

169 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER19-34-003

ORDER DENYING REHEARING

(Issued November 21, 2019)

1. On October 2, 2018, as amended on January 19, 2019, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² proposed revisions (MISO Phase 2 Revisions) to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) to: (1) address how Market Participants³ with pseudo-ties out of MISO can use Virtual Transactions to align Financial Transmission Rights (FTRs) and Transmission Usage Charges; and (2) modify Schedule 17 (Energy Market Support Administrative Service Cost Adder) to reduce the administrative charges assessed to Market Participants with a pseudo-tie of generation or load out of MISO. The Commission accepted the MISO Phase 2 Revisions, subject to condition, effective March 1, 2019, as requested.⁴ On April 18, 2019, American Municipal Power, Inc. (AMP) filed a request for rehearing of the MISO Phase 2 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

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Unless otherwise specified, all capitalized terms herein shall have the same definition as in the MISO Tariff.

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order).

physically located, to an Attaining Balancing Authority in a different geographic location.⁵ In recent years, there has been a significant increase in the number of resources that have sought to pseudo-tie from MISO into PJM Interconnection, L.L.C. (PJM) because PJM requires that an external resource be pseudo-tied to PJM in order to participate in the PJM capacity market.⁶

A. Earlier Pseudo-Tie Proceedings

3. The existing Joint Operating Agreement (JOA) between MISO and PJM contains provisions for coordinated congestion management over Reciprocally Coordinated Flowgates (RCFs).⁷ As MISO and PJM (together, the Regional Transmission Organizations or RTOs) explained in a previous filing of revisions to the JOA that were accepted by the Commission,⁸ when an RCF binds simultaneously in both the PJM and MISO markets, that RCF can create overlapping congestion charges such that the day-ahead Locational Marginal Prices (LMPs) a pseudo-tied resource pays or is paid⁹ result in the resource paying twice for the congestion that occurs between the physical location of the pseudo-tied resource and the interface between the Native Balancing Authority and the Attaining Balancing Authority.

4. Prior to the series of tariff revisions discussed below, the Native Balancing Authority assessed the pseudo-tied resource a transmission usage charge for the energy transactions between the pseudo-tied resource and the interface with the Attaining Balancing Authority. At the same time, the Attaining Balancing Authority also assessed the pseudo-tied resource a charge for delivery of energy, from the injection to the withdrawal, along the path between the physical resource and load, which includes the

⁵ See, e.g., *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,313, at P 2 (2017).

⁶ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 97 (2015), *order on reh'g*, 155 FERC ¶ 61,157 (2016).

⁷ The JOA is on file as MISO Rate Schedule 5 and as a PJM Interregional Agreement. 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.

⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at PP 3-4 (2018) (Phase 1 Order), *reh'g denied*, 169 FERC ¶ 61,038 (2019).

⁹ The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tie.

path between the physical resource and the interface. In this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface.

5. To address the market and reliability challenges posed by the increased number of pseudo-tied resources from MISO to PJM, the RTOs proposed a two-phase resolution of certain issues involving the overlapping congestion charges affecting pseudo-tied resources. As the initial step to address the congestion overlap, MISO and PJM filed identical proposed revisions to the JOA to eliminate congestion payments between PJM and MISO associated with pseudo-tie impacts on RCFs (Phase 1 Revisions).

6. The RTOs stated that the Phase 1 Revisions would eliminate the majority of the overlapping congestion charges affecting pseudo-tied generators, but would not provide full congestion credits or charges to pseudo-tied resources that result from the potential for real-time dispatch deviations from the day-ahead commitments.¹⁰ The RTOs explained that the Phase 2 Revisions would address the remaining issues through revisions to the RTOs' individual tariffs and system changes, which required additional time and investment of resources to implement, and would specify and clarify charges and credits due to pseudo-tie transactions.¹¹

7. On June 1, 2018, while the RTOs' Phase 1 Revisions were pending, PJM submitted the second phase of its revisions (PJM Phase 2 Revisions), proposing to modify the PJM Open Access Transmission Tariff and the PJM Amended and Restated Operating Agreement to: (1) charge or credit pseudo-tie transactions from MISO to the PJM-MISO 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.

8. On July 31, 2018, the Commission accepted the RTOs' Phase 1 Revisions and the PJM Phase 2 Revisions in concurrently issued orders.¹² The Commission found that the

¹⁰ Phase 1 Order, 164 FERC ¶ 61,069 at P 8 (citing MISO Deficiency Response, Docket No. ER18-136-002, at 14 (Jan. 29, 2018); PJM Deficiency Response, Docket No. ER18-137-002, at 14 (Jan. 29, 2018)).

