

167 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

American Municipal Power, Inc. Docket Nos. EL17-29-000

v.

Midcontinent Independent  
System Operator, Inc.

Tilton Energy LLC EL16-108-000

v.

Midcontinent Independent  
System Operator, Inc.

Northern Illinois Municipal Power Agency EL17-31-000

v.

PJM Interconnection, L.L.C.

American Municipal Power, Inc. EL17-37-000

v.

PJM Interconnection, L.L.C.

Dynegy Marketing and Trade, LLC EL17-54-000  
Illinois Power Marketing Company

v.

Midcontinent Independent  
System Operator, Inc.

(consolidated)

ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES, ESTABLISHING REFUND EFFECTIVE DATE, AND  
CONSOLIDATING PROCEEDINGS

(Issued May 16, 2019)

1. On December 19, 2016, as amended on December 20, 2016, American Municipal Power, Inc. (AMP) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) pursuant to sections 206 and 309 of the Federal Power Act (FPA)<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure (Complaint).<sup>2</sup> AMP alleges that, since AMP's pseudo-tie arrangement with PJM Interconnection, L.L.C. (PJM)<sup>3</sup> became effective on June 1, 2016, MISO has deviated from provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by imposing congestion and administrative charges on AMP. AMP also alleges that MISO's assessment of such charges on AMP is unjust, unreasonable, and unduly discriminatory. AMP also moves to consolidate its Complaint with a similar complaint filed by Tilton Energy LLC (Tilton) against MISO in Docket No. EL16-108-000.

2. As discussed below, we grant the Complaint in part, deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of December 19, 2016. We also consolidate the instant proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

**I. Background**

3. In 2014, the Commission approved the request of PJM to amend the PJM Open Access Transmission Tariff (PJM Tariff) to recognize limits on the amount of capacity from external resources that PJM can reliably import into the PJM region (Capacity Import Limit), and to exempt pseudo-tied resources<sup>4</sup> from the Capacity Import Limit if

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<sup>1</sup> 16 U.S.C. §§ 824e, 825h (2012).

<sup>2</sup> 18 C.F.R. § 385.206 (2018).

<sup>3</sup> Both MISO and PJM are Commission-approved regional transmission organizations (RTOs). In this order, MISO and PJM are collectively referred to as the RTOs.

<sup>4</sup> A pseudo-tied generation resource is one physically located in one Balancing Authority Area, but treated electrically as being in another Balancing Authority Area. *See, e.g., Integration of Variable Energy Resources*, Notice of Inquiry, 130 FERC (continued ...)

they meet certain requirements.<sup>5</sup> Given these changes to the PJM Tariff, the amount of capacity pseudo-tied from MISO to PJM substantially increased between PJM's 2015-2016 planning year and its 2016-2017 planning year.<sup>6</sup>

4. AMP states that it is a non-profit corporation based in Ohio, with members in Ohio, West Virginia, Pennsylvania, Maryland, Michigan, Virginia, Indiana, Kentucky, and Delaware.<sup>7</sup> AMP states that the majority of its members are load-serving entities within the PJM region and that the majority of its load is located in PJM.

5. AMP states that in 2007 it purchased a 23.26 percent interest of the Prairie State Energy Campus (Prairie State), an approximately 1,600 MW advanced technology coal-fired generating station located in Washington County, Illinois.<sup>8</sup> AMP states that Prairie State is interconnected to the transmission system owned by Illinois Power Company in MISO's Ameren Illinois Company (Ameren Illinois) Zone. AMP states that based on the MISO 2016/2017 capacity rating for the plant, AMP's share in Prairie State is 378 MW. AMP states that beginning with Prairie State's commercial operation date in 2012, AMP has scheduled energy imports into PJM from Prairie State in MISO to provide baseload electricity to serve AMP's members' native load in PJM. AMP states that it also offers the majority of its Prairie State share into PJM's capacity auctions.

6. AMP states that it has obtained 368 MW of firm point-to-point transmission service under the MISO Tariff to serve its PJM members' load from Prairie State.<sup>9</sup> AMP states that it also utilizes Network Integration Transmission Service under the PJM Tariff

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¶ 61,053, at P 32 n.23 (2010) ("Pseudo-ties are defined as telemetered readings or values that are used as 'virtual' tie line flows between balancing authorities where no physical tie line exists.").

<sup>5</sup> See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,060, at PP 25, 49-54 (2014).

<sup>6</sup> Amended Complaint, Ex. F at 2. The RTOs have stated in a Joint and Common Market (JCM) presentation that 156 MW were pseudo-tied during the 2015-2016 planning year and that the amount increased to 2,061 MW for the 2016-2017 planning year. *Id.*, Ex. B at 3.

<sup>7</sup> Amended Complaint at 6.

<sup>8</sup> *Id.* at 6-7 (citing *id.*, Ex. A, ¶ 3).

<sup>9</sup> *Id.* at 7.

(continued ...)

to allow its resources, including Prairie State, to serve its PJM-area loads. AMP states that a small portion of its Prairie State share serves AMP's MISO members.

7. AMP states that on June 1, 2016, AMP, MISO, and PJM implemented an arrangement in which AMP's share of Prairie State output is pseudo-tied into PJM and is utilized by AMP as an external Generation Capacity Resource under the PJM Tariff.<sup>10</sup> AMP states that accordingly, although Prairie State is physically located in MISO, the Prairie State operator follows PJM's dispatch instructions with respect to a portion of AMP's share of output. AMP states that it participates in the PJM market with this resource through its pseudo-ties into PJM, and that 368 MW of AMP's share of the Prairie State output is included in the PJM network model and is dispatched by PJM.

## II. Complaint

8. According to AMP, MISO uses Financial Schedules to assess congestion costs and administrative fees against generators pseudo-tied out of MISO such as AMP's share in Prairie State.<sup>11</sup> In the MISO Tariff, Financial Schedule is defined as:

A financial arrangement between two Market Participants designating a Source Point, Sink Point and Delivery Point establishing the obligations of the buyer and seller for the payment of Cost of Congestion and Cost of Losses. The Transmission Provider is not the Energy Market Counterparty to the sale of Energy under a Financial Schedule transaction and collects and disburses the Transmission Usage Charge [(TUC)] as agent for the parties to the Financial Schedule.<sup>12</sup>

9. AMP asserts that if a Financial Schedule is created, the MISO Tariff provides that a TUC must be assessed, and MISO assesses congestion costs and losses on AMP through the TUC.<sup>13</sup> The TUC is:

A charge attributable to the increased cost of Energy delivered at a given Commercial Node when the Transmission System is operating under

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<sup>10</sup> *Id.* at 8 (citing PJM Tariff, Attachment DD.5.5.A (“Capacity Resource Types”)).

<sup>11</sup> Amended Complaint at 20, 23. Unless otherwise specified, all capitalized terms herein shall have the same definition as in the MISO Tariff.

<sup>12</sup> MISO Tariff, Module A, Section 1.F. AMP does not assert that MISO is improperly assessing losses on AMP.

<sup>13</sup> Amended Complaint at 17.

(continued ...)

constrained conditions or due to losses on the system. The TUC is the per unit charge to support a Through Schedule or Financial Schedule or Generator Self-Supply and is equal to the difference in the [Locational Marginal Price (LMP)] at the sink and the LMP at source (in dollars per/MWh), which includes the Cost of Congestion and the Cost of Losses.<sup>14</sup>

10. AMP argues that in using Financial Schedules to assess congestion costs against resources pseudo-tied out of MISO, MISO has acted contrary to the MISO Tariff.<sup>15</sup> AMP asserts that multiple provisions of the MISO Tariff state that Financial Schedules are contracts between two separate Market Participants, and that MISO is not a counterparty to the transaction.<sup>16</sup>

11. AMP states that under the Financial Schedules established by MISO for AMP, the Asset Owner is both the buyer and the seller, and is responsible for the TUC, which includes congestion costs, associated with the Financial Schedule.<sup>17</sup> AMP asserts that MISO did not seek approval for any waiver from or modification to the MISO Tariff before implementing this procedure; rather, MISO simply revised its Business Practices Manuals (BPMs) to reflect the decision to use Financial Schedules to record transmission transactions for generators pseudo-tied out of MISO, despite the non-existence of a bilateral transaction that is a prerequisite for the use of a Financial Schedule.

12. In addition, AMP argues that MISO's assessment of congestion costs on generation pseudo-tied from MISO to PJM is unjust, unreasonable, and unduly discriminatory because it results in such pseudo-tied resources being charged twice for congestion costs and administrative fees along the same path and charged for real-time

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<sup>14</sup> MISO Tariff, Module A, Section 1.T.

<sup>15</sup> Amended Complaint at 6, 25.

