

169 FERC ¶ 61,038  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Midcontinent Independent System Operator, Inc.  
PJM Interconnection, L.L.C

Docket Nos. ER18-136-004  
ER18-137-004

ORDER DENYING REHEARING

(Issued October 17, 2019)

1. On October 23, 2017, as amended January 29, 2018 and May 31, 2018, Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) filed in separate dockets, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> identical proposed revisions (Phase 1 Revisions) to the Joint Operating Agreement between MISO and PJM (JOA) to provide for a phased resolution of certain issues involving overlapping congestion charges affecting pseudo-tied generation in MISO and PJM. In a July 31, 2018 order, the Commission accepted the Phase 1 Revisions to become effective August 1, 2018.<sup>3</sup> On August 30, 2018, American Municipal Power, Inc. (AMP) filed a request for rehearing of the July 2018 Order. For the reasons discussed below, we deny AMP's request for rehearing.

**I. Background**

2. A pseudo-tie involves the real-time transfer of control of a generating resource or load from the Native Balancing Authority, in whose area that resource or load is physically located, to an Attaining Balancing Authority that is responsible for operating the grid in a different geographic location.<sup>4</sup> Because PJM requires that an external

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<sup>1</sup> 16 U.S.C. § 824d (2018).

<sup>2</sup> 18 C.F.R. pt. 35 (2019).

<sup>3</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069 (2018) (July 2018 Order).

<sup>4</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 2 (citing *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,313, at P 2 (2017)).

generator be pseudo-tied to PJM in order to participate in the PJM capacity market, there has been a significant increase in the number of resources that have sought to pseudo-tie from MISO into PJM.<sup>5</sup> In filing the Phase 1 Revisions before the Commission in these proceedings, MISO and PJM (together, the Regional Transmission Organizations (RTOs)) stated that the purpose of the revisions was to provide for a phased resolution of certain issues involving overlapping congestion charges affecting pseudo-tied generation in MISO and PJM. The RTOs further stated that while they were in the process of evaluating the various issues associated with the increase in the number of resources seeking to pseudo-tie, some market participants and transmission customers filed complaints with the Commission, challenging the RTOs' administration of certain generation pseudo-ties in the combined MISO and PJM footprint.<sup>6</sup>

3. In the Phase 1 Revisions, the RTOs explained that the congestion charge overlap issue arises from the interaction of the market-based congestion management procedures under the RTOs' individual tariffs and the market-to-market coordination process under the JOA.<sup>7</sup> The JOA, *inter alia*, provides for coordinated congestion management over a number of MISO/PJM flowgates, known as Reciprocally Coordinated Flowgates (RCF).<sup>8</sup>

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<sup>5</sup> See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 97 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016).

<sup>6</sup> Five complaints were filed under sections 206, 306, and 309 of the FPA, 16 U.S.C. §§ 824e, 825e, 825h, which alleged, among other claims, that PJM and MISO acted contrary to their respective tariffs in the assessment of congestion charges on pseudo-tied resources and that the congestion charge overlap was unjust and unreasonable. On May 16, 2019, the Commission issued orders granting the complaints in part and denying them in part, establishing hearing and settlement judge procedures with respect to appropriate refunds, establishing refund effective dates, and consolidating the proceedings. *Tilton Energy LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,147 (2019); *Am. Mun. Power, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,148 (2019); *N. Ill. Mun. Power Agency v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,149 (2019); *Dynegy Mktg. and Trade, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,150 (2019).

<sup>7</sup> Prepared Direct Testimony of Kevin A. Vannoy, at 11 (Vannoy Test.), Tab A (Docket No. ER18-136-000) and Attachment C (Docket No. ER18-137-000).

<sup>8</sup> An RCF is a flowgate that is subject to reciprocal coordination by Operating Entities. See JOA § 2.2.54. A flowgate is defined under the JOA as “a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system.” See *id.* § 2.2.24.

When an RCF binds simultaneously in both the MISO and PJM markets, one or both RTOs must redispatch to relieve the constraint. Under the coordination procedure, the costs of relieving the constraint are reflected in the Locational Marginal Prices (LMPs) of both MISO and PJM.

