

148 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Indicated Load-Serving Entities

Docket No. EL13-75-000

v.

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

ORDER ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued July 11, 2014)

1. On July 2, 2013, Indicated Load-Serving Entities (complainants) filed a complaint, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),¹ naming, as the respondents, Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM).² The complaint challenges approximately \$6.9 million in charges, as assessed by MISO to PJM, pursuant to Attachment 3, section 8 of the MISO/PJM Joint Operating Agreement (JOA), an amount that was subsequently

¹ 16 U.S.C. §§ 824e, 825e, and 825h (2006).

² Complainants consist of 16 load serving entities, as represented by: Ameren Services Company, Big Rivers Electric Corporation, Consumers Energy Company, Dairyland Power Cooperative, DTE Electric Company, Hoosier Energy Rural Electric Cooperative, Indianapolis Power & Light Co., Integrys Business Support, L.L.C (as agent for Wisconsin Public Service Corp. and Upper Peninsula Power), Madison Gas and Electric Company, Northern Indiana Public Service Company, Southern Minnesota Municipal Power Agency, Southern Indiana Gas & Electric Company, Wisconsin Electric Power Co., Wolverine Power Supply Cooperative, and Xcel Energy Services Inc., on behalf of Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

refunded to PJM and then billed as Revenue Neutrality Uplift charges. Complainants' claim that these charges represent improperly "resettled" Market-to-Market (M2M) payments. Complainants seek an order from the Commission: (i) finding that MISO's resettlements were unauthorized under the JOA; (ii) directing PJM to refund to MISO the amounts of these resettlements; and (iii) directing MISO to refund to its load serving entities the amount refunded by PJM to MISO.

2. For the reasons discussed, we establish hearing and settlement judge procedures to consider the rights and obligations of the parties under the existing terms of the JOA and, thus whether, under the JOA, PJM and MISO should refund all, or part, of the charges MISO rebated to PJM. We also establish a refund effective date of July 2, 2013.

I. Background

A. Market-to-Market Coordination

3. Complainants state that the charges at issue in this proceeding are associated with certain PJM real-time flows across the "seam" between PJM and MISO, as managed by MISO and PJM under the M2M redispatch provisions of the JOA.³ The JOA, among other things, provides for coordinated congestion management over a number of PJM/MISO "flowgates."⁴ The purpose of the JOA, in this regard, is to manage the transmission limitations that occur on these coordinated flowgates in a cost-effective manner, with both MISO and PJM assigned Firm Flow Entitlements (FFE) on each of the coordinated flowgates identified by the JOA.⁵

³ The MISO-PJM JOA was first approved by the Commission in 2004, subject to certain modifications and conditions. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251 (2004). At the time, only PJM operated a "Day 2" locational based price (LMP) market. MISO implemented a Day 2 market in 2005, thus giving rise to the need for M2M coordination. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,226 (2005).

⁴ *See* JOA at Attachment 3, section 1. A flowgate is defined under the JOA as "a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system." *Id.* at section 2.2.24. Flowgates that are coordinated under the JOA are referred to as reciprocal coordinated flowgates, but for ease of use we will refer to them herein as flowgates or coordinated flowgates.

⁵ *Id.* at section 1.

4. The M2M process, as it applies to the real-time energy market, is instituted by the “monitoring RTO,” i.e., the RTO associated with a JOA-designated M2M coordinated flowgate, when that M2M flowgate is constrained and therefore binding in its dispatch.⁶ If the flowgate is not constrained, each RTO is permitted to use that flowgate and exceed its FFE. If the flowgate is constrained, as determined in the real-time security constrained economic dispatch, the monitoring RTO will enter the M2M flowgate into its security-constrained dispatch software, setting the flow limit equal to the appropriate facility rating and begin a coordination process with the non-monitoring RTO to manage the constraint.⁷

5. In this instance, the non-monitoring RTO will be required to pay the monitoring RTO for the costs of redispatch on the monitoring RTO’s system to compensate for the non-monitoring RTO’s flow in excess of its FFE, if the non-monitoring RTO exceeds its FFE associated with the relevant flowgate during such an event.⁸ If the non-monitoring RTO’s shadow price is lower than the monitoring RTO’s shadow price, the monitoring RTO will ask the non-monitoring RTO to decrease flows. When the M2M process is activated, the RTOs exchange “shadow prices,” i.e., a price representing each RTO’s cost to decrease flow to relieve the constraint.⁹

