

152 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-6-118
Midwest Independent Transmission System Operator, Inc.	ER10-2283-000 ER10-2283-001
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	EL04-135-120
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	EL02-111-139
Ameren Services Company	EL03-212-134

ORDER ON COMPLIANCE

(Issued September 16, 2015)

1. On August, 19, 2010, as amended on September 13, 2011, in Docket No. ER10-2283, Midwest Independent Transmission System Operator, Inc. (MISO)¹ and MISO Transmission Owners² (collectively referred to as MISO when describing the

¹ Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

² MISO Transmission Owners consist of: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company; Ameren Services Company, as agent for Union Electric Company; American Transmission Company LLC; American Transmission Systems, Incorporated, a

(continued...)

compliance filings) jointly submitted revised Schedules 21 and 22 to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff³ and prior versions (collectively, MISO Tariff)⁴ in compliance with the Order on Initial Decision.⁵ Also on August 19, 2010, in Docket No. ER05-6-118, PJM Interconnection, LLC Transmission Owners Agreement Administrative Committee (referred to as PJM when describing the compliance filing) submitted revised Attachments R and X to the PJM Open Access Transmission Tariff (PJM Tariff) in compliance with the Order on Initial Decision.⁶ The MISO and PJM compliance filings reflect the adjustments and corrections to the lost revenues and calculations of the Seams Elimination Charge/Cost Adjustment/Assignment (SECA) as directed in the Order on Initial Decision.

2. In this order, we conditionally accept, subject to a further compliance filing directed below, revisions to Schedules 21 and 22 to the MISO Tariff, effective the

subsidiary of FirstEnergy Corp.; City Water, Light & Power (Springfield, IL); Duke Energy Corporation (Duke) for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc., E.ON U.S. LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); Indianapolis Power & Light Company; International Transmission Company; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; and Wabash Valley Power Association, Inc.

³ MISO, FERC Electric Tariff.

⁴ Prior versions of MISO's tariff relevant to the instant proceeding are the: (1) MISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Vol. No. 1; (2) MISO Open Access Transmission and Energy Market Tariff, FERC Electric Tariff, Third Revised Vol. No. 1; and (3) MISO Open Access Transmission, Operating Reserve and Energy Markets Tariff, FERC Electric Tariff, Fourth Revised Vol. No. 1.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,173 (2010) (Order on Initial Decision), *order on reh'g*, 136 FERC ¶ 61,244 (2011) (Initial Decision Rehearing Order), *aff'd sub nom. Constellation v. FERC*, No. 11-1451, 2015 WL 1546448 (D.C. Cir. April 9, 2015).

⁶ *Id.*

beginning of each subdivision of the transition period: December 1, 2004, January 1, 2005, April 1, 2005, and May 1, 2005.⁷ Further, we establish hearing and settlement judge procedures to verify the identity of the replacement shippers for the new suppliers of North Star Steel and the retail load at the MECS.DECO.CMSZ sink. We also conditionally accept, subject to a further compliance filing directed below, revisions to Attachments R and X to the PJM Tariff, effective the beginning of each subdivision of the transition period: December 1, 2004, January 1, 2005, April 1, 2005, and May 1, 2005. We also direct MISO and PJM to file detailed reports showing any and all refunds and/or surcharges, with interest, in accordance with the compliance filings as conditionally accepted herein, to be filed with the Commission within ninety (90) days of the date of this order.

I. Background

3. In July 2002, the Commission accepted the choices of American Electric Power Service Corporation (AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively, ComEd), and the Dayton Power and Light Company (Dayton) to join PJM.⁸ In so doing, the Commission found that those Regional Transmission Organization (RTO) choices would result in an elongated and highly irregular seam between MISO and PJM that would “island” portions of MISO (Wisconsin and Michigan) from the remainder of MISO and would divide highly interconnected transmission systems across which substantial trade takes place. The Commission found that, without mitigation, the seam would subject a large number of transactions in the region to continued rate pancaking, impeding the goals of Order No. 2000.⁹ Therefore, as a condition of accepting those RTO choices, the Commission required parties in the region to address the problem of rate pancaking across the MISO-PJM seam. Accordingly, the Commission instituted a proceeding under section 206 of

⁷ Because MISO’s amended compliance filing made on September 13, 2011 included a revised Schedule 22, we: (1) accept Schedule 21 in Docket No. ER10-2283-000; (2) reject Schedule 22 in Docket No. ER10-2283-000; and (3) accept Schedule 22 in Docket No. ER10-2283-001. *See* MISO Amended Filing at 7.

