

146 FERC ¶ 61,231  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Southwest Power Pool, Inc. Docket Nos. ER14-1174-000

Midwest Independent Transmission System Operator, Inc. EL11-34-002

Southwest Power Pool, Inc. EL14-21-000

v.

Midcontinent Independent System Operator, Inc.

Midcontinent Independent System Operator, Inc. EL14-30-000

v.

Southwest Power Pool, Inc.

ORDER ON REMAND AND COMPLAINTS, ACCEPTING AND SUSPENDING  
SERVICE AGREEMENT, CONSOLIDATING PROCEEDINGS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 28, 2014)

TABLE OF CONTENTS

	<u>Paragraph Numbers</u>
I. Background .....	<a href="#">2.</a>
A. MISO-SPP JOA Remand Proceeding (Docket No. EL11-34-002) .....	<a href="#">2.</a>
B. Complaint Proceedings .....	<a href="#">7.</a>
1. SPP Complaint (Docket No. EL14-21-000) .....	<a href="#">7.</a>
2. MISO Complaint (Docket No. EL14-30-000).....	<a href="#">11.</a>

- C. SPP Service Agreement Filing (Docket No. ER14-1174-000) .....[14.](#)
- II. Notice, Interventions, and Responsive Pleadings .....[19.](#)
- III. Discussion.....[23.](#)
  - A. Procedural Matters .....[23.](#)
  - B. Substantive Issues.....[25.](#)
    - 1. Contract Path Sharing Under Section 5.2 of the MISO-SPP JOA .....[26.](#)
      - a. Interpretation of Section 5.2 .....[26.](#)
      - b. RTO Responsibility for Providing Transmission Service and Capacity Sharing ....[40.](#)
      - c. Loop Flow Arguments.....[49.](#)
    - 2. Effects of Entergy Integration on the SPP Transmission System .....[65.](#)
    - 3. Justness and Reasonableness of the Service Agreement .....[73.](#)
    - 4. Procedural Arguments .....[80.](#)
  - C. Commission Determination .....[87.](#)

Appendix

1. This order addresses four proceedings involving the dispute between Midcontinent Independent System Operator, Inc. (MISO)<sup>1</sup> and Southwest Power Pool, Inc. (SPP) over terms of the Joint Operating Agreement between MISO and SPP (MISO-SPP JOA): (1) a recent opinion of the United States District Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacating and remanding orders of the Commission in Docket Nos. EL11-34-000 and EL11-34-001 that interpreted section 5.2 of the MISO-SPP JOA;<sup>2</sup> (2) a complaint filed by SPP against MISO under sections 206 and 306 of the Federal Power Act (FPA)<sup>3</sup> alleging various violations by MISO of the terms of the MISO-SPP JOA, or in the alternative, that the MISO-SPP JOA is no longer just and reasonable (SPP Complaint);<sup>4</sup> (3) a complaint filed by MISO against SPP under sections 206 and 306 of the FPA alleging SPP's violation of the terms of the MISO-SPP JOA (MISO Complaint);<sup>5</sup> and (4) SPP's filing under section 205 of the FPA<sup>6</sup> of an unexecuted non-conforming Service Agreement for Non-Firm Transmission Service between MISO and SPP (Service Agreement).<sup>7</sup> In this order, we accept for filing the Service Agreement, suspend it for a nominal period, subject to refund. In addition, we consolidate Docket No. ER14-1174-000 with the MISO-SPP JOA Remand proceeding in Docket No. EL11-34-002, the SPP Complaint in Docket No. EL14-21-000, and the MISO Complaint in Docket No. EL14-30-000, and establish hearing and settlement judge procedures.

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<sup>1</sup> Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

<sup>2</sup> *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013) (MISO-SPP JOA Remand).

<sup>3</sup> 16 U.S.C. §§ 824e, 825e (2012).

<sup>4</sup> Southwest Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000 (filed Jan. 28, 2014).

<sup>5</sup> Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate, Docket No. EL14-30-000 (filed Feb. 18, 2014).

<sup>6</sup> 16 U.S.C. § 824d (2012).

<sup>7</sup> Southwest Power Pool, Inc., Submission of Unexecuted Non-Firm Point-to-Point Transmission Service Agreement, Docket No. ER14-1174-000 (filed Jan. 28, 2014).

## I. Background

### A. MISO-SPP JOA Remand Proceeding (Docket No. EL11-34-002)

2. In 2005, Entergy Arkansas, Inc. (Entergy Arkansas), a wholly-owned operating utility subsidiary of Entergy Corporation (Entergy), filed a notice to terminate its participation in the Entergy System Agreement between Entergy Services, Inc. (Entergy Services) and the Entergy Operating Companies,<sup>8</sup> effective December 2013, and in February 2010, the Arkansas Public Service Commission (Arkansas Commission) initiated a proceeding to manage the process of choosing a successor arrangement to the Entergy System Agreement for Entergy Arkansas.<sup>9</sup> On May 12, 2011, Entergy Arkansas filed with the Arkansas Commission a report evaluating the available options and recommending participation in MISO as the preferred option.

3. During discussions among SPP, MISO, Entergy, and Entergy's retail regulators of the various options, an issue arose involving the MISO-SPP JOA.<sup>10</sup> Specifically, MISO was asked to confirm the availability of transmission path sharing under section 5.2 of the MISO-SPP JOA in the event that Entergy Arkansas chose, or was directed by the Arkansas Commission, to join MISO. MISO's counsel prepared a legal analysis of section 5.2 of the MISO-SPP JOA, which concluded, *ceteris paribus*, that "the transmission-sharing provisions of [s]ection 5.2 would be applicable to the Entergy interconnection after Entergy becomes a [MISO] Transmission Owner and should be interpreted to allow [MISO] to utilize the combined transmission capacity of the existing SPP interconnections with Entergy and [MISO]."<sup>11</sup>

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<sup>8</sup> The Entergy Operating Companies are Entergy Arkansas, Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

<sup>9</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (Declaratory Order), *order on reh'g*, 138 FERC ¶ 61,055 (2012) (Rehearing Order).

<sup>10</sup> MISO and SPP entered into the MISO-SPP JOA as part of SPP's application to become a Regional Transmission Organization (RTO). *See Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 63 (2004) (requiring SPP to have on file with the Commission a seams agreement with MISO and to participate in the Joint and Common Market with MISO and PJM Interconnection, L.L.C. (PJM)).

<sup>11</sup> *See* *Midwest Independent Transmission System Operator, Inc.*, Petition for Declaratory Order, Request for Shortened Notice Period, and Request for Expedited Treatment, Docket No. EL11-34-000, Exh. E at 2 (filed Apr. 8, 2011) (2011 MISO

(continued...)

4. SPP challenged MISO's interpretation of section 5.2 of the MISO-SPP JOA and concluded that, in the event Entergy Arkansas became a MISO Transmission Owner, MISO would not be able to rely on the contract path sharing provisions of section 5.2 to use capacity on the SPP transmission system in order to integrate Entergy Arkansas into MISO. Among other objections, SPP asserted that the expiration, in 2013, of an existing interconnection agreement among Entergy Arkansas, Ameren Corporation (Ameren) and Associated Electric Cooperative, Inc. (Associated Electric), would eliminate the only high voltage ties between MISO and Entergy,<sup>12</sup> and that MISO is limited to transmission capacity on flowgates based on its use of the regional systems as of April 1, 2004.

5. MISO filed the 2011 MISO Petition to resolve the dispute over the conflicting interpretations of the MISO-SPP JOA. In the Declaratory Order issued on July 1, 2011 in Docket No. EL11-34-000,<sup>13</sup> the Commission granted the 2011 MISO Petition, finding that section 5.2 of the MISO-SPP JOA allows for the sharing of available transmission capacity between MISO and Entergy Arkansas and SPP and Entergy Arkansas in the event that Entergy Arkansas becomes a transmission-owning member of MISO.<sup>14</sup> The Commission confirmed that the terms of MISO-SPP JOA, regarding the sharing of transmission capacity on a common path, as set forth in section 5.2 of the MISO-SPP

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Petition); Declaratory Order, 136 FERC ¶ 61,010 at P 8. In that filing, it was stated that the Entergy transmission system had 41 direct interconnections with the SPP transmission system capable of transferring up to 14,100 MW of power. It was also stated that the SPP transmission system is also interconnected with the transmission facilities of two MISO transmission owners with a total interconnection capacity of approximately 6,900 MW. 2011 MISO Petition at 8.

<sup>12</sup> Entergy Arkansas, Ameren, and Associated Electric are parties to an interconnection agreement under which they share the capacity of the 500/345 kV transformers on a high-voltage interconnection (Interchange Agreement). The direct contiguous tie capability between Entergy Arkansas and Ameren is approximately 1,000 MW of the 1,500 MW total capability of the interconnection.

<sup>13</sup> Declaratory Order, 136 FERC ¶ 61,010 at P 2.

<sup>14</sup> The Commission rejected various arguments raised by intervenors as beyond the scope of the proceeding, including the potential impacts of Entergy joining MISO and hypothetical scenarios that may or may not occur at any given time (i.e., the termination of the Interchange Agreement, or Ameren's withdrawal from MISO).

JOA, will remain in effect and applicable to Entergy Arkansas in the event Entergy Arkansas becomes a transmission-owning member of MISO.<sup>15</sup>

6. The requests for rehearing filed by various parties were denied, and several parties appealed the Commission's decisions in the D.C. Circuit. On December 3, 2013, the D.C. Circuit issued an opinion vacating and remanding the Commission's orders.<sup>16</sup> The D.C. Circuit found that the Commission failed to provide a reasoned explanation for its decision by interpreting one item of evidence without explaining its implicit rejection of alternative interpretations. Additionally, the D.C. Circuit found that the Commission did not explain its disregard of evidence that the applicable law required it to consider.<sup>17</sup>

## **B. Complaint Proceedings**

### **1. SPP Complaint (Docket No. EL14-21-000)**

7. On January 28, 2014, SPP filed the SPP Complaint seeking a Commission order finding that MISO is violating the MISO-SPP JOA and the SPP open access transmission tariff (SPP Tariff), and requiring MISO to compensate SPP for use of the SPP transmission system under the Tariff. Alternatively, SPP requests that the Commission find (1) that the MISO-SPP JOA is no longer just, reasonable, and is unduly discriminatory to the extent that it does not provide a mechanism by which SPP may assess charges for MISO's use of the SPP transmission system to integrate the Entergy Operating Companies and (2) that the compensation mechanism set forth in the SPP Complaint is the just, reasonable, and not unduly discriminatory rate for MISO's use of the SPP transmission system.<sup>18</sup>

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<sup>15</sup> Section 5.2 of the MISO-SPP JOA provides as follows:

**Sharing Contract Path Capacity.** If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties. This will not create new contract paths for either Party that did not previously exist. SPP will not be able to deal directly with companies with which it does not physically or contractually interconnect and [MISO] will not be able to deal directly with companies with which it does not physically or contractually interconnect.

<sup>16</sup> MISO-SPP JOA Remand, 736 F.3d 994.

<sup>17</sup> *Id.* at 995.

<sup>18</sup> SPP Complaint at 1-2.