4. Prior to the effectiveness of the Phase 1 Revisions accepted in the July 2018 Order, MISO, as the Native Balancing Authority, would assess a transmission usage charge to a pseudo-tied resource located within MISO to transmit energy from the pseudo-tied resource to the interface with PJM as the Attaining Balancing Authority. At the same time, PJM would also assess a charge to the pseudo-tied resource for delivery of energy, injection and withdrawal, along the path between the physical location of the pseudo-tied resource and the load or delivery point within PJM. Overlapping congestion charges would occur because both MISO and PJM would include in their charges congestion impacts from the RCF associated with the path from the pseudo-tied generator to the interface between MISO and the PJM.<sup>9</sup>

5. The RTOs explained that the Phase 1 Revisions to the JOA required limited software changes intended to eliminate the majority of the overlapping congestion charges affecting pseudo-tied generators.<sup>10</sup> The RTOs further explained that they proposed the implementation in two phases because they did not want to delay implementation of the core solution, Phase 1. They stated that additional changes that they anticipated for Phase 2 required additional time for stakeholder review and to develop more complicated software changes, and that future revisions would address any remaining issues through the RTOs' individual tariffs (Phase 2 Revisions).<sup>11</sup>

6. In the July 2018 Order, the Commission accepted both RTOs' Phase 1 Revisions, to be effective August 1, 2018, finding them to be just and reasonable and requiring MISO to make informational filings as to the status of its efforts to file and implement a solution to the remainder of the overlapping congestion charges.<sup>12</sup> The Commission agreed with the RTOs that modeling the impacts of pseudo-ties on market-to-market flowgates in the day-ahead market and including the Generator Pseudo-Tie Market Flow

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<sup>9</sup> MISO Transmittal at 6; PJM Transmittal at 6.

<sup>10</sup> Joint response by the RTOs to Commission staff's deficiency letter filed in Docket No. ER18-136-002 and Docket No. ER18-137-002 on January 29, 2018 (RTOs Deficiency Response) at 9.

<sup>11</sup> MISO Transmittal at 9-12; PJM Transmittal at 9-12.

<sup>12</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 45.

Adjustment<sup>13</sup> will allow the RTOs to more accurately account for the congestion on their respective systems and fund existing Financial Transmission Rights (FTRs). The Commission found that these revisions would address the majority of the overlapping congestion charges.<sup>14</sup> In response to arguments by certain protesters that the Phase 1 filings did not represent a complete solution to the overlapping congestion charges, the Commission acknowledged this, but stated “we find that they represent a significant improvement over current practices, and we do not find the remaining overlapping congestion charges to be a sufficient reason not to accept the instant filings.”<sup>15</sup> Further, the Commission stated that under FPA section 205, “the Commission is limited to considering the filing before it, and whether the Phase 1 Revisions are just and reasonable does not hinge on a potential future rebate mechanism for any remaining overlapping congestion charges.”<sup>16</sup>

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<sup>13</sup> *Id.* P 7 (“The RTOs propose to calculate a Generator Pseudo-Tie Market Flow Adjustment and reflect this value in the real-time energy market settlements. According to the RTOs, the Generator Pseudo-Tie Market Flow Adjustment ensures charges between RTOs exclude the impacts of pseudo-tie resources on RCFs in the Attaining [Balancing Authority’s] Market Flow calculations.”).

<sup>14</sup> *Id.* P 45. On June 1, 2018, PJM filed its Phase 2 Revisions in Docket No. ER18-1730-000 and the Commission accepted them, to be effective August 1, 2018, in an order issued concurrently with the July 2018 Order. *See PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073 (2018) (PJM Phase 2 Order). PJM’s Phase 2 Revisions included changes to the PJM Tariff and Operating Agreement to: (1) charge or credit pseudo-tie transactions from MISO to the MISO-PJM interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market coordination pursuant to the JOA; and (2) provide a new transaction type to hedge exposure to financial risk for pseudo-tied resources from PJM into MISO. AMP filed a request for rehearing of the PJM Phase 2 Order, raising issues similar to those it raises on rehearing here. In a separate order issued concurrently with this order, the Commission is denying that request for rehearing. *See PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,039 (2019). On October 2, 2018, as amended on January 19, 2019, MISO filed its Phase 2 Revisions, which the Commission accepted on March 19, 2019. In that order, the Commission found that the RTOs had demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion charge overlap. *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186, at PP 59-61 (2019).

