

147 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc.

Docket No. ER14-1736-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND
ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued June 16, 2014)

1. On April 17, 2014, the Midcontinent Independent System Operator, Inc. (MISO) made a filing under section 205 of the Federal Power Act (FPA)¹ to Module C (Energy and Operating Reserve Markets), to include a new section, 40.3.3.a.xxiii (Real-Time Energy and Operating Reserve Market Settlement Calculations) to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). MISO explains that this filing will recover, on an interim basis, the costs invoiced to MISO under the tariff of another transmission provider. In this order, we accept for filing MISO's proposed tariff revisions, suspend them for a nominal period, and make them effective January 29, 2014, as requested, subject to refund, compliance, and the outcome of the proceedings in Docket Nos. ER12-678-002, ER12-678-003, ER13-984-001, ER12-1266-005 and ER13-2124-001. We also establish hearing and settlement judge procedures.

I. Background

2. On March 28, 2014, the Commission issued an order addressing four proceedings involving the dispute between MISO and Southwest Power Pool, Inc. (SPP) over the terms of the Joint Operating Agreement between MISO and SPP (MISO-SPP JOA):² (1) a recent opinion of the United States Court of Appeals for the District of Columbia Circuit vacating and remanding orders of the Commission in Docket Nos. EL11-34-000

¹ 16 U.S.C. § 824d (2012).

² *Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231 (2014) (MISO-SPP JOA Order). The hearing and settlement judge proceeding established by the MISO-SPP JOA Order will be referred to as the MISO-SPP JOA Proceeding.

and EL11-34-001 that interpreted section 5.2 of the MISO-SPP JOA;³ (2) a complaint filed by SPP against MISO under sections 206 and 306 of the FPA⁴ 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);⁵ (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);⁶ and (4) SPP's filing under section 205 of the FPA of a service agreement (SPP Service Agreement).⁷ In the MISO-SPP JOA Order, the Commission accepted for filing the SPP Service Agreement, suspended it for a nominal period, and made it effective January 29, 2014, subject to refund. In addition, the Commission consolidated the four proceedings and established hearing and settlement judge procedures.

3. The SPP Complaint sought 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 SPP Tariff. Alternatively, SPP requested that the Commission find that: (1) 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 into MISO; and (2) 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.⁸

4. Concurrent with the SPP Complaint, SPP filed the SPP Service Agreement to assess charges for MISO's use of the SPP transmission system as a result of MISO's real-time energy transfers between the MISO Midwest and MISO South regions (Transmission Surcharge). SPP explained that all entities that use the SPP transmission system to move energy must reserve transmission service and compensate SPP for

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

⁴ 16 U.S.C. §§ 824e, 825e (2012).

⁵ Southwest Power Pool, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000 (filed Jan. 28, 2014).

⁶ Midcontinent Independent System Operator, Inc., Complaint and Motion to Consolidate, Docket No. EL14-30-000 (filed Feb. 18, 2014).

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

⁸ SPP Complaint at 1-2.

service, and they must do so under a transmission service agreement. SPP argued that it is treating MISO comparably to other entities that desire to use the SPP transmission system to transfer energy.⁹

II. Tariff Revisions

5. MISO states that while it disagrees with the Commission's decision to place the SPP Service Agreement into effect, MISO is filing proposed amendments to its Tariff to recover a new charge, the Transmission Surcharge, that will recover the costs of all charges under the SPP Service Agreement. MISO asserts that placing the SPP Service Agreement into effect results in treating Regional Transmission Organizations (RTOs) as eligible customers under open access tariffs. Thus, new section 40.3.3.a.xxiii is not limited only to charges under the SPP Service Agreement but is available for charges that may be levied by other transmission providers, or for unique bilateral capacity agreements that MISO may voluntarily enter into to secure the lowest cost service.¹⁰ MISO explains that it will charge all customers (1) the costs invoiced to MISO for network or point-to-point transmission service under the tariff of another transmission provider; (2) costs and charges assessed by a transmission provider pursuant to a Commission-approved service agreement, including interest, penalties, and other charges that may be invoiced by the transmission provider under its Tariff; or (3) the cost of transmission capacity purchased, leased, or otherwise acquired by MISO for and on behalf of its market participants.¹¹