8. SPP frames the issues on complaint as follows. First, it states that the parties disagree about the meaning of section 5.2 of the MISO-SPP JOA and whether it may be used by MISO to avoid transmission reservations and the rates, terms, and conditions of the SPP Tariff. Second, SPP states that the Declaratory Order, which initially confirmed MISO's interpretation of the MISO-SPP JOA, has been vacated by the D.C. Circuit with instructions that the Commission consider all relevant evidence. Third, SPP points out that on several occasions, including in the Declaratory Order, the Commission recognized that, irrespective of section 5.2, the MISO-SPP JOA must be renegotiated to account for the significant changes resulting from the integration of Entergy into MISO; however, parties to the renegotiations agree that they have reached an impasse. Fourth, SPP points out that the integration of Entergy into MISO has occurred, and that beginning December 19, 2013, MISO has made daily intentional use of the SPP system without reserving capacity or paying for service. Finally, SPP argues that an expedited hearing is required to address the issues raised in the SPP Complaint and implicated by the D.C. Circuit remand because the SPP transmission owners and their customers are suffering substantial harm due to MISO's continued use of the SPP transmission system.<sup>19</sup>

9. SPP asserts that MISO does not have authority from the Commission or from the D.C. Circuit to place intentional, unscheduled flows on the SPP transmission system without an Open Access Same-Time Information System reservation and corresponding transmission service agreement. SPP contends that it began invoicing MISO under the SPP Tariff for the unauthorized use of its system, beginning on December 19, 2013. SPP states that because MISO has refused to pay, SPP is submitting, contemporaneously with the SPP Complaint, the Service Agreement. SPP maintains that acceptance of the Service Agreement, subject to refund, will ensure MISO's use of the SPP system is treated comparably to service taken by all other customers.<sup>20</sup>

10. SPP states that it recognizes that the Commission cannot summarily decide the SPP Complaint without the benefit of a hearing. It points out that there are matters of material fact in dispute, including the intentions of the parties in agreeing to section 5.2 of the MISO-SPP JOA. SPP argues that the D.C. Circuit's remand compels consideration of evidence going to contractual intent, trade usage, and course of performance. As such, SPP requests that the Commission: (1) consolidate the SPP Complaint with the MISO-SPP JOA Remand proceeding and establish hearing and settlement judge procedures; (2) place the Service Agreement into effect, subject to refund and the outcome of the consolidated proceeding; and (3) find that MISO is liable for unreserved use penalties for the unauthorized use of the SPP transmission system, beginning December 19, 2013.

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<sup>19</sup> *Id.* at 3-4.

<sup>20</sup> *Id.* at 4-5.

Alternatively, if the Commission finds that MISO-SPP JOA section 5.2 authorizes MISO to use the SPP transmission system without compensation, SPP urges the Commission to find that the MISO-SPP JOA is unjust, unreasonable, and unduly discriminatory, and place into effect the rate for compensation and other terms of service under the Service Agreement. SPP further requests that the Commission consider the SPP Complaint under its Fast Track procedures such that an initial order setting the SPP Complaint for hearing is issued contemporaneously with an initial hearing order in Docket No. ER14-1174-000 on the Service Agreement.<sup>21</sup>

## **2. MISO Complaint (Docket No. EL14-30-000)**

11. On February 18, 2014, MISO filed the MISO Complaint requesting that the Commission prohibit SPP from attempting to collect unreserved use penalties from MISO because MISO is not a customer under the SPP Tariff and flows of energy between MISO's midwest region (MISO Midwest)<sup>22</sup> and the new MISO south region (MISO South)<sup>23</sup> do not constitute transmission service under the SPP Tariff. MISO further requests that the Commission find that SPP is acting in violation of the MISO-SPP JOA, which MISO argues, permits the sharing of contract path capacity without compensation under the SPP Tariff. MISO explains that while it presented each of the arguments set forth in the MISO Complaint in its answer to the SPP Complaint, the adverse effects of SPP's invoices on MISO's market compel MISO to take immediate action through the MISO Complaint.<sup>24</sup>

12. In addition to the arguments that MISO raises in its answer to the SPP Complaint, in the MISO Complaint, MISO describes the adverse effects of SPP's actions on MISO's markets. First, MISO argues that SPP's accusations that MISO is illegally using the SPP transmission system casts a financial cloud over the MISO energy market and may inhibit market participation by those who fear, even remotely, that their transactions could result in assessments, charges and/or penalties for market flows in excess of 1,000 MW (i.e., the available transfer capability under the Interchange Agreement). MISO further asserts that SPP is apparently coordinating with certain parties to the Operations

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<sup>21</sup> *Id.* at 5-7.

<sup>22</sup> MISO Midwest represents the historical MISO footprint.

<sup>23</sup> MISO South currently represents the integration of Entergy, along with Cleco Power, Lafayette Utilities Systems, East Texas Power Cooperatives and South Mississippi Electric Power Association, into MISO effective December 19, 2013.

<sup>24</sup> MISO Complaint at 9.

Reliability Coordination Agreement<sup>25</sup> to halt progress to implement an intra-day process to permit MISO flows to rise above the temporary 2,000 MW cap on flows under the Operations Reliability Coordination Agreement. MISO states that when MISO received a letter from SPP on December 9, 2013 demanding that MISO refrain from any flows of energy between the MISO Midwest and the MISO South in excess of MISO's 1,000 MW contractual tie between the two regions, it also received similar letters from Associated Electric, Tennessee Valley Authority and Louisville Gas & Electric/Kentucky Utilities Company (some of the parties to the Operations Reliability Coordination Agreement). MISO argues that SPP's proposal to invoice MISO millions of dollars for purported transmission service will have a chilling effect on the liquidity of cost efficient transactions in MISO's energy and operating reserve markets. MISO maintains that this activity, in breach of both the MISO-SPP JOA and the Operations Reliability Coordination Agreement, could also affect the reliability of the Eastern Interconnection.<sup>26</sup>

13. MISO also requests that the MISO Complaint be consolidated with the SPP Complaint and the Service Agreement proceeding. It reasons that all three proceedings arise from the same dispute and should be considered together, within the same timeframe.<sup>27</sup>

### **C. SPP Service Agreement Filing (Docket No. ER14-1174-000)**

14. On January 28, 2014, SPP filed the Service Agreement to assess charges for MISO's use of the SPP transmission system as a result of MISO's real-time energy

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<sup>25</sup> The Operations Reliability Coordination Agreement among MISO and certain neighboring utilities and/or transmission providers, including, among others, SPP, Tennessee Valley Authority, and Associated Electric Cooperative, and Louisville Gas & Electric/Kentucky Utilities is MISO Rate Schedule No. 35, and was accepted by the Commission on October 10, 2013. *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032 (2013). The Operations Reliability Coordination Agreement establishes an Operations Transition Period during which MISO will limit directional market flows between the MISO South region and MISO's historical footprint. The Operations Transition Period – which is subdivided into three phases – begins on December 19, 2013 and extends no later than April 1, 2015. The Operations Reliability Coordination Agreement also sets forth general principles for appropriate seams agreements to be in place at the end of the Operations Transition Period and establishes a good faith negotiation process to develop those agreements.

<sup>26</sup> MISO Complaint at 20-22.

<sup>27</sup> *Id.* at 23.

transfers between the MISO Midwest and MISO South regions. SPP explains that all entities that use the SPP transmission system to move energy must reserve transmission service and compensate SPP for service, and must do so under a transmission service agreement. SPP argues that it is treating MISO comparably to other entities that desire to use the SPP transmission system to transfer energy.<sup>28</sup>

15. SPP acknowledges that its dispute with MISO over the need for the Service Agreement and MISO's obligation to compensate SPP for use of the SPP transmission system will be resolved by the Commission in the MISO-SPP JOA Remand proceeding. Additionally, SPP recognizes that the Commission cannot summarily decide the issues in the MISO-SPP JOA Remand proceeding and in the SPP Complaint without a hearing because there are matters of material fact in dispute, such as the parties' intentions in agreeing to section 5.2 of the MISO-SPP JOA. SPP states that the D.C. Circuit's remand compels consideration of evidence going to contractual intent, evidence regarding trade usage, and course of performance evidence. Therefore, SPP requests that the Commission accept the Service Agreement, effective January 29, 2014, subject to refund and the outcome of the SPP Complaint and MISO-SPP JOA Remand proceedings. SPP explains that this will enable MISO to take authorized transmission service in accordance with the SPP Tariff pursuant to the Service Agreement, avoid paying penalties for taking unreserved service, and properly compensate SPP while the SPP Complaint and MISO-SPP JOA Remand proceedings move forward. SPP also contends that the Service Agreement will provide protection to all parties for the unilateral use MISO is making of the SPP system such that the Commission may place into effect its ultimate resolution of the parties' dispute as of the proposed effective date.<sup>29</sup>

16. SPP states that its proposed Service Agreement is consistent with Commission precedent. Specifically, SPP points to a dispute among MISO, PJM and New York Independent System Operator, Inc. (NYISO) in which MISO contended that NYISO and PJM were using certain transmission facilities on the MISO transmission system.<sup>30</sup> SPP states that, in that case, the Commission accepted, subject to refund, and set for hearing and settlement judge procedures, MISO's proposed tariff changes. SPP argues that the Commission should similarly accept the Service Agreement subject to refund and the

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<sup>28</sup> SPP Service Agreement Filing at 4.

<sup>29</sup> *Id.* at 4-5.

<sup>30</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,275 (2010).

outcome of the Service Agreement proceeding, the MISO-SPP JOA Remand and SPP Complaint proceedings.<sup>31</sup>

17. In addition, SPP explains the non-conforming aspects of the Service Agreement and the unique circumstances under which service will be rendered.<sup>32</sup> First, SPP states that, unlike other non-firm point-to-point transmission service customers, MISO will not schedule transfers of energy. Instead, SPP states that actual flows under the Service Agreement will arise instantaneously in real-time as MISO dispatches its market resources, transferring energy between MISO Midwest and MISO South. Therefore, SPP explains that in lieu of scheduling service, real-time energy transfers in each direction between MISO Midwest and MISO South will be monitored and calculated as described in the Service Agreement. Second, SPP states that the service provided under the Service Agreement will be unlike usual point-to-point through-and-out transmission service, because the point-to-point energy transfers from MISO's dispatch of generation to its load, although crossing the SPP transmission system, will both originate and terminate in the MISO balancing authority area. Thus, SPP explains, the standard scheduling protocols for point-to-point through-and-out transmission service do not apply because they govern transfers from one balancing authority to a different balancing authority area.<sup>33</sup> In support, SPP cites a D.C. Circuit decision that upheld the Commission's acceptance of non-conforming transmission service agreements for unscheduled energy flows that originated in one RTO, flowed through another RTO's balancing authority area, and back into the originating RTO's balancing authority area.<sup>34</sup> SPP argues that the service at issue in that case is similar to the service SPP will provide under the Service Agreement.

18. SPP requests waiver of the Commission's 60-day notice requirement to:  
(1) permit MISO to reserve transmission service over the SPP transmission system and provide SPP compensation for such service; (2) reduce MISO's unauthorized use of the SPP transmission system and penalties from such unauthorized use; and (3) allow SPP to know in advance the amount of MISO flows that will be on its system to ensure the

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<sup>31</sup> SPP Service Agreement Filing at 5.

<sup>32</sup> The non-conforming and non-standard provisions are described on pages 7 to 12 of the SPP Service Agreement Filing.

<sup>33</sup> SPP Service Agreement Filing at 5-6.

<sup>34</sup> *Id.* at 6 (citing *NRG Power Mktg., LLC v. FERC*, 718 F.3d 947, 955 (D.C. Cir. 2013)).

orderly use of the SPP transmission system.<sup>35</sup> SPP also requests an effective date for the Service Agreement of January 29, 2014.

