

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

Midwest Independent Transmission)
System Operator, Inc.)

Docket No. ER10-1791-003

**ILLINOIS COMMERCE COMMISSION
MOTION FOR LEAVE TO FILE A LIMITED RESPONSE AND
LIMITED RESPONSE TO THE LIMITED ANSWER
OF THE MISO SOUTH REGULATORS**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.212 and 213, the Illinois Commerce Commission (“ICC”) respectfully submits this Motion for Leave to File a Limited Response and Limited Response (“Response”) to the Limited Answer of the Arkansas Public Service Commission, the Mississippi Public Service Commission, the Council of the City of New Orleans, and the Louisiana Public Service Commission (collectively, the “MISO South Regulators”) which was submitted on July 16, 2015, in the above captioned docket.

I. MOTION FOR LEAVE TO FILE A LIMITED RESPONSE

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §385.212 and 213, the ICC hereby submits this Motion for Leave to File a Limited Response to Limited Answer to the Limited Answer of the MISO South Regulators filed on July 16, 2015 (“MISO South Answer”). In response to the MISO South Regulators, the ICC seeks to clarify its Reply Comments filed June 16, 2015. While the Commission rules generally prohibit answers to answers, 18 C.F.R. § 385.213(a)(2), the Commission has found that an answer that assists the decisional process by providing clarification, thereby benefiting all parties, establishes

good cause and may be filed.¹ The Commission has also found good cause to permit an answer where the pleading helps to explicate issues that are important to the proceeding and that may have an impact on the course of the Commission's regulatory oversight.² The Commission will also permit such a response where it enhances the record.³ The ICC's Response will clarify the record in a way that will assist the decisional process, thereby benefiting all parties. As such, there is good cause for the Commission to accept the ICC's Response.

II. LIMITED RESPONSE

The MISO South Regulators state that the purpose of their Limited Answer is to respond to the Reply Comments of the ICC.⁴ In so doing, the MISO South Regulators argue that the ICC's Reply Comments:

. . . have inappropriately attempted to revisit the MISO MVP cost allocation methodology applied to the southern region of MISO (MISO South)⁵;

. . . directly challenge FERC's reasoning in the prior Entergy Integration Orders⁶, and

. . . constitute an impermissible collateral attack on FERC's decisions in the Entergy Integration Orders. . .⁷

The ICC wishes to clarify that the ICC Reply Comments did not collaterally attack the Entergy Integration Orders⁸ as the MISO South Regulators suggest.⁹ Rather, the ICC was

¹ *Independent Oil & Gas Ass'n of West Virginia*, Docket No. RI74-188-003 (Dec. 21, 1983) (J. Nacy) (Unreported); *Natural Gas Pipeline Co. of America* 52 FERC ¶ 61,219 (1990) (permitting response to protest).

² *Buckeye Pipe Line Co., L.P.*, 45 FERC ¶ 61,046 (1988).

³ *New York Irrigation Dist.*, 46 FERC ¶ 61,379 (1989).

⁴ MISO South Regulators' Answer, at 1.

⁵ MISO South Regulators' Answer, at 2.

⁶ MISO South Regulators' Answer, at 7.

⁷ MISO South Regulators' Answer, at 6.

⁸ *Midwest Indep. Transmission System Operator, Inc.* 139 FERC ¶61,056 (2012) ("Entergy Integration Order"), *order on reh'g and compliance filing*, 141 FERC ¶61,128 (2012) ("Entergy Integration Compliance Order"), *order denying reh'g*, 144 FERC ¶61,020 (2013) ("Entergy Integration Rehearing Order") (collectively, the Entergy Integration Orders").

⁹ MISO South Regulators' Answer, at 2.

responding to the Organization of MISO States (“OMS”) Initial Comments.¹⁰ Indeed, rather than “challenge FERC’s reasoning in the prior Entergy Integration Orders,”¹¹ the ICC explained that the Commission’s current policy of not allocating MISO MVP costs to transactions sinking in PJM so as to avoid rate pancaking is *consistent with* the Commission’s policy of not allocating MISO MVP costs to transactions sinking in MISO South for a time-limited period.¹² There is no need to change this approach. As the ICC explained, a decision by the Commission to repeal its current policy of not allocating MISO MVP costs to PJM load – while retaining the Commission’s current policy of not allocating MISO MVP costs to MISO South load (which the OMS and the MISO South Regulators advocate) - would be inconsistent and unduly discriminatory.¹³

In its Reply Comments, the ICC noted the consistency between that policy of protections against rate pancaking and the Commission’s decision to not allocate MISO MVP costs to MISO South load for a time-limited period. Specifically, the ICC stated,

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).¹⁴

In responding to the OMS Comments, the ICC addressed the question teed up by the United States Court of Appeals for the Seventh Circuit and repeated in the Commission’s Paper Hearing Order, specifically, “what if any limitation on export pricing to PJM Interconnection,

¹⁰ 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.”

¹¹ MISO South Regulators’ Answer, at 6 and 7.

¹² ICC Reply Comments, at 9-10.

¹³ ICC Reply Comments, at 11.

¹⁴ ICC Reply Comments, at 11.

L.L.C. (PJM) for Multi-Value Projects (MVP) by Midcontinent Independent System Operator, Inc. (MISO) is justified.”¹⁵ To be clear, the ICC maintains that the Commission’s current protections against rate pancaking for transactions between the MISO and PJM regions are justified and should be maintained. No costs of MISO MVP projects should be allocated to transactions sinking in PJM. The elimination of pancaked rates protects competition in the bulk power market, which, in turn, protects the interests of the ratepayers who ultimately pay the costs resulting from those markets.¹⁶ A usage charge on PJM members would reverse such protections and threaten the stability of the bulk power markets. As such, the Commission should maintain the status quo on this policy.

III. CONCLUSION

WHEREFORE, for the reasons explained above, the ICC requests that the Commission grant the ICC Motion for Leave to File a Limited Response and consider the clarifications herein. The ICC urges the Commission to retain its current MISO/PJM protections against rate pancaking and to reject requests of some parties in this case to authorize MISO to attach an MVP charge to export transactions that sink within PJM. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

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¹⁵ *Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,026 at P1 (2015) (“Paper Hearing Order”) (internal citations omitted).

¹⁶ *Regional Transmission Organizations*, Order No. 2000-A, 65 FR 12088-01, at 12104 (2000) (denying rehearing of the Final Rule's policy prohibiting pancaked rates; “Non-pancaked rates are a central attribute of RTO formation. We have found that pancaking of access charges acts as a major detriment to competition in the bulk power market.”); Order No. 2000, 65 FR 810-01, at 829 (1999).

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Dated: August 12, 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 12th day of August, 2015.

Respectfully submitted,

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On behalf of the
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