<sup>16</sup> *Id.* at 16-17 & n.63 (quoting MISO Tariff, Module A, Section 6A (“The Transmission Provider collects and disburses the [TUC] as agent *for the parties* to the Financial Schedule and is not the Energy Market Counterparty to the transaction.” (emphasis in Amended Complaint)); MISO Tariff, Module A, Section 7.8 (“If the non-payment is a failure *of a party* to a Financial Schedule to pay the Financial Schedule related charge owed by it, the Transmission Provider shall reduce the payment *to the other party* to the Financial Schedule . . . .” (emphasis in Amended Complaint)); MISO Tariff, Module C, Section 39.1.3 (“The Financial Schedule shall include . . . . [i]dentification of the *Market Participants* included in the Financial Schedule.” (emphasis in Amended Complaint))).

<sup>17</sup> *Id.* at 19 (citing, *inter alia*, BPM-005, Market Settlements, Section 2.7.3).

(continued ...)

congestion costs that would not be assessed if the generation was physically located within PJM.<sup>18</sup> AMP explains that when market-to-market constraints bind simultaneously in both MISO and PJM, generators such as AMP's share in Prairie State that are pseudo-tied can be charged both by PJM, where the congestion costs are incorporated into the LMP, and by MISO, where the costs are assessed through a Financial Schedule settlement.<sup>19</sup> AMP also asserts that it appears that duplicative non-market-to-market congestion costs may be included in MISO and PJM's congestion charges as well.<sup>20</sup> Further, AMP argues that MISO's decision to use Financial Schedules to conduct transmission transactions involving generation pseudo-tied from MISO to PJM results in duplicative administrative service fees by both MISO and PJM for the same megawatt-hours of energy produced.

13. AMP states that it has raised its concerns regarding the duplicative charges with representatives of both RTOs, and has communicated with MISO representatives via email and telephone conferences in an effort to determine the amounts of energy that have been subject to the double-charge and the impact this has had on AMP.<sup>21</sup> AMP explains that MISO stated that it is not possible for entities to calculate their duplicative congestion costs from publicly available data. AMP also asserts that there is also insufficient information on the bills from either RTO for AMP to precisely calculate the portion of congestion charges that are duplicative. However, AMP states that MISO has provided estimates that are instructive. AMP states that for June 2016, the first month AMP's Prairie State pseudo-tie was in effect, MISO indicated that roughly 30 percent of certain congestion charges imposed on pseudo-tied generators duplicate congestion charges that PJM also imposes.<sup>22</sup> AMP states that MISO estimated that the overlapping congestion charges resulted in a net cost to AMP of \$66,000, or 31.6 percent of the total MISO congestion charges.<sup>23</sup> AMP asserts that if this same overlapping congestion percentage is applied to the period from June through November, 2016, MISO would be

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<sup>18</sup> *Id.* at 30.

<sup>19</sup> *Id.* at 4-5 (citing *id.*, Ex. B at 11), 31.

<sup>20</sup> *Id.* at 16.

<sup>21</sup> *Id.* at 20; *see also id.*, Ex. A, ¶ 13.

<sup>22</sup> *Id.* at 21 (citing *id.*, Ex. M at 17).

<sup>23</sup> *Id.* (citing *id.*, Ex. A, ¶ 14).

shown to have assessed AMP \$649,236.97 in duplicative congestion charges over that six month period.<sup>24</sup>

14. AMP argues that MISO's assessment of real-time congestion costs against generation pseudo-tied from MISO to PJM is also unjust and unreasonable because these charges are not able to be hedged and are inconsistent with market fundamentals.<sup>25</sup> AMP argues that Financial Transmission Rights (FTRs) are not an effective hedging tool because FTRs settle based on the day-ahead LMP prices at the source and the sink, while MISO assesses congestion to the pseudo-tie transactions based on real-time LMPs.<sup>26</sup> AMP asserts that purchasing an FTR would only create additional risk for AMP in the form of day-ahead versus real-time price risk and basis risk between the MISO and PJM nodal LMPs for Prairie State. AMP asserts that because such congestion costs are assessed outside the market in which the pseudo-tied resource participates, they are not included in any price signal and cannot be meaningfully factored into offers or recovered through any of PJM's make-whole provisions.

15. AMP requests that the Commission require MISO to cease assessing congestion and administrative charges against AMP and to cease creating or using Financial Schedules in a manner inconsistent with the MISO Tariff. AMP also requests that the Commission establish a refund effective date as of June 1, 2016, the first date MISO began charging AMP congestion and administrative charges after it established a pseudo-tie to PJM. In the alternative, AMP requests a refund effective date as of the date of its Complaint. AMP alleges that MISO has used Financial Schedules to assess AMP \$2,054,547.38 in congestion costs and \$354,578.78 in administrative charges from June 1, 2016 through November 30, 2016.<sup>27</sup>

16. AMP requests summary disposition of the Complaint.<sup>28</sup> AMP asserts that the Commission is able to provide the relief requested in this proceeding based on the Complaint and supporting documentation and that no evidentiary hearing is required.

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<sup>24</sup> \$649,236.97 is 31.6 percent of \$2,054,547.38, which is the total congestion charges MISO has assessed AMP during this period. *Id.*

<sup>25</sup> *Id.* at 31.

<sup>26</sup> *Id.* at 33 (citing *id.*, Ex. A, ¶ 16).

<sup>27</sup> *Id.* at 19-20 (citing *id.*, Ex. K; Ex. A, ¶ 10).

<sup>28</sup> *Id.* at 35.

(continued ...)

AMP notes that the Commission has an established practice to seek to resolve proceedings without hearings when there are no genuine issues of material fact involved.

17. AMP states that Tilton filed a similar complaint against MISO in Docket No. EL16-108-000 on August 25, 2016.<sup>29</sup> AMP asserts that the instant complaint involves substantially similar issues of fact and law as raised in the Tilton Complaint. AMP notes that both complaints address the congestion charges assessed by MISO against pseudo-tied generators and involve the same category of transactions. AMP requests that the Commission consolidate the instant complaint proceeding with the related complaint filed in Docket No. EL16-108-000 so that the numerous common issues may be efficiently addressed in a single proceeding.

### **III. Notice of Filing and Responsive Pleadings**

18. Notice of AMP's Complaint was published in the *Federal Register*, 82 Fed. Reg. 2351 (2017), with interventions and protests due on or before January 18, 2017. On January 18, 2017, MISO filed a motion for a 7-day extension of time to extend the comment period to January 25, 2017. On January 24, 2017, the Commission granted this motion.

19. The Council of the City of New Orleans, Louisiana, and the Organization of MISO States filed notices of intervention. Arkansas Electric Cooperative Corporation; Direct Energy Business Marketing, LLC (Direct Energy); Duke Energy Corporation; Entergy Services, Inc. (Entergy);<sup>30</sup> Exelon Corporation (Exelon); Illinois Municipal Electric Agency; MISO Transmission Owners;<sup>31</sup> Monitoring Analytics, LLC, the

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<sup>29</sup> *Id.* at 2, 35-36.

<sup>30</sup> Entergy is intervening on behalf of: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

<sup>31</sup> The MISO Transmission Owners for this proceeding consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; (continued ...)

Independent Market Monitor for PJM (PJM Market Monitor); North Carolina Electric Membership Corporation; NRG Power Marketing LLC and GenOn Energy Management; PJM; Tilton; and Wabash Valley Power Association, Inc. filed timely motions to intervene. Electric Power Supply Association and Enel Green Power North America, Inc. filed motions to intervene out-of-time.

20. On January 18, 2017, Entergy filed a protest. On January 25, 2017, MISO filed an answer. On February 2, 2017, AMP filed a motion for leave to answer and an answer to the Entergy protest. On February 9, 2017, AMP filed a motion for leave to answer and an answer to the MISO Answer.

21. On January 25, 2017, concurrent with MISO's answer, the RTOs filed a joint motion to hold in abeyance the instant proceeding as well as the complaint proceedings in Docket Nos. EL16-108-000, EL17-31-000, and EL17-37-000 in order to develop a methodology to resolve the congestion overlap issue related to pseudo-ties. Answers opposing the abeyance motion were filed by AMP on January 27, 2017, by Northern Illinois Municipal Power Agency (NIMPA) on January 31, 2017,<sup>32</sup> and by Tilton on February 1, 2017. On February 8, 2017, Exelon and Direct Energy jointly filed a motion to consolidate Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 and comments supporting the abeyance motion. On February 9, 2017, the MISO Transmission Owners filed an answer to the abeyance motion stating that they did not oppose it. On February 23, 2017, AMP filed (1) an answer to Exelon and Direct Energy's joint motion to consolidate and comments and (2) a motion for leave to answer and answer to the MISO Transmission Owners' answer and the PJM Market Monitor's February 9, 2017 answer.<sup>33</sup>

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Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>32</sup> NIMPA also requested that the Commission consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

<sup>33</sup> The PJM Market Monitor's February 9, 2017 answer was filed in Docket Nos. EL17-31-000 and EL17-37-000, but not in the instant docket.

