

156 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc., Docket No. ER10-1791-003

ORDER ON REMAND

(Issued July 13, 2016)

1. This order responds to a remand by the United States Court of Appeals for the Seventh Circuit to the Commission to determine, in light of current conditions, what if any limitation on export pricing to PJM Interconnection, L.L.C. (PJM) for Multi-Value Projects (MVPs) by Midcontinent Independent Transmission System Operator, Inc. (MISO)¹ is justified.² As discussed below, we have determined that, in light of current conditions, the limitation on export pricing to PJM for MVPs by MISO is no longer justified. And, we direct MISO to submit a compliance filing consistent with our determination.

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.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh’g and compliance filing*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order), *aff’d in part, dismissed in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764, 780 (7th Cir. 2013) (*Illinois Commerce Commission II*), *cert. denied sub nom. Schuette v. FERC*, 134 S.Ct. 1277 (2014) and *cert. denied sub nom. Hoosier Rural Energy Co-op., Inc. v. FERC*, 134 S.Ct. 1278 (2014).

I. Background

A. Orders on RTO Choices, Rate Pancaking between MISO and PJM, and Cross-Border Facilities

2. In July 2002, the Commission permitted American Electric Power Service Corporation (AEP), Commonwealth Edison Company (ComEd), Commonwealth Edison Company of Indiana, and Dayton Power and Light Company to join PJM.³ In so doing, the Commission found that these parties' decisions to join PJM 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,⁴ impeding the goals of Order No. 2000.⁵ Specifically, the Commission was concerned about the scope and regional configuration characteristic set forth in Order No. 2000, in which a regional transmission organization (RTO) must serve a region of sufficient scope and configuration to permit it to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.⁶ Therefore, as a condition of accepting those parties' RTO choices, the Commission required parties in the region to address the problem of rate pancaking across the MISO-PJM seam and instituted a proceeding under section 206 of the Federal Power Act (FPA)⁷ to investigate

³ *Alliance Cos.*, 100 FERC ¶ 61,137 (2002) (RTO Realignment Order I), *order on clarification*, 102 FERC ¶ 61,214, *order on clarification*, 103 FERC ¶ 61,274 (2003) (RTO Realignment Order II).

⁴ Rate pancaking, or a pancaked rate, occurs when a transmission customer is charged separate access charges for each utility service territory that the customer's contract path crosses.

⁵ RTO Realignment Order II, 103 FERC ¶ 61,274 at PP 24-26 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,024 (1999) (citing the elimination of rate pancaking as one of the benefits of Order No. 2000), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁶ Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at 31,372.

⁷ 16 U.S.C. § 824e (2012).

the rates for service between the two RTOs and established trial-type hearing procedures.⁸ Following the hearing and issuance of an initial decision,⁹ the Commission found that the pancaked rates for service wheeled through or out of one RTO to serve load in the other RTO were unjust and unreasonable and directed the RTOs to eliminate them.¹⁰

3. The Commission replaced the pancaked rates between MISO and PJM with a license plate rate design,¹¹ and, consistent with its policies concerning use of license plate rates in RTOs, the Commission also directed MISO and PJM to work with their transmission-owning members to propose a method to allocate between the RTOs the costs of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO (cross-border facilities).¹² In subsequent proceedings, the Commission accepted proposals to include in the Joint Operating Agreement between MISO and PJM (JOA) methods to allocate between the RTOs the cost of cross-border facilities built for reliability purposes¹³ and cross-border facilities that provide economic benefits.¹⁴ In addition, in Order No. 1000, the Commission recognized this distinctive history related to the MISO-PJM seam.¹⁵

⁸ RTO Realignment Order I, 100 FERC ¶ 61,137 at PP 50-52.

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049 (2003).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 23, 2003 Order).

¹¹ Under a “license plate” rate design, a customer pays the cost of transmission facilities that are located in the same zone as the customer.

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004) (“[T]he Commission does require that proposals to use license plate rates clearly address how the cost of new transmission facilities will be allocated and how that methodology will impact efficient transmission expansion”), *reh’g denied*, 131 FERC ¶ 61,174, at P 22 (2010).