⁸ *Alliance Co.*, 100 FERC ¶ 61,137 (2002), *order on reh’g*, 103 FERC ¶ 61,274 (2003).

⁹ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

the Federal Power Act (FPA)¹⁰ to investigate the rates for service between the two RTOs and established trial-type hearing procedures.

4. Following the hearing, the Commission found the rates for service through or out of one RTO to serve load in the other RTO (i.e., regional through-and-out rates) to be unjust and unreasonable.¹¹ The Commission adopted a license plate rate design for the region and found that the SECA,¹² if properly structured, could serve as a reasonable transitional mechanism to mitigate abrupt cost shifts resulting from the replacement of rate pancaking with license plate rates. Under the SECA, transmission customers serving load in the region would pay (and ultimately did pay for 16 months) a transitional charge, i.e., the SECA, and receive long term non-pancaked rates across PJM and MISO. However, the Commission found that, at that time, the record was inadequate to establish the SECA as a just and reasonable replacement rate and adopted a license plate rate design without the SECA to replace rate pancaking effective November 1, 2003.

5. As proposed by the sponsoring transmission owners, the SECA was derived using historical test-period data and assigned lost revenue responsibility to the load in each license plate pricing zone. Specifically, the revenue responsibility for each zone was based on the amount of energy in megawatt hours (MWh) that sank in the zone during the test period that crossed the MISO-PJM seam (determined using North American Electric Reliability Corporation tag data and excluding transactions under grandfathered agreements) multiplied by the average regional through-and-out revenues per MWh of the transmission providers involved in the transaction across the MISO-PJM seam. The zonal revenue responsibility was then divided by the total load in the zone and firm point-

¹⁰ 16 U.S.C. § 824e (2012).

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 2003 Order).

¹² The SECA is a non-bypassable surcharge to license plate zonal rates for delivery to load within the combined region (i.e., within the MISO-PJM footprint). The SECA recovered revenues that were lost due to the elimination of rate pancaking from loads in each RTO based on the revenues received in a recent historical test period associated with transactions to serve that load. During the transition period, the load in each license plate pricing zone in the importing RTO paid approximately the same amount in the aggregate through the SECA surcharge as had been previously paid through regional through-and-out rates for service to such load. However, the surcharges were designed as a uniform rate to be assessed on all deliveries to loads within the zone within the importing RTO, not just those deliveries associated with through-and-out transactions.

to-point transactions sinking within the zone, excluding grandfathered transactions, resulting in the per-unit zonal SECA charges that was assessed on the actual demand of each load-serving entity (LSE) taking service in the zone for each month that the SECA was in effect.

6. The Commission later granted rehearing, adopted the SECA, delayed the replacement of rate pancaking until April 1, 2004, and ordered compliance filings to implement the SECA.¹³ The Commission found that the SECA should be based on calendar year 2002 and 2003 data, adjusted for known and measureable differences and for hubbing transactions,¹⁴ and developed on a subzonal basis.¹⁵ The Commission also provided that, as part of the compliance filing process, LSEs could make shift-to-shipper claims,¹⁶ and it allowed LSEs with existing transmission arrangements that continue into the transition period, and continue to pay regional through-and-out rates, to receive adjustments to their SECA obligations to prevent double recovery for such transmission.¹⁷

7. The Commission subsequently instituted settlement proceedings,¹⁸ and the parties entered into a settlement, the Going Forward Principles and Procedures,¹⁹ which the Commission approved.²⁰ Among other things, the settlement delayed the elimination of

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212 (2003) (November 2003 Rehearing Order).

¹⁴ For hubbing transactions, tag data showed that the transaction sank in a particular zone, but the underlying transaction actually served load in another zone, either in the same RTO or outside of the RTO.

¹⁵ November 2003 Rehearing Order, 105 FERC ¶ 61,212 at PP 66, 80, 85.

¹⁶ Shift-to-shipper claims allowed LSEs under existing fixed-price contracts for bundled power supply that continued into the transition period to demonstrate that the supplier was the shipper for such transactions and to propose that the supplier was required to pay the SECA charges for that portion of the LSE's load served by the contract.

¹⁷ November 2003 Rehearing Order, 105 FERC ¶ 61,212 at P 45.

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,105 (2004).

¹⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 63,024 (2004).

²⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,262 (2004).

rate pancaking until December 1, 2004 and committed the transmission owners to file pricing proposals under section 205 of the FPA. In its order on the two resultant pricing proposals,²¹ the Commission, among other things, adopted license plate rates for the recovery of the cost of existing facilities and ordered compliance filings to incorporate the SECA as the transitional replacement rate effective December 1, 2004 through March 31, 2006. On November 30, 2004, the Commission clarified that AEP, ComEd, and Dayton may recover lost revenues associated with the elimination of intra-RTO rate pancaking within PJM through the SECA.²²

8. In a series of orders, the Commission accepted and set for hearing initial and revised SECA implementation filings.²³ Prior to the hearing, the Presiding Judge issued two partial initial decisions, issued on March 10, 2006,²⁴ and April 13, 2006,²⁵ addressing motions for summary judgment. After the hearing, the Presiding Judge issued the Initial Decision.²⁶ Throughout the course of the hearing procedures, parties engaged in settlement discussions and some parties settled in whole or in part.²⁷ On May 21, 2010 the Commission issued the Order on Initial Decision in which it affirmed, in part, and reversed, in part, the two partial initial decisions, and the Initial Decision. On September

²¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (November 2004 Order).

²² *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,243, at P 9 (2004).

²³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,107 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,409 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,267 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,010 (2005).

²⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 63,037 (2006) (March 10 Partial Decision).

²⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 63,011 (2006) (April 13 Partial Decision).

²⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 63,030 (2006) (Initial Decision).

²⁷ For a more detailed historical account of these proceedings, *see* Order on Initial Decision, 131 FERC ¶ 61,173. *See also* *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,174 (2010) (May 2010 Rehearing Order).

30, 2011, the Commission issued the Initial Decision Rehearing Order, in which it denied rehearing of the Order on Initial Decision.

9. On April 9, 2015, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or court) dismissed, in part, and denied, in part, appeals of the Commission's Order on Initial Decision and Initial Decision Rehearing Order with regard to several LSEs' SECA shift-to-shipper claims.²⁸

10. On August 19, 2010, as amended on September 13, 2011, in Docket No. ER10-2283, MISO submitted revised Schedules 21, which sets forth the MISO Transmission Owners' lost revenues, and Schedule 22, which sets forth the subzonal SECA obligations and a method for collecting lost revenues of PJM Transmission Owners, to the MISO Tariff, in compliance with the Order on Initial Decision.

11. Also on August 19, 2010, in Docket No. ER05-6-118, PJM submitted revised Attachments R and X to the PJM Tariff in compliance with the Order on Initial Decision.

12. Both PJM and MISO state their experts, Dr. Henderson, PJM's representative and Mr. Heintz, MISO's representative, coordinated their efforts in making these adjustments.

II. Notice and Pleadings

13. Notice of MISO's August 19, 2010 compliance filing was published in the *Federal Register*, 75 Fed. Reg. 52,521 (2010), with interventions, and protests due on or before October 18, 2010.

14. American Municipal Power, Inc. (AMP); Baltimore Gas and Electric Company (BG&E); Blue Ridge Power Agency; BP Energy Company (BP Energy); Green Mountain Energy Company; Michigan Public Power Agency (Michigan PPA); Michigan South Central Power Agency (MSCPA); MidAmerican Energy Company; Old Dominion Electric Cooperative; PPL Electric Utilities Corporation, Lower Mount Bethel Energy, LLC, PPL Martins Creek, LLC, PPL University Park LLC, PPL Brunner Island, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL New Jersey Solar, LLC, PPL Renewable Energy, LLC, PPL Holtwood, LLC, PPL New Jersey Biogas, LLC, and PPL EnergyPlus, LLC, (collectively, PPL Companies); City of St. Louis, Michigan, Six Michigan Cities, Bay City, Michigan, Michigan Public Power Rate Payers Association, Chelsea, Michigan, City of Eaton Rapids, Hart, Michigan, and City of

²⁸ *Constellation v. FERC*, No. 11-1451, 2015 WL 1546448 (D.C. Cir. April 9, 2015).

Portland, Michigan, (collectively, Michigan Cities); and Wisconsin Electric Power Company filed timely motions to intervene.

15. Duke,²⁹ PJM, and Rockland Electric Company (Rockland) filed motions to intervene out-of-time.

16. Certain PJM Transmission Owners;³⁰ Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (Constellation); Detroit Edison Company (Detroit Edison); Direct Energy, LLC (Direct Energy); Integrys Energy Services, Inc. and Quest Energy, LLC (Quest/ESI); and Michigan PPA and MSCPA (collectively Michigan PPA/MSCPA) filed motions to intervene and comments.