6. MISO explains that the proposed charge is a "Market Settlement Charge" and will be recovered either through the "Revenue Neutrality Uplift" or "Real-Time Miscellaneous Amount" mechanisms, both of which have been previously approved by the Commission.¹² MISO proposes that the Transmission Surcharge be allocated on a *pro rata* basis to Market Participants' loads based on their Market Load Ratio Share.¹³ MISO asserts that this filing is just and reasonable because it represents an interim, safeguard mechanism.¹⁴ MISO maintains that the SPP Service Agreement is unjust and unreasonable, but until the Commission makes such a finding, MISO must have the

⁹ SPP Service Agreement Filing at 4.

¹⁰ MISO Filing at 4.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

ability to allocate charges incurred under the SPP Service Agreement to its customers and collect them, subject to appropriate refund protections.¹⁵

7. Finally, MISO explains that it is currently attempting to negotiate revised Balancing Authority coordination agreements with neighboring Balancing Authorities to include the charges under the SPP Service Agreement because, without such amendments, the cost of responding to an emergency energy request will reflect the SPP charges when MISO flows over the 1,000 MW limit of the contract path between MISO Midwest and MISO South and will be paid by MISO customers instead of the parties to whom energy is provided. MISO states that it will file the revised agreements as soon as they are negotiated.¹⁶ MISO explains that, like the filing it made in Docket No. ER14-1713-000 to limit intra-regional flows to 1,000 MW, MISO will support a revised cost allocation filing that stakeholders may develop at a later time.¹⁷

8. MISO requests waiver of the Commission's prior notice requirements to make the new section 40.3.3.a.xxiii effective on January 29, 2014, the date on which the SPP Service Agreement was made effective. MISO states that the Commission has permitted retroactive effective dates in section 205 proceedings to protect customers and to make transmission providers whole for costs incurred.¹⁸ It contends that, unless the timeline of the proposed cost allocation procedures matches exactly the timeline of SPP charges that the Commission has now imposed, there would be no mechanism to pay such charges, which would create financial uncertainty and violate the cost causation principle.¹⁹

III. Notice of Filing and Responsive Pleadings

9. Notice of MISO's filing was published in the *Federal Register*, 79 Fed. Reg. 23,343 (2014), with comments, protests, and interventions due on or before May 8, 2014. Timely motions to intervene were filed by American Electric Power Service Corporation, Alliant Energy Corporate Services, Inc., Xcel Energy Services, Inc., Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (KCP&L), City of Lafayette, Louisiana, Sunflower Electric Power Corporation and Mid-Kansas Electric

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, Filing of Revisions to MISO Tariff to Include Sub-Regional Power Balance Constraints, Docket No. ER14-1713-000 (filed Apr. 11, 2014)).

¹⁸ *Id.*

¹⁹ *Id.* at 5-6.

Company, LLC, City of Alexandria, Louisiana, Wisconsin Electric Power Company, East Texas Cooperatives,²⁰ NRG Companies,²¹ Manitoba Hydro, Consumers Energy Company, Wisconsin Public Service Corporation and Upper Peninsula Power Company, Ameren Services Company, MidAmerican Energy Company, Organization of MISO States, South Mississippi Electric Power Association, Brazos Electric Power Cooperative, Inc., and SPP.

10. Timely notices of intervention were filed by the Arkansas Public Service Commission (Arkansas Commission), the Missouri Public Service Commission, the Louisiana Public Service Commission (Louisiana Commission), the Indiana Utility Regulatory Commission, and the Mississippi Public Service Commission (Mississippi Commission).

11. Late-filed motions to intervene were filed by Exelon Corporation, Westar Energy, Inc., the Public Utility Commission of Texas, and the Public Service Commission of Wisconsin.

