

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

Midwest Independent Transmission) Docket No. ER10-1791-003
System Operator, Inc.)

REPLY COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

Pursuant to the Federal Energy Regulatory Commission’s (“Commission”) January 22, 2015, *Order Establishing Paper Hearing Procedure*¹ and the February 26, 2015, *Notice of Extension Of Time*, the Illinois Commerce Commission (“ICC”) respectfully submits these Reply Comments for the Commission’s consideration. These reply comments address comments submitted by: (i) The Midcontinent ISO (“MISO”) and the MISO Transmission Owners, (collectively, “MISO/MISO TOs”); (ii) The Organization of MISO States (“OMS”); and (iii) The Public Service Commission of Wisconsin (“WI PSC”).² Additionally, the ICC addresses generally supportive comments submitted by (i) The Indicated PJM Transmission Owners (“PJM TOs”); and (ii) American Municipal Power, Inc. (“AMP”).³

The ICC filed Initial Comments in the above-captioned docket on April 22, 2015. The *Notice of Extension of Time* established June 22, 2015 as the deadline for reply comments. As explained in more detail below, the ICC recommends that the Commission continue to uphold its determination that MISO may not allocate costs of Multi-Value Projects (“MVPs”) to export

¹ *Midwest Independent Transmission System Operator, Inc.* 150 FERC ¶ 61,026, (2015) (“Paper Hearing Order”).

² *See*, Comments of Midcontinent Independent System Operator, Inc. and the MISO Transmission Owners (“MISO/MISO TOs Comments”), Initial Comments by the Organization of MISO States (“OMS Comments”) and the Comments of the Public Service Commission of Wisconsin (“WI PSC Comments”), filed April 22, 2015, Docket No. ER10-1791-003.

³ *See*, Initial Comments of Indicated PJM Transmission Owners (“PJM TOs Comments”) and Comments on Remanded Issue by American Municipal Power, Inc. (“AMP Comments”), filed April 22, 2015, Docket No. ER10-1791-003.

transactions that sink within PJM. The Commission is reasonable in prohibiting MISO from adding the MVP surcharge to electricity transmitted from its grid to the grid of PJM Interconnection, LLC (“PJM”).

I. THE CONDITIONS UNDER WHICH THE COMMISSION ORDERED THE ELIMINATION OF RATE PANCAKING STILL EXIST AND AN MVP CHARGE WILL ONLY SERVE TO DIMINISH ANY BENEFITS ACHIEVABLE BY THE MISO-PJM JOINT AND COMMON MARKET.

The Commission conditioned the approval of PJM and MISO as RTOs on the creation of a functional joint and common market between the two RTOs.⁴ In particular, numerous protestors in those cases expressed concern that allowing certain of the Alliance Companies to join PJM would result in a seam between PJM and MISO that would present significant operational concerns, create obstacles to efficient transmission planning and make resolving loop-flow issues and congestion management more difficult. The Commission also expressed concern that the Alliance Companies joining PJM would result in pricing differentials and seams between PJM and MISO that would be inconsistent with the scope and configuration requirements of Order No. 2000.⁵ As part of its efforts to address these concerns, the Commission directed MISO and PJM to eliminate regional through and out rates between the two RTOs – “rate pancaking”.⁶ The Commission explained that rate pancaking restricts the

⁴ *Alliance Companies, et al.*, 100 FERC ¶ 61,137 (2002), *order on clarification*, 102 FERC ¶ 61,214, *order on reh’g and clarification*, 103 FERC ¶ 61,274 (2003) (hereinafter, “Alliance Companies”), *order denying reh’g and granting clarification*, 105 FERC ¶ 61,215 (2003), *appeal docketed sub nom. Am. Elec. Power Serv. Corp. v. FERC*, No. 03-1223 (D.C. Cir. 2003).

⁵ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (hereinafter, “Order No. 2000”).