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22. On March 27, 2017, the RTOs filed a joint informational status update in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 detailing the progress that had been made during discussions between both RTOs. AMP and NIMPA filed responses to this status update.<sup>34</sup>

23. On May 26, 2017, the RTOs filed a second joint status update in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000. AMP filed comments to this status update. On July 25, 2017, the RTOs filed a third joint status update. AMP filed a response to the RTOs' abeyance motion and third status update. On September 25, 2017, the RTOs filed a fourth joint status update. Tilton filed an answer to this status update. On November 22, 2017, the RTOs filed a fifth joint status update. AMP filed comments to this status update. On January 23, 2018, the RTOs filed a sixth joint status update. AMP filed comments to this status update. On April 6, 2018, the RTOs filed a seventh joint status update. NIMPA filed comments to this status update.<sup>35</sup>

24. On June 1, 2018, Tilton, AMP, NIMPA, and Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company<sup>36</sup> (collectively, Complainants) filed a joint request for Commission action to the status update, requesting, *inter alia*, that the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 be consolidated. On June 13, 2018, MISO filed a motion for leave to answer and answer to the Complainants' joint request. On June 28, 2018, Complainants filed a joint motion for leave to answer and answer to MISO's answer.

**A. MISO Answer**

25. MISO argues that the Commission should deny the AMP Complaint. MISO asserts that its charges assessed to AMP in connection with AMP's pseudo-tie deliveries

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<sup>34</sup> In NIMPA's response, NIMPA again requested that the Commission consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

<sup>35</sup> In NIMPA's comments, NIMPA reiterated its request to consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

<sup>36</sup> Herein, Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company are collectively referred to as the Dynegy Companies.

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are consistent with the MISO Tariff.<sup>37</sup> MISO also asserts that the Complaint presents no basis for holding unjust and unreasonable any MISO practice or MISO Tariff provision.

26. MISO disagrees with AMP's assertion that MISO's use of Financial Schedules to account for the congestion costs associated with AMP's pseudo-tie transactions is improper due to the lack of two different Market Participants acting as the seller and the buyer.<sup>38</sup> MISO argues that AMP's interpretation ignores that congestion and administrative charges are assessed not because MISO settles them by using Financial Schedules, but because the MISO Tariff independently requires Transmission Customers and Market Participants to compensate MISO for all system usage and costs associated with their transmission service transactions. MISO explains that when AMP sends its portion of Prairie State's output to PJM, the transaction causes congestion and losses on the MISO system and imposes certain other costs on MISO's Market Participants.<sup>39</sup> MISO asserts that the MISO Tariff requires AMP to pay for these costs irrespective of whether a Financial Schedule or some other cost assessment mechanism is used to bill AMP for its pseudo-tie transactions.

27. MISO asserts that because AMP utilizes firm point-to-point transmission service under the MISO Tariff from Prairie State to the MISO-PJM border, AMP is required to pay all other charges associated with its transmission service.<sup>40</sup> MISO notes that Schedule 7 of the MISO Tariff (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service) is clear that the Reserved Capacity charges under that Schedule, which compensate MISO's Transmission Owners, are "in addition to other applicable charges specified in the [MISO] Tariff." MISO also notes that Section 15.7 of the MISO Tariff further provides that "System Losses are associated with all Transmission Service" and requires MISO to "assess all Market Participants the Marginal Losses Component of Ex Post LMP," as set forth in certain specified provisions applicable to Day-Ahead and Real-Time markets. MISO notes that its Credit Policy recognizes that "all Transmission Service transactions are subject to congestion costs and marginal losses."<sup>41</sup> MISO states that requirements to pay congestion and losses are further emphasized in provisions

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<sup>37</sup> *E.g.*, MISO Answer at 2.

<sup>38</sup> *Id.* at 4, 16.

<sup>39</sup> *Id.* at 3, 11-12.

<sup>40</sup> *Id.* at 14.

<sup>41</sup> *Id.* (quoting MISO Tariff, Att. L).

(continued ...)

applicable to Module B Transmission Service, such as Section 22.2 (Additional Charge to Prevent Abuse) and Section 23.2 (Limitations on Assignment or Transfer of Service).<sup>42</sup>

28. MISO explains that under the MISO Tariff, the TUC supports Interchange Schedules (i.e., Export, Import or Through Schedules), Financial Schedules, and Generator Self-supply Schedules.<sup>43</sup> MISO asserts that while pseudo-tie transactions are functionally identical to exports or through schedules, they better lend themselves to the administrative mechanisms utilized for Financial Schedules. MISO states that pseudo-tie administration presents certain unique modeling, meter data reporting and settlement burdens and challenges. MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO resolved these challenges in order to ensure that AMP's and other pseudo-tied Market Participants' commercial choices are properly supported. MISO asserts that it was appropriate to clarify, in the BPM, the use of Financial Schedules procedures and capabilities for the purposes of settling MISO Tariff-required congestion and losses charges associated with pseudo-tied units. MISO notes that Section 2.7.3 of MISO's Market Settlements BPM clarifies that Financial Schedules procedures and capabilities can be used for the purposes of settling MISO Tariff-required congestion and loss charges associated with pseudo-tied units,<sup>44</sup> and that Section 2.7.3, as well as the other Market Settlements BPM provisions applicable to pseudo-ties, have been applied since MISO launched its energy markets in 2005.

29. MISO disagrees with AMP that this BPM practice departs from the MISO Tariff.<sup>45</sup> MISO asserts that the MISO Tariff requires AMP to pay for the Cost of Congestion and the Cost of Losses associated with its pseudo-tie transaction and that there is no modification to any of the formulas established by the MISO Tariff to calculate the Cost of Congestion and the Cost of Losses. MISO asserts that, instead, use of the existing Financial Schedule settlement infrastructure implements these requirements in a cost-

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<sup>42</sup> *Id.* & n.54 (quoting MISO Tariff, Module B, Section 22.2 (“In addition, the Market Participant shall pay for marginal Losses and any congestion relief costs based on the actual transmission path for which service is scheduled according to provisions in Module C.”); MISO Tariff, Module B, Section 23.2 (“In addition, the Market Participant shall be financially responsible for any Energy, Marginal Congestion Charge, and Marginal Losses associated with related Market Participant’s transactions . . .”)).

<sup>43</sup> *Id.* at 15.

<sup>44</sup> *Id.* at 18-19 (citing BPM-005, Market Settlements, Section 2.7.3).

<sup>45</sup> *Id.* at 19.

(continued ...)

efficient way for MISO and its Market Participants, including pseudo-tie Transmission Customers.

30. In addition, MISO states that AMP's pseudo-tie arrangement imposes certain recognized administrative costs on MISO, which are captured under various schedules in the MISO Tariff.<sup>46</sup> MISO states that its invoices to AMP include the following charges to recover MISO's administrative costs: (1) Schedule 10 charges (ISO Cost Recovery Adder); (2) Schedule 17 (Energy Market Support Administrative Service Cost Adder); and (3) Schedule 24 (Local Balancing Authority Adder). MISO explains that these charges are applied to AMP due to its procurement of transmission service in MISO (Schedule 10), participation in transactions using the MISO Transmission System (Schedule 17), and imposing costs on its Local Balancing Authority by engaging in such Transactions (Schedule 24).<sup>47</sup> MISO asserts that the MISO Tariff grants no exception to pseudo-ties from any of these charges, which have been a long-standing feature of MISO's Commission-approved rate design. Further, with respect to Schedule 10 charges, MISO asserts that the fact that PJM may assess similar charges under the PJM Tariff is immaterial and simply reflects the undisputed reality that AMP is engaged in transactions that require transmission service from both RTOs.

31. MISO argues that exempting AMP from the assessed charges would be inconsistent with cost causation principles.<sup>48</sup> MISO asserts that granting the AMP Complaint would result in impermissible cost shifts, requiring MISO's Market Participants to subsidize the benefits AMP obtains from its pseudo-tie arrangement with PJM, and AMP essentially would become a free rider. MISO explains that exempting AMP from MISO congestion charges would shift the congestion costs caused by AMP's transactions to other Transmission Customers and Market Participants in the form of FTR Shortfalls or Real-time Congestion Uplifts. MISO also explains, *inter alia*, that exempting AMP from the administrative charges under Schedules 10, 17 and 24 similarly would result in other Transmission Customers and Market Participants subsidizing the services and benefits that AMP receives under these Schedules.

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<sup>46</sup> *Id.* at 14, 20.

<sup>47</sup> MISO explains that although AMP's share of Prairie State's output is pseudo-tied to PJM's Balancing Authority Area for purposes of PJM's markets, it is still interconnected to and physically injecting energy into the Transmission System in the Ameren Illinois Local Balancing Authority as far as reliability is concerned. *Id.* at 22.

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

(continued ...)

