

154 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER12-1194-001
ER12-1194-002

ORDER ON REHEARING AND COMPLIANCE

(Issued March 22, 2016)

1. On September 18, 2014, the Commission conditionally accepted Midwest Independent Transmission System Operator, Inc.'s (MISO)¹ proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to provide for allocation of Multi-Value Project Auction Revenue Rights (MVP ARR)s.² On October 20, 2014, FirstEnergy Service Company (FirstEnergy)³ submitted a request for rehearing and clarification of the September 18 Order. On November 17, 2014, MISO filed a compliance filing in response to the September 18 Order (Compliance Filing). For the reasons discussed below, we deny the request for rehearing and grant the request for clarification of the September 18 Order. We also accept MISO's Compliance Filing.

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

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 148 FERC ¶ 61,204 (2014) (September 18 Order).

³ FirstEnergy is acting on behalf of six of its affiliates: American Transmission Systems, Inc. (ATSI), The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company, Pennsylvania Power Company, and First Energy Solutions Corp.

I. Background

2. In the September 18 Order, the Commission conditionally accepted MISO's proposed MVP ARR allocation mechanism, subject to a compliance filing. The Commission found that MISO had adequately addressed the Commission's directive in the MVP Order to establish "what changes to its allocation of congestion rights are necessary to reflect the allocation of MVP costs being accepted."⁴ The Commission found that MISO had proposed a specific mechanism for the allocation of benefits associated with the incremental capacity resulting from the construction of MVPs that is just and reasonable and not unduly discriminatory or preferential.

3. The Commission also found that MISO's proposal, to use the incremental capacity of MVPs to allocate MVP ARRs on a regional basis in Stage 1B after prioritizing the feasibility of Long-Term Financial Transmission Rights (LTTRs) in Stage 1A, complied with the Commission's direction in the MVP Order. The Commission concluded, based on the record, that prioritizing the feasibility of LTTRs in Stage 1A before allocating the remainder of the incremental benefits associated with the construction of MVPs produces a roughly commensurate allocation of costs and benefits that is just and reasonable, and is not unduly discriminatory or preferential.⁵

4. In addition, the Commission directed MISO to make a compliance filing clarifying its proposed tariff language to note that the Simultaneous Feasibility Test is used with regard to the allocation of ARRs, and not only financial transmission rights. The Commission also directed MISO to more specifically identify the "MVP-related schedules."⁶

II. Request for Rehearing and Clarification

5. FirstEnergy argues that the Commission erred in accepting MISO's allocation proposal because MISO's proposal suffers from two critical defects: (1) in violation of

⁴ September 18 Order, 148 FERC ¶ 61,204 at P 39 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 395 (2010) (MVP Order), *order on reh'g*, 137 FERC ¶ 61,074, at PP 298-299 (2011) (MVP Rehearing Order), *aff'd in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th Cir. 2013), *cert. denied*, *Shutte v. FERC*, 82 USLW 3240 (U.S. Feb. 24, 2014) (Nos. 13-443), *Hoosier Energy Rural Elec. Co-Op., Inc. v. FERC*, 82 USLW 3240 (U.S. Feb. 24, 2014) (No. 13-445)).

⁵ *Id.* P 40.

⁶ *Id.* P 45.

Guideline 3 of Order No. 681,⁷ MISO did not allocate any LTTRs from the incremental MVP capacity to former MISO transmission owners (former MISO TOs) in the first stage of the MISO congestion rights allocation process, the only stage in which LTTRs are nominated and allocated; and (2) MISO created an unduly discriminatory mismatch between those who pay for MVPs and those who receive congestion rights from the incremental transmission capacity created by MVPs by confiscating a portion of the incremental MVP capacity to increase the feasibility of existing LTTRs in the first stage before allocating the residual capacity in the second stage through short-term MVP ARRs to those who pay for the MVPs.⁸ According to FirstEnergy, this violates cost-causation principles because the beneficiaries of existing LTTRs in the first stage are not the same parties that pay for MVPs, and include parties with Grandfathered Transmission Service Agreements (GFAs) who are exempt from the obligation to pay any MVP costs.⁹