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008).

¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

¹⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 662

B. Orders Applying the Prohibition of Rate Pancaking between MISO and PJM to MVPs

4. On July 10, 2010, MISO and MISO Transmission Owners¹⁶ (MISO Parties) submitted revisions to the MISO Tariff to implement criteria for identifying and allocating the costs of MVPs, which are projects that “enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple [MISO] transmission zones.”¹⁷

5. In the MVP Order, the Commission accepted the proposed MVP charge for export and wheel-through transactions, except for transactions that sink in PJM. With regard to transactions that sink in PJM, the Commission stated that the MISO Parties had not shown that their proposal did not constitute a resumption of rate pancaking along the MISO-PJM seam, contrary to previous Commission orders. The Commission found that, while there had been some changes since the elimination of rate pancaking between MISO and PJM, the changes were insufficient to mitigate the RTO scope and configuration concerns that led the Commission to find that pancaked rates between

(2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (noting that MISO and PJM “developed their cross-border cost allocation method in response to Commission directives related to MISO and PJM’s intertwined configuration”).

¹⁶ MISO Transmission Owners include Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC (ATC); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc. (Duke Ohio), Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc. (Duke Kentucky); Great River Energy; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

¹⁷ July 15, 2010 MVP Filing, Transmittal Letter at 2.

MISO and PJM were unjust and unreasonable.¹⁸ The Commission also found arguments that its decision to eliminate rate pancaking is now incorrect to be impermissible collateral attacks on prior Commission orders.¹⁹

6. In the MVP Rehearing Order, the Commission denied rehearing, reiterating that Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will look at the extent to which an RTO would encompass one contiguous area, whether it would encompass a highly interconnected portion of the grid, and what the trading patterns would look like.²⁰ The Commission rejected the argument by MISO Parties that, as a result of changes in membership of PJM and MISO, the Commission's previous concerns have been alleviated. The Commission instead found that:

[N]o party has provided substantial evidence comprehensively addressing the factors identified in Order No. 2000, nor have they otherwise supported their claim that the Commission's scope and configuration findings regarding the irregular [MISO]-PJM seam no longer are justified.²¹ While parties may be correct that the underlying regulatory priorities and state and federal requirements have changed since the Commission rendered its previous findings regarding the appropriateness of rate pancaking between [MISO] and PJM (e.g., implementation of state renewable portfolio

¹⁸ MVP Order, 133 FERC ¶ 61,221 at PP 423, 440 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35). Changes cited within pleadings in the MVP proceeding, and observed by the Commission in the MVP Orders, included: (1) Illinois Power had decided to remain in MISO; (2) American Transmission System, Inc. (ATSI) had obtained Commission approval to transfer from MISO to PJM; and (3) Duke Ohio and Duke Kentucky had obtained Commission approval to transfer from MISO to PJM.

¹⁹ *Id.*

²⁰ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 289 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

²¹ *Id.* (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 33).

standards), the relevant requirements of Order No. 2000 remain applicable.^[22]

7. The Commission also rejected arguments that MVP charges were distinguishable from the pancaked rates that were previously eliminated by the Commission on the basis of the types of transmission projects considered (e.g., new versus existing transmission projects), transmission planning processes employed (e.g., regional versus local project planning), or benefits generated (e.g., cross-border versus local benefits). The Commission determined that none of those arguments changed its view of the scope and configuration of MISO and PJM, nor did they suggest that the design of the proposed MVP cost allocation methodology would not involve pancaked rates between MISO and PJM. The Commission also rejected the notion that its previous orders encouraging a broader sharing of transmission costs implicitly endorsed an impermissible resumption of rate pancaking. In addition, the Commission rejected the argument that MVP charges should be viewed as being akin to charges that recover the costs associated only with administering MISO and its markets.²³