<sup>15</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 45.

<sup>16</sup> *Id.* P 48.

## II. AMP Request for Rehearing

7. On rehearing, AMP alleges that the Commission failed to evaluate the “end result” of the Phase 1 Revisions when it determined that those revisions will yield a rate that is just and reasonable.<sup>17</sup> Specifically, AMP claims the Commission erred by accepting a phased approach to implement a solution to overlapping and unauthorized congestion charges associated with pseudo-tie transactions from MISO into PJM. AMP contends that the phased approach constitutes impermissible “piecemeal” rate making, the end result of which is unjust, unreasonable and unduly discriminatory rates.<sup>18</sup> In support of this allegation, AMP asserts that MISO and PJM admit that the Phase 1 Revisions “do not fully resolve the overlapping congestion charges or address the issue of the unauthorized congestion charges.”<sup>19</sup>

8. Moreover, AMP alleges that the Generation Pseudo-Tie Market Flow Adjustment of the Phase 1 Revisions merely shifts congestion revenue from one RTO to the other.<sup>20</sup> AMP also argues that the Commission “disregarded credible allegations that the Phase 1 Revisions depend upon the RTOs continuing to collect unauthorized congestion charges going forward.”<sup>21</sup> In addition, AMP states that the Commission “implicitly found” that the RTOs are assessing overlapping and unauthorized congestion charges, and the Commission should “compel the RTOs to submit filings that resolve the acknowledged problem of overlapping and unauthorized congestion charges and provide a remedy for past overcharges.”<sup>22</sup>

## III. Commission Determination

9. We find that the July 2018 Order appropriately accepted the Phase 1 Revisions based on the reasonable determination that the Phase 1 Revisions “represent an improvement over current practices and will address the majority of the overlapping

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<sup>17</sup> AMP Request for Rehearing at 2 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1177 (D.C. Cir. 1987) (*Jersey Central Power & Light*)).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing July 2018 Order, 164 FERC ¶ 61,069 at P 30).

<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 4-5.

<sup>22</sup> *Id.* at 5, 7.

congestion charges affecting pseudo-tied generation in MISO and PJM.”<sup>23</sup> Accordingly, we deny AMP’s request for rehearing.

10. AMP argues that the July 2018 Order violates the requirement that the Commission consider the end result of a proposed rate, rather than examine only particular rate components in isolation in order to avoid “piecemeal” ratemaking that does not result in a “complete solution.”<sup>24</sup> In particular, AMP contends that, in order to satisfy the “end result” standard, the Commission was required to address and resolve AMP’s contentions that the RTOs’ congestion charges are unauthorized under their tariffs and otherwise unjust and unreasonable.<sup>25</sup> We disagree with AMP’s contention that the Commission’s acceptance of the Phase 1 filings represents disallowed “piecemeal” ratemaking or violates what AMP calls the “end result” standard.

11. As an initial matter, the “end result” standard for ratemaking that AMP cites does not prohibit the acceptance of the Phase 1 Revisions, because the Commission did not, as AMP asserts, “examine only particular rate components in isolation.” AMP misconstrues the precedent that disfavors piecemeal ratemaking; that precedent does not require the Commission to refuse to address one aspect of a multifaceted problem unless and until all aspects of the total solution can be presented for resolution. We note that several commenters agreed that the Phase 1 Revisions represented a “positive step” and are a “significant improvement over current practices.”<sup>26</sup> It is not inappropriate for the Commission to accept a just and reasonable improvement as a component of a multi-phased solution for large and complex issues.<sup>27</sup>

12. In addition, as explained in the July 2018 Order, the issues that AMP claims should have been considered before accepting the Phase 1 Revisions are beyond the

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<sup>23</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 22.