6. FirstEnergy argues that MISO must make LTTRs available to former MISO TOs for incremental MVP capacity paid for by the former MISO TOs. According to FirstEnergy, MISO's proposal provides no LTTRs or LTTR-related benefits to former MISO TOs for incremental capacity in Stage 1A. First Energy asserts that under Schedule 39, MISO seeks to impose large, long-term charges on former MISO TOs for MVP projects approved before they departed MISO. FirstEnergy argues that by requiring the former MISO TOs to pay for MVPs, but refusing to make available any LTTRs or LTTR-related benefits to them for the incremental capacity created by those MVPs, MISO has violated Order No. 681 and engaged in undue discrimination.¹⁰

7. FirstEnergy argues that Guideline 3 of Order No. 681 requires that LTTRs must be made available to any party that pays for transmission upgrades and expansions that create new capacity.¹¹ It further argues that "[t]he purpose of guideline (3) is to ensure that entities that fund transmission upgrades that expand transmission capacity receive Incremental ARRs commensurate with this expanded capacity."¹² FirstEnergy asserts that

⁷ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g*, Order No. 681-B, 126 FERC ¶ 61,254 (2009)).

⁸ FirstEnergy Rehearing Request at 1-2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 10.

¹¹ *Id.* (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 210).

¹² *Id.* (quoting *PJM Interconnection, LLC*, 121 FERC ¶ 61,073, at P 22 (2007)).

the Commission has required MISO, PJM, the California ISO, ISO-New England, and the New York ISO to comply with Guideline 3 when developing their processes for nominating and allocating LTTRs.¹³ FirstEnergy asserts that its protest argued that MISO's proposal violated Order No. 681 and Guideline 3, and the Commission erred by not responding to this argument in the September 18 Order.¹⁴

8. FirstEnergy disagrees with MISO's argument that Guideline 3 applies to entities that fund transmission upgrades through direct assignment and is inapplicable to upgrades that are rolled into transmission rate base. According to FirstEnergy, in Order No. 681, the Commission clarified that Guideline 3 applies only to upgrade costs that are directly assigned to a particular entity and not rolled into transmission rate base.¹⁵ However, FirstEnergy states that in making this clarification the Commission was responding to a concern that third-party transmission sponsors that seek revenue recovery through rate base should not be allocated LTTRs.¹⁶ FirstEnergy disputes MISO's argument that MVP costs are not directly assigned to former MISO TOs because Schedule 39 charges are "usage-based" charges based on energy withdrawals in the zones of the former MISO TOs. FirstEnergy argues that under Schedule 39, MVP costs would be borne solely by former MISO TOs and would not be rolled into transmission rate base. Schedule 39 revenues from the former MISO TOs are distributed among the existing MISO transmission owners and therefore are excluded from the MVP costs paid for by MISO customers. Therefore, FirstEnergy asserts that because MVP costs would be directly assigned to former MISO TOs under Schedule 39, Guideline 3 fully applies to MISO TOs' Schedule 39 payments for MVPs.¹⁷

¹³ *Id.* at 10-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143, at PP 73-76 (2007); *PJM Interconnection, LLC*, 117 FERC ¶ 61,220, at PP 46-47 (2006), *order on reh'g*, 119 FERC ¶ 61,144 (2007); *California Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at PP 74-77 (2007) (*CAISO*); *ISO New England Inc.*, 122 FERC ¶ 61,173, at PP 57-59 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,029, at PP 22-24 (2009)).

¹⁴ *Id.* at 11 (citing *PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 209 (D.C. Cir. 2011); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005); *Can. Association of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001); *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000)).

¹⁵ *Id.* (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 211).

¹⁶ *Id.* at 11-12 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 194).

¹⁷ *Id.* at 12.