32. MISO argues that AMP's claimed exemption is particularly untenable in light of the fact that MISO's Schedule 7 through-and-out rate to PJM is zero.<sup>49</sup> MISO explains that its internal customers are already bearing the full cost responsibility for all existing transmission facilities that AMP is using for its PJM deliveries, and thus, waiving congestion, losses or other charges in such circumstances would effectively result in free transmission service for AMP.

33. MISO also argues that exempting AMP from the assessed charges would be unduly discriminatory and preferential.<sup>50</sup> MISO states that, like exporters, AMP is required to procure transmission service from MISO to enable its pseudo-tie deliveries to PJM and pay various charges associated with its transmission service and system usage. MISO asserts that because these exporting customers are required to pay for congestion between the injection inside MISO and their External Interface, as well as losses and other associated charges, the same requirement should apply to similarly situated pseudo-tied resources, including AMP's share in Prairie State. MISO explains that the physical location of AMP's generation is exactly the same as prior to its pseudo-tie and the congestion on the MISO Transmission System does not change depending on whether MISO or PJM sends dispatch signals to the unit.<sup>51</sup> MISO argues that under the Commission's cost causation rules, as well as the FPA undue discrimination requirements, AMP must be treated just like any other Transmission Customer exporting to PJM.

34. In addition, MISO asserts that exempting pseudo-ties from congestion, losses and other charges is inconsistent with MISO's market design.<sup>52</sup> MISO asserts the availability of the firm transmission service that AMP uses for its pseudo-tie transactions is premised on MISO's ability to redispatch the system and thus accommodate the additional congestion created by export transactions. MISO contends that the customer's payment of the associated congestion costs entitles it to the available transmission capacity, as opposed to those customers who are unwilling to pay congestion, and that this has been clear since the formation of MISO's Day 2 market.

35. Further, MISO argues that the Complaint does not meet the burden of proof under section 206 and fails to demonstrate that any MISO Tariff provision or MISO practice is

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<sup>49</sup> *Id.* at 23; *see also id.* at 14 n.50 (citing MISO Tariff, Sched. 7, Section (3)).

<sup>50</sup> *Id.* at 22.

<sup>51</sup> *Id.* at 4.

<sup>52</sup> *Id.* at 25.

(continued ...)

unjust and unreasonable.<sup>53</sup> MISO argues that the AMP Complaint fails to establish the requisite factual and legal foundation for the relief sought, as the Complaint relies on extrapolations and assessments of congestion charges under the MISO Tariff, while providing no evidence of charges and amounts assessed by PJM.

36. MISO acknowledges that the RTOs, both jointly and separately, have been discussing various issues associated with the two RTOs' treatment of pseudo-tied generation, including what has become known as "double counting" of congestion in some circumstances.<sup>54</sup> However, MISO asserts that the RTOs' discussion of this issue does not suggest that MISO's practices are unjust and unreasonable. MISO explains that the congestion cost overlap does not apply to all congestion, but instead is limited to a narrow set of circumstances: only when a Reciprocally Coordinated Flowgate under the MISO-PJM Joint Operating Agreement (JOA) binds simultaneously in both the MISO and PJM markets.

37. MISO argues that, even assuming that some double counting of congestion occurred with respect to AMP's pseudo-tie transactions during the relevant period, the claimed refund is still widely overstated.<sup>55</sup> MISO argues that, contrary to AMP's assertions, no such congestion cost overlap can arise with respect to non-market-to-market congestion costs.<sup>56</sup> In addition, MISO notes that the JOA market-to-market protocol deals solely with congestion and has no impact on any administrative charges required under the MISO Tariff. MISO thus argues that there can be no overlap of MISO's administrative charges under any scenario and that the market-to-market process can provide no basis for refund of those charges.

38. MISO disagrees with AMP that MISO's treatment of its pseudo-tie is not just and reasonable because it has limited ability to hedge the risk presented by MISO's charges and has no recourse to uplift payments.<sup>57</sup> MISO explains that under the MISO Tariff, AMP has access to standard hedging instruments within MISO, such as FTRs, which conform to all applicable Commission requirements. MISO states that to the extent any of these instruments are less financially appealing or are too cumbersome to use in AMP's case, that is simply a reflection of the fact that AMP has chosen not to participate

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<sup>53</sup> *Id.* at 4, 27.

<sup>54</sup> *Id.* at 4-5.

<sup>55</sup> *Id.* at 33.

<sup>56</sup> *Id.* at 5, 33-34.

<sup>57</sup> *Id.* at 32.

(continued ...)

in MISO's markets. MISO also notes that MISO does provide LMPs for pseudo-tie commercial Pricing Nodes, including the two nodes established for AMP, with MISO's Day-Ahead Market results and in Real-Time via the MISO website and market portal. Thus, MISO disagrees with AMP's assertion that MISO's charges are not included in any price signal.

39. MISO asserts that to the extent action is required to address the double counting issue, the Commission should base such action on a comprehensive record, including an analysis of costs, cost causers, benefits, and beneficiaries of all aspects of the issue.<sup>58</sup> MISO states that it believes that the RTOs are in the best position to jointly develop and deliver to the Commission a comprehensive solution to best resolve this issue to the extent possible.<sup>59</sup>

40. MISO argues that if the Commission decides that any MISO practice or MISO Tariff provision is no longer just and reasonable, the relief should be prospective only, as of the date of the Commission's order.<sup>60</sup> MISO notes that in RTO markets, the Commission has declined refunds where they would require re-running of the market or would have other adverse effects on the market.<sup>61</sup>

#### **B. Entergy Protest**

41. Entergy argues that the Commission should find that MISO has properly followed the MISO Tariff and cost causation principles in charging congestion, losses and related administrative charges to AMP.<sup>62</sup> Entergy also argues that the Commission should find

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<sup>58</sup> *Id.* at 31.

<sup>59</sup> As discussed above, concurrent with MISO's Answer, MISO filed a joint motion with PJM to hold the instant proceeding in abeyance, along with certain other pending proceedings related to pseudo-tie deliveries of MISO generation into PJM, so as to allow the two RTOs to address pseudo-tie deliveries between their footprints in a coordinated fashion. *Id.* at 2.

<sup>60</sup> *Id.* at 34.

<sup>61</sup> *Id.* (citing *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 157 (2009), *California Indep. Sys. Operator, Inc.*, 120 FERC ¶ 61,271, at PP 24-25 (2007)).

<sup>62</sup> Entergy Protest at 12.

(continued ...)

that AMP has failed to meet its burden under section 206 to show that the MISO Tariff or the rates charged pursuant to the MISO Tariff are unjust and unreasonable.<sup>63</sup>

42. Entergy states that it supports MISO's answer to the Tilton complaint in Docket No. EL16-108-000 with regard to provisions of MISO's Tariff that apply to pseudo-ties and the Financial Schedules that MISO employs to collect these costs from AMP.<sup>64</sup> Entergy contends that by using Financial Schedules for purposes of settlement, MISO is simply using its existing market settlements infrastructure to assess these otherwise required charges or credits. Entergy further contends that if the Commission were to grant the broad remedy request by AMP, MISO would have to redo more than a decade of market settlements and make substantial refunds. Entergy contends that such an undertaking is unwise and unwarranted based on AMP's insufficient showing of a Tariff violation.<sup>65</sup>

43. Entergy asserts that cost causation principles require that AMP pay for congestion from its resource to the MISO border.<sup>66</sup> Entergy explains that when MISO manages around the output of a pseudo-tied resource, MISO orders resources under MISO's control to ramp up or down, which in turn causes increased costs.<sup>67</sup> Entergy asserts that because AMP's resource causes real-time congestion on MISO's system which in turn requires MISO to redispatch the resources under its control in order to keep the system balanced, AMP must pay MISO for the costs it imposes on MISO's system. Entergy avers that if MISO did not assess congestion charges on AMP, these costs would continue to be incurred—but would shift to other Market Participants on MISO's system.<sup>68</sup>

44. Entergy argues the Commission should reject AMP's argument that the real-time congestion charges assessed by MISO are unduly discriminatory because such charges are not assessed to generation physically located in PJM.<sup>69</sup> Entergy argues that Prairie

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<sup>63</sup> *Id.* at 1-2.

<sup>64</sup> *Id.* at 20.

<sup>65</sup> *Id.* at 22.

<sup>66</sup> *Id.* at 9.

<sup>67</sup> *Id.* at 8.

<sup>68</sup> *Id.* at 11.

<sup>69</sup> *Id.* at 12.

(continued ...)

State is not similarly situated to generation physically located in PJM. Entergy notes that Prairie State receives benefits based on its location in MISO, including reactive power compensation.