6. Complainants state that the M2M coordination obligations at issue here arose from certain revisions to the M2M process, as recently agreed to by the parties in a settlement proceeding. Specifically, complainants note that, in 2010, cross-complaints were filed by PJM and MISO regarding these issues, in which MISO had argued, among other things, that PJM had failed to initiate the M2M redispatch provisions of the JOA and had erroneously calculated charges for M2M settlements. PJM had countered that MISO had

⁶ *Id.* at section 8.1.3. The “monitoring RTO” is defined by the JOA as “[t]he RTO that has the primary responsibility for monitoring and control of a specified M2M Flowgate.” *Id.* at section 8, Appendix A.

⁷ *Id.* at section 3.1 (2) and (4).

⁸ *Id.* at section 3.2 (“If the Real-Time Market Flow is greater than the flow entitlement plus the Approved MW adjustment from Day Ahead Coordination, the Non-Monitoring RTO will pay the Monitoring RTO for congestion relief provided to sustain the higher level of Real-Time market flow.”).

⁹ *Id.* at section 3.

improperly used “substitute flowgates” in the M2M process.¹⁰ The settlement resolving these issues clarified how the initiation of the M2M coordination process is to be achieved, when an indicated flowgate is constrained, and the circumstances under which an after-the-fact review would be authorized, including the review of whether the monitoring RTO had improperly relied upon a substitute flowgate.¹¹

B. Congestion Events at Issue

7. Complainants state that the congestion giving rise to the disputed charges in this case occurred between June 16, 2012 and July 19, 2012 over two flowgates located near Clinton, Iowa (Beaver Channel flowgates).¹² PJM’s flows, during these hours, exceeded its FFEs and MISO, redispatched its system to accommodate these flows and then assessed to PJM the corresponding settlements. Complainants argue that this assessment of charges was appropriate under the JOA.

8. Complainants also cite the circumstances giving rise to MISO’s subsequent resettlements, which were made in November 2012. Specifically, complainants note that during the occurrence of the congestion event at issue, PJM asked MISO to analyze the causes of the congestion, at which time MISO identified a generating unit located within MISO near the two constraints that was being self-scheduled by its owner and, at times, delivered into MISO at a negative LMP.¹³ Complainants state that MISO initially took no mitigation action against this unit, based on MISO’s initial assumption that this unit was needed to maintain local voltage (i.e., that it was needed for reliability purposes).

¹⁰ A substitute flowgate is a flowgate activated by an RTO that has not been designated as a reciprocal coordinated flowgate under the JOA and therefore does not qualify as an M2M constraint. *See Midwest Indep. Transmission Sys. Operator, Inc. v. PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,243, at P 3, n.5 (2011) (*M2M Settlement Order*). Substitute flowgates, however, may be used under the JOA under certain specified conditions. *Id.* P 6.

¹¹ *Id.*

¹² The Beaver Channel flowgates are located on a line that extends to Albany, New York, and reflect two separate constraint contingencies: (i) the loss of the Salem transformer; and (ii) the loss of the Cordova to Nelson 345 kV line. Complainants assert that congestion in this area is common.

¹³ MISO’s independent market monitor (IMM) was separately evaluating this same unit for uneconomic production, as governed by Module D of the MISO Tariff.

9. Complainants state that the M2M event at issue extended through July 19, 2012, at which time MISO determined that its original assumption was in error, i.e., that the unit in question was, in fact, not required for local voltage support. Complainants add that on this same date, the IMM determined that this unit was engaging in uneconomic production as specified in Module D of the MISO Tariff.¹⁴ On July 20, 2012, the generating unit ceased its uneconomic production and MISO removed the Beaver Channel constraint from the M2M process. For the period in question, PJM was billed for, and paid to MISO, approximately \$6.9 million to cover the costs incurred by MISO for redispatch of the Beaver Channel flowgates.

10. After making its M2M payment, PJM asked MISO to review the settlement. Complainants assert that MISO did so and in November 2012, gave PJM a full refund, based on what complainants say was MISO's and PJM's erroneous conclusion that because there was a delay in identifying that the unit's must-run commit status could have been mitigated, the M2M settlements prior to the mitigation were somehow inappropriate and should have been suspended.