8. With respect to the challenges to the Commission's decision to exempt PJM entities from an allocation of MVP charges but not loads within MISO or in other regions, the Commission found that such arguments were collateral attacks on its previous decision to eliminate rate pancaking between MISO and PJM, but not between MISO and other RTOs, and, as such, it need not consider them. However, the Commission did note that it had stated in the July 23, 2003 Order that the circumstances presented in that proceeding were "unprecedented" and explained that certain transmission owners were "uniquely situated" in relation to PJM and MISO.²⁴

9. The Commission also disagreed with claims that the MVP Order conflicted with cost causation principles, endorsed free ridership by PJM members, and condoned unduly preferential treatment for PJM loads. The Commission noted that, while it had in the MVP Order rejected the proposed methodology to allocate MVP costs to transactions that sink in PJM, it did not find that any allocation of MVP costs to PJM would necessarily be unjust and unreasonable, nor did the Commission otherwise prohibit MISO from seeking to allocate MVP costs to PJM loads (e.g., through a filing under section 205 of the

²² *Id.*

²³ *Id.* P 290.

²⁴ *Id.* P 291 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at PP 29-30).

FPA²⁵) in a manner that does not involve an impermissible resumption of pancaked rates and is in accordance with cost causation principles.²⁶

C. Remand

10. On June 7, 2013, the Seventh Circuit granted a petition for review regarding the Commission's determination in the MVP Order and MVP Rehearing Order that, in view of Commission precedent prohibiting rate pancaking along the seam between MISO and PJM, MISO may not allocate costs of MVPs to export transactions that sink within PJM.²⁷ In its review of the Commission's determination the Seventh Circuit highlighted the fact that at the time of the Commission's decision to prohibit rate pancaking on transactions between MISO and PJM, all of MISO's transmission projects were local and provided only local benefits.²⁸ The Seventh Circuit noted that, in contrast, MVPs are not local but rather support all uses of the system, including transmission on the system that is ultimately used to deliver to an external load.²⁹ The Seventh Circuit remanded the case to the Commission for further proceedings to determine, "in light of current conditions," what if any limitation on export pricing to PJM by MISO is justified as regards MVPs.³⁰

²⁵ 16 U.S.C. § 824d (2012).

²⁶ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 292 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

²⁷ *Illinois Commerce Commission-II*, 721 F.3d at 778-780. In the same opinion, the Seventh Circuit otherwise rejected challenges to the Commission's MVP Order and MVP Rehearing Order.

²⁸ *Id.* at 779.

²⁹ *Id.* at 779-780 (citing *Illinois Commerce Commission v. FERC*, 576 F.3d at 473-74 (7th Cir. 2009)). This earlier Seventh Circuit decision affirmed the reasonableness of license plate rates for existing facilities in PJM.

³⁰ *Id.* at 780.

D. Paper Hearing

11. In response to the Seventh Circuit's remand, on January 22, 2015, the Commission issued an order establishing a paper hearing to supplement the record in this proceeding.³¹ The Commission provided an opportunity for parties to submit comments regarding, "in light of current conditions, what if any limitation on export pricing to PJM for MVPs by MISO is justified."³² The Commission encouraged parties to provide studies, methodologies, or other evidence to support their positions.³³ Initial comments in the paper hearing were due on April 22, 2015 and reply comments were due on June 22, 2015.³⁴

12. On April 9, 2015, the Arkansas Public Service Commission (Arkansas Commission) filed a motion to intervene out-of-time.

13. Timely initial comments were filed by: American Municipal Power, Inc. (AMP); the Public Service Commission of Wisconsin (Wisconsin Commission); the Illinois Commerce Commission (Illinois Commission); MISO Parties; the Organization of MISO States (OMS); and Indicated PJM Transmission Owners (Indicated PJM TOs).³⁵ On

³¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 150 FERC ¶ 61,026 (2015) (Paper Hearing Order).

³² *Id.* P 11.

³³ *Id.*

³⁴ The Commission provided 45 days from the date of the order for parties to submit initial comments and 30 days thereafter for reply comments. In response to a motion for extension of time, on February 26, 2015, the Commission issued a notice granting an extension of the deadlines for initial and reply comments, respectively, to April 22, 2015 and June 22, 2015, respectively.