## **II. Notice, Interventions, and Responsive Pleadings**

19. Notice of the SPP Service Agreement Filing was published in the *Federal Register*, 79 Fed. Reg. 6891 (2014) with interventions and protests due on or before February 18, 2014. Various parties filed motions to intervene, notices of intervention, comments, protests, answers, and other pleadings in response to the SPP Service Agreement Filing.

20. Notice of the SPP Complaint was published in the *Federal Register*, 79 Fed. Reg. 7176 (2014) with interventions and protests due on or before February 18, 2014. Various parties filed motions to intervene, notices of intervention, comments, protests, answers, and other pleadings in response to the SPP Complaint.

21. Notice of the MISO Complaint was published in the *Federal Register*, 79 Fed. Reg. 10,793 (2014) with interventions and protests due on or before March 10, 2014. Various parties filed motions to intervene, notices of intervention, comments, protests, answers, and other pleadings in response to the MISO Complaint.

22. The appendix to this order lists the motions and pleadings filed in each of these dockets. Motions and pleadings filed in Docket No. EL11-34-002 proceeding are also listed.<sup>36</sup> The comments, protests and answers filed are summarized below.

## **III. Discussion**

### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notices of intervention and timely, unopposed motions to intervene serve to make the entities who filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene given the entities' interests in these proceedings, the early stage of these proceedings, and the absence of undue prejudice or delay.

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<sup>35</sup> *Id.* at 12.

<sup>36</sup> The pleadings were filed in Docket Nos. EL11-34-000 and EL11-34-001.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

## **B. Substantive Issues**

25. While a few parties filed separate pleadings in multiple dockets,<sup>37</sup> most parties that intervened in multiple dockets filed one pleading to represent their positions on the complaints and the Service Agreement. Thus, the arguments summarized below were made in discussions of the SPP Complaint, the MISO Complaint, the SPP Service Agreement Filing, and/or the MISO-SPP JOA Remand proceeding. Among the issues commonly raised were: (1) contract path sharing under section 5.2 of the MISO-SPP JOA; (2) the effects of Entergy's integration into MISO on the SPP transmission system; (3) the justness and reasonableness of the Service Agreement; and (4) procedural arguments. Some parties advocate in support of the SPP Complaint and Service Agreement and in opposition to the MISO Complaint while others support the MISO Complaint and oppose the SPP Complaint and Service Agreement.

### **1. Contract Path Sharing Under Section 5.2 of the MISO-SPP JOA**

#### **a. Interpretation of Section 5.2**

26. MISO and several parties support MISO's interpretation of section 5.2 of the MISO-SPP JOA. MISO and MISO Transmission Owners assert that SPP is wrong to claim that the D.C. Circuit endorsed SPP's interpretation of section 5.2 of the MISO-SPP JOA. Rather, they argue that the court did not endorse one interpretation, it merely remanded the Commission's order for consideration of all the relevant evidence. According to MISO, MISO Transmission Owners, and Xcel, SPP's interpretation of section 5.2 ignores the history of section 5.2, which they argue originated from section 6.5 of the Joint Operating Agreement between MISO and PJM (MISO-PJM JOA), as approved by the Commission. In their view, SPP's interpretation ignores MISO's and PJM's use of section 6.5 of the MISO-PJM JOA not only for reliability but for provision of service on a regular basis, including MISO flowing power to Michigan utilities under

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<sup>37</sup> For example, Madison Gas & Electric filed separate motions to intervene in Docket Nos. ER14-1174-000, EL14-21-000, EL14-30-000 and EL14-30-000. American Electric Power Service Corporation and East Texas Cooperatives each filed separate motions to intervene in Docket Nos. ER14-1174-000, EL14-21-000, and EL14-30-000.

that provision.<sup>38</sup> MISO also argues that SPP's interpretation conflicts with MISO's and SPP's performance during the instance in 2009 when MISO used SPP's path to Entergy Arkansas to reach load served by a MISO member, Ameren. MISO also argues that SPP's interpretation conflicts with the Commission's prohibition on undue discrimination because if section 5.2 could only be used to provide service to third-party entities, that would mean that under section 5.2 the RTOs would not charge each other for service to a third party, but would charge for service to their customers inside each balancing authority.

27. Entergy Services argues that the Commission should reaffirm MISO's interpretation of section 5.2 of the MISO-SPP JOA because it is the only interpretation that effectuates the Commission's intent in ordering MISO and SPP to base their JOA on the seams agreement between MISO and PJM. Entergy Services contends that SPP has conceded that section 5.2 was not negotiated in the ordinary course between MISO and SPP, but rather was included to comply with the Commission's directive to use the MISO-PJM JOA as the model. Entergy Services claims that SPP's interpretation creates the incongruous result where coordinated seams management is reduced every time MISO and SPP add a new member because each new member becomes an "internal" load excluded by section 5.2. Entergy Services maintains that such a result would inhibit the growth of both RTOs by imposing artificial barriers on expansion and otherwise harms consumers by creating skewed economic dispatch decisions when there is no actual transmission congestion present.<sup>39</sup>

28. Entergy Services further argues that MISO's interpretation of section 5.2 is consistent with the MISO-SPP JOA read as a whole, because it gives meaning to all relevant provisions governing transmission usage rights, including flowgate allocations set forth in the Congestion Management Process.<sup>40</sup> Entergy Services states that the

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<sup>38</sup> See MISO Answer to Complaint, Docket No. EL14-21-000 at 21 (citing Mallinger Affidavit at P 19).

<sup>39</sup> Entergy Services Answer and Protest, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 4-5. Entergy notes that SPP has not claimed that MISO's internal dispatch is creating congestion on the SPP system.

<sup>40</sup> The Congestion Management Process is a standardized document resulting from discussions among multiple operating entities to resolve how different congestion management methodologies (i.e., market-based and traditional transmission loading relief measures) interact to ensure system reliability. The Congestion Management Process requires, among other things, the identification of impacted flowgates, allocates the capacity of those flowgates based on historic use to serve native load, and requires each entity to respect those allocations in the dispatch of their systems.

Congestion Management Process identifies Coordinated Flowgates, evaluates the impact of each system's operations on those flowgates, and determines which flows should be treated as firm. Entergy Services maintains that SPP's interpretation does not give meaning to all relevant provisions concerning transmission usage rights because its interpretation of section 5.2 trumps the flowgate allocations in the Congestion Management Process and MISO-SPP JOA section 6 which incorporates these flowgate allocation processes by requiring a party to redispatch generation, if necessary, to relieve congestion.<sup>41</sup>

29. Additionally, Entergy Services, MISO, and MISO Transmission Owners maintain that the testimony of SPP's witness, Mr. Monroe, submitted in support of the SPP Complaint is irrelevant because it is undocumented, is evidence only of internal SPP understandings, and is inconsistent with MISO's testimony as to MISO's understanding at the time section 5.2 of the MISO-SPP JOA was adopted. Entergy Services urges the Commission not to place excessive reliance on the course of performance evidence that the D.C. Circuit identified as a central problem on remand.

30. MISO and MISO Transmission Owners further argue that SPP's trade usage evidence is irrelevant because the North American Energy Standards Board, the North American Electric Reliability Corporation and MISO business practices definitions of "contract path" are used in different contexts from the RTO contract path sharing context. MISO and MISO Transmission Owners also state that the Commission has discussed combined "contract path" capacity in the JOA context as allowing MISO members to access the MISO-PJM combined capability under the MISO Tariff.<sup>42</sup>

31. Entergy Services asserts that MISO's interpretation provides meaning to all relevant terms within section 5.2 and that the Commission correctly found that section 5.2 allows contract path sharing with respect to all entities, not just entities outside either RTO. It maintains that SPP's alternative interpretation adds new terms to section 5.2 that do not exist, such as SPP's argument that "contract path" means exchanges between "balancing authorities," even though section 5.2 does not use that term. Additionally, Entergy Services contends that SPP's argument that a party cannot have a contract path "to itself" reads other words out of section 5.2 of the MISO-SPP JOA because section 5.2

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<sup>41</sup> Entergy Services Answer and Protest, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 12-13.

<sup>42</sup> See MISO Answer to Complaint, Docket No. EL14-21-000 at 38 (citing *Commonwealth Edison Company*, 106 FERC ¶ 61,250, at P 63 (2004) (*ComEd*)); MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 19 (citing *ComEd*, 106 FERC ¶ 61,250 at P 63).

differentiates between “Parties” and “entities,” so that “Parties” share contract paths to all “entities,” not themselves. Entergy Services states that RTOs have contract paths to their members in the sense that an RTO acquires the right to operate transmission facilities and transfer energy throughout the RTO only through contractual agreements with its transmission owners.<sup>43</sup>

32. MISO also argues that SPP’s interpretation of section 5.2 should be rejected, because it distorts the language of the provision, particularly the terms “Party,” “entity,” and “contract path.”<sup>44</sup> MISO states that another fundamental aspect of section 5.2 that is not addressed by SPP or its supporters is the relationship between contract paths and the allocation of flowgate capacity in the Congestion Management Process which requires the RTOs to redispatch their systems if they are above their historic flowgate allocation when congestion occurs. MISO further states that it is inconsequential whether MISO uses all, or none, of the combined contract path capacity of the two RTOs—it must still control its flows to preserve SPP’s flowgate allocations.<sup>45</sup>

33. NRG Companies contend that SPP’s filings represent a step backward in the Commission’s seams coordination policy, which, if implemented, would result in less efficient use of the transmission system and could unintentionally undermine the current success of the MISO-PJM seam, because section 5.2 of the MISO-SPP JOA and section 6.5 of the MISO-PJM JOA are identical. NRG Companies argue that the Commission should reject SPP’s filings and reaffirm its interpretation of section 5.2 of the MISO-SPP JOA.<sup>46</sup>

34. Several other parties believe that SPP’s interpretation of section 5.2 of the MISO-SPP JOA is the correct interpretation. Regarding arguments that section 5.2 of the MISO-SPP JOA was modeled on the contract path sharing provision of the MISO-PJM JOA, SPP argues that the circumstances MISO and PJM confronted when they entered

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<sup>43</sup> Entergy Services Answer, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 14-15.

<sup>44</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 15; MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 13-14.

<sup>45</sup> MISO Answer to Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 5.

<sup>46</sup> NRG Companies Protest in Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 7.

into the MISO-PJM JOA were much different from those MISO and SPP faced. SPP explains that MISO and PJM's respective systems were heavily intertwined, and therefore each party likely stood to gain substantial mutual benefits from the use of the other's facilities.<sup>47</sup> SPP states that the rate structure applicable to transactions across the MISO-PJM seam highlights another distinction. Specifically, because of the irregular MISO-PJM border, the Commission eliminated regional through-and-out transmission service rates for transactions between those two RTOs, so that there was and continues to be no pancaked transmission rate for service between MISO and PJM.<sup>48</sup> SPP alleges that this could explain why neither party objected to the expansive sharing of contract path capacity without charge. According to SPP, to the extent MISO accurately portrays MISO and PJM's intent, neither party gave up anything (i.e., compensation), but instead simply gained the ability to use capacity on the other's system at no cost and for mutual benefit.

35. In addition, SPP argues, elsewhere in the industry, when a utility seeks to flow energy that exceeds its own system's physical capability and will rely on the facilities of its neighbors, the utility makes proper arrangements, including compensation, for the use of the neighboring systems. For example, SPP explains, when Consolidated Edison moves energy from upstate New York to New York City that exceeds the physical capabilities of the NYISO system between those locations, Consolidated Edison makes arrangements with PJM to use and pay for the PJM system over which the excessive flows will take place.<sup>49</sup>

36. SPP Transmission Owners argue that MISO's interpretation is logically unworkable because it is based upon the assumption that the Commission would have approved an unlawful arrangement—i.e., a zero rate for transmission service, resulting in cross-subsidization of MISO customers by SPP customers. Further, SPP Transmission Owners argue that an interpretation of a contract that would provide MISO and its customers with a substantial windfall based upon a theory that the Commission approved

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<sup>47</sup> SPP March 5 Answer, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34 at 14.