C. Complainants' Asserted Bases for Relief

11. Complainants argue that by refunding the \$6.9 million settlement payment at issue in this proceeding to PJM, MISO violated Attachment 3, section 3.2 of the JOA.¹⁵ Complainants assert that, under this provision, PJM cannot be excused from paying for the "relief provided to sustain the higher level of Real-Time market flow."

¹⁴ See MISO tariff at sections 63.3.a.iii and 64.1.3.a(i) and (ii). A unit satisfying the criteria for mitigation for uneconomic production can be mitigated by modifying its must-run flag, which will either cause the unit to be shut down, or by applying a sanction. In the instant case, immediately after the unit was informed that it was engaging in uneconomic production, the unit ceased operation.

¹⁵ Attachment 3, section 3.2 of the JOA (Real-Time Energy Market Settlements) provides that "[i]f the Real-Time Market Flow is greater than the [FFE] plus the Approved MW adjustment from Day Ahead Coordination, the Non-Monitoring RTO will pay the Monitoring RTO for congestion relief provided to sustain the higher level of Real-Time market flow."

12. Complainants argue that MISO's asserted obligation to resettle the charges at issue in this case turns on an erroneous interpretation of Attachment 3, section 8.1.2 of the JOA.¹⁶ Complainants argue that the plain language of section 8.1.2 limits its application to inappropriate M2M coordination that produces less than optimal dispatch, and does not impose a general obligation to "minimize financial harm" to the other RTO that results from conduct or operating actions occurring outside the M2M process, such as the failure to impose mitigation for uneconomic production. Complainants further argue that the JOA explicitly prescribes the extent of matters that can be resettled after-the-fact, and that the actions giving rise to the resettlement at issue here are not included.

13. Complainants argue that the M2M process is limited to the dispatch process and optimal dispatch is associated only with the market operator correctly utilizing inputs to its security constrained economic dispatch process. Complainants conclude that, as such, section 8.1.2 of the JOA is aimed at dispatch and does not extend to commitment of generation (either by the RTO or market participant), appropriateness of generation offers, must-run status (i.e., self-commitment), or market monitoring and mitigation issues. In addition, complainants argue that MISO's broad reading of section 8.1.2 reads the FTR revenue inadequacy language (a limitation clause) out of this provision altogether.

14. Complainants assert that, even if section 8.1.2 is found to be ambiguous, extrinsic evidence supports a narrow reading of this provision and under what specific circumstances after-the-fact review and resettlement may apply. Complainants argue that in the *M2M Settlement Order*, which approved the after-the-fact review provisions of the JOA, and resolved certain M2M disputes between PJM and MISO, the Commission specifically found that after-the-fact review would "not permit one RTO to avoid paying legitimate market-to-market settlements that are permitted under the JOA."¹⁷

¹⁶ Attachment 3, section 8.1.2 of the JOA ("Minimizing less than Optimal Dispatch") provides as follow:

The parties agree that, as a general matter, they should minimize financial harm to one RTO that results from [M2M] coordination initiated by the other RTO that produces less than optimal dispatch, which can lead to revenue inadequacy for [Financial Transmission Rights (FTR)], and impose the burden for such revenue inadequacy on one or both RTOs.

¹⁷ Complaint at 28 (citing *M2M Settlement Order*, 135 FERC ¶ 61,243 at P 41).

15. Complainants add that, in response to criticism from the IMM that after-the-fact review would enable a non-monitoring RTO to avoid a M2M settlement because it “disagrees with the decisions of the monitoring RTO[,]” MISO and PJM clarified that the after-the-fact review process “verifies” if the monitoring RTO improperly used a substitute flowgate in the M2M process.¹⁸ Complainants further add that the *M2M Settlement Order* describes the specific and decidedly narrow instance in which *ex post* changes to the M2M settlement will be allowed and does not authorize MISO to resettle M2M payments outside the context of an improperly utilized substitute flowgate. Complainants assert that the Beaver Channel resettlement did not involve such a flowgate.

16. Complainants further assert that MISO and PJM unit commitment decisions are not part of the M2M process, i.e., that MISO, in this case, was not authorized under the JOA to suspend an M2M settlement due to commitment of generation resources. Complainants argue that the JOA does not authorize the monitoring RTO to suspend an M2M settlement obligation due to unit de-commitment (versus redispatch) considerations, even if de-committing generation could have decreased congestion on the activated constraints at issue. Complainants add that the RTOs have never de-committed units to minimize financial harm to the neighboring RTO under the M2M process and that, as such, it would not be reasonable to suspend M2M payments due to a delay in such a de-commitment.