9. FirstEnergy argues that MISO cannot argue that Guideline 3 does not apply to former MISO TOs on the ground that the former MISO TOs are not market participants located in MISO. According to FirstEnergy, Guideline 3 broadly states that the requirement applies to “any party” that pays for transmission expansions, and ensures that “entities that fund transmission upgrades that expand transmission capacity” receive LTTRs.¹⁸ Thus, for example, FirstEnergy asserts, Guideline 3 applies to merchant transmission developers who are not participants in energy markets.¹⁹

10. Further, FirstEnergy argues that MISO’s assertion that using incremental MVP capacity in Stage 1A to increase the feasibility of existing LTTRs provides regional benefits in the form of reduced uplift does not support MISO’s exclusion of former MISO TOs from the benefits of incremental MVP capacity in Stage 1A. FirstEnergy argues that former MISO TOs do not receive any of this alleged regional benefit because they are not existing LTTR holders and do not pay uplift from infeasible LTTRs. According to FirstEnergy, MISO’s argument underscores that MISO’s approach is unduly discriminatory and in violation of Guideline 3.

11. In addition, FirstEnergy argues that none of the Commission’s arguments in paragraph 43 of the September 18 Order rebut FirstEnergy’s contention that MISO’s approach violates Guideline 3 and Order No. 681. FirstEnergy asserts that the argument that only a small amount of incremental MVP capacity might be needed to make existing LTTRs feasible in Stage 1A fails for two reasons. First, although this contention may have a bearing on the amount of benefits the former MISO TOs might receive in Stage 1B, it is irrelevant to FirstEnergy’s objection to the complete exclusion of former MISO TOs from any benefits in Stage 1A. Second, FirstEnergy argues that as MISO and the Commission have previously recognized, LTTRs can become infeasible for many reasons outside MISO’s control and “*it is not possible to predict* the amount of feasible LTTRs that will be available until after a feasibility test has been run and a transmission system evaluation has been made based on the most up-to-date system topology.”²⁰ Therefore, FirstEnergy argues that it is impossible to predict the infeasibility of LTTRs in future years based on data from 2011 and 2012, and that to the extent MISO were to claim that LTTRs for remaining MISO members had somehow been rendered infeasible

¹⁸ *Id.* (quoting *PJM Interconnection, LLC*, 121 FERC ¶ 61,073 at P 22).

¹⁹ *Id.* (citing *CAISO*, 120 FERC ¶ 61,023 at P 74).

²⁰ *Id.* at 13 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,063, at P 24 (2007) (emphasis added by FirstEnergy); *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER07-478-000, at 12 (Jan. 29, 2001) (delegated letter order)).

or less valuable as the result of the ATSI zone withdrawing from MISO, any such claim was disposed by the settlement in Docket No. ER11-2059.²¹

12. Further, FirstEnergy argues that the rejection of FirstEnergy's protest is not supported by the reference to a delegated letter order in which "the Commission accepted revisions to MISO's Tariff that permit [load-serving entities] with load external to the MISO footprint to obtain LTTRs if they secure proper transmission service."²² FirstEnergy argues that the delegated order involved MISO's proposal to revise the process for designating and replacing Reserved Source Points, which form part of the basis for MISO's LTTRs and ARR, and that there is no mention in MISO's filing in that proceeding or in the Commission's delegated letter order accepting that filing, of MVP costs or whether former MISO TOs may receive LTTR-related benefits for incremental MVP capacity in Stage 1A. FirstEnergy argues that if the Commission was trying to communicate that former MISO TOs are not eligible for Stage 1A LTTRs unless "they secure the proper transmission service," then the Commission needs to clarify what would be "proper" and why that requirement would not be unreasonable or unduly discriminatory for former MISO TOs who now take transmission service from PJM.

13. According to FirstEnergy, the final argument in paragraph 43 of the September 18 Order, that the purpose of requiring former MISO TOs to pay for MVP costs is to ensure that costs are not inappropriately shifted to the remaining MISO transmission owners, also does not support the Commission's decision. FirstEnergy asserts that the purpose of avoiding cost shifts has already been addressed by the requirement that former MISO TOs will pay MVP costs under Schedule 39. FirstEnergy contends that denying former MISO TOs the right to participate in LTTR nomination and allocation in Stage 1A violates Order No. 681 and does not further the Commission's goal of avoiding "inappropriate" cost shifts; rather the Commission has authorized a punitive measure by denying Stage 1A LTTR allocations in addition to requiring Schedule 39 payments from former MISO TOs if it ultimately sustains the Initial Decision on MISO's Schedule 39.²³

²¹ *Id.* at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,139, at PP 12-13 (2012)).