⁶ *See Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105, *reh’g denied*, 105 FERC ¶ 61,212 (2003).

amount of generation that can be delivered economically to any customer, thereby frustrating the realization of competitive and efficient bulk power markets.⁷

In its initial comments, MISO/MISO TOs argued that conditions have changed significantly since the Commission issued its conditioned approval of MISO and PJM as RTOs. In particular, MISO/MISO TOs argued that “significant realignment” of transmission owners has occurred, to the point where continuing to exempt exports to PJM from MVP charges on the basis of an irregular seam while charging exports to other RTOs and non-RTO users is no longer warranted.⁸

There is no doubt that the boundaries of both PJM and MISO have changed since the Commission issued its *Alliance Companies* order. However, the change in the configuration of the PJM and MISO seam noted by MISO/MISO TOs is not sufficient to alleviate the concerns that led the Commission to impose the no pancaking rule in the first place. The ICC acknowledges that the decision issued by the U.S. Court of Appeals for the Seventh Circuit noted that there are no longer any parts of MISO in Ohio.⁹ The Court also recognized that “PJM enclaves” still exist in MISO.¹⁰ These enclaves still exist and include Commonwealth Edison and AEP, whose decisions to join PJM led the Commission to have significant market, operational and planning concerns about the resulting configurations of both the PJM and MISO regions.¹¹ The Court also recognized that FERC wants more data from MISO to show whether the supposed elimination of the MISO diagonal running south to north in Kentucky and Ohio has actually solved the power-routing problem as MISO suggests.¹² MISO did not provide the data

⁷ *Id.*, at P 29.

⁸ MISO/MISO TO Comments, at 26-27.

⁹ *See, Illinois Commerce Commission v. FERC*, 721 F.3d 764, at 779 (7th Cir. 2013)(“Remand Decision”).

¹⁰ Remand Decision, at 779.

¹¹ *Alliance Companies*, at P 53.

¹² Remand Decision, at 779.

in its comments. Moreover, MidAmerican joined MISO in 2009, increasing the seam on the western side of Commonwealth Edison.¹³ Notably, the Court also recognized that the Commission did not require a similar negotiation between MISO and the other RTOs that MISO abuts because no enclave or power-routing problem was created by transmission to those RTOs; there were no enclaves or highly irregular borders.¹⁴

MISO/MISO TOs attempt to bolster their realignment argument by providing two maps showing both the initial and current configuration of the seam between MISO and PJM, arguing that there has been a “significant smoothing of the elongated and highly irregular seam”.¹⁵ MISO/MISO TOs even go so far as to argue that the Commission’s prohibition of rate pancaking was based largely on the perceived “irregular” MISO-PJM seam, but that much of the irregularity of that seam has been mitigated through transmission owner realignment.¹⁶ The map fails to illustrate, however, that in spite of several transmission owners leaving one RTO for another, the net effect is that the MISO-PJM seam has simply been rearranged. As AMP aptly notes, the migration of the Ohio companies may have shifted the MISO-PJM south-central and southern borders eastward, but did nothing to unravel the more problematic intertwined seam at the north-central and northern border of the two RTOs.¹⁷ Moreover, the highly interconnected nature of the PJM and MISO transmission grids remains unchanged. Indeed, almost all of the commenters in this proceeding recognize that the MISO and PJM regions remain highly integrated, interconnected and interdependent.¹⁸ AMP, the PJM TOs and the WI PSC all note the large amount of interactions across the MISO-PJM seam.¹⁹

¹³ *Midwest Independent Transmission System Operator, Inc.*, 128 FERC ¶ 61,046 (2009).

¹⁴ Remand Decision, at 779.

¹⁵ MISO/MISO TOs Comments, at 26 (citing *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058 (2010)).

¹⁶ MISO/MISO TOs Comments, at 25.

¹⁷ AMP Comments, at 8.

¹⁸ PJM TOs Comments, at 4; AMP Comments, at 6; WI PSC Comments, at 5-6; and OMS Comments, at 4-5.

¹⁹ PJM TOs Comments, at 4; AMP Comments, at 6; and WI PSC Comments, at 5-6.