<sup>48</sup> *Id.* at 14-15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105, *order on reh'g*, 105 FERC ¶ 61,212 (2003), *reh'g denied*, 131 FERC ¶ 61,174 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004), *reh'g denied*, 131 FERC ¶ 61,174 (2010)).

<sup>49</sup> *Id.* at 25 (citing *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010), *order on reh'g*, 135 FERC ¶ 61,018 (2011), *aff'd*, *NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013)).

an unlawful rate simply is not credible, and further, would contravene the SPP Membership Agreement.<sup>50</sup>

37. SPP Transmission Owners argue that while MISO can claim that the MISO-SPP JOA grants it the right to use the SPP transmission system, the question of compensation is not addressed in the MISO-SPP JOA. According to SPP Transmission Owners, compensation can only be addressed under the SPP Tariff. Furthermore, SPP Transmission Owners argue, SPP has no authority to allow significant use of the SPP transmission system, which they own but voluntarily turned over to SPP to operate when they joined the RTO, outside of the SPP Tariff and without compensation. Therefore, SPP Transmission Owners argue, SPP could not have entered into any agreement that waived SPP Transmission Owners' rights to compensation. SPP Transmission Owners also argue that the fixed costs of the transmission system are not recovered under the MISO-SPP JOA; rather, they are recovered under the SPP Tariff.<sup>51</sup> SPP Transmission Owners also argue that, if the Commission determines that section 5.2 as currently constituted bars such compensation, section 5.2 should be found to be unjust and unreasonable and reformed.

38. Basin Electric Power Cooperative (Basin Electric) states that in 2011, when Basin Electric, the Western Area Power Administration (Western), and Heartland Consumers Power District (collectively known as the IS Parties) cancelled their seams service agreement with MISO, the impetus for cancellation was a MISO filing that sought to modify its tariff to add section 82.5a. This section was essentially identical to section 5.2 of the MISO-SPP JOA and provided that if MISO and the seams service customer have contract paths to the same entity, each party may use the other's contract path capacity. Basin Electric adds that the IS Parties' primary concern was that MISO would rely on section 82.5 to make unauthorized and uncompensated use of the IS Parties' facilities far in excess of its contract path capacity.<sup>52</sup>

39. Western states that MISO has historically attempted to use the IS Parties' contract path capability for its own deliveries, without reservation and payment, based upon its interpretation of the contract path sharing provisions under the MISO seams agreement with the IS Parties. Western adds that it has not executed a replacement seams agreement

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<sup>50</sup> SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000 at 23.

<sup>51</sup> *Id.* at 34-37.

<sup>52</sup> Basin Electric Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 4-5.

with MISO to coordinate the operation across the seam because of MISO's interpretation of its contract path sharing provisions under its seams service. Western also states that should it successfully negotiate membership with SPP, the IS Parties' transmission facilities included under the SPP Tariff could once again be exposed to the unreserved and uncompensated use by MISO, given MISO's interpretation of the MISO-SPP JOA.<sup>53</sup>

**b. RTO Responsibility for Providing Transmission Service and Capacity Sharing**

40. MISO maintains that under Commission policy, RTOs are required to promote maximum and efficient use of the transmission facilities, membership in RTOs is voluntary,<sup>54</sup> and RTOs must reduce barriers to energy transactions that arise from the seams created by the RTO membership choices of their transmission owners. MISO explains that the Commission required PJM, MISO, and SPP to adopt contract path capacity sharing provisions in their JOAs, to reduce the impacts of such seams, in order to become RTOs,<sup>55</sup> and without the capacity sharing provisions, certain transmission owners' choices to join SPP might have been rejected. MISO points to Western's recent decision to join SPP, noting that Western joining SPP will have the same effect as Entergy joining MISO, in that it will separate the system of transmission owner Montana-Dakota Utilities and will require capacity sharing with no compensation. Therefore, MISO argues that RTOs' sharing of unused capacity to accommodate a transmission owner's RTO preference, without charge and on a reciprocal basis, is a just and reasonable trade-off for voluntary membership. MISO asserts that capacity sharing without compensation benefits all RTOs, promotes efficiency, and reduces ultimate energy costs to consumers.<sup>56</sup>

41. MISO also claims that contract path capacity sharing encourages closer regional planning, as set out in Order No. 890 and Order No. 1000.<sup>57</sup> According to MISO, under

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<sup>53</sup> See Western Comments, Docket No. EL14-21-000 at 6-7.

<sup>54</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 42-43 (citing, e.g., *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058 (2010)).

<sup>55</sup> *Id.* at 43 (citing *Alliance Cos.*, 100 FERC ¶ 61,137, at P 53 (2002), *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at PP 62-63 (2004)).

<sup>56</sup> *Id.* at 44-45.

<sup>57</sup> *Id.* at 45-46 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-

those orders, transmission improvements are made when they are more economical than sharing capacity on an as-available basis. MISO argues that without capacity sharing, expansion plans will be inefficient because they will ignore existing unused capacity.

42. In addition, MISO asserts that under capacity sharing, SPP does not have to reallocate capacity among its customers or upgrade its transmission facilities to accommodate MISO market flows. Therefore, according to MISO, capacity sharing is not causing costs or undue discrimination. Moreover, MISO argues, the capacity sharing is reciprocal. Finally, MISO argues that the fact that MISO flows more energy over SPP than SPP flows over MISO at this time does not cause the MISO-SPP JOA to be unduly discriminatory or to violate cost causation policy.<sup>58</sup>

43. SPP Transmission Owners state that the energy flows that MISO is currently making beyond the physical capacity of its existing tie could not occur but for the existence of its neighbors' interconnected transmission systems. SPP Transmission Owners argue that when transmission facilities are required to provide transmission service to a particular customer, that customer must share in the cost of those facilities.<sup>59</sup> SPP Transmission Owners also argue that the Commission cannot distinguish between MISO, an RTO, and other market participants, because MISO operates on behalf of its members who are the beneficiaries of MISO's actions. SPP Transmission Owners argue that if MISO's claim is given effect it will unjustly enrich loads in each MISO region that are served by generation in the other MISO region, because it will allow them to obtain the benefit of using neighboring transmission systems at no cost. Thus, SPP Transmission Owners argue, SPP customers would unfairly subsidize the service received by MISO customers, a result that is unjust and unreasonable.

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B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012)).

<sup>58</sup> *See id.* at 46 (citing *Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th Cir. 2013)).

<sup>59</sup> SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000 at 15 (citing *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1188–89 (D.C. Cir. 1995); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300-01 (D.C. Cir. 1992) (citation omitted)).

44. In addition, SPP Transmission Owners argue that, because MISO is not the agent of the SPP Transmission Owners, it must use the SPP Tariff to obtain the service that it, in turn, provides to its customers. SPP Transmission Owners assert that the way this relationship should be structured is in some respects like a lease/sublease arrangement. That is, like a lessor, MISO would obtain transmission capacity from SPP not for MISO's own use, but rather to provide transmission capacity like a sublease, to its own customers.<sup>60</sup> SPP Transmission Owners state that there is precedent for such an arrangement in MISO's own treatment of grandfathered agreements.<sup>61</sup> SPP Transmission Owners also argue that the Service Agreement follows cost causation principles and avoids cross-subsidization. SPP Transmission Owners add that MISO's position that it and its customers should not bear a portion of the cost responsibility for the transmission facilities they are using violates basic cost causation and beneficiary-pays principles. SPP Transmission Owners also argue that the Service Agreement is not unduly discriminatory because it requires all customers to pay their fair share of the transmission system.

45. SPP Transmission Owners state that the reforms brought about in Order No. 888 will no longer work if MISO is granted free access to the SPP transmission system.<sup>62</sup> SPP Transmission Owners argue that while open access was meant to reduce undue discrimination and increase the efficient use of the electrical grid, "open access" has never meant "free access." SPP Transmission Owners note that the Commission has stated that "[t]he contribution to fixed costs by the third-party customer helps to reduce

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<sup>60</sup> *See id.* at 17 (citing Hunger Affidavit at P 17).

<sup>61</sup> *Id.* (citing *Midwest Indep. Transmission Sys. Operator Inc.*, 98 FERC ¶ 61,141 at 61,413–14 (2002), *petition for rev. denied sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004)).

<sup>62</sup> *Id.* at 26-28 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

SPP Transmission Owners further state that requiring MISO load to pay its fair share of charges is just and reasonable and equitable because even where “there are no constraints on transmission, third-party transmission customers pay a *pro rata* share of the fixed costs of the system. That payment in turn reduces the costs of serving native-load customers.”<sup>63</sup>

46. SPP Transmission Owners also argue that allowing MISO to free-ride on the SPP transmission system will be detrimental to the objectives of Order No. 1000, stating that it will skew transmission investment incentives because MISO members would have a reduced incentive to incur costs to build transmission facilities, knowing that they could utilize SPP facilities for free; that is, because actual costs would not be reflected in the rates of MISO customers, MISO transmission investment decisions would be inefficient.<sup>64</sup>

47. The Missouri Commission states that the current dispute between MISO and SPP adds uncertainty to the integrated resource planning within the state of Missouri.<sup>65</sup> The Missouri Commission states that under the integrated resource planning process, Missouri utilities plan for their future needs, accessing the available resources in the most economical way. The Missouri Commission explains that the utilities look within their respective RTO, but also outside of their RTO for the most cost-effective resources. The Missouri Commission further explains that Ameren Missouri may look to resources within SPP and, conversely, Missouri utilities within SPP will look to MISO for the most economic resources.<sup>66</sup> The Missouri Commission asserts that this planning process requires a stable and predictable JOA; otherwise, costs cannot be accurately predicted.

48. The Missouri Commission also argues that the lack of a properly functioning seam and effective JOA naturally leads each RTO to focus on internal-only solutions to manage seams issues. The Missouri Commission adds that this internal-only planning undermines the goals of Order No. 1000 and leads to less efficient projects being planned and built, and necessarily excludes interregional projects that could be cost shared.<sup>67</sup>

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<sup>63</sup> *Id.* at 28-29 (citing *Penelec*, 60 FERC at 61,127 n. 40).

<sup>64</sup> *Id.* at 29, Hunger Affidavit at PP 15-16.

<sup>65</sup> Missouri Commission Comments, Docket No. EL14-21-000 at 4.

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

<sup>67</sup> *Id.* at 5.

**c. Loop Flow Arguments**

49. MISO and Xcel assert that SPP's distinction between "inadvertent" or "ordinary" loop flows and "intentional" flows is meaningless because all flows are intentional, and MISO's are ordinary and allowed under section 5.2. MISO and Xcel maintain that if congestion occurs on an SPP flowgate, then MISO will reduce its flows' impact in accordance with the Congestion Management Process, and if no congestion occurs, then the flows are acceptable as part of being interconnected under the MISO-SPP JOA.<sup>68</sup> MISO and Xcel argue that MISO does not need to be a customer under the SPP Tariff or reserve service for MISO's internal balancing authority flows.

