised Rate Schedule FERC No. 5; PJM Interconnection LLC Second Revised Rate Schedule No. 38.

For its complaint, the Midwest ISO states as follows:

## **I. NOTICES AND COMMUNICATIONS**

Correspondence and communications in this matter should be addressed to:

Gregory A. Troxell \*  
Midwest Independent Transmission  
System Operator, Inc.  
P.O. Box 4202  
Carmel, IN 46082-4202  
Telephone: (317) 249-5400  
gtroxell@midwestiso.org

Stephen L. Teichler\*  
Ilia Levitine  
Duane Morris LLP  
505 9th Street, N.W., Suite 1000  
Washington, DC 20004  
Telephone: (202) 776-7800  
steichler@duanemorris.com  
[ilevitine@duanemorris.com](mailto:ilevitine@duanemorris.com)

\*Persons designated for official service pursuant to Rule 2010

## **II. PARTIES**

1. Complainant Midwest ISO is the regional transmission organization (“RTO”) that provides operating and reliability coordination functions in portions of the Midwest states and one Canadian province. The Midwest ISO administers an open access tariff for transmission and related services on its transmission system, and has developed processes and systems to operate markets to facilitate trading of day-ahead, real-time energy, operating reserves and financial transmission rights.

2. Respondent PJM is the RTO that provides operating and reliability coordination functions in portions of the mid-Atlantic and Midwest states. PJM also administers an open access tariff for transmission and related services on its transmission system, and independently operates markets for day-ahead, real-time energy, operating reserves and financial transmission rights.

### III. STATEMENT OF FACTS

3. In 2002, the Commission ordered the former members of the Alliance RTO to elect membership in either PJM or the Midwest ISO.<sup>2</sup> Commonwealth Edison Company (“ComEd”), and American Electric Power Co. (“AEP”), among others, elected to join PJM. To protect reliability and to improve economic efficiency at the seam created by these elections, the Commission ordered PJM and the Midwest ISO to develop a JOA that would address these issues.<sup>3</sup> The initial JOA was executed in December of 2003, and was approved by the Commission in March of 2004.<sup>4</sup> Because the Midwest ISO had not implemented an energy market at the time, the JOA provided for both market-to-nonmarket congestion management (“Phase 1”) and market-to-market congestion management (“Phase 2”).

4. During Phase 1, the JOA provided for the least-cost congestion management on Reciprocal Coordinated Flowgates (“RCF”) pursuant to a Congestion Management Process (“CMP”), which is Attachment 2 to the JOA. The CMP provides the instruction set for modeling competing uses of the regional transmission network so that Transmission Providers can more efficiently use the capacity of their own systems without overburdening their interconnected neighbors. The modeling results are used determine how much transmission can be sold, and are also used to populate the data base of the NERC Interchange Distribution Calculator (“IDC”). The IDC is used to allocate Transmission Loading Relief (“TLR”) curtailments or other responses necessary to reduce congestion in real time. The CMP provides the methodology for calculating “Market Flows” for a party that operates an energy market.

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<sup>2</sup> *Alliance Cos., et al.*, 99 FERC ¶ 61,105 (2002).

<sup>3</sup> *Alliance Cos., et al.*, 100 FERC ¶ 61,137 (2002).

<sup>4</sup> *Midwest Independent Transmission System Operator, Inc., and PJM Interconnection LLC*, 106 FERC ¶ 61,251 (2004).

5. In addition to the CMP, the JOA incorporates as Attachment 3, the Interregional Coordination Process (“ICP”). In its own words, the purpose of the ICP is “to allow *any transmission constraints* that are significantly impacted by generation dispatch changes in both markets to be jointly managed in the security-constrained economic dispatch models of both RTOs. This joint management of transmission constraints near the market borders will provide the more efficient and lower cost transmission congestion management solution, while providing coordinated pricing at the market boundaries.” (Emphasis added).

6. Simply stated, the ICP mechanism resolves congestion by allowing one RTO (called the “Monitoring RTO”) to pay the other RTO (called the “Non-Monitoring RTO”) to redispatch for the Monitoring RTO’s congestion relief obligation if that is less expensive than using the Monitoring RTO’s own resources.