¹¹ MISO Transmittal Letter, Docket No. ER18-136-000, at 10-12 (Oct. 23, 2017); PJM Transmittal Letter, Docket No. ER18-137-000, at 10-12 (Oct. 23, 2017). *See also* Phase 1 Order, 164 FERC ¶ 61,069 at P 32 (citations omitted).

¹² Phase 1 Order, 164 FERC ¶ 61,069; *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073 (2018) (PJM Phase 2 Order), *reh'g denied*, 169 FERC ¶ 61,039.

Phase 1 Revisions address the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.¹³ The Commission also found that the PJM Phase 2 Revisions address concerns about the potential for congestion charge overlap.¹⁴ Further, the Commission directed MISO to submit periodic informational filings detailing its progress toward a solution for the remainder of the overlapping congestion charges (i.e., MISO's progress toward making its own Phase 2 Revisions).¹⁵

B. The MISO Phase 2 Revisions

9. MISO explained that the proposed MISO Phase 2 Revisions: (1) clarify the charges and credits resulting from pseudo-tie transactions; and (2) specify procedures for pseudo-tied resources to participate or reflect their expected transmission use in the Native Balancing Authority's Day-Ahead Market to use Virtual Transactions to better align Transmission Usage Charges for congestion with available FTRs.¹⁶

10. First, under the revisions to Module C of the Tariff, which describes MISO's energy and reserve markets, MISO proposed to clarify that Market Participants with pseudo-ties have the ability to use Virtual Transactions¹⁷ in the Day-Ahead Market and can align Transmission Usage Charges¹⁸ with FTRs. MISO claimed that these proposed revisions would make clear that Market Participants with pseudo-ties can effectively hedge against real-time congestion in the Day-Ahead Market.¹⁹ MISO also sought to

¹³ Phase 1 Order, 164 FERC ¶ 61,069 at P 22.

¹⁴ PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 17.

¹⁵ Phase 1 Order, 164 FERC ¶ 61,069 at PP 46, 48.

¹⁶ MISO Transmittal at 2.

¹⁷ Virtual Transactions are defined as: "Transactions related to Virtual Bids and/or Virtual Supply Offers." *See* MISO Tariff, Module A, § 1.V.

¹⁸ Transmission Usage Charge is defined as: "A charge attributable to the increased cost of Energy delivered at a given Commercial Node when the Transmission System is operating under constrained conditions or due to losses on the system." *See* MISO Tariff, Module A, § 1.T.

¹⁹ *Id.*

“[clarify] reporting and coordination requirements to Market Participants that have pseudo-tie transactions.”²⁰

11. Second, MISO proposed a new paragraph to section IV of Schedule 17 (Energy and Operating Markets Support Administrative Service Cost Recovery Adder) of the Tariff, which would reduce the billing units that Market Participants with pseudo-ties out of MISO are charged “by the lesser of the: (a) real-time Financial Schedule, in MWh; or (b) all cleared Day-Ahead Virtual Transactions with the same Sink Point and Source Point Commercial Pricing Nodes as the Real-Time Financial Schedule.”²¹ MISO stated that this proposed paragraph was reasonable because it ensures that Market Participants with pseudo-ties out of MISO will be charged for administrative costs in the same way that Market Participants with physical transactions are charged.

12. In the MISO Phase 2 Order, the Commission accepted, subject to condition, the Phase 2 Revisions.²² As relevant on rehearing, the Commission determined that, “[b]ased on PJM’s and MISO’s representations in their Phase 1 Revisions and Phase 2 Revisions proceedings, and the absence of evidence to the contrary, the RTOs have demonstrated that the congestion overlap has been eliminated.”²³

II. AMP Request for Rehearing

13. On rehearing, AMP alleges that the Commission erred “by basing its acceptance on MISO’s unsupported assertions that Tariff revisions addressing congestion double charges are not necessary because the issue of overlapping congestion charges was resolved in earlier proceedings.”²⁴ Specifically, AMP contends that, although MISO “promised” that its Phase 2 Revisions would be a “solution” for the remainder of the overlapping congestion charges through rebates or other means, that did not occur and MISO offers no evidence to support its claim that overlapping charges have been resolved.²⁵

²⁰ MISO Jan. 18, 2019 Deficiency Response at 3.

²¹ *Id.* at 4.

²² MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 50.

²³ *Id.* P 59.