<sup>24</sup> AMP Request for Rehearing at 2, 5. For example, AMP cites to *Jersey Central Power & Light*, 810 F.2d at 1177 (“an order cannot be justified simply by a showing that each of the choices underlying it was reasonable; those choices must still add up to a reasonable result”).

<sup>25</sup> AMP Request for Rehearing at 5-6.

<sup>26</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 45.

<sup>27</sup> See *Nat’l Ass’n of Broadcasters v. FCC*, 740 F.2d 1190, 1207 (D.C. Cir. 1984) (“reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the [regulatory] mind.”) (internal citation omitted).

scope of this proceeding.<sup>28</sup> Under FPA section 205, the Commission determines the justness and reasonableness of the proposal before it, and is not obligated to consider whether the proposal is more or less reasonable than other alternatives, including AMP's proposal to prohibit the RTOs from collecting the congestion charges outright.<sup>29</sup> Thus, when considering proposed revisions made pursuant to FPA section 205, the Commission need not consider whether the applicant has demonstrated the justness and reasonableness of unrevised portions of the tariff and JOA.<sup>30</sup> Moreover, as the Commission stated in the July 2018 Order, the Phase 1 Revisions do not depend on any determination that the RTOs' assessment of these congestion charges on pseudo-tied generators is either authorized by or consistent with the RTOs' respective tariffs.<sup>31</sup> The RTOs may, under FPA section 205, propose revisions to their JOA to improve their procedures for market-to-market coordination and settlement as they relate to congestion charges, and a determination that, as AMP contends, the RTOs do not have authority to assess congestion charges to certain market participants, i.e., pseudo-tie resources, would not render the Phase 1 Revisions moot.<sup>32</sup> As noted in the July 2018 Order, the RTOs have the right to file to amend their JOA to better account for congestion going forward, and the Commission found that it is just and reasonable for the RTOs to improve the manner in which they coordinate the impacts of pseudo-tied offered quantities in the day-ahead

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<sup>28</sup> See, e.g., July 2018 Order, 164 FERC ¶ 61,069 at P 30.

<sup>29</sup> *Id.* at P 48 & n.78, P 59 (citing *California Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,265, at P 21 (2009) (“the issue before the Commission is whether the CAISO’s proposal is just and reasonable and not whether the proposal is more or less reasonable than other alternatives”); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider “whether a proposed rate schedule is more or less reasonable than alternative rate designs”)).

<sup>30</sup> See 16 U.S.C. § 824d; see also, e.g., *Pub. Serv. Comm’n of N.Y. v. FERC*, 642 F.2d 1335, 1345 (D.C. Cir. 1980) (utility bears burden of proof on those parts of its proposed rate that depart from status quo, but not on those parts that are “constant elements” of the previous rate).

<sup>31</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 30.

<sup>32</sup> *Id.*

market.<sup>33</sup> Further, recognizing that AMP's specific additional concerns were raised in other complaint proceedings being considered by the Commission, the Commission here properly exercised its procedural discretion as to how to address related issues in other ongoing proceedings.<sup>34</sup>

13. AMP asserts that the proposed Generator Pseudo-Tie Market Flow Adjustment merely shifts congestion revenue from one RTO to the other.<sup>35</sup> AMP further notes that the Phase 1 Revisions are intended to improve day-ahead market coordination and asserts that although this may reduce the occurrence of overlapping congestion charges, it will not eliminate them.<sup>36</sup> Accordingly, AMP contends that because the Phase 1 Revisions do not eliminate all of the overlapping congestion charges or any of the unauthorized congestion charges, the Commission violated the "end result" standard, and the Phase 1 Revisions are not just and reasonable.<sup>37</sup> We disagree with this contention. The just and reasonable standard does not require that implementation of a solution to the problem of overlapping and unauthorized congestion charges be "perfect" or that it be implemented all at once, as suggested by AMP.<sup>38</sup> Here, the Commission reasonably found that the

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<sup>33</sup> *Id.*

<sup>34</sup> *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,206, at P 4 (2005) ("the Commission accepted this phased approach [to a billing issue]"; *Midwest Indep. Transmission Sys. Operator Inc.*, 116 FERC ¶ 61,252, at P 49 (2006) ("We will accept [MISO's] phased approach to developing a workable permanent resource adequacy plan for the region."). *See also Mobil Oil Expl. & Producing Se. Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) ("An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures"); *Nat'l Ass'n of Broadcasters v. FCC*, 740 F.2d at 1207.