45. Further, Entergy asserts that AMP's argument that it was charged twice for the same congestion is unsupported.<sup>70</sup> Entergy argues that AMP inappropriately conflates the congestion charges it receives from MISO that are related to binding market-to-market constraints and those that are not. Entergy notes that the RTOs have acknowledged the possibility of overlapping congestion charges on binding market-to-market flowgates but agree that there are no overlapping congestion charges on non-market-to-market flowgates.<sup>71</sup>

46. Entergy also asserts that while AMP requests relief from all of the congestion charges that MISO has assessed for the period June to November of 2016, AMP only attempts to demonstrate that 31.6 percent of charges during June stemmed from flows over coordinated market-to-market flowgates.<sup>72</sup> Entergy argues that AMP does not provide any support for refunds of the other 68.4 percent of charges during June 2016, or for refunds of the charges assessed from July to November 2016. In addition, Entergy observes that although AMP provides invoices from MISO demonstrating that MISO assessed charges or credits to AMP for congestion and administrative charges on MISO's system periodically since June 1, 2016, AMP does not provide evidence in its Complaint showing that PJM assessed AMP congestion charges during those same periods.<sup>73</sup>

47. Entergy notes that the RTOs have estimated that double counted congestion costs in June 2016 amounted to average congestion charges of \$0.22/MWh and represented one percent of PJM energy market revenues.<sup>74</sup> Entergy argues that in order to show that a market rate is unjust and unreasonable under section 206, AMP must provide context of its overall revenue picture, including energy, capacity and ancillary services revenues, in explaining the effect of the alleged harm and, as most relevant to this proceeding, explain why a one percent reduction in its PJM energy market revenues in one month denies it

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 12-13 (citing Amended Complaint, Ex. M at 15).

<sup>72</sup> *Id.* at 13.

<sup>73</sup> *Id.* at 6.

<sup>74</sup> *See* Amended Complaint, Ex. M at 17.

(continued ...)

the opportunity to recover its costs.<sup>75</sup> Entergy argues that the Commission should find that AMP has not met that requisite showing and has not offered sufficient evidence that it has incurred double congestion charges due to the market-to-market process.

48. Entergy asserts that if the Commission finds that there is some potential for double payment of market-to-market congestion costs above a *de minimus* amount that may create an unjust and unreasonable rate, the Commission should direct parties to attempt to resolve the issue through existing processes.<sup>76</sup> Entergy contends that the Commission can direct the RTOs to use the existing JCM framework to resolve issues related to pseudo-tied generation, and this includes discussions of congestion double counting in the market-to-market process.

49. Entergy states that in the alternative, the Commission should establish ALJ-directed settlement procedures so that all parties affected by the issues raised in this Complaint and by related issues detailed in MISO's Pseudo-Tie Issues Statement have an opportunity to participate in settlement discussions.<sup>77</sup> Entergy notes that MISO has identified additional costs and harms from pseudo-tied generation, including uncompensated commitment costs and reliability harms.<sup>78</sup> Entergy argues that the Commission should not address the single issue of potential double congestion without, at the same time, addressing these harms that pseudo-ties impose on participants in the MISO market.

### C. AMP Answer to MISO Answer

50. AMP asserts that MISO's assessment of congestion charges against AMP based on AMP's use of transmission service for pseudo-tie transactions is inconsistent with market fundamentals.<sup>79</sup> AMP notes that MISO has admitted that the purpose of the pseudo-tie is to remove AMP's resource from MISO's energy market and to place it instead within PJM's energy market. AMP asserts that MISO's application of congestion charges to AMP's pseudo-tied resource is an inappropriate piecemeal attempt to retain and apply a single pricing element from MISO's energy market when that resource is participating in PJM's energy market. AMP argues that because MISO has "cherry-

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<sup>75</sup> Entergy Protest at 15.

<sup>76</sup> *Id.* at 15-16.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 19.

<sup>79</sup> AMP Answer to MISO Answer at 3.

(continued ...)

picked” the congestion component of LMP and levied that as a charge against the pseudo-tied generator, outside of its own or PJM’s energy market, these charges are necessarily inconsistent with security-constrained economic dispatch and will result in inefficient pricing in both RTOs.

51. AMP also argues that MISO’s application of congestion charges to AMP’s pseudo-tied resource is inconsistent with cost causation principles. AMP explains that MISO assesses congestion charges against it based on the differential between the congestion cost component of LMP at the Prairie State Commercial Pricing Node (CPNode) and the LMP at the interface with PJM.<sup>80</sup> AMP asserts that there are a number of factors other than just the operation of a single resource, such as AMP’s pseudo-tied generator, that may cause LMP differentials, including the dispatch of other resources that are participating in MISO’s energy market.

52. Further, AMP argues that the absence of applicable charging provisions in the MISO Tariff precludes MISO from assessing congestion costs against AMP based on AMP’s use of transmission service for pseudo-tie transactions. AMP asserts that the TUC provisions that MISO invokes in support of assessing congestion charges do not contain billing determinants that are applicable to AMP.

53. AMP asserts that MISO’s practices contrast starkly with the language MISO quotes from MISO Tariff Module C, Section 40 that MISO says apply in the various cases of: (i) Real-Time Energy Market Sales and Export Schedules; (ii) Through Transactions; and (iii) Financial Schedules.<sup>81</sup> AMP argues that in each case, the applicable MISO Tariff language applies the TUC based on either a differential between scheduled transactions in the real-time market and scheduled transactions in the day-ahead market, or, in the case of “all Financial Schedules designated to be settled in the Real-Time Energy and Operating Reserve Market,” the TUC is applied to the differential between the source and sink LMPs and the billing determinant is “the amount of Energy Scheduled . . . .”<sup>82</sup> AMP argues that MISO does not, and cannot, cite any MISO Tariff language authorizing MISO to “designate” pseudo-tie transactions, such as those involving AMP’s Prairie State share, as “to be settled” in MISO’s real-time market. AMP explains that because energy produced by pseudo-tied resources has been removed from MISO’s market, transactions involving this energy are not settled in MISO’s markets. Further, AMP asserts that the only relevant “designating” language in the

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<sup>80</sup> *Id.* at 4.

<sup>81</sup> *Id.* at 6.

<sup>82</sup> *Id.* (quoting MISO Answer at 17-18 (quoting MISO Tariff, Module C, Section 40.4.2)).

(continued ...)

MISO Tariff applies to certain bilateral energy transactions. AMP argues that pseudo-tie arrangements are not bilateral energy transactions involving MISO's markets and, therefore, they are not properly treated as Financial Schedules under the MISO Tariff.

54. In addition, AMP asserts that MISO's BPM provisions impermissibly affect the terms and conditions of service provided by MISO.<sup>83</sup> AMP asserts that these BPM provisions describe the operative "designation" process MISO uses to create Financial Schedules, which contravenes—rather than clarifies—the MISO Tariff. Specifically, AMP argues that the passive voice language used in Section 2.7.3 of the Market Settlements BPM provides MISO no justification for creating Financial Schedules and that MISO's attempt to use it as such is baseless. AMP argues that, moreover, to the extent this BPM is MISO's justification for using Financial Schedules, it significantly affects the terms and conditions of service by applying charges to AMP when the unambiguous express terms of the MISO Tariff would not. AMP concludes that, as a result, MISO is violating the Commission's statute-based policy of requiring material terms to be included in the filed MISO Tariff, rather than only in BPMs.

55. AMP argues that the admissions of the RTOs adequately demonstrate that AMP has been double charged for more than market-to-market congestion at Reciprocally Coordinated Flowgates, and thus its Complaint satisfies the applicable evidentiary standards.<sup>84</sup> AMP argues that MISO's Answer, in which MISO acknowledged the congestion cost overlap between the two RTOs' markets, coupled with MISO's own confirming statements to AMP representatives establishes that AMP has been subject to double charging by the RTOs.

56. AMP asserts that PJM's actions and statements to the Commission indicate that the double-charging issue extends far more broadly than market-to-market flowgates that are reciprocally coordinated under the JOA.<sup>85</sup> AMP states that in comments to the Commission, PJM has recognized that assessing congestion charges to scheduled imports based on nodes remote from the MISO-PJM border leads to overcharging for congestion. PJM stated that "the 'double-counting' concern . . . was caused by the fact that the PJM interface definition for MISO was located inside the MISO system instead of right at the border between the RTOs."<sup>86</sup> AMP asserts that this is the same situation faced by

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<sup>83</sup> *Id.* at 7.

<sup>84</sup> *Id.* at 8.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* (quoting PJM Interconnection, L.L.C., Reply Comments, Docket No. AD14-3-000, at Att. 1 (Interface Pricing Issue – PJM Position Paper), p. 6 (filed Jun. 15, 2015)).

(continued ...)

generators pseudo-tied from MISO into PJM and relates to all congestion cost overlaps between the PJM-MISO interface and the pseudo-tied generators' pricing nodes, not just those subject to the JOA.