12. A notice of intervention and comment was filed by the Council of the City of New Orleans (Council of New Orleans).

13. Motions to intervene and comment were filed by Entergy Services, Inc. (Entergy) and Arkansas Electric Cooperative Corporation (Arkansas Electric). Motions to intervene and protest were filed by Madison Gas & Electric Company and WPPI Energy (collectively, Wisconsin TDUs), and Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (collectively, Dynegy).

14. A motion to intervene and protest was filed by the MISO Transmission Owners.²²

²⁰ The East Texas Cooperatives consist of the East Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc.

²¹ NRG Companies consist of NRG Power Marketing LLC and GenOn Energy Management, LLC.

²² The MISO Transmission Owners for purposes of this filing consist of: 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.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota

15. The Mississippi Commission filed a protest.
16. Entergy, KCP&L, Arkansas Electric, East Texas Cooperatives, and MISO filed answers. A joint answer was filed by the Louisiana Commission, the Mississippi Commission, and the Arkansas Commission (jointly, State Commissions).
17. Wisconsin TDUs filed a response to the answers filed by MISO, Arkansas Electric, and the State Commissions.
18. Entergy supports MISO's filing while other entities raise issues with the filing, as summarized below. Entergy states that MISO's filing represents a reasonable, initial response to the MISO-SPP JOA Order.²³ Entergy notes that MISO plans to conduct a stakeholder process to explore alternative means for allocating transmission charges.²⁴ Entergy explains that MISO's filing is a generic filing that applies to all transmission charges imposed on MISO under the tariff of another transmission provider.²⁵ Therefore, according to Entergy, a *pro rata* allocation of the charges is appropriate.²⁶

A. Scope of Transmission Surcharge

19. Several entities argue that the cost recovery methodology under MISO's proposed tariff revisions is unjustified and overly broad, because it applies to charges beyond the SPP Service Agreement and to future charges that may be levied by other transmission providers.²⁷ These entities assert that the Commission should limit the implementation of the Transmission Surcharge to the recovery of charges under the SPP Service Agreement.

Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; 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.

²³ Entergy Comments at 1.

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ *Id.*

²⁷ *See, e.g.,* Mississippi Commission Protest; Council of New Orleans Comments; and MISO Transmission Owners Protest.

For example, the Mississippi Commission acknowledges MISO's need, as a revenue-neutral entity, to recover charges under the SPP Service Agreement through an appropriate cost recovery mechanism; however, it argues that MISO's filing goes beyond what is needed on an interim, expedited basis.²⁸ The Mississippi Commission asserts that there is no need to expedite the implementation of a surcharge to recover costs that may be levied against MISO by other transmission providers in the future.²⁹ The Mississippi Commission contends MISO should work with stakeholders to develop a well-reasoned, stakeholder-vetted plan to address the recovery of other potential charges.³⁰

20. The Council of New Orleans contends that MISO includes in the Transmission Surcharge an assessment to recover the "cost of transmission capacity purchased, leased, or otherwise acquired by the Transmission Provider for and on behalf of Market Participants, or other usage charges pursuant to a contract for services executed by the Transmission Provider for and on behalf of Market Participants that has been filed with and accepted by the Commission."³¹ The Council of New Orleans asserts that MISO "has not explained how, when MISO 'voluntarily' makes itself an eligible customer by entering into a transmission capacity contract with other parties, that is consistent with the [MISO-SPP JOA Order], which MISO argues is the basis for its broader cost recovery language."³² Additionally, the Council of New Orleans maintains that MISO has not shown that it has incurred any of these types of costs to date or that it anticipates doing so in the future. The Council of New Orleans further argues that MISO does not explain why a transmission capacity contract entered into on behalf of market participants should be recovered automatically under the Transmission Surcharge without any determination of whether all market participants are, in fact, beneficiaries of the specific transmission capacity contracted entered into by MISO.³³

²⁸ Mississippi Commission Protest at 1.

²⁹ *Id.* at 3.

³⁰ *Id.* at 4.

³¹ Council of New Orleans Comments at 6 (quoting MISO Tariff at section 40.3.3.a.xxiii (iii)).