²² *Id.* at 13-14 (citing September 18 Order, 148 FERC ¶ 61,204 at P 43 and n.62 (citing *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER13-1515-000, at 4 (Aug. 8, 2013) (delegated letter order)). We note that although First Energy describes the delegated letter order as unpublished, it is publically available on elibrary.

²³ *Id.* at 14-15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 63,007 (2013) (Schedule 39 Initial Decision)).

14. FirstEnergy also contends that MISO cannot first allocate incremental MVP capacity to existing LTTRs and then allocate the remaining capacity to those who pay for it.²⁴ In this regard, First Energy argues that under the principle that transmission costs should be allocated to those who benefit from the transmission facilities,²⁵ the Commission has held that those who pay the costs of the transmission system should receive benefits in the form of transmission congestion rights.²⁶ FirstEnergy argues that MISO's proposal violates this principle because MISO first gives away some of the incremental MVP capacity to existing LTTR holders in Stage 1A of the congestion rights allocation process, before using the residual capacity in Stage 1B to benefit the parties that pay the costs of the MVP facilities. According to FirstEnergy, MISO has created an unjustified mismatch between those who are required to pay for MVPs and those who receive the benefits from the new capacity created by MVPs "by siphoning off some of the incremental MVP capacity for the benefit of existing LTTR holders."²⁷

15. FirstEnergy explains that this mismatch occurs because the entities that receive the benefit of the incremental MVP capacity in Stage 1A are different from the parties that pay for the MVP capacity. FirstEnergy asserts that MISO Network Integration Transmission Service (NITS) customers and customers with GFA entitlements may nominate ARR entitlements in Stage 1A, but customers with GFA entitlements do not pay any MVP costs.²⁸ Therefore, FirstEnergy asserts that under MISO's proposal, benefits from MVPs are first given to GFA entitlement holders who have been exempt from paying the costs of MVPs. According to FirstEnergy, because MISO NITS customers receive their full *pro rata* share of the residual benefit of incremental MVP capacity in Stage 1B, they receive a double benefit from incremental MVP capacity. In

²⁴ *Id.* at 15.

²⁵ *Id.* (citing *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,232, at PP 586, 657 (2011); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

²⁶ *Id.* (citing *PJM Interconnection, LLC*, 108 FERC ¶ 61,269, at P 22 (2004); *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,145, at P 70 (2003); *New England Power Pool*, 101 FERC ¶ 61,344, at P 59 (2002), *reh'g denied*, 103 FERC ¶ 61,304 (2003)).

²⁷ *Id.* at 16.

²⁸ *Id.* (MVP Order, 133 FERC ¶ 61,221 at P 450; MVP Rehearing Order, 137 FERC ¶ 61,074 at P 293).

this regard, FirstEnergy argues that MISO NITS customers receive an initial allocation of benefits to the extent the incremental MVP capacity is needed in Stage 1A to make their LTTRs feasible, and then they still receive their *pro rata* share of any residual benefits remaining in Stage 1B. FirstEnergy contends that this is unduly discriminatory and creates a mismatch between the allocation of MVP costs and the allocation of the benefits of incremental capacity.²⁹

16. FirstEnergy further argues that Guideline 5 of Order No. 681 does not authorize MISO to take incremental MVP capacity for existing LTTR holders before allocating the residual capacity to those who pay for MVPs. FirstEnergy asserts that Guideline 5 states that “[l]oad serving entities must have priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity,”³⁰ and argues that Guideline 5, however, explicitly refers to a priority to LTTRs supported by existing capacity, and lends no support to MISO’s proposal to allocate LTTRs made feasible by incremental MVP capacity.