17. AMP and Hoosier filed protests.

18. BP Energy, Indicated PJM Transmission Owners,³¹ MISO, and MISO Transmission Owners filed answers.

²⁹ Duke filed on behalf of its affiliates, Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services, LLC.

³⁰ Certain PJM Transmission Owners include: (1) Exelon Corporation, on behalf of its transmission owning subsidiaries Commonwealth Edison Company and Commonwealth Edison Company of Indiana and PECO Energy Company (collectively, Exelon); (2) AEP, on behalf of its transmission owning subsidiaries Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; (3) Pepco Holdings, Inc., on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company (collectively, Pepco); (4) PPL Companies; (5) First Energy PJM Companies, including Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; (6) Virginia Electric and Power Company (Dominion Virginia Power); (7) Dayton; (8) West Penn Power Company, Monongahela Power Company, and the Potomac Edison Company (collectively, Allegheny Power); and (9) Public Service Gas and Electric Company.

³¹ Indicated PJM Transmission Owners include: AEP, on behalf of Appalachian Power Service Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company and Wheeling Power Company; Dayton; Duquesne Light Company; Exelon; FirstEnergy Service Company on behalf of Jersey Central Power and Light Company,

(continued...)

19. MISO's September 13, 2011 amended compliance filing was published in the *Federal Register*, 76 Fed Reg. 58,490 (2011), with interventions, and protests due on or before October 4, 2011.
20. Exelon filed a timely motion to intervene. Detroit Edison filed comments.
21. Integrys Energy Services, Inc., Quest Energy, LLC and Direct Energy, LLC (collectively, Integrys/Quest/Direct Energy) filed a protest. Constellation filed a protest out-of-time. CMS Energy Resource Management Company (CMS Energy) and MISO Transmission Owners filed answers. Constellation filed an answer to the answer of CMS Energy.
22. Notice of PJM's compliance filing was published in the *Federal Register*, 75 Fed. Reg. 53,289 (2010), with interventions, and protests due on or before October 18, 2010.
23. BP Energy filed a timely motion to intervene. Direct Energy and Quest/ESI filed timely motions to intervene and comments. Constellation filed comments. AMP and Hoosier filed protests. CMS Energy, Constellation, Indicated PJM Transmission Owners and MISO Transmission Owners filed answers. Constellation filed an answer to the answer of CMS Energy.
24. As part of settlement agreements, BP Energy filed a request to withdraw its pleading in the above-captioned proceeding. AEP, Dayton, and Exelon filed requests to withdraw their pleadings as they apply to BP Energy in the above-captioned proceeding. AMP filed a request for a partial withdrawal of its protest in the above-captioned proceeding.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of CMS Energy, Constellation, Indicated PJM Transmission

Metropolitan Edison Company and Pennsylvania Electric Company; Allegheny Power; Pepco; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; UGI Utilities, Inc.; and Dominion Virginia Power.

Owners, MISO and MISO Transmission Owners because they provided information that assisted us in our decision-making process.

26. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2015), we will grant Duke, PJM, and Rockland's late-filed motions to intervene given their interest in this particular matter, the early stage of consideration of this particular matter, and the absence of undue prejudice or delay.

B. Substantive Matters

27. As explained below, we conditionally accept, subject to a further compliance filing directed below, revisions to Schedules 21 and 22 to the MISO Tariff, and establish hearing and settlement judge procedures, as discussed below. We also conditionally accept, subject to a further compliance filing directed below, revisions to Attachments R and X to the PJM Tariff. The effective dates for the revisions to the MISO Tariff and the PJM Tariff correspond to the beginning of each subdivision of the transition period: December 1, 2004, January 1, 2005, April 1, 2005 and May 1, 2005.

C. Settlements and Calculation of Refunds/Surcharges

1. Comments and Protests

28. Detroit Edison states that the majority of disputes concerning SECA obligations were previously resolved through settlement, but that the compliance filings in the instant proceeding fail to address how, exactly, MISO will treat various transmission-using entities who have previously reached settlement with the various transmission owners participating in the underlying SECA proceedings. Detroit Edison requests that the Commission order MISO to explain exactly how it proposes to treat the billing of relevant MISO Tariff charges, and specifically to order MISO to address how such billing is to occur with respect to the numerous entities, such as Detroit Edison, that have previously resolved SECA obligations through settlements on file with the Commission.³²

29. Michigan PPA/MSCPA request assurance from the Commission that MISO will make refunds, with interest, within 30 days of Commission acceptance of the instant compliance filing.³³ Michigan PPA/MSCPA assert that they were among the parties that did not settle their SECA obligations and are owed over \$900,000, approximately

³² Detroit Edison October 4, 2011 Protest at 2.