³⁵ For the purposes of their comments, Indicated PJM TOs consist of: American Electric Power Service Corporation, on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; The Dayton Power and Light Company; Exelon Corporation; FirstEnergy Service Company on behalf of American Transmission Systems, Inc.,

(continued ...)

April 24, 2015, OMS filed a clarification of its initial comments.³⁶

14. On June 16, 2015, the Organization of PJM States, Inc. (OPSI) filed a motion to intervene out-of-time.³⁷ On June 22, 2015, the Mississippi Public Service Commission (Mississippi Commission) filed a motion to intervene out-of-time.

15. Timely reply comments were filed by: OPSI; Illinois Commission; OMS; MISO Parties; PJM; Indicated PJM TOs; and AMP.

16. On July 16, 2015, the City Council of the City of New Orleans, Louisiana (City of New Orleans) and the Louisiana Commission filed motions to intervene out-of-time.

Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company; Old Dominion Electric Cooperative; Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and Rockland Electric Company.

³⁶ OMS states that the following members, which represents a majority, generally support its comments: Arkansas Public Service Commission, Iowa Utilities Board, Kentucky Public Service Commission, Michigan Public Service Commission (Michigan Commission), Minnesota Public Utilities Commission, Mississippi Public Service Commission, Missouri Public Service Commission, Montana Public Service Commission, City of New Orleans, North Dakota Public Service Commission, South Dakota Public Utilities Commission, Public Utility Commission of Texas and Wisconsin Public Service Commission. OMS also states that the Louisiana Public Service Commission (Louisiana Commission), Manitoba Public Utilities Board and City of New Orleans abstained. (We note that OMS appears to inadvertently list City of New Orleans as both generally supporting OMS' filing and abstaining.)

³⁷ OPSI states that members joining in its filing are Delaware Public Service Commission, District of Columbia Public Service Commission, Illinois Commission, Maryland Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Virginia State Corporation Commission and Public Service Commission of West Virginia. OPSI states that Indiana Utility Regulatory Commission opposed the comments and Kentucky Public Service Commission and Michigan Commission abstained.

17. On July 16, 2015, the Arkansas Commission, the Mississippi Commission, City of New Orleans, and the Louisiana Commission (collectively, MISO South Regulators) filed a limited answer to the reply comments of Illinois Commission. The Illinois Commission filed a motion for leave to file a limited response and a limited response to MISO South Regulators' answer.

1. Initial Comments for Eliminating the Prohibition on the Export Charge

18. MISO Parties comment that, since the issuance of the Anti-Pancaking Orders,³⁸ there has been realignment of transmission owners which has mitigated the MISO-PJM seam irregularity: i.e., ATSI, which had created a horizontal border between Canada and PJM, transferred from MISO to PJM, and Duke Ohio and Duke Kentucky realigned to PJM.³⁹ The Wisconsin Commission expresses support for having PJM members be allocated MVP costs and argues that, in addition to the changes in the geography of the seam, other changes have occurred, such as the Commission's expansion of policy to include a regional focus in Order No. 1000 and advances in computer technology and real-time markets.⁴⁰ In a similar vein, MISO Parties assert that the existence and evolution of the JOA between MISO and PJM itself is a change in circumstances that warrants reevaluation of the anti-pancaking policy with regard to MVPs, as the JOA establishes significant market and operational efficiencies that counteract the Commission's concerns expressed in the Anti-Pancaking Orders that pancaked rates retard efficiency and the establishment of regional markets.⁴¹

19. Another changed condition cited to by MISO Parties is the emergence of large scale wind generation located in remote areas of MISO that is capable of serving both MISO's and its neighbors' policy requirements.⁴² MISO Parties observe that 10 states in

³⁸ RTO Realignment Order, *supra* note 3; *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049, *modified by*, July 23, 2003 Order, 104 FERC ¶ 61,105, at P 35, *order on reh'g*, 105 FERC ¶ 61,212 (2003) (November 17, 2003 Order) (collectively, Anti-Pancaking Orders).