²⁴ AMP Request for Rehearing at 2.

²⁵ *Id.* at 3.

14. AMP argues that the Commission's finding that the issue of overlapping congestion was resolved is inconsistent with the Commission's findings, in the Phase 1 and PJM Phase 2 Orders, that the RTOs' Phase 1 Revisions and the PJM Phase 2 Revisions did not fully resolve the congestion double-charges.²⁶ AMP notes that, in the Phase 1 Order, the Commission determined that it is "important for the RTOs to have their complete Commission-approved solutions effective early and in a timely manner [and directed] MISO to submit informational filings . . . detailing its progress toward a solution for the remainder of the overlapping congestion charges."²⁷ AMP also notes that the Commission stated in the Phase 1 Order:

as the RTOs represent, the Phase 1 Revisions do not resolve the overlapping congestion charges issue entirely, and they will continue to work to address the remaining congestion overlap charges. In fact, as noted above, we are concurrently issuing an order accepting PJM's Phase 2 revisions.²⁸

In addition, AMP asserts that MISO's November 8, 2018 answer in this proceeding (MISO First Answer) provided no new information that would support the Commission's reversal of the findings it made in the Phase 1 and Phase 2 Orders.

15. Furthermore, AMP argues that the MISO Phase 2 Order is also inconsistent with the Commission's finding in the PJM Phase 2 Order, in which, according to AMP, the Commission based its acceptance of PJM's filing in part on the expectation that MISO would develop a voluntary schedule-cutting mechanism similar to PJM's.²⁹ AMP notes that it had argued that PJM's mechanism was unduly discriminatory because the mechanism only addressed pseudo-tied exports out of PJM and offered no relief to resources pseudo-tied from MISO into PJM. AMP argues that the MISO Phase 2

²⁶ *Id.* at 3-4 (citation omitted).

²⁷ *Id.* at 3 (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 46).

²⁸ *Id.* (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 46).

²⁹ *Id.* at 4 (citing PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 25). By voluntary schedule-cutting mechanism, we assume AMP is referring to PJM's Phase 2 Revisions accepted in the PJM Phase 2 Order, which provide pseudo-tied market participants that export energy from PJM to MISO with a hedge against congestion, by permitting them to submit day-ahead bids associated with real-time physical transactions by specifying the maximum amount they are willing to pay for congestion between the source (i.e., from the pseudo-tied resource) and the sink (i.e., to the PJM-MISO interface). *See* PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 9, P 10.

Revisions do not include a voluntary schedule-cutting mechanism similar to PJM's or provide any new mechanism that provides relief from congestion double-charges to resources pseudo-tied from MISO into PJM.³⁰

III. Commission Determination

16. We deny rehearing. We disagree with AMP that, in the MISO Phase 2 Order, the Commission erred in determining that the Phase 1 and the PJM Phase 2 Revisions eliminated the overlapping or duplicative charges.

17. As an initial matter, we disagree with AMP that MISO "promised" to address the remainder of the overlap through rebates or other means. In the Phase 1 Revisions, the RTOs did not commit that both RTOs would need to implement rebate mechanisms in Phase 2. Rather, the Phase 1 Revisions provide, with respect to Phase 2, that "[w]here appropriate, [T]ariff modifications will establish or clarify congestion rebate mechanisms available to pseudo-tie transactions, including scheduling and eligibility requirements for both the Attaining [Balancing Authority] and Native [Balancing Authority]."³¹ It was apparent from the Phase 1 Revisions that, at the time the RTOs filed the Phase 1 Revisions, the details of what modifications would be needed in Phase 2 to remove the remainder of the overlap were still under consideration.

18. In recognition of those continuing developments, the Commission required MISO to submit informational filings detailing its progress toward addressing "the remainder of the overlapping congestion charges" in its upcoming Phase 2 Revisions.³² Contrary to AMP's contention, this statement in the Phase 1 Order was not an affirmative finding by the Commission that there remained overlapping congestion charges after accepting the Phase 1 and PJM Phase 2 Revisions, but was based on the representations by the RTOs in the Phase 1 proceedings indicating that both RTOs would be making Phase 2 Revisions following the Phase 1 Revisions. At the time the Commission issued the Phase 1 Order and PJM Phase 2 Order, the RTOs had not made explicit that the congestion overlap had been fully eliminated by those measures.

³⁰ Request for Rehearing. at 4-5.

³¹ MISO Transmittal Letter, Docket No. ER18-136-000 at 10; PJM Transmittal Letter, Docket No. ER18-137-000 at 10.