17. FirstEnergy takes issue with MISO’s argument that Guideline 5 applies to incremental transmission capacity from transmission upgrades where the costs of the upgrades are rolled into transmission rates, arguing that this does not support MISO’s claim that exiting LTTR holders should have priority to use incremental MVP capacity paid for by former MISO TOs. FirstEnergy asserts that MVP costs borne by former MISO TOs are not rolled into transmission rate base, but are borne solely by the former MISO TOs.

18. FirstEnergy contends that the priority for load-serving entities in Guideline 5 is based on the same principle that supports Guideline 3: that transmission congestion rights should be awarded to those who pay the transmission costs.³¹ FirstEnergy states that it is primarily for this reason that each load serving entity is entitled to an equitable allocation of firm transmission rights, whether short-term or long-term, that are supported by existing capacity. Therefore, FirstEnergy concludes that because former MISO TOs must pay a share of MVP costs, the equitable purpose of Guideline 5 does not support giving MISO load-serving entities a priority to incremental MVP capacity over former MISO TOs.³²

²⁹ *Id.* at 16-17.

³⁰ *Id.* at 17 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 325; 18 C.F.R. § 42.1(d)(5)).

³¹ *Id.* (citing Order No. 681-A, 117 FERC ¶ 61,201 at PP 68, 78).

³² *Id.* at 18.

19. In addition, FirstEnergy argues that Order No. 681-A states that Guideline 5's priority to existing capacity for load-serving entities applies to load-serving entities outside the RTO where: (1) the outside load-serving entity has an existing agreement with the transmission owner to pay a share of the transmission system on a long-term basis to support load outside the region; and (2) pancaked rates between the RTO and other transmission provider have been eliminated, as long as the agreement with the load-serving entity provides for cost sharing in accordance with non-pancaked rates currently in effect.³³ First Energy argues that both of these circumstances apply here to load-serving entities in the zones of the former MISO TOs. First Energy argues that to the extent MISO succeeds in imposing an MVP charge on former MISO TOs under Schedule 39, that schedule would constitute payment for a share of the embedded costs of the MVP facilities on a long-term basis sufficient to satisfy the first circumstance. Further, FirstEnergy asserts that because the Commission approved the elimination of pancaked rates between MISO and PJM, the second circumstance is also met for load-serving entities in the ATSI Zone, which is now located in PJM.³⁴ FirstEnergy therefore concludes that any priority to incremental MVP capacity under Guideline 5 that applies to load-serving entities in MISO should also apply to load-serving entities in the zones of the former MISO TOs.³⁵

20. Further, FirstEnergy argues that MISO cannot rely on FPA section 217(b)(4) or the obligation in Attachment FF, section I.A(vi), of the MISO Tariff, which requires MISO's transmission planning process to evaluate expansions that support the simultaneous feasibility of existing LTTRs. FirstEnergy asserts that while MISO has an obligation to plan for the continued feasibility of existing LTTRs that does not give MISO the right to take incremental transmission capacity created by MVPs that was not planned for that purpose. According to FirstEnergy, the only MVP project for which ATSI allegedly has cost responsibility, the Michigan Thumb project, was planned to create additional capacity to meet renewable energy requirements in the State of Michigan, not to increase the feasibility of LTTRs.³⁶

21. FirstEnergy asserts that the Commission cannot defend MISO's proposal by claiming that the amount of incremental MVP capacity given away in Stage 1A might be

³³ *Id.* (citing Order No. 681-A, 117 FERC ¶ 61,201 at P 79; Order No. 681-B, 126 FERC ¶ 61,254 at P 12).

³⁴ *Id.* (citing Order No. 681-A, 117 FERC ¶ 61,201 at P 75).

³⁵ *Id.* at 18-19.

³⁶ *Id.* at 19 (citing MVP Order, 133 FERC ¶ 61,221 at P 95 and n.118).

small.³⁷ FirstEnergy also contends that any amount of incremental MVP capacity that is given away to existing LTTR holders in Stage 1A will create an undue preference in favor of existing LTTR holders and a mismatch between those who are allocated MVP costs and those who are allocated congestions rights benefits. Therefore, FirstEnergy concludes that the Commission should grant rehearing of the September 18 Order and direct MISO to allocate the congestion revenue rights from incremental MVP capacity to those who pay for the incremental MVP capacity.