³³ Michigan PPA/MSCPA October 18, 2010 Comments at 2-3.

92 percent of the charges assessed under the original SECA rate schedules. Michigan PPA/MSCPA state that MISO's compliance filing does not expressly address when the refunds will be processed.³⁴ Quest/ESI and Direct Energy similarly request that the Commission order refunds immediately upon issuance of an order on the instant compliance filing proceeding.³⁵

30. AMP, Quest/ESI and Direct Energy state that the compliance filings, while accompanied by extensive workpapers, do not contain details addressing how the revised SECA calculations, which may result in refunds and/or surcharges to some LSEs, will be implemented against the backdrop of the numerous settlements that have been entered into between and among various combinations of affected parties.³⁶ As a result, AMP, Quest/ESI and Direct Energy request that the Commission require MISO and PJM to submit detailed refund/surcharge reports, including any workpapers, describing all refunds made and/or surcharges assessed to LSEs such that each LSE will be able to identify the specific transmission owner and transactions purportedly giving rise to the refund or surcharge amount.³⁷

2. Answers

31. MISO Transmission Owners state that the Commission did not direct refunds and surcharges regarding the revised SECA charges as part of the instant compliance filing proceeding.³⁸ Therefore, MISO Transmission Owners argue that they are currently not obligated to submit detailed refund/surcharge reports at this time. MISO Transmission Owners state that the Commission should direct refunds and surcharges only after the compliance filings have been accepted without further modification and provide sufficient time to correctly reflect all of the charges and settlements. MISO Transmission

³⁴ *Id.* at 3.

³⁵ Quest/ESI October 18, 2010 Comments at 7-8; Direct Energy October 18, 2010 Comments at 7-8.

³⁶ AMP October 8, 2010 Protest at 8-9; Quest/ESI October 18, 2010 Comments at 1-2, 7-8; Direct Energy October 18, 2010 Comments at 7-8.

³⁷ AMP October 8, 2010 Protest at 9; Quest/ESI October 18, 2010 Comments at 7-8; Direct Energy October 18, 2010 Comments at 7-8.

³⁸ MISO Transmission Owners November 2, 2010 Answer at 5-6; MISO Transmission Owners October 18, 2011 Answer at 11.

Owners argue that the calculation of any refunds and surcharges resulting from the revised charges will be complicated due to the complexity in calculating the SECA charges and the numerous settlements in this proceeding. MISO Transmission Owners state that, in order to be ready to comply with a refund/surcharge report requirement as soon as possible after the compliance filings are accepted, MISO and PJM are working to develop the information and processes necessary for developing refund and surcharge calculations that reflect the settlements.³⁹

32. Indicated PJM Transmission Owners state that the request for refund reports is premature and should come after Commission approval of the final compliance filing.⁴⁰ Indicated PJM Transmission Owners state that they are coordinating with MISO Transmission Owners to prepare a report that could be filed at the conclusion of this proceeding.

3. Commission Determination

33. As an initial matter, we agree with the MISO Transmission Owners that the Commission did not direct refunds and surcharges as part of the Commission's directives in the Order on Initial Decision. Therefore, we agree that the MISO Transmission Owners were not required to submit detailed refund/surcharge reports. However, the MISO Transmission Owners and the Indicated PJM Transmission Owners indicate in their respective answers that the MISO Transmission Owners, PJM Transmission Owners, MISO and PJM are currently coordinating efforts to prepare refund reports that could be filed upon acceptance of the instant compliance filings. As such, we find it reasonable to require MISO and PJM to submit, within ninety (90) days of the date of this order, detailed reports with the Commission in this proceeding showing any and all refunds and/or surcharges, with interest, in accordance with the compliance filings as conditionally accepted herein. Given the complexity of the proceeding and the numerous settlements between affected parties, we do not believe, as requested by Michigan PPA/MSCPA, that thirty (30) days is sufficient time to make such filings.

³⁹ *Id.* at 6-7.

⁴⁰ Indicated PJM Transmission Owners November 2, 2010 Answer at 6-7.