³² *Id.* PP 46, 48.

19. However, in the MISO First Answer, MISO stated that congestion overlap had been eliminated.³³ MISO noted that, in accepting the Phase 1 Revisions, the Commission found that the Phase 1 Revisions addressed the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.³⁴ Further, MISO explained that as a result of the acceptance of the PJM Phase 2 Revisions, “PJM can now assess and rebate pseudo-tie transaction(s) congestion charges resulting from [market-to-market] coordination for the path between the [pseudo-tied] resource in MISO to the PJM-MISO interface for Real-Time deviations from day-ahead.”³⁵ MISO stated that “[i]n combination, the implementation of the Phase 1 solution and PJM’s Phase 2 mechanism rebates the PJM assessed charges for congestion for pseudo-tie paths that MISO and PJM enter [market-to-market] coordination on RCFs.”³⁶ MISO asserted that claims of overlapping congestion were, therefore, baseless.³⁷

20. In light of MISO’s explanation, in the MISO Phase 2 Order, the Commission stated:

[A]lthough in the Phase 1 Order the Commission directed MISO to submit informational filings detailing its progress toward a solution for the remainder of the overlapping congestion charges, MISO has confirmed in the MISO First Answer that the congestion overlap issue has been resolved.³⁸

Referencing the MISO First Answer, the Commission concluded that “PJM now charges or credits congestion on the overlap portion of the pseudo-tie path.”³⁹

21. Thus, in the MISO Phase 2 Order, the Commission found that a rebate mechanism in the MISO Tariff was not necessary in order to address the overlapping congestion

³³ MISO First Answer at 8-9 (citations omitted).

³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 61.

³⁹ *Id.*

charge issue.⁴⁰ AMP, in its request for rehearing, does not explain why rebates from MISO would be necessary given that, under the PJM Phase 2 Revisions, PJM now charges or credits congestion on the overlap portion of the pseudo-tie path (i.e., the path from the source nodal point to the PJM-MISO interface).

22. In addition, we disagree with AMP's contention that the MISO Phase 2 Order is inconsistent with the Commission's finding in the PJM Phase 2 Order that PJM's voluntary schedule-cutting mechanism was not unduly discriminatory. In the PJM Phase 2 Order, the Commission rejected AMP's argument that PJM's proposed hedging mechanism is unduly discriminatory because it is available only for pseudo-tied resources that are exporting from PJM into MISO, and not for resources importing from MISO into PJM. The Commission explained that "[r]esources that are importing into PJM from MISO, and thus are not in PJM's geographic footprint, are not similarly situated to resources exporting from PJM, which are in PJM's geographic footprint."⁴¹ By noting PJM's expectation that "MISO will develop a similar hedging mechanism that will address pseudo-tied resources from MISO to PJM,"⁴² the Commission did not find that congestion charges by MISO for pseudo-ties into PJM would be unjust and unreasonable in the absence of a particular hedging mechanism. Nor did the Commission rely upon the anticipated filing of the MISO Phase 2 Revisions as a basis for finding the PJM Phase 2 Revisions just and reasonable. Rather, the Commission merely identified the then-anticipated filing of the MISO Phase 2 Revisions as a proceeding in which AMP's concerns regarding a hedging mechanism for pseudo-tie transactions from MISO to PJM potentially could be addressed.

23. Moreover, even assuming, for the sake of argument, that the Phase 1 Revisions and the PJM Phase 2 Revisions did not fully resolve the issue of overlapping congestion charges, the fact that the MISO Phase 2 Revisions do not propose particular provisions to address the overlap issue, such as a voluntary schedule-cutting mechanism, does not preclude the Commission from accepting them as just and reasonable under FPA section 205. AMP's request for rehearing does not identify Tariff changes included in the MISO Phase 2 Revisions that AMP believes are unjust and unreasonable. Thus, AMP has not presented an adequate basis for the Commission to grant rehearing and to reject the MISO Phase 2 Revisions. The Commission's authority to review proposed rates under section 205 of the FPA is limited to the question whether the proposed rate is just

⁴⁰ *Id.* P 59; *see also id.* P 61.

⁴¹ PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 25. We note that AMP did not challenge this determination in its request for rehearing of the PJM Phase 2 Order.

⁴² *Id.*

and reasonable and does not extend to determining “whether a proposed rate schedule is more or less reasonable than alternative rate designs.”⁴³

The Commission orders:

The 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.

⁴³ *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *see also* MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 60 (citations omitted).