22. FirstEnergy also argues that the Commission erred by failing to address FirstEnergy's request that the Commission require MISO to clarify that incremental ARR benefits will be disbursed as payments to those entities that have paid for the corresponding MVP projects – or at least as credits against Schedule 39 payments, and not as some form of credit for transmission services that former MISO TOs now located in PJM will have little or no reason to use.³⁸ Specifically, FirstEnergy argues that as stated in its protest, MISO's proposal ambiguously states that "MISO will distribute the revenues associated with MVP ARRs to the entities to which MVP costs are allocated, by crediting the revenue shares against the MVP charges of those entities."³⁹ FirstEnergy argues that the Commission did not clarify, or direct MISO to clarify, how the Stage 1B credit mechanism is intended to work. FirstEnergy asserts that clarification is needed because MISO does not explain exactly what it means by "ARR credit" or how these will be distributed.⁴⁰

23. MISO filed a motion for leave to file an answer and answer to FirstEnergy's request for rehearing. FirstEnergy filed an opposition to MISO's motion for leave to answer and answer to FirstEnergy's request for rehearing. First Energy argues that the Commission should reject MISO's answer. If the Commission accepts MISO's answer, FirstEnergy requests leave to answer MISO's answer.

³⁷ *Id.* (citing September 18 Order, 148 FERC ¶ 61,204 at PP 40, 43).

³⁸ *Id.* at 2; 20-21.

³⁹ *Id.* at 20 (quoting MISO March 1, 2012 Compliance Filing, Docket No. ER12-1194-000 at 5).

⁴⁰ *Id.*

III. Discussion

A. Procedural Matters

24. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits answers to a request for rehearing. Therefore, we reject the answers submitted by MISO and FirstEnergy.

B. Substantive Matters

25. We note at the outset that, as a result of Opinion No. 539, the MVP cost calculation methodology in Schedule 39 may not be applied to ATSI because Schedule 39 is inconsistent with the terms of MISO's Tariff at the time of ATSI's withdrawal,⁴¹ and thus Opinion No. 539 resolves FirstEnergy's argument on rehearing that under Schedule 39, MISO seeks to impose large, long-term charges on ATSI for MVP projects approved before it departed MISO.⁴² However, FirstEnergy requests rehearing on issues not limited to FirstEnergy because FirstEnergy refers to former MISO TOs, and we address those issues below.

26. We deny FirstEnergy's request that the Commission grant rehearing to find that MISO is required to allocate LTTRs from the incremental MVP capacity to former MISO TOs in the first stage of the MISO congestion rights allocation process on the basis that Guideline 3 applies to payments made under Schedule 39. Guideline 3 applies only to the direct assignment of transmission project costs, or participant-funded network upgrades, and provides that "[l]ong-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions."⁴³ In Order No. 681, the Commission stated that "[o]ur intention in guideline (3) was to address transmission rights awarded to entities that fund transmission upgrades and expansions through direct cost assignment. Our subsequent discussion in this section applies only to such upgrades or expansions. ... Guideline (3) does not address the award of transmission rights made possible by transmission upgrades that are rolled into transmission rates."⁴⁴ Thus,

⁴¹ *Midwest Independent Transmission System Operator, Inc.*, Opinion No. 539, 153 FERC ¶ 61,101, at PP 69-78 (2015) (Opinion No. 539).

⁴² *See infra* P 6.

⁴³ Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 210.

⁴⁴ *Id.* P 211.