D. Specific Adjustments

1. PJM Compliance Filing

34. PJM includes a correction of a 10 MW Craig-Botetourt Electric Coop load in the AEP zone that was shifted from the Blue Ridge Power Authority subzone to Bristol subzone in compliance with the Order on Initial Decision.⁴¹

2. Comments/Protests

35. Constellation states that the PJM compliance filing improperly establishes SECA sub-zones in the AEP zone for Wolfhills and Bristol. Constellation states that adding these subzones was not part of the Commission's compliance directives if PJM is referring to Wolf Hills Energy, LLC (Wolf Hills) because it is not a LSE, but instead the owner of a 250 MW natural gas-fired electric generating facility located near Bristol, Virginia.⁴² Constellation states that PJM provides no explanation for the creation of these subzones other than a brief statement made by Dr. Henderson in his affidavit.⁴³ Further, Constellation argues that Wolf Hills is an exempt wholesale generator that was granted market-based rate authorization by the Commission and, as such, cannot make retail sales of electric energy.⁴⁴ Absent an adequate explanation, Constellation requests that the Commission direct PJM to remove the Wolfhills and Bristol sub-zones from the PJM compliance filing.

36. Hoosier asserts that the compliance filing fails to comply with the Order on Initial Decision because it does not reflect a known and measurable adjustment to Hoosier's SECA obligations supported by Hoosier Witness Daniel Becher at the hearing in this proceeding.⁴⁵ Hoosier argues that its SECA obligation based on the 2002 test year should be adjusted to reflect known and measurable differences as approved in the Order on Initial Decision.

⁴¹ PJM Filing, Appendix A, J. Stephen Henderson Affidavit at 3.

⁴² Constellation October 18, 2010 Comments at 1-2, 5-7.

⁴³ *Id.* at 5-6 (citing PJM Transmission Owners Compliance Filing, Appendix A at 3).

⁴⁴ *Id.* at 6.

⁴⁵ Hoosier October 18, 2010 Protest at 2-3 (citing Initial Decision, 116 FERC ¶ 63,030 at P 57).

3. Answers

37. Indicated PJM Transmission Owners assert the Wolfhills subzone and the Bristol subzone are the same subzone (i.e., the Bristol, Virginia municipal utility) and there has been no suggestion that SECA charges were improperly invoiced to any party other than this LSE.⁴⁶

38. Further, Indicated PJM Transmission Owners state that the subzone identified in the tariff sheets was supported at the hearing by various witnesses.⁴⁷ Indicated PJM Transmission Owners argue that neither the Initial Decision nor the Order on Initial Decision directed the PJM transmission owners to remove the subzone from the tariff sheets supported at the hearing. Indicated PJM Transmission Owners argue that the Bristol, Virginia municipal utility interconnected to the AEP transmission system during 2002 and AEP provided transmission service to the municipal utility. For a period of time, Indicated PJM Transmission Owners state that the municipal utility connected to the AEP transmission system at a new substation constructed to interconnect the Wolf Hills plant to the AEP transmission system. During the time that this delivery point was utilized to serve the Bristol, Virginia municipal utility, to the best knowledge of the Indicated PJM Transmission Owners, that municipal utility was the only entity assessed SECA charges for the identified subzone.⁴⁸

39. With regard to Hoosier, the MISO Transmission Owners state that MISO incorporated only the specific adjustments directed by the Commission in the Order on Initial Decision. Because the Order on Initial Decision did not direct the specific adjustment requested by Hoosier, the MISO Transmission Owners state that the adjustment was not included.⁴⁹ MISO Transmission Owners state that the adjustment will be made if the Commission determines the adjustment should be incorporated into the MISO Tariff.

40. In addition, Indicated PJM Transmission Owners state that the Order on Initial Decision did not address adjustments for Hoosier and the compliance filings did not reflect the adjustment. Indicated PJM Transmission Owners state that they will make this

⁴⁶ *Id.*

⁴⁷ *Id.* at 4.

⁴⁸ *Id.* at 4-5.