17. Complainants further argue that while the JOA, at sections 8.2.2 and 8.4, authorizes after-the-fact review of settlement charges, under certain circumstances, these conditions are not at issue here. Complainants note that, under section 8.2.2, after-the-fact review is authorized where the M2M event at issue involves the use of a limit control that is below 95 percent of the actual limit, or where the binding percentage of an M2M flowgate may be appropriately reduced.

18. Complainants also make certain equity arguments in support of their request for relief. Specifically, complainants argue that while PJM’s customers may have been harmed by MISO’s mistake in not mitigating the uneconomic production they also benefitted by MISO’s decision to allow PJM to exceed its FFEs on the flowgates as the MISO shadow price with the unit generating was still cheaper than PJM’s shadow price, and that PJM was willing to pay these prices. Complainants note that, by contrast, MISO’s customers received no benefit from the assumption that the unit was needed for reliability purposes and should therefore not be required to pay now.

¹⁸ *Id.*

19. Finally, complainants argue that, even assuming that the JOA did authorize MISO to resettle with PJM over the charges at issue, it was not appropriate for MISO to have suspended these settlements in their entirety, at full value, because the “harm” MISO purportedly caused, in failing to mitigate the unit in question, did not account for all of the redispatch that occurred. Complainants note that the unit MISO mistook as being needed for local reliability contributed, on average, only 14 percent and 20 percent, respectively to the two Beaver Channel constraints, while PJM exceeded its FFEs by 13 percent to 36 percent.

II. Notice of Filing and Responsive Pleadings

20. Notice of the complaint was published in the *Federal Register*, 78 Fed. Reg. 40,135 (2013), with respondents’ answers, and motions and/or notices of intervention and comments, due on or before July 22, 2013.

21. Respondents’ submitted timely-filed answers. In addition, motions to intervene and notices of intervention were timely-filed by American Municipal Power, Inc.; Calpine Corporation; Dominion Resources Services, Inc.; Illinois Commerce Commission; Indiana Utility Regulatory Commission (Indiana Commission); Great River Energy; Old Dominion Electric Cooperative; Organization of MISO States; Otter Tail Power Company; Potomac Economics, acting as MISO’s independent market monitor (IMM); and the Public Service Commission of Wisconsin.

22. Motions to intervene out-of-time were filed on July 23, 2013, by FirstEnergy Services Company (FirstEnergy) and PPL Electric Utilities Corporation (PPL Companies), on July 25, 2013, by Duke Energy Corporation (Duke), on July 29, 2012, by Dayton Power and Light Company (Dayton), and on August 2, 2013, by Public Service Electric and Gas Company, *et al.*, (PSEG Companies). Answers to answers were filed on August 5, 2013, by complainants, on August 12, 2013, by the IMM, and on August 30, 2013, by PJM.

A. MISO’s Answer

23. MISO argues that it correctly resettled the M2M redispatch payments at issue in this proceeding, given that the original charges were not authorized under the JOA. Specifically, MISO argues that M2M coordination and settlement should not have been undertaken by MISO (and were thus appropriately resettled), given that the qualifying condition of Attachment 3, section 8.1.2 was not met. MISO argues that, under section 8.1.2, if a party to the JOA initiates M2M coordination and that coordination produces “less than optimal dispatch,” financial harm to the other party must be

minimized.¹⁹ MISO asserts that this qualifying condition, i.e., a less than optimal dispatch obligating the monitoring RTO to minimize the financial harm to the non-monitoring RTO, was not met under the circumstances at issue here, i.e., where the unit that MISO later identified as a trigger of the relevant congestion remained unmitigated.

24. MISO argues that, during the relevant congestion event, the unit was engaged in uneconomic production, which persisted because MISO erroneously believed the unit to be necessary for local voltage support. MISO asserts that while the security-constrained economic dispatch software it utilizes will decide which specific unit needs to increase, or reduce, its output to relieve a given constraint, this dispatch process does not de-commit units, meaning that the unit in question was responsible for producing a “less than optimal dispatch.” MISO argues that, under the system conditions in June and July 2012, the mitigation of this unit would have helped relieve congestion and would thus have ensured an optimal dispatch, notwithstanding any remaining congestion as caused by any other factor.