7. Shortly after the integration of ComEd in PJM in May of 2004, west-to-east flows from ComEd to PJM East began to cause disruptions on systems subject to the operational control of the Midwest ISO. Those flows were multiplied when, on October 1, 2004, AEP joined PJM. On May 2, 2005, the Northern Indiana Public Service Company (“NIPSCO”) filed a complaint against the Midwest ISO and PJM concerning the RTO operations under the JOA.<sup>5</sup> NIPSCO complained that west-to-east flows initiated by ComEd caused serious transmission problems on its system. NIPSCO was concerned that the problems would be exacerbated once the Midwest ISO initiated market operations. NIPSCO alleged that: “PJM’s market driven generation dispatch took control of ComEd’s generation system. Since the bulk of ComEd’s

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<sup>5</sup> See *N. Indiana Pub. Serv. Co. v. Midwest Indep. Transm. Sys. Operator, Inc.*, Docket No. EL05-123-000. (“NIPSCO Complaint”)

generation is made up of base-loaded nuclear units, the PJM market established these units as the lowest-cost, off-peak resources.”<sup>6</sup>

8. The October 2004, AEP integration into the PJM market allowed ComEd units to dispatch without the prior limitation of the 500 MW transmission reservation that ComEd had been using to deliver its energy to the Mid-Atlantic area. The Midwest ISO observed extreme flows on the NIPSCO system shortly after midnight when AEP became part of PJM, and immediately advised PJM of the circumstances. When ComEd could not back down its generation under PJM’s dispatch, the Midwest ISO declared an emergency allowing ComEd generators to reduce their output. Shortly thereafter the two RTOs adopted remedial measures to avoid further emergencies.<sup>7</sup>

9. The solution developed by the RTOs provides for the Midwest ISO to request “Safe Operating Mode” when heavy ComEd flows threaten the reliability of the Midwest ISO transmission system, to avoid the prospect of an Interconnection Reliability Operating Limit (“IROL”) violation, and the possibility of a cascading event. When Safe Operating Mode is called, ComEd reduces its generation output to remove its market flows from the system until congestion is reduced. Similar to a curtailment or other action using TLR procedures, Safe Operating Mode does not employ market based solutions, and there is no compensation from one RTO to the other when it is used.

10. Eventually, the Midwest ISO determined that PJM had failed to account for 34 generators in its calculation of market flows in the ComEd area. Even accounting for the impact

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<sup>6</sup> NIPSCO Complaint at 9.

<sup>7</sup> See generally, *Northern Indiana Public Serv. Comm’n v. Midwest Indep. Transm. Sys. Operator*, 115 FERC ¶ 62,089 (2006).

of the missing generators in the Market Flow calculation, the Midwest ISO experiences high flows from the low-priced ComEd generation fleet responding to the higher LMP market price signals from the Mid-Atlantic region of PJM. Safe Operating Mode is still required from time to time, to protect the Midwest ISO transmission system.

11. Beginning with the implementation of the Midwest ISO energy market on April 1, 2005, PJM and Midwest ISO have implemented on a regular basis the market-to-market redispatch provisions of the JOA. The JOA requires that the market-to-market process, and the financial settlements that are a part of it, are mandatory when reducing congestion on a RCF.

12. In February 2009 the Midwest ISO and PJM implemented certain tariff changes, including changes to Section 11.2.3. Prior to February 2009, there was no discussion in Article XI of the JOA on the use of substitute flowgates. The obligation to conduct market-to-market settlements when an RCF is the binding constraint, however, is explicit in Section 1 of the ICP, Attachment 3 to the JOA. The 2009 tariff change was implemented because PJM did not consistently initiate the market-to-market process when it bound a flowgate designated as an RCF under the JOA.

13. The intent of the fourth paragraph of Section 11.2.3 is to insure that PJM initiates market-to-market redispatch when it binds an RCF, and the last sentence of that paragraph provides the sole exception to this otherwise mandatory requirement. This is consistent with the intent and the language of the JOA. Section 3.2.5 of the Congestion Management Process provides for the use of substitute flowgates during an interim period while the four studies referenced therein are being performed on a new RCF.