57. In addition, AMP argues that MISO's answer does not support the application of MISO administrative charges to AMP's Prairie State pseudo-tie.<sup>87</sup> AMP argues that AMP's pseudo-tie does not impose all the costs that would be recovered by MISO's full menu of charges. AMP notes, as an example, that one of the charges MISO would assess is provided for under Schedule 17 of the MISO Tariff. AMP notes that, as MISO explains, costs recovered under Schedule 17 "include but are not limited to, costs associated with: (1) market modeling and scheduling functions; (2) market bidding support; (3) locational marginal pricing support; (4) market settlements and billing; (5) market monitoring functions; and, (6) simultaneous co-optimization for the scheduling and enabling of the least-cost, security-constrained commitment and dispatch of Generation Resources to serve Load and provide Operating Reserves in the MISO Balancing Authority Areas while also establishing a spot energy market."<sup>88</sup> AMP argues that several of these cost items are not implicated by pseudo-tie arrangements and MISO's assessment of the full amount of Schedule 17 charges on pseudo-ties violates the cost-causation principle in assessing the full amount of Schedule 17.

58. AMP argues that the applicability of the other administrative charges MISO assesses is also in dispute.<sup>89</sup> AMP notes that Schedule 24, for example, "includes 'costs for actions Local Balancing Authorities must take at the direction of the [MISO] to maintain reliability in the [MISO] Balancing Authority Area.'"<sup>90</sup> AMP argues that the fact that its share of Prairie State output is no longer within a MISO Local Balancing Authority raises questions about the applicability of Schedule 24. AMP asserts that closer examination of the activities underlying Schedule 24's charges is likely to identify a number of costs that are not triggered by AMP's pseudo-tie.

59. Finally, AMP argues that the abeyance motion by the RTOs should be denied.

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<sup>87</sup> *Id.* at 10.

<sup>88</sup> *Id.* (quoting MISO Answer at 21 (quoting MISO Tariff, Sched. 17)).

<sup>89</sup> *Id.* at 11 & n.36.

<sup>90</sup> *Id.* (quoting MISO Answer at 22 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,074, at P 22 (2008))).

(continued ...)

**D. AMP Answer to Entergy Protest**

60. AMP argues, *inter alia*, that cost causation principles do not excuse violations of the MISO Tariff or justify double-charging for the same services.<sup>91</sup> AMP asserts that its Complaint is premised on the fact that MISO is assessing charges that are not applicable to AMP under MISO's Tariff and, in addition, that these charges are at least partially, if not fully, duplicate charges imposed by PJM.

61. AMP argues that MISO must file Tariff revisions with the Commission if it seeks to recover congestion costs from pseudo-tied generators.<sup>92</sup> AMP contends that by resorting to self-help, MISO deprived the Commission of the opportunity to examine the proposed rates, terms and conditions of service in order to satisfy its statutory obligation to ensure that any proposal filed by MISO is just, reasonable, and not unduly discriminatory. AMP further asserts that MISO also has deprived customers of the opportunity to contest those rates, terms and conditions in a section 205 context, forcing them to incur the burden and cost of a section 206 complaint proceeding instead.

62. AMP disagrees with Entergy's argument that AMP has not made the requisite showing for section 206 relief.<sup>93</sup> AMP argues that it is not under a duty to establish the precise level of refunds it is owed, especially not where information publicly available to customers is insufficient to determine the precise level of overcharges. AMP argues that, given the RTOs' admissions that demonstrate there has been double charging for congestion, the Commission should grant the complaint and require MISO to provide data and calculations revealing the exact amount of double-charging in a compliance filing containing a refund report.

63. AMP asserts that Entergy misrepresents the applicable evidentiary standards to make a section 206 showing.<sup>94</sup> AMP argues that Entergy's interpretation would impose a nearly insurmountable hurdle for complainants seeking relief for discrete tariff violations, such as AMP in this proceeding, by requiring the complainant to present what is effectively a full cost-of-service rate case within its section 206 complaint. AMP argues that the FPA has never been understood to make the protection against unlawful charges conditional on whether an adversely affected party suffers net operating losses as a result.

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<sup>91</sup> AMP Answer to Entergy Protest at 5.

<sup>92</sup> *Id.* at 5-6.

<sup>93</sup> *Id.* at 7.

<sup>94</sup> *Id.* at 8.

(continued ...)

AMP further contends that such an interpretation would render lawful any overcharge so long as the overcharge did not eat too deeply into a complainant's revenues.

64. In addition, AMP argues that refunds due to it resulting from MISO's Tariff violations and duplicative congestion charges would not cause market disruption.<sup>95</sup> AMP contends that the Commission has frequently addressed concerns about resettling markets after the fact by funding refunds through uplift or recoupment. Finally, AMP argues that Entergy appears to endorse a refund policy that would create a perverse incentive that favors inflating the harm caused by a tariff violation in order to escape refund liability.<sup>96</sup>

#### IV. Related Proceedings

##### A. Other Pseudo-Tie Congestion Complaint Proceedings

65. As noted above, on August 25, 2016, Tilton filed a complaint against MISO in Docket No. EL16-108-000. Tilton's complaint is substantively similar to the instant Complaint, alleging that MISO violated the MISO Tariff by assessing congestion and administration charges, and further alleging duplication of such charges by MISO and PJM. On March 28, 2017, the Dynege Companies filed a complaint against MISO in Docket No. EL17-54-000. The Dynege Companies also allege that MISO violated its Tariff and allege that MISO has imposed duplicative charges for congestion and losses.

66. On December 21, 2016, NIMPA filed a complaint against PJM in Docket No. EL17-31-000. NIMPA alleges that PJM deviated from provisions of the PJM Tariff by imposing charges that assess congestion costs starting at the nodal point of their facilities within the MISO region, rather than at the interface between MISO and PJM. NIMPA further asserts that this method of calculating such charges is unjust, unreasonable, and unduly discriminatory because it results in duplicative costs associated with overlapping transmission service from MISO into PJM. On January 6, 2017, AMP also filed a complaint against PJM in Docket No. EL17-37-000. AMP's complaint is substantively similar to NIMPA's complaint.

67. In this order, we refer to the instant Complaint, and the four other complaints described above,<sup>97</sup> collectively as the MISO/PJM Pseudo-Tie Congestion Complaints.

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<sup>95</sup> *Id.* at 10.

<sup>96</sup> *Id.* at 10-11.

<sup>97</sup> *See supra* PP 65-66.

(continued ...)

## **B. RTOs' Phase 1 and Phase 2 Revisions**

68. As part of their efforts to address the market and reliability challenges posed by the increased number of pseudo-tied resources from MISO to PJM, the RTOs jointly proposed a two-phase resolution of certain issues involving the overlapping congestion charges affecting pseudo-tied resources. The RTOs explained that the then-effective JOA contained provisions for coordinated congestion management over Reciprocally Coordinated Flowgates.<sup>98</sup> The RTOs explained that when a Reciprocally Coordinated Flowgate binds simultaneously in both MISO and PJM, that Reciprocally Coordinated Flowgate can create overlapping congestion charges that a pseudo-tied resource pays or is paid.<sup>99</sup> The RTOs explained that congestion overlap occurs on the pseudo-tie transaction path between the source generation resource and sink interface for congestion associated with Reciprocally Coordinated Flowgates that are coordinated under the market-to-market settlement process.

69. The RTOs further explained that when both markets bind on the same Reciprocally Coordinated Flowgate, the Native Balancing Authority would assess 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 would also assess the pseudo-tied resource a charge for delivery of energy, injection and withdrawal, along the 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.

70. On October 23, 2017, as amended January 29, 2018 and May 31, 2018, MISO and PJM filed identical proposed revisions to the JOA to address the congestion charge overlap (Phase 1 Revisions). The RTOs stated that the Phase 1 Revisions were intended to eliminate congestion payments between the RTOs associated with pseudo-tie impacts on Reciprocally Coordinated Flowgates, which recognize and account for the congestion payments made by the pseudo-tied customer. The RTOs further proposed to modify settlement treatment of pseudo-tie impacts to properly account for market flows and associated market-to-market congestion payments between the RTOs. The RTOs stated

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<sup>98</sup> The JOA is on file as MISO Rate Schedule 5 and as a PJM Interregional Agreement. A Reciprocally Coordinated Flowgate 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.

<sup>99</sup> The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tied resource.

*(continued ...)*

that each RTO would separately file Phase 2 revisions to make any necessary changes to their individual tariffs.

71. On July 31, 2018, the Commission accepted the Phase 1 Revisions, effective August 1, 2018.<sup>100</sup> The Commission found that the “Phase 1 Revisions represent an improvement over current practices and will address the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.”<sup>101</sup> The Commission noted that the claims of overcharges in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings were beyond the scope of the Phase 1 Revisions proceeding and that such claims would be addressed in the respective complaint proceedings.<sup>102</sup>

72. On June 1, 2018, PJM submitted its Phase 2 Revisions, proposing to modify the PJM 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 (PJM Phase 2 Revisions). On July 31, 2018, the Commission accepted PJM’s Phase 2 Revisions effective August 1, 2018, finding that they address concerns about the potential for congestion charge overlap.<sup>103</sup> Again, the Commission found that the claims of overcharges in the complaints were beyond the scope of the Phase 2 Revisions proceeding and stated that they would be addressed in those complaint dockets.<sup>104</sup>

73. On October 2, 2018, as amended on January 19, 2019, MISO filed its Phase 2 Revisions to (1) address how Market Participants with pseudo-ties out of MISO can use Virtual Transactions to align FTRs and TUCs; 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 (MISO Phase 2 Revisions). On March 19, 2019, the Commission accepted the MISO

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<sup>100</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 3 (2018) (Phase 1 Order).