50. MISO argues that in Order No. 1000, the Commission reaffirmed a long-standing principle that concerns about flows on a public utility's transmission system caused by another public utility are resolved under the Commission's loop flow precedent. MISO states that this precedent cautions against the hasty submittal of unilateral filings and prefers resolution of parallel path flow issues on a consensual, regional basis.<sup>69</sup>

51. Additionally, MISO alleges that under Commission precedent, compensation for loop flows must be authorized by the Commission and will only be authorized on a showing that the loop flow jeopardizes reliability on the system or diminishes the system's ability to use its system in the most economical manner.<sup>70</sup> MISO maintains that its market flows over SPP do not jeopardize reliability or diminish SPP's ability to use its system in the most economical manner, so no compensation is appropriate. MISO notes that in *East Kentucky Power Cooperative, Inc.*, the Commission found loop flow compensation to Tennessee Valley Authority for East Kentucky Power Cooperative, Inc.'s (East Kentucky) flows to Warren Rural Electric Cooperative (Warren) to be inappropriate because, while the flows were foreseeable, they were not deliberate, and were an unavoidable consequence of Tennessee Valley Authority providing coordination services to East Kentucky and Warren.<sup>71</sup> MISO also notes that in Order No. 2000, the

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<sup>68</sup> See Xcel Comments, Docket No. EL14-21-000 at 8.

<sup>69</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 48 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 506).

<sup>70</sup> *Id.* at 48-49 (citing *N. Ind. Pub. Serv. Co. v. Midwest Indep. Trans. Sys. Operator, Inc.*, 116 FERC ¶ 61,006 (2006); *Am. Elec. Power Serv. Corp.*, 93 FERC ¶ 61,151 (2000); and *Am. Elec. Power Serv. Corp.*, 49 FERC ¶ 61,377 (1989)).

<sup>71</sup> *Id.* at 50-51 (citing *E. Ky. Power Coop., Inc.*, 114 FERC ¶ 61,035 (2006), *reh'g denied*, 115 FERC ¶ 61,347 (2006)).

definition of loop flow does not use the term “inadvertent” but uses “unscheduled,” and the Commission’s original definition of loop flow was “inadvertent or unauthorized,” and MISO’s flows are authorized under section 5.2.<sup>72</sup>

52. Entergy Services contends that the SPP Complaint conflicts with Commission policy on compensation for loop flow. Entergy Services argues that the Commission has previously rejected the claim that there is a scienter requirement for loop flows—i.e., that a flow must be unintentional—and it should do so again here.<sup>73</sup> Entergy Services states that it is not suggesting that the MISO-SPP JOA cannot be improved in ways that benefit customers of both RTOs. Thus, Entergy Services would support the Commission and its staff taking an active role in overseeing the negotiations between MISO and SPP, similar to their role in overseeing ongoing negotiations between MISO and PJM regarding their seams issues.

53. The MISO Independent Market Monitor (MISO IMM) states that any power that flows on the SPP system as a result of commitment and dispatch of the MISO system is the natural consequence of operating adjacent systems in an interconnected network. The MISO IMM further states that these flows created by the dispatch of neighboring systems are referred to as loop flows or parallel flows and have long been recognized in the electric utility industry as an unavoidable consequence of interconnected utility operations. The MISO IMM explains that the Commission has required JOAs among the RTOs and adjacent systems to address these seams issues and well-structured JOAs are the most reasonable means to coordinate flows over the interconnected electricity network created by the dispatch of adjacent RTOs.<sup>74</sup>

54. The MISO IMM states that, beyond adherence to the filed JOAs, the Commission has rightly declined to impose further requirements or restrictions on RTOs in the commitment and dispatch of their respective systems. Such additional requirements to purchase transmission for loop flows or to restrict inter-area dispatch levels, according to the MISO IMM, would likely produce significant dispatch inefficiencies that would ultimately raise costs to RTOs’ consumers. Therefore, the MISO IMM adds, provided

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<sup>72</sup> *Id.* at 51 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,128 n. 505 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000)).

<sup>73</sup> Entergy Services Answer and Protest, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 23-24 (citing *E. Ky. Power Coop., Inc.*, 114 FERC ¶ 61,035 at P 31; *Ind. Mich. Power Co.*, 64 FERC ¶ 61,184, at 62,544-45 (1993)).

<sup>74</sup> MISO IMM Comments, Docket Nos. EL14-30-000 and EL14-21-000 at 2-3.

MISO is adhering to the terms of the MISO-SPP JOA, there is no basis for further requirements to address loop flows on the SPP system through transmission charges or by limits on MISO internal dispatch. The MISO IMM argues that SPP's proposal would result in inefficient dispatch and under-utilization of available transmission. The MISO IMM estimates that by imposing dispatch limits between the two MISO regions, MISO would have incurred an increase in production costs of at least \$18 million for the six weeks beginning in mid-December if it had complied with SPP's proposal.<sup>75</sup>

55. The MISO IMM further argues that SPP's proposal to limit the MISO dispatch will lead to significant cost increases on the MISO transmission system without countervailing cost savings being achieved on the SPP system. The MISO IMM recommends that the Commission not accept SPP's proposal to charge MISO for loop flows. In the alternative, the MISO IMM suggests that the Commission could address SPP's concerns by ordering the accelerated implementation of market-to-market coordination between MISO and SPP.<sup>76</sup>

56. The MISO IMM argues that imposing an intra-RTO limit on RTO dispatch, an alternative advanced by SPP, would likely generate even more inefficiencies than the transmission loading relief process used by an RTO to address constraints caused by the dispatch of a market RTO (MISO in this case) in the non-market area. The MISO IMM states that SPP's proposal is much more restrictive than the interim limits established by the Operations Reliability Coordination Agreement, which already have generated substantial costs in the MISO market with almost all of these costs being incurred at times when the MISO dispatch was not contributing to congestion in neighboring areas. The MISO IMM further explains that these inefficiencies arise because MISO would be required to replace low-cost generation in one part of MISO with higher-cost generation in the other part, in order to reduce the internal transfers.<sup>77</sup>

57. SPP disputes the MISO IMM's claims that SPP seeks to limit the transfers between MISO Midwest and MISO South. Instead, SPP contends, MISO seeks to achieve approximately \$144 million of yearly benefits through its use of SPP's and others' transmission systems. This will leave SPP and other customers, who obtain none

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<sup>75</sup> *Id.* at 3.

<sup>76</sup> *See id.* at 4.

<sup>77</sup> *Id.* at 6, 9.

of these benefits, bear the full transmission investment and operating costs incurred to produce the benefits.<sup>78</sup>

58. SPP Transmission Owners aver that MISO's use of its neighbors' transmission systems to transport energy that exceeds the physical capability of the 1,000 MW tie between MISO South and MISO Midwest is transmission service, not loop flow. SPP Transmission Owners state that MISO's dispatch does not take into account the limit of the sole 1,000 MW tie-line resulting in flows between MISO South and MISO Midwest in excess of that limit.<sup>79</sup> Similarly, Basin Electric argues that exceeding contract path capacity on a daily basis and to such a large extent cannot reasonably be argued to constitute "loop flow" because a loop flow is "the flow of electric current through electric power systems over paths other than the contract path."<sup>80</sup>

59. Further, SPP Transmission Owners point out that MISO declined SPP's request that MISO limit its flows to that which MISO would be "independently capable of delivering."<sup>81</sup> SPP Transmission Owners argue that MISO's own data shows that MISO has far exceeded its 1,000 MW capacity in both directions every day since MISO took over functional control of the MISO South transmission system.<sup>82</sup> To the same effect, Basin Electric notes that MISO acknowledged that in integrating Entergy it planned to transfer at least 4,000 MW between MISO Midwest and MISO South, using SPP capacity for the bulk of these transfers, in order to bring the benefits of MISO's market to Entergy.<sup>83</sup> Basin Electric argues that MISO's acknowledgment undercuts any argument that MISO's use of SPP capacity is unintended or is simply loop flow.

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<sup>78</sup> See SPP Answer, Docket No. EL14-30-000 at 6.

<sup>79</sup> SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000 at 4-5.

<sup>80</sup> Basin Electric Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 7-8 (citing McGraw Hill Dictionary of Scientific & Technical Terms, 6E (2003)).

<sup>81</sup> SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000 at 8 (citing SPP Complaint, Exhibit No. 2, December 12, 2013 Letter from Richard Doying to Carl Monroe at 1).

<sup>82</sup> *Id.* at 9 (citing SPP Complaint, Affidavit of Carl A. Monroe at P 14).

<sup>83</sup> Basin Electric Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 9 (citing In The Matter Of A Show Cause Order Directed To Entergy

60. SPP Transmission Owners aver that MISO apparently believes that it is only limited by the Operations Reliability Coordination Agreement in dispatching its generation in a fashion that could not occur but for its use of other transmission systems. SPP Transmission Owners state that MISO intends to increase its flows to as much as seven times the limit on its tie-line once the Operations Reliability Coordination Agreement expires.<sup>84</sup> SPP Transmission Owners conclude that this is not loop flow, a by-product of interconnection, but is transmission service.

61. Further, SPP Transmission Owners argue that MISO's argument that it will only use capacity that no one else is using fails because, if that were an option, no one would pay for transmission service, preferring instead to obtain it for free. SPP Transmission Owners state that this is not a model that would encourage critical transmission infrastructure investment.<sup>85</sup>

62. Basin Electric maintains that if the Commission finds that MISO may use its contract path with SPP to serve MISO South, the Commission should also find that MISO must compensate SPP for that use, either by scheduling and paying for transmission service under the terms of the SPP Tariff or, if MISO does not schedule it, by paying the transmission charge and unreserved use penalty.<sup>86</sup>

63. SPP Transmission Owners also express concern that important reliability considerations have gone unaddressed as a result of MISO's approach to transmission service. SPP Transmission Owners state that SPP's Tariff requires evaluation of new

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Arkansas, Inc. Regarding Its Continued Membership In The Current Entergy System Agreement, Or Any Successor Agreement Thereto, And Regarding The Future Operation And Control Of Its Transmission Assets, Docket No. 10-011-U, Transcript at 247 (Arkansas Public Service Commission, Sept. 14, 2010) (Arkansas Public Service Commission Transcript); Entergy-Regional State Committee Meeting, Sept. 9, 2010, Transcript at 156, 187-89.) Basin Electric notes that excerpts from these transcripts were attached to the Motion to Intervene and Protest of Southwest Power Pool, Inc., Docket No. EL11-34-002 (May 9, 2011), and are included as Attachment C to the SPP Complaint.

<sup>84</sup> See SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000, at 14.

<sup>85</sup> *Id.* at 24, Hunger Affidavit at PP 15-16.

<sup>86</sup> Basin Electric Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 12.

requests for point-to-point transmission service and that such evaluations are part of the process for assessing reliability impacts and providing data inputs to the planning analysis that has long been the norm for Commission-jurisdictional transmission providers. SPP Transmission Owners state that MISO's assurances that everything will be managed through the MISO-SPP JOA are not a substitute for such data, analysis, and commitment because the MISO-SPP JOA did not contemplate the sort of large-scale unreserved use that MISO wants to make of the SPP system. Rather, according to SPP Transmission Owners, the MISO-SPP JOA is primarily a congestion management tool that was not intended to be used as MISO would use it. In that regard, SPP Transmission Owners argue that the MISO-SPP JOA has a complex system of managing congestion and priorities that in turn draws upon the priority of service accorded to transmission service pursuant to the tariff under which the service is taken. SPP Transmission Owners are concerned that if all of the flows between MISO South and MISO Midwest are deemed to be service provided under the MISO Tariff, the priority accorded to such flows under the MISO-SPP JOA congestion management process will be based upon MISO's labeling of such flows as network service. If that is allowed, SPP Transmission Owners aver, these flows could have the same or higher priority for JOA congestion management purposes as a customer actually paying to use the SPP system.<sup>87</sup>

64. Western Farmers argues that MISO's unfettered use of the SPP transmission system will adversely impact SPP Transmission Owners and customers.<sup>88</sup> For example, Western Farmers argues, generation may be dispatched in an uneconomic fashion because MISO flows that result from serving the MISO South region are not subject to transmission loading relief and SPP congestion management procedures.<sup>89</sup> Western Farmers explains that MISO's uncompensated use may also force SPP transmission customers to bear an unfair share of increases in SPP Tariff rates because MISO is not bearing its fair share and may impede SPP transmission customers from making economy energy purchases.