14. The argument that Section 11.2.3 prohibits using an RCF as a substitute flowgate would conflict with the CMP, and the Commission's mandate that the JOA use coordinated

dispatch to eliminate the economic inefficiencies of the seam. The last sentence of the fourth paragraph of Section 11.2.3 does not ban *all* substitute flowgates, but is to be read in context with the entire paragraph in which it appears. The fourth paragraph of Section 11.2.3 mandates the use of market-to-market settlement when a party binds an RCF, and the last sentence thereof provides the sole exception—if the binding occurred as the result of using the RCF as a substitute flowgate, then market-to-market settlement is not mandatory.

15. Section 3.2.5 of the CMP states: “Alternatively, for internal and external Flowgates, an Operating Entity may utilize an appropriate substitute Coordinated Flowgate that has similar Market Flows and tag impacts as the temporary Flowgate.” This section of the CMP refers to temporary flowgates that can be used on an interim basis pending the outcome of the four studies set forth in Appendix C and Table C-1 of the CMP.

16. Section 2.2.54 of the JOA defines an RCF so that the RTOs may still mutually agree to make a flowgate an RCF, even if it does not meet one of the four criteria in Appendix C, or even without the necessity of even running the four tests. This is consistent with the intent of the JOA, and the Commission’s directives in the JOA orders, that Midwest ISO and PJM should use coordinated dispatch to reduce the economic inefficiencies of the seam between their markets.

17. PJM has recently demanded resettlement of amounts related to market-to-market redispatch on RCFs, when the congestion that was being controlled existed on a flowgate that was not an RCF, or was an RCF other than the one upon which the market-to-market process was initiated. This practice, to which PJM now objects, is referred to as using an RCF as a “substitute flowgate” or “proxy flowgate.” In several instances, the resettlement now demanded by PJM is based upon market-to-market processes that occurred as the result of mutual

agreement, and are documented in operating guides specifically identifying the proxy flowgate practice as the most efficient solution under the circumstances being addressed.

18. PJM now objects to the mutually agreed upon use of a proxy flowgate documented in the “Managing Flow on the NIPSCO System During High West-East Transfers” Operating Guide. This guide was created after American Electric Power and Dayton Power and Light were integrated into the PJM market on October 1, 2004. This event caused Midwest ISO to declare a system emergency in order to get PJM to back-down its west-to-east flows. Midwest ISO and PJM executives met in Indianapolis on October 11, 2004 and agreed to develop the NIPSCO Operating Guide as well as the “Safe Operating Mode” procedure.

19. The Midwest ISO and PJM agreed on the “Managing Market Flow impacts on the NIPSCO Dune Acres – Michigan City #1 and #2 138 kV circuits” Operating Guide effective November 15, 2004. This operating guide included PJM binding on Flowgate 2980 - Dune Acres-Michigan City 138 1&2 for the loss of the Wilton Center-Dumont 765 kV line and Midwest ISO calling TLR on Flowgate 2980. Per the operating guide, the Midwest ISO and PJM agreed to utilize FG 2980 to address “overloading on the Dune Acres – Michigan City 138kV (NIPS) lines (13839 and/or 13843).”

20. Prior to the start of the Midwest ISO market on April 1, 2005, Midwest ISO and PJM updated the “Managing Market Flow impacts on the NIPSCO Dune Acres – Michigan City #1 and #2 138 kV circuits” operating guide to reflect that Midwest ISO would also bind on Flowgate 2980 in conjunction with PJM. The currently effective operating guide for the “Managing Flow on the NIPSCO System During High West – East Transfers” includes Midwest ISO and PJM using “UDS re-dispatch, market-to-market procedures, and non-firm TLR if appropriate, to control FG 2980: Dune Acres-Michigan City 13839 & 13843 (flo) Wilton Center-

Dumont 765” as a normal procedure. PJM has asserted, in 2010, that the Midwest ISO should now refund settlement dollars associated with this practice.

21. PJM has alleged that certain proxy flowgate usage during June 2008 was improper, and has asserted that the Midwest ISO is obligated to refund nearly \$9 million for improper use of FG2286. The activity on FG 2286 took place between June 8 and June 11, 2008, immediately following the loss of two ComEd 345 kV lines on June 7, 2008 due to extensive tornado damage. The Midwest ISO was experiencing near Interconnection Reliability Operating Limit (“IROL”) conditions due to the probability of cascading outages. This condition was caused by high PJM west-to-east flows that resulted from the 345kV line outages, and the fact that PJM East was experiencing extremely hot weather in the Mid-Atlantic region during this period. The Midwest ISO, PJM, NIPSCO and ComEd specifically agreed to the use of the market-to-market settlement process on Flowgates 2286, 2980 and 3270, using an RCF as a proxy flowgate, and documented this plan in an emergency operating guide that was approved by all four parties.