25. MISO argues that because these tariff obligations were not carried out, as required by the JOA, and because they resulted in improperly collected charges, sections 16.2 and 18.3.3.1 of the JOA required MISO to resettle the associated M2M charges to PJM. MISO asserts that, under section 16.2, “each Party shall render invoices to the other Party for amounts due under this Agreement in accordance with its customary billing practices (or as otherwise agreed between the Parties) and payment shall be due in accordance with the invoicing Party’s customary payment requirements (unless otherwise agreed).” MISO adds that, under section 18.3.3.1, adjustments for erroneously billed charges are necessary and proper and are not limited to charges that are malicious or reckless.

26. MISO also relies on section 17.1 of the JOA, which provides that “all obligations hereunder shall be subject to and performed in a manner that complies with each Party’s

¹⁹ MISO also relies on the underlying intent of section 11.2.3 of the JOA (Market-to-Market Coordination), which addresses the RTO’s joint management of transmission constraints via their respective security constrained economic dispatch models. Section 11.2.3 states in relevant part:

The fundamental philosophy of the [M2M] process is to allow any transmission constraints that are significantly impacted by a generation dispatch changes in both markets to be jointly managed in the security constrained economic dispatch models of both Parties. The joint management of transmission constraints near the borders will provide a more efficient and lower cost transmission congestion management solution and will also provide coordinated pricing in the market boundaries.

internal requirements.” MISO argues that these internal requirements, as relevant here, included a timely resolution of the uneconomic production issue arising under Module D of the MISO Tariff.

27. MISO also responds to its asserted failure to demonstrate that the Beaver Channel constraint became binding and remained so solely due to the impact of the unit in question. MISO argues that whether the removal of the unit would have eliminated the M2M payment, or would have merely reduced it, is immaterial to the criteria established under Attachment 3, section 8.1.2, which required only that MISO achieve an optimal dispatch for M2M payments to occur. MISO argues that, regardless, Module D of the MISO Tariff defines uneconomic production (the finding made by the IMM) as necessarily causing a binding constraint. MISO asserts that, under the MISO Tariff, the IMM could not have found uneconomic production by the unit in question “but for” the unit causing a binding constraint during that period.

28. MISO also takes issue with complainants’ allegation that, under the after-the-fact review provisions of Attachment 3, sections 8.2.2 and 8.4, MISO and PJM lack the authority to resettle M2M payments outside the context of an improperly utilized substitute flowgate. First, MISO argues that it did not base its resettlement actions on these provisions. Second, MISO responds that these provisions are not intended to operate as the exclusive way in which correction to M2M invoices may occur. Third, MISO argues that complainants’ interpretation of these provisions would unreasonably limit the RTOs’ ability to resolve mutual errors promptly and effectively.

29. MISO also responds to complainants’ assertion that M2M settlements were required simply because PJM exceeded its FFEs during the period at issue. MISO argues that, under the JOA, M2M settlement does not automatically happen whenever a party exceeds its FFE; rather, the M2M process will be undertaken when, among other things, an M2M flowgate is constrained and binding in its dispatch.

30. MISO also responds to complainants’ assertion that MISO and PJM unit commitment decisions are not part of the M2M process and are not encompassed within the dispatch obligations addressed by JOA section 11.2.3 and Attachment 3, section 8.1.2 of the JOA. MISO argues that complainants’ argument overlooks the fact that the erroneous commitment of the unit in question resulted in it running at its economic minimum.

31. MISO further argues that even if its security-constrained economic dispatch software had dispatched this unit to a different output level, this adjustment would not have altered its mitigation status. MISO adds that the intent of Attachment 3, section 8.1.2 of the JOA was to require the RTOs to ensure that their respective markets are performing adequately as a prerequisite to implementing the M2M process. Finally,

MISO argues that complainants' equitable arguments fail, given the filed rate doctrine violation at issue here.

B. PJM's Answer

32. PJM's answer largely supports MISO's arguments, as summarized above.²⁰ Among other things, PJM argues that the complaint is flawed because the M2M process should not have been instituted. Specifically, PJM asserts that MISO unintentionally breached sections 17.1 and 11.2.3 of the JOA, and Attachment 3, sections 8.1.1 and 8.1.2 of the JOA by initiating and conducting M2M operations for the Beaver Channel flowgates while at the same time inadvertently permitting the unit to cause the flowgates to bind. PJM adds that, in accordance with the MISO tariff, MISO and its IMM should have mitigated this unit, as of June 16, 2012, for uneconomic production.