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<sup>87</sup> SPP Transmission Owners Comments and Supporting Evidence, Docket Nos. ER14-1174-000 and EL14-21-000 at 30-32.

<sup>88</sup> Western Farmers Comments, Docket Nos. ER14-1174-000 and EL14-21-000 at 5. Western Farmers supports SPP's filings as a means to ensure that MISO: (1) reserves transmission service in accordance with the SPP Tariff on a comparable basis with other entities that desire to use the SPP transmission system; and (2) adequately compensates SPP for its use of the SPP transmission system to serve the MISO South region. *Id.* at 4.

<sup>89</sup> *Id.* at 5.

## 2. Effects of Entergy Integration on the SPP Transmission System

65. Entergy Services disagrees with SPP that the integration of Entergy into MISO is a change of circumstance that merits a modification to capacity sharing between MISO and SPP. Entergy Services also argues that both MISO and SPP have previously integrated large new systems including MidAmerican and the Nebraska Public Power District that were not “anticipated” at the time the MISO-SPP JOA was approved, but were accomplished without change to the MISO-SPP JOA. Entergy Services contends that the fact the Entergy Operating Companies’ systems taken as a whole are “larger” and allegedly “distant” is also not a distinguishing factor.<sup>90</sup> Entergy Services and the Louisiana Commission argue that SPP has not alleged that MISO’s dispatch is imposing congestion or reliability problems on the SPP system.<sup>91</sup> The Louisiana Commission avers that even with daily flows between MISO South and MISO Midwest ranging from 1,600 to 2,800 MW for the period from December 19, 2013 to January 26, 2014, SPP has not alleged any congestion, reliability, or economic harm to SPP or any of its transmission owners as a result of these levels of flows.<sup>92</sup>

66. The Missouri Commission states that the integration of Entergy into MISO is a substantial and material change to the conditions under which both RTOs operate, and as such is one reason among many that demonstrates the need to renegotiate the MISO-SPP JOA. According to the Missouri Commission, without renegotiation both RTOs will likely exploit the provisions of the existing MISO-SPP JOA to ensure that their members are not disadvantaged. The Missouri Commission states that it is in complete agreement with the Commission that the MISO-SPP JOA should be renegotiated and that it has provided a forum for such negotiation.<sup>93</sup>

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<sup>90</sup> Entergy Services Answer and Protest, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 22-23.

<sup>91</sup> *Id.* at 5-6; Louisiana Commission Protest, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 4.

<sup>92</sup> *See id.*

<sup>93</sup> Missouri Commission Comments, Docket No. EL14-21-000 at 2-3. The Missouri Commission initiated a proceeding in EW-2014-0156, *In the Matter of an Investigation into the Possible Methods of Mitigating Identified Harmful Effects of Entergy joining MISO on non-MISO Missouri Utilities and Their Ratepayers and Maximizing the Benefits for Missouri Utilities and Ratepayers along RTO and Cooperative Seams.*

67. Joint Parties<sup>94</sup> state that, contrary to MISO's assertions, the Joint Parties have every intention of developing and implementing the goals and objectives of the Operations Reliability Coordination Agreement. Joint Parties argue that MISO's accusation that they have "coordinated" with SPP and, in effect, breached the Operations Reliability Coordination Agreement based on letters some of the Joint Parties sent to MISO shortly after the D.C. Circuit remanded the Declaratory Order, is unfounded. Joint Parties explain that the goal of the Operations Reliability Coordination Agreement is to protect reliability in light of the transfers in excess of 1,000 MW permitted by the Declaratory Order, but it was not intended to create an independent right to use the transmission systems of the Joint Parties. Joint Parties state that, in the absence of such a right (because of the D.C. Circuit's vacatur and remand), the letters questioned MISO's right to engage in transactions that exceed the 1,000 MW contract path under the Interchange Agreement and MISO's obligation to compensate LG&E/KU, Tennessee Valley Authority and Associated Electric (and other impacted parties) for the use of their transmission systems in excess of 1,000 MW. The Joint Parties argue that rather than breaching the Operations Reliability Coordination Agreement, LG&E/KU, Tennessee Valley Authority and Associated Electric were simply reserving their rights to receive compensation for providing any transmission service to MISO that MISO is not entitled to receive for free.<sup>95</sup>

68. Joint Parties add that, like the Operations Reliability Coordination Agreement, the MISO-SPP JOA does not address issues of compensation to the Joint Parties for impacts on their systems resulting from the flows dispatched by MISO across the 1,000 MW contract path. Joint Parties assert that the Commission should establish hearing and settlement judge procedures that will facilitate the determination of a long-term solution that is fair and reasonable to all affected parties.<sup>96</sup>

69. Basin Electric states that, in its experience, MISO has been unrelenting in its desire to utilize the transmission systems of its neighbors without regard to whether it properly reserves or pays for the transmission capacity it uses. Basin Electric argues that, now that Entergy has joined MISO, MISO has begun exploiting the contract path sharing

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<sup>94</sup> In this proceeding, Joint Parties are: Associated Electric, Louisville Gas and Electric Company, Kentucky Utilities Company, PowerSouth Energy Cooperative, Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (by and through their agent Southern Company Services, Inc.), and the Tennessee Valley Authority.

<sup>95</sup> Joint Parties Comments, Docket No. EL14-30-000 at 10.

<sup>96</sup> *Id.* at 12.

provision for transfers well in excess of actual contract path entitlements. Basin Electric adds that it is clear that MISO's intent all along has been to expropriate the systems of its neighbors in order to serve its own loads without regard for capacity limits, without reserving the capacity, and without any kind of compensation.<sup>97</sup>

70. Northern Indiana Public Service Company (NIPSCO) states that it does not take a position at this time regarding the merits of the SPP Complaint but filed comments separately from MISO Transmission Owners to highlight several issues. First, NIPSCO notes that the MISO's new configuration creates the same type of seams issues as the PJM configuration following the integration of Commonwealth Edison and American Electric Power into PJM. NIPSCO explains that, in both cases, a large remote load center/resource zone is attempting to function as an integrated whole with a large region to which it is otherwise loosely connected. NIPSCO states that in the MISO-PJM JOA, provisions are made for market-based redispatch to alleviate over-allocated interregional transmission paths with a compensation mechanism under which the affected RTO can be compensated for its system when the other RTO exceeds its Firm Flow Entitlement.<sup>98</sup> NIPSCO explains that, without conceding to the merits of the SPP Complaint, or the validity of SPP's factual allegations, creating the same type of system under the MISO-SPP JOA would appear to be a reasonable resolution of this case.

71. Second, NIPSCO asserts that the long-term solution to these long-standing seams problems, where two independently solved power markets compete over "free" transmission capacity, would be transmission upgrades.<sup>99</sup> NIPSCO urges the Commission, as part of the resolution of this matter, to consider obstacles to robust interregional planning solutions between MISO and SPP. Finally, NIPSCO states that the Commission should act promptly and forcefully in this case. Otherwise, according to NIPSCO, stakeholders within the two large regions will be left in an uncertain position, both financially and operationally.<sup>100</sup>

72. Arkansas Electric Cooperative Corporation (Arkansas Electric) states that the evidence adduced in the various pending proceedings demonstrates that, unless the

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<sup>97</sup> Basin Electric Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 6.

<sup>98</sup> NIPSCO Comments, Docket No. EL14-21-000 at 3.

<sup>99</sup> *Id.* at 4 (citing *Northern Indiana Public Service Co. v. Midcontinent Indep. Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,256 (2013)).

<sup>100</sup> *Id.*

Commission imposes appropriate conditions, the integration of the Entergy Operating Companies will leave MISO and SPP with a scope and configuration that neither internalizes loop flows nor eliminates pancaked transmission rates within the broadest possible trading area. Arkansas Electric adds that the Commission should pay particular heed to the needs of load-serving entities, like Arkansas Electric, that have no choice but to do business across the MISO-SPP seam.<sup>101</sup>

### **3. Justness and Reasonableness of the Service Agreement**

73. MISO claims that SPP's charging for MISO's flows as "unreserved use" would be discriminatory because it would apply only to MISO's flows but not to other entities' loop flows, particularly flows causing congestion that would be resolved not through redispatch under the Congestion Management Process (as MISO's flows would be) but through transmission loading relief events.<sup>102</sup> MISO further argues that the Service Agreement is unjust and unreasonable, because SPP has failed to demonstrate not only that the non-conforming Service Agreement is consistent with or superior to the *pro forma* agreement, but that it is also necessary.

74. MISO and MISO Transmission Owners assert that under Order No. 2000, RTOs provide transmission service and do not take transmission service.<sup>103</sup> MISO notes that both Order No. 2000 and Order No. 1000 require RTOs to work out their seams issues and not act unilaterally.<sup>104</sup> MISO, MISO Transmission Owners, the Louisiana Commission, and Entergy Services also point to Order No. 890 as providing that RTOs do not take transmission service and thus are not subject to penalties (such as for unreserved use) associated with taking transmission service.<sup>105</sup>

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<sup>101</sup> Arkansas Electric March 10, 2014 Answer, Docket No. EL14-30-000 at 17, 20.

<sup>102</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 51-52.

<sup>103</sup> *Id.* at 54 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036; Order No. 2000, FERC Stats. & Regs. ¶ 31,089); MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 25-26 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036; Order No. 2000, FERC Stats. & Regs. ¶ 31,089).

<sup>104</sup> *Id.* at 48-49, 54-55 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 506; Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,129).

<sup>105</sup> *Id.* at 55 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 868); MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 24-25 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 868); Louisiana Commission

(continued...)

75. MISO and NRG Companies argue that the Service Agreement should be rejected because it would result in pancaked rates for service within MISO, which violates Order No. 2000.<sup>106</sup> Associated Electric states that it takes no position on the MISO Complaint but it agrees with MISO that pancaked transmission charges are inimical to efficient market operations along the seam between MISO and SPP.<sup>107</sup> Associated Electric explains that Associated Electric is at “ground zero” for this inter-RTO conflict, and its distribution cooperative members and the approximately 500,000 retail customers they serve are unfairly bearing the financial burden.<sup>108</sup> Associated Electric asserts that in total, the rate pancaking of network transmission charges between MISO and SPP is now costing Associated Electric about \$6.3 million annually and is forecasted to rise to \$9.8 million annually by 2023.<sup>109</sup>

76. NRG Companies argue that, while the Commission obviously cannot judge how MISO will recover the additional costs allocated from SPP, there is no question that these costs will be passed through to ratepayers in some format—either through the imposition of a surcharge across the MISO Midwest-MISO South interface, or otherwise. NRG Companies add that, since rate pancaking increases the price of electricity and discourages competition, SPP’s filings create an unnecessary liability on MISO market participants that will create market inefficiencies.<sup>110</sup>

77. MISO also argues that if the Service Agreement were to be implemented, as an RTO MISO would have inside access to competing customers’ information and to system conditions, which would lead to complaints of abuse and Standards of Conduct violations. MISO also asserts that requiring it to take service under the Service

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Protest, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 5; Entergy Services Answer and Protest, Docket Nos. EL14-21-000, ER14-1174-000, EL11-34-002, and EL11-34-001 at 19 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at PP 838, 868).