³⁹ MISO Parties Initial Comments at 25.

⁴⁰ Wisconsin Commission Initial Comments at 5-6 and 8.

⁴¹ MISO Parties Initial Comments at n. 87.

⁴² MISO Parties Initial Comments, Affidavit of Mr. Moser at P 14.

the PJM footprint have Renewable Portfolio Standards (RPS) or other mandatory or quasi-mandatory targets.⁴³ These parties argue that the emergence of wind in MISO and a stated purpose of MVPs to deliver that wind in order to address policy requirements are conditions which should result in different export pricing as to MVPs and that the cost causation principle requires eliminating the prohibition with regard to MVPs, arguing that MVPs benefit PJM loads.

20. OMS also notes the increasing demand for renewable energy in PJM driven by state and local policies, and asserts that, with the MVPs, abundant renewable energy resources in MISO would be deliverable across a much wider geographic area than would be possible without the MVPs, allowing entities outside of MISO to meet those policy requirements more efficiently. OMS believes that these benefits will continue to grow as reserve margins decrease with implementation of carbon-reduction policies and the changing energy mix.⁴⁴ As such, OMS argues that limitations on export charges to PJM should be in line with the principle that beneficiaries of transmission projects be allocated costs that are at least roughly commensurate with the benefits that are expected to accrue and be bound by the extent of the benefits provided to the payer absent the existence of a specific, time-limited agreement between parties.⁴⁵

21. In its April 24 Clarification, OMS states that, notwithstanding the objection of the Michigan Commission, an OMS member, to the existing MVP methodology, the Michigan Commission recognizes the Seventh Circuit's finding that all beneficiaries, including users in PJM, must shoulder a reasonable portion of MVP costs.⁴⁶

⁴³ *Id.*, Affidavit of Mr. Moser at P 13 (citing Comparison of RPS Programs in PJM States, PJM Interconnection, L.L.C. (Feb. 5, 2015) and attached as Exhibit No. MISO-3).

⁴⁴ OMS Initial Comments at 3.

⁴⁵ OMS states that the Entergy utilities in the MISO South region negotiated, as part of their MISO membership, a 5-year transition period during which MVP project costs from the North and Central regions would not be allocated. OMS states that this is a very specific, time-limited provision that can be distinguished from the Commission's decision directed at PJM. OMS states that it does not advocate altering that agreement in any way. *Id.* at 2, n.8.

⁴⁶ OMS Clarification at 4, n.13.

22. MISO Parties argue that exempting customers exporting to PJM from the MVP charge results in a cost shift from these customers to other MISO transmission customers that use the MVP infrastructure to deliver power within MISO or export it to regions other than PJM. They argue that the estimated MVP charges that would be paid by customers engaging in exports to PJM absent the Commission's exemption would total \$439.4 million over the 20-year period from 2012 to 2031. This estimate is based on multiplying MISO's projected MVP annual transmission revenue requirement by the percentage of MWh attributable to exports to PJM for each year of the period.⁴⁷

23. Finally, MISO Parties calls for the Commission to eliminate the exemption for PJM exports and hold that MISO may properly apply the MVP usage rate to export and wheel-through transactions into PJM dating back to July 16, 2010, the effective date of the MVP Tariff provisions.⁴⁸

2. Initial Comments for Maintaining the Prohibition on the Export Charge

24. Indicated PJM TOs argue that MISO is procedurally wrong in seeking to change the existing rate or rate design under a section 205 filing. Indicated PJM TOs state that the Commission has held that a section 206 challenge to an existing rate must be asserted in a separate complaint under section 206 and cannot be subsumed within a pleading in a section 205 proceeding.⁴⁹ Indicated PJM TOs assert that MISO simply made a section 205 filing seeking approval of an export charge that applies to transactions sinking in PJM and, therefore, violates a feature of the existing rate design.⁵⁰ Indicated PJM TOs argue that MISO did not allege in its filing that the Commission's long-standing prohibition on rate pancaking in the combined PJM-MISO region has become unjust and unreasonable. Also, Indicated PJM TOs state that, on a substantive basis, the Commission's reasons for prohibiting rate pancaking in the combined region are still valid today despite changes in the boundaries of MISO and PJM. Specifically on the

⁴⁷ MISO Parties Initial Comments at Exhibit No. MISO-4. MISO Parties use historical data for 2012-2014 while the 3 percent used for years 2015-2031 represents an average of the percentages in years 2012-2014.