⁴⁹ MISO Transmission Owners November 2, 2010 Answer at 5.

adjustment if the Commission so directs.⁵⁰ However, Indicated PJM Transmission Owners state that any adjustment to Hoosier's SECA obligation to AEP under the tariff was overtaken by events since Hoosier settled its SECA obligations long ago.⁵¹

4. Commission Determination

41. With regard to the creation of the Wolfhills and Bristol sub-zones in the AEP zone, we find it appropriate that these adjustments were made as part of PJM's instant compliance filing. In the Initial Decision Rehearing Order, the Commission noted that several parties (i.e., AEP, Dayton, and Exelon) requested verification that various corrections to data should be made in the instant compliance filings.⁵² The Commission agreed, finding that various corrections to the lost revenue data identified by Dr. Henderson and Mr. Heintz were to be incorporated into the instant filings to comply with the Order on Initial Decision and the Commission stated that it would address them here.⁵³ Importantly, we find that the Indicated PJM Transmission Owners' Answer has sufficiently clarified that the Wolfhills and Bristol sub-zone references are not to Wolf Hills, as Constellation asserted, but in fact to the Bristol, Virginia municipal utility. Therefore, we find that this clarification addresses the concerns raised by Constellation.

42. With regard to Hoosier, we agree with Hoosier that the adjustments to its SECA obligation directed in the Order on Initial Decision are not reflected in the instant compliance filings. Therefore, we direct MISO and PJM to submit further compliance filings, within 90 days of the date of issuance of this order, to revise the tariff sheets to reflect the adjustments to Hoosier's SECA obligation, to the extent that Hoosier has not otherwise settled its SECA obligations, for known and measurable differences.

⁵⁰ Indicated PJM Transmission Owners November 2, 2010 Answer at 5.

⁵¹ *Id.* at 5-6 (referring to one of Hoosier's SECA settlements, *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,166 (2006)).

⁵² Initial Decision Rehearing Order, 136 FERC ¶ 61,244 at P 69.

⁵³ *Id.* P 75 (*see also* Order on Initial Decision, 131 FERC ¶ 61,173 at P 161).

E. Quest and CMS Energy (i.e., North Star Load & MECS.DECO.CMSZ Sink)

1. MISO Compliance Filings

43. In its original filing, MISO states that it adjusted Quest's SECA obligation associated with deliveries to North Star Steel because Quest did not service these loads during the transition period. MISO also states that it adjusted CMS Energy's SECA obligation associated with deliveries to the MECS.DECO.CMSZ sink since it did not service this load during the transition period. However, MISO states that, at that time, MISO lacked the information necessary to identify the replacement suppliers.

2. Comments/Protests

44. Detroit Edison states that it does not object to providing MISO with the identities of the new suppliers to be assessed SECA charges previously assessed to Quest (i.e., North Store Steel) and CMS Energy (i.e., retail load at the MECS.DECO.CMSZ sink), subject to a mutually agreeable confidentiality agreement.⁵⁴ Detroit Edison states that it is not necessary for the Commission to issue an order specifically requiring Detroit Edison to disclose such information to MISO.

45. Certain PJM Transmission Owners state that they support the efforts of MISO and Detroit Edison to identify the correct suppliers of retail load at the MECS.DECO.CMSZ sink during the SECA transition period in accordance with the findings in the Order on Initial Decision that the SECA obligations are to be shifted to the new suppliers.⁵⁵ Notwithstanding any confidentiality claims raised by Detroit Edison or others, Certain PJM Transmission Owners state that these new suppliers must be identified in Schedule 22, Attachment B of the MISO Tariff, consistent with the identification of all other suppliers of sub-zonal load. Certain PJM Transmission Owners argue that if the new suppliers are not named in the filed rate, the PJM transmission owners could be adversely harmed by challenges to MISO's efforts to collect SECA obligations from the unnamed entities.⁵⁶ Currently, Certain PJM Transmission Owners state the tariff sheets contain placeholders for the identities of the new suppliers. Accordingly, Certain PJM Transmission Owners request that the Commission direct revisions to MISO's

⁵⁴ Detroit Edison September 17, 2010 Comments at 4.

⁵⁵ Certain PJM Transmission Owners October 18, 2010 Comments at 4.

⁵⁶ *Id.* at 4-5.

compliance filing to include the names of the new suppliers of the shifted Quest and CMS Energy SECA obligations in Schedule 22, Attachment B of MISO's Tariff, and to specify that this requirement is not subject to any confidentiality claims.⁵⁷

3. MISO's Amended Compliance Filing

46. MISO states that with additional information provided by Detroit Edison, Mr. Heintz was able to identify the correct replacement suppliers for the CMS Energy load, as directed in the Order on Initial Decision. With this information, Mr. Heintz has identified the following entities as the new suppliers for the CMS Energy load: Commerce Energy, Inc., Constellation, Detroit Edison, Direct Energy, FirstEnergy Solutions Corp., MidAmerican Energy Company, Nordic Marketing, LLC, Nordic Marketing of Michigan, L.L.C., Premier Energy Marketing L.L.C., and Quest. Mr. Heintz calculated each replacement suppliers' share of the previously calculated SECA obligation.