<sup>101</sup> *Id.* P 22.

<sup>102</sup> *Id.* P 30.

<sup>103</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073, at P 17 (2018) (PJM Phase 2 Order).

<sup>104</sup> *Id.* P 44.

(continued ...)

Phase 2 Revisions, subject to condition, effective March 1, 2019.<sup>105</sup> The Commission found that the RTOs demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion charge overlap.<sup>106</sup> The Commission stated that it would address the issue of relief for prior charges assessed by MISO, and the various arguments as to whether MISO had authority to assess TUCs—which include congestion charges—and administrative charges, in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings.<sup>107</sup>

## V. Discussion

### A. Procedural Matters

74. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission will grant the late-filed motions to intervene of Electric Power Supply Association and Enel Green Power North America, Inc. given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

75. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

76. As the RTOs have filed, and the Commission has accepted, their Phase 1 and Phase 2 Revisions to address, *inter alia*, the congestion charge overlap issue, the RTOs' abeyance motion is dismissed as moot.

### B. Substantive Matters

77. As discussed below, we grant the Complaint in part, deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of December 19, 2016. We also consolidate the instant

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<sup>105</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order).

<sup>106</sup> *Id.* PP 59, 61.

<sup>107</sup> *Id.* PP 52, 56, 63.

proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

1. **Tariff Authorization to Assess Congestion and Administrative Charges**

78. We conclude that MISO's assessment of congestion costs and administrative charges on AMP does not violate MISO's Tariff. Specifically, as discussed below, we find that the Tariff authorizes MISO to assess congestion costs and administrative charges on pseudo-tie transactions. We also find that it was not a violation of the Tariff for MISO to use Financial Schedules as a vehicle for imposing congestion and administration charges on AMP.

a. **Assessment of Congestion Charges and the Use of Financial Schedules**

79. AMP is a MISO Transmission Customer taking service under Schedule 7 of the Tariff (Long-Term Firm Point-to-Point Transmission Service) to facilitate its pseudo-tie transactions.<sup>108</sup> AMP is thus required to pay the applicable charges set forth on Schedule 7 "in addition to other applicable charges specified in the [MISO] Tariff."<sup>109</sup> While Schedule 7 does not itself specify what other MISO Tariff charges are applicable, other provisions in the MISO Tariff identify congestion and loss charges as applicable to all transmission service transactions, including those associated with pseudo-tie transactions. Specifically, Attachment L (Credit Policy) recognizes that all transmission service transactions are subject to the costs of congestion and losses.<sup>110</sup> Moreover, Section 23.2

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<sup>108</sup> Schedule 7 of the MISO Tariff states, in part:

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below in addition to other applicable charges specified in the [MISO] Tariff.

<sup>109</sup> MISO Tariff, Schedule 7.

<sup>110</sup> Attachment L of the MISO Tariff states, in part:

Because all Transmission Service transactions are subject to congestion costs and marginal losses, every Transmission Customer of [MISO] must either apply to be a Market Participant

*(continued ...)*

(Limitations on Assignment or Transfer of Service) identifies congestion charges as among the transmission service costs for which Market Participants are financially responsible.<sup>111</sup> Section 23.2 references, *inter alia*, Section 40.4. While Section 40.4 is reserved, it has a non-reserved Subsection 40.4.2 (Financial Schedule Settlements) that provides, in part, a calculation for the TUC, i.e., the costs of congestion and losses to be assessed to buyers and sellers under Financial Schedules designated to be settled in the Real-Time Energy and Operating Reserve Market.<sup>112</sup>

80. Though AMP argues that Subsection 40.4.2 of the MISO Tariff does not authorize MISO to assess congestion charges for pseudo-tie transactions, we disagree. First, AMP argues that the MISO Tariff does not grant MISO the authority to designate pseudo-tie transactions as “to be settled” in MISO’s real-time market. However, pseudo-tie transactions that utilize MISO’s Transmission System cause real-time congestion costs on MISO’s Transmission System,<sup>113</sup> and we find that MISO properly settles the congestion charges associated with such transactions as a part of the MISO real-time market. Consistent with this finding, Section 2.7.3 of the Market Settlements BPM clarifies that the settlement of pseudo-tied generation within the MISO Balancing Authority Area to an external Balancing Authority Area is “only applicable to the [real-time market].” We

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or be represented by a duly authorized Market Participant in good standing pursuant to the terms and conditions of this Credit Policy and the Agreements.

<sup>111</sup> Section 23.2 of the MISO Tariff states, in part:

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement . . . the Market Participant shall be financially responsible for any Energy, Marginal Congestion Charge, and Marginal Losses associated with related Market Participant’s transactions as set forth in Sections 39.3.1 [Charges for Day-Ahead Energy and Operating Reserve Market Purchases], 39.3.3 [Payments and Charges for Financial and Interchange Schedules], 40.3 [Real-time Energy and Reserve Market Settlement] and 40.4 [Reserved].

The fact that the MISO Tariff requires customers to pay these charges on redirects necessarily assumes that they are also paid on the original Receipt and Delivery Points.

<sup>112</sup> MISO Tariff, Module C, Section 40.4.2.

<sup>113</sup> See *infra* P 89.

(continued ...)

further note that it has been MISO's standard practice since it launched its energy markets in 2005 to assign Financial Schedules to pseudo-tie transactions, as reflected in MISO's BPMs.<sup>114</sup> Thus, for more than ten years before AMP filed its Complaint, MISO has used the procedures and capabilities of Financial Schedules for the purpose of settling MISO Tariff-required congestion and losses charges associated with pseudo-tie transactions.<sup>115</sup> We recognize both that the MISO Tariff does not explicitly state that a Financial Schedule will be created for a pseudo-tie transaction and that the MISO Tariff's definition of Financial Schedule refers to "two Market Participants." However, given that the MISO Tariff does not specify what settlement vehicle MISO must use to assess congestion charges on pseudo-tie transactions, and such charges are settled in the real-time market, we find it reasonable that MISO assigned Financial Schedules to AMP's pseudo-tie transactions and assessed congestion costs via the TUC.<sup>116</sup>

81. AMP also argues that Section 40.4.2 of the MISO Tariff does not authorize MISO to assess congestion charges against it because this provision does not contain billing determinants that are applicable to AMP.<sup>117</sup> We disagree. As discussed above, we find that MISO's assessment of such charges via Financial Schedules is consistent with the recognition in other parts of the MISO Tariff—such as Schedule 7, Attachment L, and Section 23.2—that all transmission service transactions are subject to congestion costs, and the fact that congestion charges associated with pseudo-tie transactions are appropriately settled as a part of the MISO real-time market. Thus, we find that a reasonable reading of Section 40.4.2 is that the billing determinants to be applied to pseudo-tie transactions, such as transactions associated with AMP's share in Prairie State, are the amount of energy scheduled by the destination balancing authority, such as PJM.

82. In sum, we find that the MISO Tariff authorizes MISO to assess congestion and loss charges on AMP, and that MISO did not violate its Tariff by using Financial Schedules to do so. Schedule 7, Attachment L, and Section 23.2 of the MISO Tariff recognize and provide for the imposition of congestion and loss charges on AMP, while

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<sup>114</sup> Section 2.7.3 of the Market Settlements BPM states, in part "[w]ith these [pseudo-tied] volumes, a Pseudo Real-Time Financial Schedule is created." Additionally, we note that section 2.7.3 of the Market Settlements BPM states, in part, that "[p]seudo-tied Generation Resources are subject to congestion and loss charges between their Resource and the Interface CPNode where the energy is being exported."

<sup>115</sup> MISO Answer at 19.

<sup>116</sup> MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO was able to ensure that AMP's and other pseudo-tied Market Participants' commercial choices are properly supported. *Id.* at 15-16.

<sup>117</sup> AMP Answer to MISO Answer at 5-6.

Section 40.4.2—when read in conjunction with these provisions—specifies the calculation of such charges.

**b. Assessment of Administrative Charges**

83. We also find that the Tariff authorizes the assessment of administrative charges contained in Schedules 10, 17 and 24 on pseudo-tied resources.

84. Schedule 10 (ISO Cost Recovery Adder) states, in part, “The cost recovery mechanism and charges . . . are applicable to all Transmission Customers . . .” In Schedule 10, the specific rate applicable to point-to-point transmission service is established as a function of, among other things, the capacity reserved, and the duration of the reservation. Because AMP is a Transmission Customer reserving point-to-point transmission service, AMP is responsible for paying Schedule 10 charges.