Guideline 3 applies only to the direct assignment of transmission project costs, or participant-funded transmission upgrades.⁴⁵

27. We reject FirstEnergy's assertion that the Commission's clarification in Order No. 681 – that Guideline 3 applies only to upgrade costs that are directly assigned to a particular entity and not rolled into transmission rate base – is inapplicable here.⁴⁶ The Commission has affirmed that Guideline 3 applies only to the direct assignment of transmission project costs, or participant-funded transmission upgrades in a more recent order. In evaluating the Southwest Power Pool, Inc.'s (SPP) proposal to provide long-term congestion rights, the Commission explained that Guideline 3 applies to direct cost assignment, and required SPP to submit a compliance filing that addresses “participant-funded upgrades in a way that is just and reasonable and consistent with Order No. 681[,]” particularly Guideline 3.⁴⁷ By contrast, MVP costs are allocated regionally throughout the MISO footprint.⁴⁸ FirstEnergy argues that MVP costs borne solely by former MISO TOs are not rolled into transmission rate base, and that Schedule 39 revenues from former MISO TOs are distributed among the existing MISO transmission owners and therefore are excluded from the MVP costs paid for by MISO customers. Thus, concludes FirstEnergy, Guideline 3 of Order No. 681 applies to former MISO TOs' payments for MVPs. However billing under Schedule 39 by MISO is not the same as direct assignment of network upgrade costs because Schedule 39 implements the withdrawing transmission owner's obligation to pay for legacy MVP costs allocated to its zone through the rolled-in rate design under the MISO Tariff prior to its withdrawal. We

⁴⁵ We reject First Energy's argument that Guideline 3 applies here based on its assertion that the Commission has found that Guideline 3 applies to merchant transmission developers who are not participants in energy markets. First Energy Rehearing Request at 12 (citing *CAISO*, 120 FERC ¶ 61,023 at P 74). As discussed above, we find that Guideline 3 does not apply here because it applies only to the direct assignment of transmission costs. Thus, we find that the Commission's determination in *CAISO* does not support FirstEnergy's assertion that Guideline 3 is applicable here.

⁴⁶ FirstEnergy Rehearing Request at 11-12 (citing Order No. 681, FERC Stats. & Regs. ¶ 31,226 at PP 194, 211).

⁴⁷ *Sw. Power Pool, Inc.*, 149 FERC ¶ 61,076, at PP 33-34 (2014), *order on reh'g*, 152 FERC ¶ 61,034 (2015).

⁴⁸ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at PP 434, 436, 438-40, 442-43 (2013) (finding MVPs involve regional cost allocation), *order on reh'g*, 147 FERC ¶ 61,127, at P 379 (2014), *order on reh'g*, 150 FERC ¶ 61,037 (2015).

find that the costs of MVPs are regionally allocated,⁴⁹ and are not directly assigned to a particular entity in order to receive services under MISO's Tariff. Thus, Guideline 3 does not support FirstEnergy's assertion that it should be allocated LTTRs in the first stage of the MISO congestion rights allocation process.

28. FirstEnergy further suggests that the proposal fails to follow cost-causation principles because the beneficiaries of existing LTTRs in the first stage are not the same parties that pay for MVPs, and include, for example, parties with GFAs who FirstEnergy states are exempt from the obligation to pay any MVP costs. At the outset, we find that FirstEnergy's argument would have the Commission treat a former MISO TO similar to entities that remain in MISO by entitling a former MISO TO to all the benefits that would accrue to entities within its zone had it remained a member of MISO. However, a former MISO TO is differently situated from load-serving entities within MISO because a former MISO TO's cost responsibility for MISO transmission system facilities as a former MISO TO is associated with its withdrawal obligation and does not reflect full participation in the cost allocation for MISO transmission expansions on an ongoing basis to which load-serving entities with MISO are subject.⁵⁰ Furthermore, we disagree with FirstEnergy's argument that GFA customers benefit from incremental MVP capacity without paying MVP costs. Although GFA customers are exempt from the MVP usage charge, they still pay for MVP costs because the Commission specifically required MVP costs to be allocated to GFAs, and GFA customers pay for their transmission service through the rates in their GFAs, not through the rates for transmission service under the MISO Tariff.⁵¹ Thus GFA customers will not receive a double benefit.

⁴⁹ MISO, FERC Electric Tariff, Attachment FF, § III.A.2.g.