4. Comments/Protests to Amended Filing

47. Integrys/Quest/Direct Energy protest MISO's amended compliance filing to the extent that it identifies replacement suppliers for, among other things, CMS Energy load that CMS Energy allegedly did not serve in the transition period at the sink code MECS.DECO.CMSZ.⁵⁸ Integrys/Quest/Direct Energy state that they are among three of the LSEs identified by MISO in the amended compliance filing. Integrys/Quest/Direct Energy argue that the evidence submitted is simply inadequate to show that the allocations are correct.⁵⁹ For instance, Integrys/Quest/Direct Energy assert that Mr. Heintz's affidavit does not support the calculation and merely testifies to an arithmetic methodology, apparently relying on information provided by a third party (i.e., Detroit Edison).⁶⁰ Therefore, Integrys/Quest/Direct Energy request that the Commission reject MISO's amended compliance filing. In the alternative, Integrys/Quest/Direct Energy request that the Commission require MISO to file additional information (i.e., OATi tag data, workpapers, detailed explanation of methodology) to substantiate that Integrys/Quest/Direct Energy are appropriately

⁵⁷ *Id.* at 5.

⁵⁸ Integrys/Quest/Direct Energy October 4, 2011 Joint Protest at 1.

⁵⁹ *Id.* at 5-6.

⁶⁰ *Id.*

included among the new suppliers identified in MISO's amended compliance filing.⁶¹ Likewise, Constellation, also identified as a new supplier at the MECS.DECO.CMSZ sink, requests that the Commission reject the amended compliance filing as unsupported or, in the alternative, issue a deficiency letter requiring evidentiary and explanatory support for the reassignment of SECA charges.⁶²

5. Answers

48. MISO Transmission Owners state that they were informed by Detroit Edison that because the retail customer specific information (i.e., customer billing information and chosen supplier) is confidential, these data are required to remain confidential and cannot be filed even under protective order, absent a Commission order requiring the release of these data.⁶³ MISO Transmission Owners state instead that the replacement suppliers identified in Schedule 22 and aggregated data (i.e., public data), as required by the Order on Initial Decision, were provided in the instant proceeding.⁶⁴ MISO Transmission Owners state that the method employed by Detroit Edison to identify the relevant load and replacement suppliers (i.e., aggregate data) complies with the Order on Initial Decision.⁶⁵ MISO Transmission Owners state that other methods identified by Integrys/Quest/Direct Energy (i.e., OATi tag data) cannot identify certain CMS Energy load and the replacement suppliers for that load. MISO Transmission Owners state that there is no publicly available data to verify the load and who individual components of the load chose as new suppliers.⁶⁶ Moreover, MISO Transmission Owners state that, because the sink codes (i.e., OATi tags) do not follow the individual customers, but rather the LSE, the sink codes are not useful in determining the identity of the replacement suppliers and the only way to identify the replacement suppliers is by using customer data from Detroit Edison.⁶⁷

⁶¹ *Id.* at 6-7.

⁶² Constellation October 6, 2011 Protest at 4-6.

⁶³ MISO Transmission Owners October 19, 2011 Answer at 6.

⁶⁴ *Id.* at 6-7.

⁶⁵ *Id.* at 7.

⁶⁶ *Id.* at 8-9.

⁶⁷ *Id.* at 9.

6. Commission Determination

49. MISO's proposed replacement suppliers 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. We therefore set for hearing and settlement judge procedures the verification of the identity of the new supplier(s) of the North Star Steel load and retail load at the MECS.DECO.CMSZ sink.

50. 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.⁶⁸ 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.⁶⁹ The settlement judge shall report to the Chief Judge and the Commission within thirty (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 compliance filings are hereby conditionally accepted, subject to a further compliance filing, as discussed in the body of this order.

⁶⁸ 18 C.F.R. § 385.603 (2015).

⁶⁹ 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 (5) 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>).

(B) PJM's compliance filing is hereby conditionally accepted, subject to a further compliance filing, as discussed in the body of this order.

(C) MISO and PJM are hereby directed to file refund/surcharge reports, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly 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 MISO's proposed compliance filing as discussed above. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), 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 the 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.

(F) 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 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 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.