³² *Id.*

³³ *Id.* at 3-7.

21. The Council of New Orleans asserts that MISO has not demonstrated that the Transmission Surcharge, as proposed, is just and reasonable.³⁴ The Council of New Orleans and Dynegy argue that MISO's proposal was not vetted through a stakeholder process, which would have provided all parties an opportunity to understand the proposed recovery mechanism and raise concerns.³⁵

22. The MISO Transmission Owners assert that MISO's proposal has significant shortcomings and should not be accepted. According to the MISO Transmission Owners, the Commission should reject the filing and instruct MISO to file a revised cost allocation proposal if, at the conclusion of the ongoing MISO-SPP JOA proceeding, the Commission concludes that MISO must pay SPP for transmission service. Until that time, the MISO Transmission Owners contend that there is no basis for MISO to charge Market Participants for transmission charges invoiced by SPP. MISO Transmission Owners further assert that MISO's proposed cost allocation method is overly broad, because it would apply charges that may be levied by others to providers in the future. For this reason, the MISO Transmission Owners argue that MISO's proposal exceeds the scope of the problem it seeks to address. They contend that MISO should only seek to allocate liability for charges imposed by SPP.³⁶

23. MISO responds to these protests by noting that there are currently on-going discussions with stakeholders and that MISO is open to future revisions to its cost recovery proposal.³⁷

24. MISO responds to the MISO Transmission Owners' argument that the proposed cost recovery mechanism should be limited to recover amounts invoiced by SPP, and that MISO should be required to file separately for authorization to recover charges assessed by other transmission providers in the future. MISO states that this issue has been raised in stakeholder discussions, and MISO commits to amend the proposal in a future compliance filing to allow only recovery of invoices from SPP under the SPP Service Agreement.³⁸

³⁴ Council of New Orleans Comments at 2.

³⁵ *Id.*; Dynegy Protest at 4-5.

³⁶ MISO Transmission Owners Protest at 5.

³⁷ MISO Answer at 4.

³⁸ *Id.* at 4-5.

B. Recovery of Transmission Surcharge

25. Several entities argue that MISO's proposed tariff revisions do not conform with cost causation and allocating costs based on benefits.³⁹ Wisconsin TDUs contend that the allocation issue they are raising is not specifically a MISO Midwest versus MISO South inter-regional issue; rather, it is an issue of fairness.⁴⁰ Wisconsin TDUs argue that, whichever MISO region is bearing higher locational marginal prices due to sending energy to the other region also should not have to bear a load-based uplift charge for the privilege of doing so.⁴¹ Wisconsin TDUs explain that, if net flows exceeding 1,000 MW in a given hour are in fact looping from one MISO region to another MISO region through SPP, it can only be because during that hour, one MISO region is generating substantially less energy than it is consuming, while the other MISO region is doing the opposite.⁴² According to the Wisconsin TDUs, because SPP's invoices to MISO for transmission identify the flow direction giving rise to the SPP charges, it is possible to ascertain which MISO sub-region is generating for the other.⁴³ Wisconsin TDUs note that, although the predominant flow direction in SPP's bills to date has been north-to-south, the direction has varied in a substantial number of hours, and the predominating billed direction might well reverse in future years; e.g., if the retirement of MISO Midwest coal resources alters the geographic distribution of MISO's lowest-priced resources and that changed distribution alters the flows deemed by SPP to be chargeable.⁴⁴

26. Dynegy explains that, because the costs at issue here do not exist "but for" Entergy's integration, basic cost causation principles require that 100 percent of the costs be allocated to the MISO South region using whatever cost allocation methodology those market participants deem appropriate.⁴⁵ Dynegy adds that the MISO Midwest region should not be saddled with a new set of costs without some demonstration that the

³⁹ See, e.g., Wisconsin TDUs Protest; Dynegy Protest; MISO Transmission Owners Protest.

⁴⁰ Wisconsin TDUs Protest at 5.

⁴¹ *Id.* at 5-6.