⁵⁰ We similarly disagree with FirstEnergy that it is in one of those situations contemplated by Order No. 681 that would require extending priority to LTTRs to load serving entities outside the RTO. *See* FirstEnergy Rehearing Request at 18 (citing Order No. 681-A, 117 FERC ¶ 61,201 at P 79; Order No. 681-B, 126 FERC ¶ 61,254 at P 12). A former MISO TO's withdrawal obligation is neither an existing agreement with a transmission owner to pay a share of the transmission system on a long-term basis in order to support load outside the region, nor is it cost sharing in accordance with the non-pancaked rate adopted in the combined MISO-PJM region.

⁵¹ MVP Order, 133 FERC ¶ 61,221 at P 452. The Commission specifically required MISO to clarify on compliance that the divisor of the MVP usage charge in Attachment MM reflects the MWhs of grandfathered service provided by each transmission owner to reflect an allocation of the costs of MVPs recovered under grandfathered agreements.

29. We also reject FirstEnergy's argument that denying it LTTRs in the first stage of the MISO congestion rights allocation process will result in a mismatch between those who pay the cost of the MVPs and those who benefit from the project's incremental capacity. MISO's proposal to allocate MVP ARR on a regional basis in Stage 1B after prioritizing the feasibility of LTTRs in Stage 1A complies with the Commission's direction in the MVP Order, and "produces a roughly commensurate allocation of costs and benefits that is just and reasonable, and is not unduly discriminatory or preferential."⁵² The record indicates that only a small percentage of LTTRs are infeasible, and no party has presented evidence to the contrary or otherwise rebutted the record. On this basis, and because LTTR allocation in Stage 1A is limited to 50 percent of peak usage, we find unsupported the concern that a significant amount, let alone all or most, of the benefits associated with the incremental capacity resulting from the construction of MVPs will be used up before Stage 1B. In addition, the courts have recognized that no cost allocation method can perfectly assign costs to the beneficiaries of a transmission project.⁵³

30. Finally, we clarify that former MISO TOs' share of MVP ARR benefits shall be credited against payment of Schedule 39 charges, as applicable. However, we note that the Commission found in Opinion No. 539 that the MVP cost calculation methodology in Schedule 39 may not be applied to ATSI.⁵⁴ Because Schedule 39 may not be applied to ATSI, crediting FirstEnergy's share of MVP ARR benefits against its payment of Schedule 39 charges may no longer be applicable.

IV. MISO's Compliance Filing

31. On November 17, 2014, in compliance with the September 18 Order, MISO submitted revisions to clarify certain provisions of its Tariff regarding MVP ARRs. MISO explains that as required by paragraph 45 of the September 18 Order, it has modified the Tariff's definition of the term Simultaneous Feasibility Test to clarify that it is also used with regard to the allocation of ARRs, not only financial transmission rights.⁵⁵ MISO also states that it has revised section 47.3 of the Tariff to specify the

⁵² September 18 Order, 148 FERC ¶ 61,204 at P 40.

⁵³ See *Illinois Commerce Commission v. FERC*, 576 F.3d at 476-77 ("[w]e do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars"). See also *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, at 1369 (D.C. Cir. 2004) ("we have never required a ratemaking agency to allocate costs with exacting precision").

⁵⁴ Opinion No. 539, 153 FERC ¶ 61,101 at P 105.

⁵⁵ MISO Compliance Filing Transmittal at 2.

“MVP-related schedules” referenced therein, which are Schedules 26-A and 39. MISO requests that the proposed Tariff provisions be made effective on September 1, 2012, consistent with the September 18 Order.⁵⁶

32. Notice of MISO’s Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 70,174 (2014) with interventions and protests due on or before December 8, 2014. No comments or protests were filed.

33. We find that MISO has complied with the Commission’s directives in the September 18 Order, and we will accept MISO’s Compliance Filing, effective September 1, 2012, as requested.

The Commission orders:

(A) FirstEnergy’s request for rehearing is hereby denied, as discussed in the body of this order.

(B) FirstEnergy’s request for clarification is hereby granted, as discussed in the body of this order.

(C) MISO’s Compliance Filing is hereby accepted, effective September 1, 2012, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁶ *Id.* (citing September 18 Order, 148 FERC ¶ 61,204 at P 46).