All told, the significant market, operational and planning issues that were cause for Commission concern still exist. The Commission cannot ignore the effects that the MISO-PJM seam has on markets, operations and planning between PJM and MISO and the diminishment of benefits to stakeholders and consumers in the Midwest. Continuous attention to this significant seam is merited as the Commission has repeatedly noted,²⁰ and the Commission should not take steps to reverse protections already in place, such as the anti-rate pancaking protections. Given the high level of interconnectedness that still exists between PJM and MISO, the adverse economic impact of a charge based on MVPs - one sought to be imposed not to recover any potential or real lost revenues but solely to impose a charge for MISO-alleged “benefits” neither necessarily needed nor requested by the alleged PJM member beneficiaries and apparently without their input into the planning determination - would be significant and would violate, among other things, the joint operating agreement (“JOA”). As such, allowing an MVP export charge to PJM would significantly reduce the benefits of the joint and common market that the Commission required to be developed as a condition in the *Alliance Companies* Order. As AMP succinctly states,

...the Commission already has evaluated various claims that changes in the configuration of MISO and PJM that have occurred since 2003 warrant abandonment of the anti-pancaking rule. The Commission correctly rejected those claims based on the facts (among others) that the two RTOs continue to be a [sic] highly integrated, and that the goal of reducing the balkanization of regional markets is one that continues to be valid. To be sure, there is nothing in the 7th Circuit’s decision that can be read to suggest that eliminating the anti-pancaking rule would benefit the combined MISO-PJM region. The Commission therefore should stand by its initial determinations regarding the benefits of removing pancaking between MISO and PJM.²¹

²⁰ See, e.g., Docket Nos. AD12-16-000 and AD14-3-000.

²¹ AMP Comments, at 8-9.

The ICC agrees that the Commission is reasonable in its assessments regarding the benefits of removing rate pancaking between MISO and PJM and should continue those protections.

II. MISO’S PROPOSED MVP CHARGE ATTEMPTS TO CIRCUMVENT ESTABLISHED COMMISSION-APPROVED COST ALLOCATION PROCESSES FOR INTER-REGIONAL PROJECTS.

In their initial comments, the OMS,²² MISO/MISO TOs and WI PSC argue that the Commission erred in exempting exports to PJM from MVP charges on the basis of the “cost causation principle”, which, according to those parties, suggests that the cost of MISO’s MVP portfolio should be allocated to the parties who cause the incurrence of such costs and those who would otherwise benefit from them.²³ Both MISO and the OMS cite the Commission’s MVP Order which states that MVPs will likely provide numerous benefits, including improved system reliability, reduced congestion, increased access to renewable energy supplies, and enhanced market efficiency.²⁴ The WI PSC further argues that an increase in the need for inter-RTO power transfers and the corresponding recognition of cross-border benefits justifies the allocating MVP project costs to PJM.²⁵

MISO/MISO TOs, OMS and the WI PSC fail, however, to acknowledge that the Commission-approved method of allocating some costs of new transmission projects proposed to be built in one RTO to the other is through the inter-regional transmission planning process set

²² The ICC, while a member of OMS, did not support the OMS Comments filed in Docket No. ER10-1791-003 on April 22, 2015. OMS Comments, at 4.

²³ MISO/MISO TOs Comments, at 10; OMS Comments, at 2-3; and WI PSC Comments, at 4.

²⁴ OMS Comments, at 2 and MISO/MISO TOs Comments, at 7, citing *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (“MVP Order”) at P 440 (citing July 23, 2003, *Order*, 104 FERC ¶ 61,105 at P 35), *order on reh’g and compliance filing*, 137 FERC ¶ 61,074 (2011).

²⁵ WI PSC Comments, at 5-6.

forth in the Commission-approved MISO-PJM joint operating agreement (“JOA”).²⁶ The JOA expressly details the process to be used for developing, constructing and allocating costs of transmission facilities that are located in one RTO, but provide benefits to customers in the other. The PJM TOs note that the MISO-PJM JOA requires MISO and PJM to jointly develop criteria identifying the inter-regional facilities subject to cost allocation under the JOA; to allocate upfront the costs of inter-regional facilities between each RTO in accordance with each RTO’s benefits as identified through mutually-agreed planning criteria; and to allocate costs assigned to each RTO.²⁷ The ICC is not aware of any MVP project that was planned under these JOA/cross-border criteria. Yet MISO/MISO TOs, OMS and the WI PSC still seek to allocate the costs of the MVPs to utilities in the PJM region.

At no point in the MVP planning process did MISO identify any specific benefits or beneficiaries in the PJM region. Indeed, the testimony MISO provided in this proceeding about the benefits that MVPs provide focuses primarily within MISO. For example:

...the MVP portfolio was expected to enable the delivery of more than 40 million megawatt-hours (“MWh”) of renewable energy annually to support the renewable energy mandates of the MISO states through at least 2026.²⁸

MISO provides no engineering studies or hard evidence about benefits of MVPs that actually accrue to PJM. Any such benefits are merely implied.