<sup>106</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 56; NRG Companies Protest, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 5.

<sup>107</sup> Associated Electric Answer, Docket No. EL14-30-000 at 3-4.

<sup>108</sup> *Id.* at 5.

<sup>109</sup> *Id.* at 14.

<sup>110</sup> NRG Companies Protest, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 5.

Agreement would conflict with MISO having the exclusive and independent authority over transmission service in its region, as the service would be between two contiguous parts of the MISO balancing authority area. MISO concludes that the Service Agreement should be rejected because it would undermine confidence in the fairness of the transmission system, threaten open access, create a hurdle for regional transactions, and increase costs for end use customers.<sup>111</sup>

78. MISO and MISO Transmission Owners further argue that the Service Agreement should be rejected because (1) an RTO does not meet the definition of a “Transmission Customer” under the SPP Tariff; (2) MISO would be required to take point-to-point service, although the customers whose flows are going between MISO Midwest and MISO South are taking network service; (3) the dispatch flow measured under the Operations Reliability Coordination Agreement (on which SPP plans to base the quantity to be charged to MISO), includes scheduled/tagged/paid-for point-to-point transmission service deliveries to other connected balancing authorities, including Tennessee Valley Authority, such that if the Service Agreement were to be in place, these dispatch flows would be double-charged; (4) per North American Energy Standards Board requirements, MISO cannot reserve transmission service without scheduling it; (5) the Open Access Same-Time Information System reservation process requires the request to be submitted by a “purchasing-selling entity,” which MISO cannot be; (6) by not requiring service to be scheduled, SPP’s Available Flowgate Capability calculations would be incorrect; and (7) SPP would charge MISO the non-firm service rate including ancillary service charges and congestion and loss charges, which should not apply to unscheduled market flows.<sup>112</sup>

79. MISO and MISO Transmission Owners also claim that SPP’s unreserved use penalties should be rejected because the SPP Tariff’s unreserved use penalty provisions state that the penalties apply only to transmission customers, and MISO is not a transmission customer under the SPP Tariff.<sup>113</sup> Also, MISO argues that the unreserved use of transmission service is not applicable to this situation because these are loop flows, not service under the SPP Tariff.<sup>114</sup> MISO also argues that SPP calculates unreserved use penalties based on point-to-point service, but because the Service Agreement is unrelated to any *pro forma* service, the Commission should require SPP to meet the standard filing

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<sup>111</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 56-58.

<sup>112</sup> *See id.* at 58-65.

<sup>113</sup> *Id.* at 66-67; MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 31.

<sup>114</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 67-68.

requirements for a new rate, which include the submission of cost support data.<sup>115</sup> MISO argues that, if accepted, the Service Agreement would establish MISO as the only transmission provider in the country paying all of its neighbors for 100 percent of the parallel flows when it moves energy from one portion of its balancing authority to the other, even though it already has sufficient contract path capacity.<sup>116</sup>

#### **4. Procedural Arguments**

80. Parties make various procedural arguments. For instance, MISO Transmission Owners argue that the Commission should dismiss the SPP Complaint because SPP fails to satisfy the requirements of Rule 206 of the Commission's Rules of Practice and Procedure<sup>117</sup> to demonstrate that it has standing to bring the complaint by specifying the adverse effects from the actions complained of and quantify the financial burden from such adverse effects. MISO Transmission Owners argue that SPP has not alleged any harm from MISO's actions beyond depriving SPP of unreserved use penalties under the SPP tariff and transmission revenues under the Service Agreement, which they argue SPP has no right to collect.

81. MISO Transmission Owners also argue that the SPP Complaint fails to meet the requirement of Rule 204(b)(6) to state whether the issues are pending in other existing proceedings, and if they are, explain why the issues cannot be resolved in the existing proceeding. MISO Transmission Owners assert that while SPP acknowledges that the issues are pending in the MISO-SPP JOA Remand proceeding but does not explain why the issues cannot be resolved there.

82. MISO argues that if the Commission finds the MISO-SPP JOA to no longer be just and reasonable, the Commission should exercise its discretion not to require refunds because (1) such a remedy would be a rate change, which can only be applied prospectively; (2) the Commission has discretion not to order refunds when the market would have to be re-run or would be adversely affected by refunds; and (3) refunds

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<sup>115</sup> *Id.* at 66.

<sup>116</sup> MISO Answer to Comments, Docket Nos. EL14-21-000, ER14-1174-000, and EL11-34-002 at 18-19.

<sup>117</sup> MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 9-11 (citing 18 C.F.R. § 385.206 (2013)).

would be inappropriate because there would have been no violation of a filed rate, as MISO's flows were in reliance on the Commission's prior interpretation of section 5.2.<sup>118</sup>

83. Entergy Services argues that there is no need for a trial-type hearing because this dispute can be decided on the basis of the written record. Entergy Services maintains that based on that record, the Commission should reject the Service Agreement and SPP Complaint.

84. MISO also argues that SPP's request to consolidate the SPP Complaint proceeding and the Service Agreement proceeding should be granted, but SPP's request to consolidate both those matters with the MISO-SPP JOA Remand proceeding should be rejected. MISO also argues that SPP's request that the Commission set the proceedings for hearing and settlement judge proceedings should be rejected, because interpretation of section 5.2 is a matter of law, and no issues of material fact exist. MISO states that to the extent the Commission decides to establish a hearing and settlement judge proceeding with respect to the broader issues raised in SPP's alternative request for relief, MISO requests that the Commission consolidate any such proceeding with the MISO Complaint and address the issue of how to lessen the impact of the MISO-SPP seam, including identifying which joint and common market initiatives must be implemented by SPP and MISO within an agreed upon timetable, not to exceed 18 months after launch of the SPP Integrated Marketplace and what other opportunities there are to reduce the impact of the seam on all stakeholders.<sup>119</sup> Xcel requests that if the Commission does not reject the Service Agreement, it suspend it for the maximum five-month period to allow for settlement judge procedures, and if no settlement is reached by a set date then the Commission issue an order resolving the issues, rather than set the matter for hearing.<sup>120</sup>

85. In response to the MISO Complaint, SPP asserts that MISO raises no new arguments or facts that MISO has not already raised regarding the SPP Complaint and Service Agreement. SPP argues that MISO attempts to incorporate by reference everything that it has already filed in response to the SPP Complaint, including all of its

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<sup>118</sup> MISO Answer to Complaint, Docket No. EL14-21-000 at 71-72 (citing *Louisiana Public Service Commission v. Entergy Corp.*, 142 FERC ¶ 61,211, at P 52 (2013)).

<sup>119</sup> *Id.* at 74-75.

<sup>120</sup> Xcel Comments, Docket No. EL14-21-000 at 11.

attachments and exhibits. SPP also contends that MISO admits that it presented each of the arguments set forth in the MISO Complaint as a defense to the SPP Complaint.<sup>121</sup>

86. SPP disagrees that MISO is experiencing harm to its markets based on the uncertain outcome of the SPP Complaint proceeding. According to SPP, nothing in the SPP Complaint seeks to stop MISO's transactions between MISO Midwest and MISO South or the benefits they produce to MISO members. SPP asserts that SPP and other neighboring systems simply seek "the ordinary, Tariff-approved compensation for MISO's share of its use of other transmission systems, so that the customers of SPP (and others) do not pay the costs of producing the MISO benefits."<sup>122</sup>

### **C. Commission Determination**

87. As an initial matter, we note that MISO Transmission Owners filed a motion to dismiss the SPP Complaint arguing that the SPP Complaint is facially deficient in that SPP does not demonstrate any harm it has suffered, and that it is procedurally improper in that the SPP Complaint repeats questions already before the Commission in Docket No. EL11-34-000.<sup>123</sup> We deny MISO Transmission Owners' motion to dismiss. We find that SPP has substantially complied with the Commission's complaint regulations in good faith.<sup>124</sup> SPP provided testimony and exhibits to support its arguments. In addition, there are issues SPP raises in its complaint that were not before the Commission in the MISO-SPP JOA Remand proceeding.<sup>125</sup> Accordingly, we find that SPP has established a prima

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<sup>121</sup> SPP Answer to Complaint, Docket No. EL14-30-000 at 5 (citing MISO Complaint at 9).

<sup>122</sup> *Id.* at 5-6.

<sup>123</sup> MISO Transmission Owners Motion to Dismiss and Answer, Docket No. EL14-21-000 at 9.

<sup>124</sup> *City of Anaheim v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100, at P 22 (2014) (citing *La. Pub. Serv. Comm'n v. Entergy Corp.*, 129 FERC ¶ 61,205, at P 26 n.20 (2009) (denying a request to dismiss a complaint when the complaint "substantially complies" with Rule 206(b)'s requirements); *E.ON U.S. LLC*, 131 FERC ¶ 61,025, at P 41 n.60 (2010)).

<sup>125</sup> *See* Rehearing Order, 138 FERC ¶ 61,055 at P 30 ("The Petition sought only a determination as to whether the contract path sharing provision of section 5.2 would apply to Entergy Arkansas if it becomes a transmission-owning member of MISO. The Petition did not seek guidance as to how such provision would be implemented nor whether compensation is necessary.").

facie case under section 206 of the FPA and we will not dismiss the SPP Complaint on that basis.<sup>126</sup>

88. We find that the Service Agreement, the SPP Complaint, the MISO Complaint, and the MISO-SPP JOA Remand proceeding raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

89. Our preliminary analysis indicates that the Service Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the Service Agreement for filing, suspend it for a nominal period, subject to refund and hearing and settlement judge procedures. We also establish hearing and settlement judge procedures on the SPP Complaint, the MISO Complaint, and the MISO-SPP JOA Remand proceeding. Given the common issues of fact and law, we will consolidate these four proceedings for purposes of settlement, hearing, and decision.

90. 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>127</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>128</sup> The settlement judge

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<sup>126</sup> As set forth in the Commission's regulations, a complainant establishes a prima facie case if the complainant: (1) clearly identifies the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements; and (2) the complainant explains how the action or inaction violates the applicable statutory standards or regulatory requirements. *See* 18 C.F.R. § 385.206(b)(1)-(2) (2013). To that effect, the Commission requires that the complainant provide the Commission with evidentiary materials, including documents that support the facts in the complaint. *See* 18 C.F.R. § 385.206(b)(8) (2013).

<sup>127</sup> 18 C.F.R. § 385.603 (2013).

<sup>128</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 available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

shall report to the Chief Judge and the Commission within thirty (30) days of the date of this order 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 commencement of a hearing by assigning the case to a presiding judge.

91. 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 refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing maximum protection to customers,<sup>129</sup> we will set the refund effective date for the SPP Complaint at January 29, 2014, one day after the SPP Complaint was filed and the effective date of the Service Agreement. We will set the refund effective date for the MISO Complaint at the earliest date possible, i.e., February 18, 2014, the date the MISO Complaint was filed.

92. 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 twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by March 30, 2015. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by January 30, 2016.

The Commission orders:

(A) The Service Agreement in Docket No. ER14-1174-000 is hereby accepted for filing and suspended for a nominal period to be effective January 29, 2014, subject to refund and hearing and settlement judge procedures, as discussed in the body of this order.