⁴² *Id.* at 4.

⁴³ *Id.*

⁴⁴ *Id.* at 5.

⁴⁵ Dynegy Protest at 3.

integration provides benefits to the MISO Midwest region.⁴⁶ Dynegy explains that it is unaware of any analysis or demonstration that the new dispatch, including the Entergy region's existing generation and load, provides any economic benefit to the MISO Midwest region.⁴⁷ Dynegy maintains that only when a separate study demonstrates benefits to the MISO Midwest region would it be appropriate to allocate some of these costs to the MISO Midwest region.⁴⁸

27. The MISO Transmission Owners assert that MISO proposes to allocate SPP transmission costs according to a market participant's share of total withdrawals and exports, regardless of the degree, if any, to which that market participant benefits from MISO's purported use of SPP transmission service. The MISO Transmission Owners contend that the Commission has rejected this one-size-fits-all approach in the past because such an approach failed to show that the costs to be allocated benefited all load rather than a subset of load. They further argue that the Commission should apply its precedent and reject MISO's proposal to allocate transmission costs according to the market load ratio share method. Instead, the Commission should require MISO to develop an allocation that proposes a compensation mechanism that allocates the costs more closely to those that benefit from the use of that capacity.⁴⁹

28. Arkansas Electric responds to the protests of the MISO Transmission Owners and Wisconsin TDUs. Arkansas Electric asserts that the protestors mischaracterize the nature of the issue that MISO is attempting to address in this docket and that the solution each proposes would impose rates that would be unjust and unreasonable. Arkansas Electric contends that the MISO Transmission Owners and Wisconsin TDUs fail to appreciate that there are no parties that derive particular benefits from MISO's redispatch to observe the 1,000 MW contract path between MISO Midwest and MISO South. It explains that the costs that MISO proposes to allocate are not costs incurred to address actual physical transmission constraints; rather, they would provide compensation for the use of the transmission capacity that is currently impeded by contractual and regulatory disputes regarding the rights, terms and conditions for such use.⁵⁰

⁴⁶ *Id.*

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ MISO Transmission Owners Protest at 7 (citing *Midwest Independent Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,204, at PP 24-25 (2012)).

⁵⁰ Arkansas Electric Answer at 3.

29. East Texas Cooperatives argue that the MISO Transmission Owners take too narrow a view of the benefits created by MISO South, which creates benefits for the entire MISO system in terms of economic dispatch, system diversity and reliability benefits from the flows between MISO South and the rest of the MISO footprint. They argue that the MISO Independent Market Monitor has described the substantial inefficiencies that are created by limiting these flows and that the MISO Independent Market Monitor's concern is for the system as whole, and not any subset of load. East Texas Cooperatives maintain that MISO's proposal to allocate any SPP transmission costs among all market participants is consistent with the well-established recognition that the integration of MISO South benefits the entire MISO system, rather than only some subset of load as the MISO Transmission Owners contend.⁵¹

30. Wisconsin TDUs respond to Arkansas Electric's argument that there are no parties that derive particular benefits from MISO's redispatch to observe the 1,000 MW contract path between MISO Midwest and MISO South. They contend that the costs at issue here are those that SPP charges MISO when it does not succeed in limiting flows to a 1,000 MW contract path. Wisconsin TDUs explain that those flows give rise to SPP's charges to MISO and they do not arise as a result of MISO's redispatch in an attempt to avoid them. They maintain that the costs of suboptimal dispatch incurred as MISO tries to avoid SPP's charges are recovered through MISO's existing market rules and are not at issue in this docket.⁵²