Nor did the parties in the PJM region agree to accept an allocation of MVP costs at any time - either before or after the construction of the MVPs. MISO’s attempt to allocate MVP costs to the PJM region without first engaging in the Commission-established inter-regional

²⁶ *Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.* (2008), at Section 9.4.4.2.

²⁷ PJM TOs Comments, at 10.

²⁸ MISO/MISO TOs Comments, Exhibit No. MISO-1, at P 10-13.

planning process not only violates the conditions of the MISO-PJM JOA, but also violates Cost Allocation Principle No. 4 of Order No. 1000, which precludes allocating inter-regional project costs outside of a region unless the outside entity voluntarily agrees to assume responsibility for those costs.²⁹

MISO/MISO TOs, the OMS and WI PSC also argue that failing to allocate MVP costs to PJM effectively allows PJM to be a “free rider” on the MISO system.³⁰ Even if that argument had merit, and the ICC is not conceding that it does, the Commission recognized that Cost Allocation Principle No. 4 could legitimately allow some beneficiaries to avoid cost responsibility for projects that provide benefits to them and that such avoidance would be merited in light of greater considerations regarding improved regional transmission planning.³¹

In summary, in its MVP planning process, MISO did not identify any specific benefit or beneficiary in the PJM region and the MVPs were not designed to address any transmission need in the PJM region. Furthermore, MISO did not follow the joint planning process set forth in the MISO/PJM JOA. Finally, Order 1000 sets forth the principle that allocating the costs of transmission projects built in one region to another region is dependent on that other region’s voluntary acceptance of the costs. For these reasons, the Commission must reject the proposals made by the MISO/MISO TOs, the OMS and WI PSC in this case.

²⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utilities.*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarif.*, Order No. 1000- B, 141 FERC ¶ 61,044 (2012), *aff’d sub. nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014), at P 657.

³⁰ OMS Comments, at 3; WI PSC Comments, at 7; and MISO/MISO TOs Comments, at 4.

³¹ Order No. 1000, at P 660 and Order No. 1000-A, at P 709.

III. ADVOCATING THE IMPOSITION OF THE MVP EXPORT CHARGE ON LOADS IN PJM WHILE ACCEPTING THE EXEMPTION OF LOADS IN MISO'S SOUTHERN REGION IS ILLOGICAL, UNDULY DISCRIMINATORY, PREJUDICIAL AND PREFERENTIAL IN VIOLATION OF THE FEDERAL POWER ACT.

The MISO/MISO TOs and the OMS argue that exempting load in PJM from the MVP charge is unduly discriminatory and violates a beneficiary pays principle. Indeed, MISO argues at length that the Commission's decision excluding exports to PJM from paying the MVP Charge cannot be defended under that principle.³² MISO/MISO TOs witness Mr. Moser argues that allowing a PJM state to use an MVP to satisfy its public policy mandate without contributing to the costs of those MVPs, while at the same time requiring other states to pay the MVP charge is inconsistent with the beneficiary pays principle, enabling free riding by PJM customers importing from MISO, and resulting in substantial cost shifts.³³

The OMS similarly argues for assessing a portion of the MVP costs to PJM through the "beneficiaries pay" principle, stating:

...the Organization of MISO States (OMS) submits these limited comments to voice support for long-standing Commission precedent that beneficiaries of transmission projects be allocated costs that are at least roughly commensurate with the benefits that are expected to accrue. [footnote omitted] Limitations on export costs to PJM should be in line with this principle and be bound by the extent of the benefits provided to the payer absent the existence of a specific, time-limited agreement between parties.³⁴

Both the MISO/MISO TOs and the OMS advocate for assessing the MVP charge on exports of energy from MISO to PJM to the extent that PJM entities benefit from MVPs. Neither the OMS nor the MISO/MISO TOs, however, call for repealing the current policy of not applying any MVP charge to energy withdrawals from the MISO system for the purpose of

³² MISO/MISO TOs, at 10-20.

³³ MISO/MISO TOs Comments, Exhibit No. MISO-1, at P 13.