85. Schedule 17 (Energy and Operating Reserve Markets Support Administrative Service Cost Recovery Adder) states, in part:

Energy and Operating Reserve Markets Support Administrative Service is provided by the Transmission Provider to all Market Participants that participate in Transactions using the Transmission System . . . The billing determinants for the [adder] shall be: 1) all Actual Energy Injections into the Transmission System by all Market Participants . . . *including deliveries to the Transmission System from generation located both within the Transmission System and outside of the Transmission System*, 2) all Actual Energy Withdrawals from the Transmission System by all Market Participants . . . *including MWh delivered to loads located both within the Transmission System and outside of the Transmission System including all out and through transactions using the Transmission System . . .*” (emphases added).<sup>118</sup>

86. We find that the “including” clauses identified above are broad enough to recover the administrative charge from AMP. Specifically, because AMP is a Market Participant that participates in transactions using the Transmission System and those transactions include deliveries to the Transmission System to serve load located outside of the Transmission System, we find that AMP is liable for Schedule 17 charges. We disagree with AMP’s argument that the application of MISO administrative charges to AMP’s Prairie State pseudo-tie are unsupported. The fact that some cost items listed in Schedule

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<sup>118</sup> MISO Tariff, Sched. 17.

(continued ...)

17 may not be applicable to pseudo-tie transactions, as AMP claims,<sup>119</sup> does not preclude MISO's assessment of costs for those items that are applicable.

87. Schedule 24 (Local Balancing Authority Cost Recovery Adder) states, "Local Balancing Authorities shall recover their costs incurred as a result of implementing the Markets and Services pursuant to this Tariff . . . For the purposes of allocating and collecting these costs, the Local Balancing Authority Costs shall be recovered together with the Schedule 17 costs and in the same manner as the Schedule 17 costs." Because we find above that AMP is responsible for charges under Schedule 17, AMP is also responsible for charges under Schedule 24 pursuant to the terms of Schedule 24. We also note that, as MISO has explained, although AMP's share of Prairie State's output is pseudo-tied to PJM's Balancing Authority Area for purposes of PJM's markets, it is still interconnected to and physically injecting energy into the Transmission System in the Ameren Illinois Local Balancing Authority as far as reliability is concerned.<sup>120</sup> Accordingly, we disagree with AMP's suggestion that Schedule 24 is not applicable to its pseudo-tie transactions.

2. **Whether MISO's Assessment of Congestion and Administrative Charges Is Unjust, Unreasonable, Unduly Discriminatory or Preferential**

88. As discussed below, we find AMP has not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and administrative charges on AMP. However, we find that there was the potential for the RTOs to assess unjust and unreasonable overlapping or duplicative congestion charges prior to the effective dates of the Phase 1 and Phase 2 filings, and thus we establish hearing and settlement procedures to consider the extent to which the Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to such charges and are due refunds.

89. We find that AMP has not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and administrative charges on AMP. MISO and Entergy have explained that AMP's use of the MISO Transmission System to facilitate AMP's pseudo-tie transactions causes congestion and administrative costs on the MISO Transmission System. AMP has not disputed this fact in its Complaint or its Answer. Thus, exempting AMP from these charges would require MISO's Transmission Customers and Market Participants to subsidize benefits that AMP obtains from its pseudo-tie arrangement with PJM. Specifically, exempting AMP from

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<sup>119</sup> See AMP Answer to MISO Answer at 10-11.

<sup>120</sup> See MISO Answer at 22.

*(continued ...)*

congestion charges would shift costs caused by AMP's transactions to others in the form of FTR Shortfalls or Real-time Congestion Uplifts. Similarly, exempting AMP from the administrative charges under Schedules 10, 17, and 24 would result in other Transmission Customers and Market Participants subsidizing the services and benefits that AMP receives under these Schedules.<sup>121</sup>

90. AMP contends that MISO's congestion charges are not part of the PJM LMP price signal, and argues that MISO's congestion charges cannot effectively be hedged by the use of FTRs or other MISO hedging instrument. However, these contentions, even if true, do not demonstrate that MISO's congestion charges are unjust, unreasonable, unduly discriminatory or preferential.<sup>122</sup>

91. Further, we agree with Entergy that it is not unduly discriminatory for AMP to be assessed congestion costs that it would not be assessed if its generation were physically located within PJM.<sup>123</sup> AMP's Prairie State resource is not similarly situated to generation physically located in PJM because it is physically located in MISO and, thus, AMP imposes costs on the MISO Transmission System when it injects energy onto the MISO Transmission System.

92. We also reject AMP's claim that the administrative charges MISO assesses on AMP's share of Prairie State are unjust and unreasonable because they overlap with administrative fees PJM charges for the same MWh of energy produced. As MISO explains, pseudo-tied resources impose administrative costs on both MISO and PJM.<sup>124</sup> Thus, we find that MISO's assessment of administrative charges under Schedules 10, 17, and 24 has not been shown to be unjust, unreasonable, unduly discriminatory or preferential.

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<sup>121</sup> We agree with MISO that AMP's claimed exemption is particularly untenable given the fact that MISO's Schedule 7 through-and-out rate to PJM is zero. *See* MISO Answer at 23.

<sup>122</sup> Further, AMP could hedge the costs to some extent with the purchase of FTRs. In addition, we note that pseudo-tied resources may also use Virtual Transactions as a hedging mechanism. *See, e.g.*, MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 43, 57. While such a hedge may not be a perfect hedge, we are not persuaded that the lack of a perfect hedge for AMP makes the underlying congestion charges unjust and unreasonable.

<sup>123</sup> *See* Entergy Protest at 12.

<sup>124</sup> *See* MISO Answer at 20.

(continued ...)

93. Finally, AMP argues that it has been subject to overlapping congestion charges assessed by the RTOs. As discussed above, the Commission has accepted the RTOs' Phase 1 and Phase 2 filings to address prospective concerns regarding such charges. Further, the MISO Phase 2 Order found that the RTOs have demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion overlap.<sup>125</sup> Thus, we find that the JOA and other sections of the MISO Tariff as currently on file are just and reasonable, and we will not require MISO to make further Tariff revisions.

94. However, with respect to AMP's argument that it has been subject to overlapping congestion charges assessed by the RTOs prior to the acceptance of the Phase 1 and Phase 2 Revisions, based on the record before us and the statements by the RTOs in making their Phase 1 and Phase 2 Revisions,<sup>126</sup> we find that the potential for overlapping or duplicative charges for congestion existed prior to the effective dates of the revisions made by the Phase 1 and Phase 2 filings. The RTOs have stated, and no party disputes, that there was a potential for such overlapping or duplicative congestion charges in certain circumstances, specifically, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process.<sup>127</sup> We therefore grant AMP's Complaint, in part, finding that to the extent AMP was assessed overlapping or

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<sup>125</sup> MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

<sup>126</sup> See, e.g., MISO Answer at 4-5, 7-8; Amended Complaint, Ex. M at 14-18; RTOs January 25, 2017 Joint Motion to Hold Proceedings in Abeyance at 2-3; RTOs March 27, 2017 Status Update at 1-3; Phase 1 Order, 164 FERC ¶ 61,069 at PP 3-5, 8; PJM Phase 2 Order, 164 FERC ¶ 61,073 at PP 7-8; MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 30-31 (citations omitted).

<sup>127</sup> As discussed above, prior to the acceptance of the Phase 1 and Phase 2 Revisions, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process, 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 the energy transactions between the pseudo-tied resource and the delivery point within the Attaining Balancing Authority. In this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface. See *supra* P 69; see also Phase 1 Order, 164 FERC ¶ 61,069 at P 4.

duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.<sup>128</sup>

95. We find that determining what refunds are appropriate to AMP to remedy the overlapping or duplicative congestion charges raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Because of the existence of common issues of law and fact regarding the extent to which the Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds, we grant the motions to consolidate and consolidate the instant Complaint proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

96. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>129</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.<sup>130</sup> The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

97. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a

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<sup>128</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 222 (2004) (requiring MISO to modify its proposal to "clarify that external transactions will not be double-charged for congestion and losses").

<sup>129</sup> 18 C.F.R. § 385.603 (2018).

<sup>130</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,<sup>131</sup> we will set the refund effective date at the earliest date possible, i.e., December 19, 2016.

98. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within approximately twelve months of the commencement of hearing procedures, or May 18, 2020. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by January 18, 2021.

The Commission orders:

(A) AMP's Complaint is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 are hereby consolidated for purposes of settlement, hearing, and decision.

(C) The RTOs' joint motion to hold the proceeding in abeyance is hereby dismissed, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the Complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order.

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<sup>131</sup> See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(F) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The refund effective date established pursuant to section 206(b) of the FPA is December 19, 2016, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.