31. MISO and the State Commissions respond to the MISO Transmission Owners, Dynegy and Wisconsin TDUs' argument that the proposal does not match costs with benefits. MISO explains that this is an unprecedented situation where one RTO is subject to transmission charges from another RTO and therefore a *pro rata* allocation of such extraordinary charges is just and reasonable. The State Commissions contend that these protestors' arguments are falsely premised on a common theme, which is that MISO South is somehow the major beneficiary of the flows above 1,000 MW and should pay the majority of all the SPP charges. The State Commissions also dispute allegations that MISO Midwest companies are being harmed. According to the State Commissions, all MISO members have the opportunity to benefit from the expansion of the MISO market to include the MISO South footprint, and all parties and regions voluntarily participate in MISO's markets and should benefit, provided that those markets are competitive and efficient. Additionally, the State Commissions argue that the addition of MISO South allowed the allocation of MISO's administrative costs among a far broader base, providing immediate, quantifiable savings to the MISO regions. The State Commissions also maintain that the MISO South integration has not harmed MISO Midwest, and that the SPP charges are the direct result of the operation of the MISO-wide regional market

⁵¹ East Texas Cooperatives Answer at 4-6.

⁵² Wisconsin TDUs Answer at 4-5.

that should benefit the entire MISO footprint.⁵³ MISO acknowledges that this may not be the only just and reasonable approach and restates its commitment to the stakeholder process to consider alternative just and reasonable methods. However, MISO contends that at this time, its proposal is just and reasonable and should be accepted by the Commission.⁵⁴

32. Wisconsin TDUs respond to MISO that asserting that a problem is “unprecedented” and “extraordinary” cannot justify discarding cost causation and benefit distribution principles in contemplating a solution. They assert that the allocation proposed by MISO has not been shown to reasonably reflect the distribution of costs and benefits; therefore, at a minimum, MISO’s proposal should be suspended and made subject to refund. In response to the State Commissions, Wisconsin TDUs state that they agree that both source-area entities and sink-area entities can benefit from inter-area net flows. However, they assert that the source-area entities that benefit from exports are source-area generators, not source-area loads, and that the cost burden imposed by MISO’s proposal would land only on load.⁵⁵

33. Entergy urges the Commission to reject Dynegy’s argument that basic cost causation principles require that 100 percent of the costs of the Entergy Operating Companies’ integration into MISO should be allocated to MISO South. Entergy points out that MISO is conducting a stakeholder process to explore alternative means for the allocation of transmission charges under the SPP Service Agreement and that the Commission should not bypass this process by adopting proposals asserted by stakeholders in protests in this proceeding. Entergy also asserts that in Docket No. ER14-1713-000, the MISO Independent Market Monitor proposed that MISO adopt a hurdle rate in its dispatch algorithm equal to the estimated charges under the SPP Service Agreement. Entergy contends that if the Commission accepts the MISO Independent Market Monitor’s proposal, the controversy over cost allocation of the Service Agreement charges will be eliminated, because charges under the Service Agreement will be deducted from congestion revenues that are not owed to any holder of congestion rights over the path between MISO Midwest and MISO South. Nevertheless, Entergy argues that even if the Commission were inclined to accept cost allocation proposals asserted in protests to MISO’s filing, it should not accept Dynegy’s proposal, because it does not allocate costs in accordance with benefits.⁵⁶

⁵³ State Commissions Answer at 2-5.

⁵⁴ MISO Answer at 5.

⁵⁵ Wisconsin TDUs Answer at 3.

⁵⁶ Entergy Answer at 2-3.

C. Other Comments

34. Arkansas Electric asserts that the problem that MISO's filing addresses is yet one more consequence of the failure to demonstrate that, following Entergy's integration, MISO continues to satisfy the scope and configuration requirements under Order No. 2000.⁵⁷ Arkansas Electric expresses particular concern about the failure to eliminate rate pancaking across the MISO-SPP seam. Arkansas Electric also expresses the hope that the Commission, having ratified Entergy's choice to join an RTO with which it has limited connectivity and no history of trade, will now take on the resolution of this seam issue.⁵⁸

35. The Mississippi Commission argues that the Commission should grant retroactive implementation of the Transmission Surcharge but only to the extent that it is used to recover charges associated with the SPP Service Agreement. It explains that the only costs that MISO has incurred to date are the charges under the SPP Service Agreement, which although made effective January 29, 2014, are also suspended, subject to refund, and the subject of currently ongoing settlement judge proceedings. The Mississippi Commission asserts that MISO's recovery of costs associated with potential future service agreements with other RTOs or voluntary bilateral capacity agreements that MISO may enter into in the future does not require expedited treatment and should be subject to the full notice requirement.⁵⁹

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶⁰ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁶¹ we will grant the late-filed motions to

⁵⁷ Arkansas Electric Comment at 4 (citing *Regional Transmission Organizations*, Order No. 2000, 65 FR 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,082 (1999), *order on reh'g*, Order No. 2000-A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁵⁸ *Id.* at 4-5.