³⁴ OMS Comments, at 2.

serving load in the MISO South sub-region of MISO. The only mention of the policy is in footnote number eight of the OMS comments. Therein, the OMS recognizes the arrangement between the MISO South and MISO, ironically, calling for its continuation.³⁵ The OMS also attempts to justify the inconsistency of logic by stating that the agreement is time-limited and, therefore, distinguishable. The ICC disagrees.

Exempting some internal MISO load from the MVP charge while imposing that same charge on other internal MISO load and potentially imposing it on external load in PJM is logically inconsistent, unduly discriminatory, prejudicial and preferential, in violation of the Federal Power Act.³⁶ If the MISO South companies had not joined MISO, then they would have been charged the MVP fee on all imports of energy from the MISO system. The MISO South companies have managed to escape that charge by joining MISO under a “time-limited agreement” between MISO and those Southern sub-region companies. This time limitation does not negate the undue preference to those in the Southern sub-region, subjecting those in the PJM region to undue prejudice, disadvantage, and discrimination.³⁷ The MISO TOs may not contract away their statutory obligations under the FPA. While MISO/MISO TOs witness Mr. Moser attempts to quantify the so-called “substantial cost shifts” that result from not assessing an MVP Charge on PJM load, there is no attempt at similarly analyzing the MISO South region.³⁸ The contradictory positions the MISO/MISO TOs and the OMS take in the MISO South proceeding illustrate MISO’s inconsistent application of the cost causation principle and OMS’ hollow attempt to stand on the principles-based moral high ground of the “beneficiaries pay” principle.

³⁵ OMS Comments, at 2, footnote 8, state: “The Entergy utilities in the MISO South region negotiated, as part of their MISO membership, a 5-year transition period during which MVP project costs from the North and Central regions would not be allocated. This is a very specific, time-limited provision that can be distinguished from the Commission’s decision directed at PJM. OMS does not advocate altering that agreement in any way.” *Id.*

³⁶ 16 USCS §824d(a)(b).

³⁷ *Id.*

³⁸ MISO/MISO TOs Comments, Exhibit No. MISO-1, at P 16.

Such a cherry-picked application convolutes the principle. It is indeed ironic that OMS raises the “beneficiaries pay” version of the cost-causation principle here. One of the basic precepts of the principle is that customers should not be compelled to pay for services they have not requested and do not want.³⁹ This is particularly true of the debate surrounding rolled-in versus incremental pricing for expansion of gas transmission facilities. The Commission has said in that analogous context that the incremental customers for whom facilities are built “are primarily responsible for the cost of, and receive the most benefits from, the expansion projects.”⁴⁰ The ICC sees no difference here when MISO has chosen to go it alone in determining the merits of an MVP line. It would certainly stand in the face of logic and reason to find that an alleged beneficiary outside the planning region of member TOs should be subject to export charges or incremental costs of certain projects, when certain segments of its own member entities would not be. It is not for PJM members and ratepayers within the PJM region to subsidize those in MISO and certainly not those in the MISO-South/Entergy region.

If it is not unduly discriminatory to exempt some MISO load-serving entities from paying the MVP charge because they have entered into a “time-limited agreement” with MISO, then it cannot be unduly discriminatory to exempt load serving entities in the PJM region (even if they had been demonstrated to be beneficiaries, which MISO never demonstrated). The Commission has an established rule preventing such rate pancaking between MISO and PJM as well as an established process by which both MISO and PJM are to make determinations regarding inter-regional projects. MISO simply failed to follow the process here.

The cost allocation recommendation of both MISO/MISO TOs and the OMS in this case is logically inconsistent, unduly discriminatory, unduly prejudicial and unduly preferential.

³⁹ See *Great Lakes Gas Transmission Limited Partnership*, 57 FERC ¶ 61140, at 61,523 (1991).

⁴⁰ *Id.*, at 61,524.

Therefore, the Commission cannot give any weight to the recommendation. Accordingly, the Commission should retain its protections against rate pancaking between the MISO and PJM regions.

IV. CONCLUSION

WHEREFORE, for the reasons explained above, the ICC recommends that the Commission reject the recommendations of the MISO/MISO TOs, the OMS and WI PSC in this case and continue to uphold its determination that MISO may not allocate costs of MVPs to export transactions that sink within PJM.

Respectfully submitted,

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Dated: June 16, 2015

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 16th day of June, 2015.

Respectfully submitted,

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