(B) 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 sections 205 and

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<sup>129</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 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a hearing shall be held in Docket Nos. ER14-1174-000, EL14-21-000, EL14-30-000, and EL11-34-002 concerning the Service Agreement, the SPP Complaint, the MISO Complaint, and the MISO-SPP JOA Remand proceeding, respectively. However, the hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. 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 a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 fifteen (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 rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Docket Nos. ER14-1174-000, EL14-21-000, EL14-30-000 and EL11-34-002 are hereby consolidated for purposes of settlement, hearing and decision.

(G) The refund effective date in Docket No. EL14-21-000 pursuant to section 206(b) of the FPA will be January 29, 2014, as discussed in the body of this order.

(H) The refund effective date in Docket No. EL14-30-000 pursuant to section 206(b) of the FPA will be February 18, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose  
Secretary.

**Appendix**

**I. Docket No. EL11-34-002 (Declaratory Order Remand)**

Notices of Intervention and Timely Motions to Intervene<sup>130</sup>

Basin Electric Power Cooperative  
Consumers Energy Company  
Entergy Services, Inc.  
ITC Companies<sup>131</sup>  
Louisiana Public Service Commission  
Oklahoma Corporation Commission  
Westar Energy, Inc.  
Western Area Power Administration

Late-Filed Motions to Intervene

Exelon Corporation  
Kansas Corporation Commission

Comments and Protests

Basin Electric Power Cooperative  
Entergy Services, Inc.  
ITC Companies  
Louisiana Public Service Commission  
NRG Companies  
Southwest Power Pool  
Southwest Power Pool Transmission Owners  
Western Area Power Administration

Answer

Midcontinent Independent System Operator, Inc.<sup>132</sup>

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<sup>130</sup> These reflect new interventions and have no impact on a party that previously intervened in this docket.

<sup>131</sup> For this filing, ITC Companies consist of: International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC.

<sup>132</sup> On March 18, 2014, MISO filed an “Answer of The Midcontinent Independent System Operator, Inc. to Comments of The SPP Parties” in Docket Nos. EL11-34-000, ER14-1174-000, and EL14-21-000. Additionally, on March 25, 2014, MISO filed a

(continued...)

**II. Docket No. EL14-21-000 (SPP Complaint)**

Notices of Intervention and Timely Motions to Intervene

Alabama Public Service Commission  
Alliant Energy Corporate Services, Inc.  
Ameren Services Company  
American Electric Power Service Corporation  
American Municipal Power  
American Transmission Company LLC  
Arkansas Cities<sup>133</sup>  
Arkansas Electric Cooperative Corporation  
Arkansas Public Service Commission  
Basin Electric Power Cooperative  
Calpine Corporation  
City of Springfield, Missouri  
Coalition of MISO Transmission Customers  
Consumers Energy Company  
East Texas Cooperatives  
Edison Mission Marketing & Trading, Inc.  
Empire District Electric Company  
Georgia Public Service Commission  
Heartland Consumers Power District  
Illinois Commerce Commission  
ITC Companies  
Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company  
Lincoln Electric System  
Louisiana Public Service Commission  
Madison Gas & Electric Company and WPPI Energy  
Manitoba Hydro  
MISO Transmission Owners<sup>134</sup>

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“Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc. to Answers and Comments of Certain Parties” in Docket Nos. EL14-21-000, EL11-34-000, EL14-30-000 and ER14-1174-000.

<sup>133</sup> For this filing, Arkansas Cities consist of: the Conway Corporation, the West Memphis Utilities Commission, the City of Osceola, Arkansas, the North Little Rock Electric Department, the City of Benton, Arkansas, and the City of Prescott, Arkansas.

Missouri Public Service Commission  
Nebraska Public Power District  
Northern Indiana Public Service Company  
NRG Companies<sup>135</sup>  
Oklahoma Corporation Commission  
Oklahoma Gas and Electric Company  
Organization of MISO States  
PJM Interconnection, L.L.C.  
Southern Company Services, Inc. and Tennessee Valley Authority<sup>136</sup>  
Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC  
Wabash Valley Power Association, Inc.

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<sup>134</sup> For this filing, MISO Transmission Owners 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; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; 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; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; South Mississippi Electric Power Association; 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>135</sup> For this filing, NRG Companies consist of: Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, Louisiana Generating LLC, NRG Power Marketing LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, and GenOn Energy Management, LLC.

<sup>136</sup> Southern Company Services, Inc. and Tennessee Valley Authority filed on behalf of Associated Electric Cooperative Inc., Louisville Gas and Electric Company, Kentucky Utilities Company, PowerSouth Energy Cooperative, Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company.

Westar Energy, Inc.  
Western Area Power Administration  
Western Farmers Electric Cooperative  
Wisconsin Electric Power Company  
Xcel Energy Services

Late-Filed Motions to Intervene

Edison Electric Institute  
Exelon Corporation  
Independent Market Monitor for PJM  
Kansas Corporation Commission  
MISO Independent Market Monitor  
Public Utility Commission of Texas  
SERC Reliability Corporation  
South Mississippi Electric Power Association  
Southwest Power Pool Market Monitoring Unit  
Wisconsin Public Service Corp. and Upper Peninsula Power Co.

Comments and Protests

Basin Electric Power Cooperative  
Entergy Services, Inc.  
ITC Companies  
Louisiana Public Service Commission  
MISO Independent Market Monitor  
MISO Transmission Owners  
Missouri Public Service Commission  
Northern Indiana Public Service Company  
NRG Companies  
Southern Company Services, Inc. and Tennessee Valley Authority  
Southwest Power Pool Market Monitoring Unit  
Southwest Power Pool Transmission Owners<sup>137</sup>

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<sup>137</sup> For this filing, Southwest Power Pool Transmission Owners consist of: Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; Lincoln Electric System; Omaha Public Power District; The Empire District Electric Company; Westar Energy, Inc.; City Utilities of Springfield, Missouri; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; Nebraska Public Power District; and Oklahoma Gas & Electric Company.

Western Area Power Administration  
Western Farmers Electric Cooperative  
Xcel Energy Services

Answers

Arkansas Electric Cooperative Corporation  
Basin Electric Power Cooperative  
Entergy Services, Inc.  
Midcontinent Independent System Operator, Inc.<sup>138</sup>  
MISO Transmission Owners  
Southwest Power Pool  
Southwest Power Pool Transmission Owners

**III. Docket No. ER14-1174-000 (SPP Service Agreement)**

Notices of Intervention and Motions to Intervene

Alabama Public Service Commission  
Ameren Services Company  
American Electric Power Service Corporation  
American Transmission Company LLC  
Arkansas Electric Cooperative Corporation  
Arkansas Public Service Commission  
Basin Electric Power Cooperative  
City of Springfield, Missouri  
Consumers Energy Company  
East Texas Cooperatives  
Empire District Electric Company  
ITC Companies  
Kansas City Power & Light Company and KCP&L Greater Missouri Operations  
Company  
Lincoln Electric System  
Louisiana Public Service Commission

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<sup>138</sup> On February 18, 2014, MISO filed an answer to the SPP Complaint in Docket No. EL14-21-000 and on March 28, 2014, filed an “Answer of The Midcontinent Independent System Operator, Inc. to Comments of The SPP Parties” in Docket Nos. EL11-34-000, ER14-1174-000, and EL14-21-000. Additionally, on March 25, 2014, MISO filed a “Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc. to Answers and Comments of Certain Parties” in Docket Nos. EL14-21-000, EL11-34-000, EL14-30-000 and ER14-1174-000.

Madison Gas & Electric Company and WPPI Energy  
Manitoba Hydro  
Midcontinent Independent System Operator, Inc.  
MISO Transmission Owners  
Missouri Public Service Commission  
Nebraska Public Power District  
NRG Companies  
Oklahoma Corporation Commission  
Oklahoma Gas and Electric Company  
Omaha Public Power District  
Organization of MISO States  
PJM Interconnection, L.L.C.  
Southern Company Services, Inc. and Tennessee Valley Authority  
Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC  
Wabash Valley Power Association, Inc.  
Westar Energy, Inc.  
Western Area Power Administration  
Western Farmers Electric Cooperative  
Xcel Energy Services

Late-Filed Motions to Intervene

Arkansas Cities  
Edison Electric Institute  
Kansas Corporation Commission  
Northern Indiana Public Service Company  
Public Utility Commission of Texas  
Wisconsin Public Service Corp. and Upper Peninsula Power Co.

Comments and Protests

Basin Electric Power Cooperative  
Entergy Services, Inc.  
ITC Companies  
Louisiana Public Service Commission  
Midcontinent Independent System Operator, Inc.  
MISO Transmission Owners  
NRG Companies  
Southern Company Services, Inc. and Tennessee Valley Authority  
Southwest Power Pool Transmission Owners  
Western Area Power Administration  
Western Farmers Electric Cooperative  
Xcel Energy Services

Answers

Basin Electric Power Cooperative  
Midcontinent Independent System Operator, Inc.<sup>139</sup>  
MISO Transmission Owners  
Southwest Power Pool  
Southwest Power Pool Transmission Owners

**IV. Docket No. EL14-30-000 (MISO Complaint)**

Notices of Intervention and Motions to Intervene

Alliant Energy Corporate Services, Inc.  
Ameren Services Company  
American Electric Power Service Corporation  
American Transmission Company LLC  
Arkansas Public Service Commission  
Basin Electric Power Cooperative  
Calpine Corporation  
City of Springfield, Missouri  
Consumers Energy Company  
East Texas Cooperatives  
Empire District Electric Company  
Heartland Consumers Power District  
Indiana Utility Regulatory Commission  
ITC Companies  
Kansas City Power & Light Company and KCP&L Greater Missouri Operations  
Company  
Lincoln Electric System  
Louisiana Public Service Commission  
Madison Gas & Electric Company and WPPI Energy  
MISO Transmission Owners  
Missouri Public Service Commission  
Nebraska Public Power District  
Northern Indiana Public Service Company

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<sup>139</sup> On March 18, 2014, MISO filed an “Answer of The Midcontinent Independent System Operator, Inc. to Comments of The SPP Parties” in Docket Nos. EL11-34-000, ER14-1174-000, and EL14-21-000. Additionally, on March 25, 2014, MISO filed a “Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc. to Answers and Comments of Certain Parties” in Docket Nos. EL14-21-000, EL11-34-000, EL14-30-000 and ER14-1174-000.

NRG Companies

Oklahoma Corporation Commission

Oklahoma Gas and Electric Company

Omaha Public Power District

PJM Interconnection, L.L.C.

South Mississippi Electric Power Association

Southern Company Services, Inc. and Tennessee Valley Authority

Westar Energy, Inc.

Western Area Power Administration

Western Farmers Electric Cooperative

Wisconsin Electric Power Company

Wisconsin Public Service Corp. and Upper Peninsula Power Co.

Late-Filed Motions to Intervene

Exelon Corporation

Kansas Corporation Commission

MISO Independent Market Monitor

Southwest Power Pool Market Monitoring Unit

Comments and Protests

Basin Electric Power Cooperative

MISO Independent Market Monitor

MISO Transmission Owners

Southern Company Services, Inc. and Tennessee Valley Authority

Southwest Power Pool Market Monitoring Unit

Answers

Arkansas Electric Cooperative Corporation<sup>140</sup>

Midcontinent Independent System Operator, Inc.

MISO Transmission Owners

Southwest Power Pool

Southwest Power Pool Transmission Owners

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<sup>140</sup> On March 10, 2014, Arkansas Electric Cooperative Corporation filed a “Motion to Intervene and Answer of Arkansas Electric Cooperative Corporation” and on March 19, 2014, it also filed an “Answer of Arkansas Electric Cooperative Corporation.”