<sup>35</sup> AMP Request for Rehearing at 4.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *See, e.g., PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,048, at P 48 n.61 (2011) ("Pricing provisions do not have to be perfect, only just and reasonable and not unduly discriminatory or preferential."). *See also Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) ("feasibility concerns play a role in approving rates, indicating that [the Commission] is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly"); *Cities of Batavia v. FERC*, 672 F.2d 64, 84 (D.C. Cir. 1982) ("billing design need only be reasonable, not theoretically perfect"); *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,179, at P 25 (2006) (provisions "need be neither perfect nor even the most desirable; they need only

Phase 1 Revisions are a just and reasonable solution to “the majority of the overlapping congestion charges” and “a significant improvement over current practices.”<sup>39</sup> As the Commission has explained, requiring further revisions, in addition to those proposed here in the Phase 1 Revisions, is beyond the scope of the Commission’s review under FPA section 205.<sup>40</sup> In sum, the Generator Pseudo-Tie Market Flow Adjustment properly takes into account the correct distribution of inter-regional flows for the purposes of congestion cost allocation.

14. Similarly, the Commission was not required to “reject the Phase 1 Revisions and direct the RTOs to file a complete solution,” including refunds for asserted overcharges.<sup>41</sup> AMP assumes that the JOA, prior to the Phase 1 Revisions accepted in the July 2018 Order, was unjust and unreasonable and/or unduly discriminatory or preferential. But the Commission did not make such a finding in the July 2018 Order, and was not required to make such a finding in order to act on the RTOs’ FPA section 205 filings.<sup>42</sup>

15. Finally, AMP claims that “[t]he Commission implicitly found the overlapping congestion charges that remain in place after acceptance of the Phase 1 Revisions will be unjust, unreasonable, or unduly discriminatory because the Commission required MISO to take steps to implement a solution to this problem.”<sup>43</sup> This is incorrect. For the reasons discussed above, the July 2018 Order made no findings as to the RTOs’ existing tariffs or the existing JOA. Rather, the Commission stated that it is not “persuaded by commenters that the issues raised in the instant filings must be addressed concurrently

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be just and reasonable and not unduly discriminatory or preferential”); *New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990) (rate design proposed need not be perfect, it merely needs to be just and reasonable), *aff’d*, *Town of Norwood, Mass. v. FERC*, 962 F.2d 20 (D.C. Cir. 1992).

<sup>39</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 45.

<sup>40</sup> *See W. Res., Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993) (holding that the Commission erred in “reach[ing] beyond approval or rejection of the pipeline’s proposal [under section 4 of the Natural Gas Act, analogous here to FPA section 205] to adoption of an entirely different rate design”).

<sup>41</sup> AMP Request for Rehearing at 5, 7.

<sup>42</sup> *See* July 2018 Order, 164 FERC ¶ 61,069 at P 29.

<sup>43</sup> AMP Request for Rehearing at 5.

with the other pseudo-tie proceedings,”<sup>44</sup> referencing the complaint proceedings where parties, including AMP, challenged the RTOs’ tariffs and the JOA. As the Commission explained, “[t]he fact there are other proceedings with issues related to the issues PJM and MISO seek to address in the instant filings does not limit the Commission’s ability to render a decision on these filings.”<sup>45</sup> Instead, the decision not to consolidate proceedings is “a reasonable exercise” of discretion.<sup>46</sup>

The Commission orders:

AMP’s request for rehearing is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>44</sup> July 2018 Order, 164 FERC ¶ 61,069 at P 29.

<sup>45</sup> *Id.* P 45.

<sup>46</sup> *Algonquin Gas Transmission Co. v. FERC*. 948 F.2d 1305, 1314 (D.C. Cir. 1991).