22. The JOA requires parties to initiate the market-to-market process, for both redispatch and financial settlement, when an RCF is the binding constraint. The ICP, Attachment 3 to the JOA so states, and in 2009 this mandatory obligation was incorporated into Section 11.2.3 of the JOA.

23. Notwithstanding this clear requirement, and the Commission’s prior orders regarding the use of coordination dispatch to reduce the economic inefficiencies of the seam, the Midwest ISO has documented several events in which PJM appears to have bound an RCF, but failed to initiate the market-to-market process. The likely result of this failure would be to impose higher costs on PJM stakeholders who must pay more for redispatch, while Midwest ISO

generators that do not participate in reducing congestion by redispatching, would be deprived of revenues. These revenues instead would flow to PJM generators that were redispatched instead, to reduce the congestion. These events, to date, have been listed in the affidavit of Thomas J. Mallinger, attached to this Complaint.

24. The Midwest ISO believes that the amount that would have been paid to Midwest ISO during 2009 and 2010, with regard to just the AEP-DOM interface flowgates, is approximately \$5 million.<sup>8</sup> Further data in the possession of PJM is necessary to determine all of the occasions when PJM improperly failed to initiate market-to-market settlements and the reasons why. The Commission should issue an interim order requiring PJM to produce all records for the 2005 to 2010 time period that establish this information with regard to binding constraints on PJM RCFs, and further requiring the preservation of all communications internally and between PJM and its market participant generators that discuss the use of market-to-market under the JOA.

#### **IV. PRAYER FOR RELIEF**

The Midwest ISO requests that PJM be ordered to follow the requirements of the JOA, to minimize the economic inefficiencies and operating impacts of the seam created by the RTO choices of the Alliance Companies, by: (1) employing the market-to-market process for redispatch and settlement when a PJM flowgate is an RCF and is the binding constraint; (2) being ordered to resettle all sums previously paid to it, and to pay to Midwest ISO any sums not paid, as a result of failing to initiate the market-to-market process when required; (3) prohibiting PJM from refusing to acknowledge the proper use of an RCF as a proxy flowgate to achieve lower cost congestion management as set forth in the JOA, from refusing to initiate the market-

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<sup>8</sup> Mallinger Affidavit ¶ 30.

to-market process on appropriate flowgates, and from demanding resettlement of amounts related to Midwest ISO's previous use of proxy flowgates; and (4) that PJM produce all records indicating when it bound an RCF for congestion but failed to initiate the market to market process, and that PJM preserve all records and communications relating to the use of market to market redispatch.

The proposed relief is well within the Commission's authority under the FPA. PJM, a jurisdictional public utility, is required to observe its filed rates and tariffs. The courts have held that the Commission "has the authority under Section 205 of the FPA, 16 U.S.C. § 824d (2000), to direct refunds of amounts improperly charged for Commission-jurisdictional activities."<sup>9</sup> In addition, Section 309 of the FPA<sup>10</sup> provides broad authority for the Commission to remedy tariff violations:

FERC also has remedial authority to require that entities violating the Federal Power Act pay restitution for profits gained as a result of a statutory or tariff violation. This authority derives from § 309 of the Federal Power Act, which authorizes FERC 'to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act.' Unlike refund proceedings commenced under § 206, no time limits apply to remedial actions filed pursuant to § 309.<sup>11</sup>

The Midwest ISO requests that the Commission exercise this authority in the instant case, as set forth herein.

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<sup>9</sup> *Entergy Servs. v. FERC*, 400 F.3d 5 (D.C. Cir. 2005).

<sup>10</sup> Section 309 gives the Commission the power to "perform all acts . . . as it may find necessary or appropriate to carry out the provisions of the [FPA]." 16 U.S.C. § 824h.

<sup>11</sup> *PUC of California v. FERC*, 456 F.3d 1025, 1046 (9th Cir. 2006) (internal quotations omitted).