C. Intervenor Comments

33. The IMM agrees with complainants that MISO's resettlements of PJM's M2M obligations are based on an erroneous interpretation of Attachment 3, section 8.1.2 of the JOA. The IMM argues that in the *M2M Settlement Order* the Commission specifically addressed the scope of section 8.1.2 and held that it addressed only the issue of whether an RTO has activated a substitute flowgate.

34. The IMM adds that while both RTOs routinely review and occasionally resettle JOA payments, based on corrections in data or tariff administration related directly to M2M coordination under the JOA, the resettlements at issue here, if allowed to stand, would represent the first such resettlements based on an RTO action that extends beyond

²⁰ In addition to the positions enumerated herein, PJM concurs with MISO that: (i) section 17.1 of the JOA requires MISO to perform its obligations under the JOA in a manner that complies with its internal requirements; (ii) Attachment 3, section 8.1.2 of the JOA obligates MISO to "minimize financial harm," meaning in this case correctly mitigate the unit identified by MISO as a trigger of the congestion in issue; (iii) section 11.2.3 of the JOA justifies MISO's resettlements because, among other things, it requires that M2M coordination "result in a more efficient economic dispatch solution across both markets to manage the Real-Time transmission constraints that impact both markets"; and (iv) FFEs are used to calculate M2M settlements only where the relevant flowgate binds and M2M coordination is conducted resulting in a payment obligation.

the JOA, i.e., to include all less than optimal dispatch. The IMM argues that such an extension would make this provision of the JOA unreasonably broad.²¹

35. The IMM notes that while dispatch will never be fully optimal, MISO participants are required to settle based on the actual dispatch and corresponding LMPs. The IMM adds that MISO and PJM, operating under the JOA, should be treated no differently, as the JOA, in fact, contemplates. Accordingly, the IMM asserts that section 8.1.2 should be interpreted to tie a “less than optimal dispatch” only to a defect in the initiation of M2M coordination, not to a broader set of dispatch considerations. The IMM suggests that such an interpretation would be consistent with the *M2M Settlement Order*’s determination regarding the after-the-fact review of M2M outcomes.

36. Finally, the IMM proposes revisions to Attachment 3, section 8.1.2 of the JOA to clarify that “minimizing financial harm” is only intended to refer to revising M2M settlements and that such revisions should only occur when there has been an error or flaw in the implementation of the M2M coordination between the RTOs.

37. The Indiana Commission agrees with complainants that the actions taken in this case by MISO and PJM are not authorized under the JOA. The Wisconsin Commission concurs, noting that Attachment 3, sections 8.1.2 and 11.2.3 do not represent unambiguous authority supporting the resettlements at issue. The Wisconsin Commission notes that, under section 8.1.2, the duty to minimize harm is an objective of the coordinated dispatch, not the grant of authority to MISO to unilaterally execute refunds when it perceives that an inequity has occurred. The Wisconsin Commission adds that, similarly, under section 11.2.3, the monitoring RTO’s obligation to utilize the most cost-effective generation provides only a general coordination and dispatch objective, not the express authority to issue a resettlement. In addition, the Wisconsin Commission argues that any ambiguity in the JOA relied upon by MISO must be construed against it as the filing utility.

²¹ Specifically, the IMM notes that the dispatch, in virtually any interval, could be characterized as less than optimal where: (i) the day-ahead market does not facilitate the commitment of the most efficient set of generating units; (ii) suppliers submit offers that do not equal their marginal costs; (iii) generators under-produce or over-produce relative to their dispatch instruction; (iv) PJM or MISO commits resources for reliability or takes other reliability actions that turn out to be unnecessary, in retrospect; (v) network flows caused by generators and loads outside MISO or PJM change unexpectedly; (vi) assumed network flows associated with changes in imports and exports are incorrect; or (vii) forecasted output of wind resources is incorrect.

D. Complainants' Answer

38. Complainants respond to MISO's argument that the complaint, in effect, seeks to change the terms of the JOA. Complainants argue, to the contrary, that their complaint reflects a dispute over the application of the currently-effective JOA, specifically, whether certain sections of the JOA, including Attachment 3, section 8, provided PJM the right, and MISO the authority, to recalculate the M2M payments, as initially assigned to PJM. Complainants add that the Commission may order refunds for past periods where a public utility has either misapplied a formula rate or otherwise charges rates contrary to the filed rate.²² In addition, complainants assert that, under FPA section 206, the Commission is authorized to order relief for under-compensation from errors in the application of schedules under a respondent utility's tariff.²³

E. Additional Answers

39. The IMM reiterates its position that the JOA allows for resettlements only in the case of erroneous or inappropriate use of M2M coordination, not to a resettlement based on a unit that was inappropriately permitted to run uneconomically.