⁵⁹ Mississippi Commission Protest at 4-5.

⁶⁰ 18 C.F.R. § 385.214 (2013).

⁶¹ *Id.* § 385.214(d),

intervene given the entities' interest in the proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.⁶² We accept the answers that parties filed because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

38. We find that MISO's proposed tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

39. Our preliminary analysis indicates that MISO's proposed recovery of the Transmission Surcharge has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept for filing MISO's proposed tariff revisions, suspend them for a nominal period, and make them effective January 29, 2014, as requested, subject to refund, compliance, and the outcome of the proceedings in Docket Nos. ER12-678-002, ER12-678-003, ER13-984-001, ER12-1266-005 and ER13-2124-001. We also establish hearing and settlement judge procedures. We note that MISO's proposed revisions to section 40.3.3 include tariff revisions pending before the Commission in Docket Nos. ER13-2124-001 and ER13-2124-002, with an effective date of March 17, 2014.⁶³ Thus, we direct MISO to make a compliance filing within 30 days of the date of this order that removes the tariff language from the tariff sheets in Docket Nos. ER13-2124-001 and ER13-2124-002 that was inadvertently included in this filing. MISO must file two sets of tariff sheets: one for the period between January 29, 2014 and March 16, 2014; and one beginning March 17, 2014. In addition, MISO acknowledges that it included with the tariff sheets that it filed in this docket, tariff language that is pending before the Commission in other unrelated dockets, which it highlighted in the filed tariff sheets. Those dockets include Docket Nos. ER12-678-002, ER12-678-003, ER13-984-001, ER12-1266-005 and ER13-

⁶² *Id.* § 385.213(a)(2).

⁶³ *See* Midcontinent Independent System Operator, Inc., RSG Netting Compliance Filing, Docket No. ER13-2124-001 (filed Apr. 7, 2014); Midcontinent Independent System Operator, Inc., Amended RSG Netting Compliance Filing, Docket No. ER13-2124-002 (filed Apr. 29, 2014). On March 4, 2014, the Commission accepted tariff revisions filed by MISO, including revisions to section 40.3.3, effective March 17, 2014. MISO filed the same tariff changes to section 40.3.3 on compliance in e-tariff in Docket Nos. ER13-2124-001 and Docket Nos. ER13-2124-002 as it did in this proceeding.

2124-001.⁶⁴ We grant MISO's request that the Commission accept those pending tariff revisions subject to the outcome of the proceedings in each of those dockets and note MISO's commitment to file any revisions to the highlighted language as necessary to comply with any Commission orders in those proceedings.

40. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.⁶⁵ 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.⁶⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) MISO's proposed tariff revisions are hereby accepted for filing, suspended for a nominal period, and set for hearing, to be made effective on January 29, 2014, as requested, subject to refund, compliance, and the outcome of the proceedings in Docket Nos. ER12-678-002, ER12-678-003, ER13-984-001, ER12-1266-005 and ER13-2124-001, as discussed above.

(B) MISO is hereby directed to make a compliance filing within 30 days of the date of this order that removes the tariff language from the tariff sheets in Docket Nos. ER13-2124-001 and ER13-2124-002 that were included in this filing, as discussed above.

(C) 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 Federal Power Act, particularly

⁶⁴ MISO Filing at n.18.

⁶⁵ 18 C.F.R. § 385.603 (2013).

⁶⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

sections 205 and 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 public hearing shall be held concerning the justness and reasonableness of MISO's filing, as described above. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of 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.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.