## V. COMPLIANCE WITH COMPLAINT FILING REQUIREMENTS

Rule 206 of the Commission's regulations requires a complaint to meet certain informational requirements. The Midwest ISO addresses those requirements below:

**1. Identification of Violation of Regulatory Requirement (18 C.F.R. § 385.206(b)(1)).**

PJM violated its Rate Schedule 38, a Commission-approved rate schedule, as stated in this Complaint.

**2. Explanation of the Violation (18 C.F.R. § 385.206(b)(2)).**

PJM has demanded repayment of sums related to mutually agreed use of proxy flowgates, in violation of the JOA, and has failed without explanation to initiate the market to market process when the binding constraint is an RCF under PJM control, all as required by PJM Rate Schedule 38.

**3. Economic Interest Presented (18 C.F.R. § 385.206(b)(3)).**

By refusing to initiate market to market process when required, PJM charges its stakeholders unnecessary costs for congestion, increases PJM generator revenues, and deprives the Midwest ISO generators of revenue.

**4. Financial Impact (18 C.F.R. § 206(b)(4)).**

The precise amount of damages cannot be determined without discovery and access to additional data in PJM's possession.

**5. Practical Impact (18 C.F.R. § 385.206(b)(5)).**

PJM's failure to acknowledge the use of proxy flowgates, and to initiate market to market redispatch when required, did not affect reliability, but rather caused an exclusively financial impact upon the market participants of both the Midwest ISO and PJM.

**6. Presence of Issues Pending in Other Proceedings (18 C.F.R. § 385.206(b)(6)).**

As required by the JOA, the parties have attempted to resolve this matter through mediation, including sessions at the Commission under the aegis of a Settlement Administrative Law Judge and the assistance of the Commission mediation service.

**7. Remedy Sought (18 C.F.R. § 385.206(b)(7)).**

The Midwest ISO seeks the remedy set forth in Section IV of this Complaint.

**8. Documents in Support of Complaint (18 C.F.R. § 385.206(b)(8)).**

The principal documents, extrinsic to documents that have been previously filed with the Commission, are appended to the complaint.

**9. Dispute Resolution Services (18 C.F. R. § 385.206(b)(9)).**

The parties have followed the required dispute resolution procedures set forth in the JOA. Further, the parties made a good faith attempt to resolve this matter with the assistance of a Settlement Administrative Law Judge and the Commission's Dispute Resolution Service, but came to an impasse.

**10. Notice (18 C.F.R. § 385.206(b)(10)).**

A form of Notice of the Complaint suitable for publication in the *Federal Register* is appended hereto.

**VI. SERVICE**

In accordance with Rule 206(c), 18 C.F.R. § 385.206(c) (2009), the Midwest ISO has served this Complaint on the Respondent, affected state regulatory agencies, and members of the Midwest ISO and PJM.

## VI. CONCLUSION

WHEREFORE, the Midwest ISO respectfully requests that the Commission accept this complaint and grant the relief requested herein.

Respectfully submitted,

/s/ Stephen L. Teichler

Stephen L. Teichler

Ilia Levitine

Duane Morris LLP

505 9th St., N.W., Suite 1000

Washington, D.C. 20004-2166

Telephone: (202) 776-7800

Facsimile: (202) 776-7801

slteichler@duanemorris.com

Gregory A. Troxell

Midwest Independent Transmission

System Operator, Inc.

P.O. Box 4202

Carmel, IN 46082-4202

Telephone: (317) 249-5400

Facsimile: (317) 249-5912

gtroxell@midwestiso.org

Counsel for

Midwest Independent Transmission

System Operator, Inc.

Dated: March 8, 2010

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

Midwest Independent Transmission  
System Operator, Inc.

*Complainant*

v.

PJM Interconnection, LLC

Docket No. EL10-\_\_\_\_\_

*Respondent*

**NOTICE OF COMPLAINT**

(March\_\_\_\_\_, 2010)

Take notice that on March 8, 2010, the Midwest Independent Transmission System Operator, Inc. (“MISO”) filed a formal complaint against PJM Interconnection, Inc. (“PJM”) pursuant to Sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e, and 825h and 18 C.F.R. § 385.206 (2009) regarding redispatch requirements under the JOA between the parties.

The Midwest ISO certifies that copies of the complaint were served on the contacts for PJM as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance

with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose,  
Secretary