III. Discussion**A. Procedural Matters**

40. 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 that filed them parties to this proceeding. In addition, given the early stage of this proceeding and the absence of undue prejudice or delay, we grant the unopposed late-filed interventions submitted by FirstEnergy, PPL Companies, Duke, Dayton, and PSEG Companies.

41. 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 an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by the complainants, MISO, and PJM because they have assisted us in our decision-making process.

²² Complainants' Answer at 7 (citing *DTE Energy Trading, Inc. v. Midwest Indep. Transmissio Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005)).

²³ *Id.*

B. Analysis

42. For the reasons discussed below, we find that the parties' interpretations of the JOA, and related claims, raise material issues of disputed facts. Accordingly, we establish hearing and settlement judge procedures to examine the rights and obligations of the parties under the existing terms of the JOA and, thus whether, under the JOA, PJM and MISO should refund all, or part, of the charges MISO rebated to PJM.²⁴ We also establish a refund effective date of July 2, 2013.

43. Complainants assert that refunds covering the charges they have been assessed by MISO are warranted, given complainants' assertion that MISO lacks authority, under the JOA, to resettle the M2M payments giving rise to these charges. In support of that claim, complainants cite to numerous interwoven rights and obligations arising under the JOA, including Attachment 3, sections 3.2 (addressing real-time energy market settlements), section 8.1.2 (addressing the parties obligations to minimize a less than optimal dispatch), sections 8.2.2 (addressing M2M events requiring an after-the-fact review), and section 8.4 (addressing the after-the-fact review process itself). Complainants also cite to Module D of the MISO Tariff and the asserted intent of the parties to the settlement agreement accepted by the Commission in the *M2M Settlement Order*.

44. Respondents, meanwhile, offer differing interpretations of the above-noted JOA provisions and the *M2M Settlement Order* and then cite to additional JOA provisions supporting their positions, including JOA section 11.2.3 (addressing M2M coordination), section 16.2 (addressing invoicing), section 18.3.3.1 (addressing adjustments for erroneously-billed charges), section 17.1 (addressing the obligation of the JOA-parties to honor each other's internal requirements), and section 8.1.1 (addressing the bases upon which M2M coordination may be implemented).

45. In addition, our preliminary review of the parties' positions and the underlying provisions of the JOA suggest that other JOA provisions may also be relevant, or require interpretation, including Attachment 3, section 3.1 (addressing the commencement of M2M coordination) and the preamble to Attachment, section 8 (addressing the appropriate use of the M2M process).

²⁴ When a complaint alleges that a public utility has charged a rate contrary to its filed rate, the Commission may order refunds covering past period charges. *See, e.g., BJ Energy LLC v. PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,006, at P 18 (2009); *DTE Energy Trading, Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005).

46. Given the interplay between these rights and obligations, we find that the parties' claims and counter-charges raise disputed issues regarding the currently-effective provisions of the JOA and the MISO Tariff that cannot be resolved based on the current record. Accordingly, we find that material issues of disputed fact have been raised regarding the rights and obligations of the parties under the existing terms of the JOA and, thus whether, under the JOA, PJM and MISO should refund all, or part, of the charges MISO rebated to PJM.

47. In cases such as this, where 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,²⁵ we will set the refund effective date at the earliest date possible, i.e., July 2, 2013, the date the complaint was filed.

48. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date, or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. We estimate that we will be able to render a decision within six months of the date that a settlement is certified to the Commission, or an initial decision is issued.

The Commission orders:

(A) 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, 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, as discussed in the body of this order, concerning the rights and obligations of the parties under the existing terms of the JOA and, thus whether, under the JOA, PJM and MISO should refund all, or part, of the charges MISO rebated to PJM. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (B) and (C) below.

²⁵ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

(B) 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 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in [Rule 603](#) and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

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

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding 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.

(E) The refund effective date established in Docket No. EL13-75-000 pursuant to section 206(b) of the FPA will be July 2, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.