⁴⁸ *Id.* at 10.

⁴⁹ Indicated PJM TOs Initial Comments at 22.

⁵⁰ *Id.*

margin, trades that would have resulted in economic benefit are rendered uneconomic by increased transmission costs.⁵¹

25. AMP argues that, while the migration of the Ohio companies may have shifted the MISO-PJM south-central and southern borders eastward, it did nothing to unravel the more problematic intertwined seam at the north-central and northern border of the two RTOs.⁵² Indicated PJM TOs also point to the interlaced transmission lines found in Indiana as a significant and unique characteristic of the MISO-PJM seam.⁵³

26. In addition, Indicated PJM TOs argue that the addition of MidAmerican in MISO, on the western side of ComEd, increases ComEd's degree of inclusion within the MISO footprint.⁵⁴ Similarly, Indicated PJM TOs assert that the state of Michigan is only very weakly interconnected to MISO in the Wisconsin Upper-Michigan System region that includes the upper peninsula of Michigan, and weakly connected through Northern Indiana Public Service Company in Indiana and that Michigan's strongest connection to the rest of MISO is through AEP.⁵⁵

27. Indicated PJM TOs further describe the trading relationship between MISO and PJM. Indicated PJM TOs note that MISO is a net importer from PJM. Indicated PJM TOs also state that MISO is PJM's largest trading partner, with 40,124 GWh of gross power flows (imports plus exports); MISO is PJM's largest source of imports; and that, since 2011, capacity imports from MISO have had a significant role in meeting PJM reserve requirements.⁵⁶

⁵¹ Indicated PJM TOs Initial Comments, Affidavit of Drs. Hieronymus and Hunger at P 27.

⁵² AMP Initial Comments at 8.

⁵³ Indicated PJM TOs Initial Comments, Affidavit of Drs. Hieronymus and Hunger at P 35.

⁵⁴ *Id.*, Affidavit of Drs. Hieronymus and Hunger at P 31.

⁵⁵ *Id.*

⁵⁶ *Id.* PP 34, 36 and 37 and Figure 7.

28. Indicated PJM TOs further argue that MISO and PJM share a very long border and share numerous points of interconnection. In 2014, a review of hourly settlement data between MISO and PJM shows that power was exchanged through approximately 120 different flow gates across nine interfaces over that calendar year. In addition, five MISO Local Resource Zones have ties to PJM. Also, they argue that many of the highest voltage transmission lines in the western edge of PJM are physically located in the MISO regions of Indiana and Illinois,⁵⁷ which is unlike the PJM seams with other RTOs that have more regular and manageable seams.

29. Indicated PJM TOs also assert that there are currently identified issues still remaining regarding coordination across the seam including: Day Ahead Market Coordination; Interchange Optimization (Coordination Transaction Scheduling); Interface Pricing; Using Ontario-ITC Phase Angle Regulating Transformers for Congestion Management; Freeze Date for Firm Flow Entitlement Calculations; Use of Commercial Flow in Market-to-Market Process; Capacity Deliverability; and Cross-Border Transmission Planning Projects.⁵⁸

30. Commenters argue that the Commission's general prohibition on rate pancaking has not been shown to be unlawful nor has it been shown that there is anything special about MVPs warranting an exception to the general prohibition.⁵⁹ The Illinois Commission argues that allowing the export charge would violate the conditions of Order No. 2000, and specifically the scope and configuration characteristics, under which the Commission previously determined MISO and PJM to be qualified as RTOs.⁶⁰

⁵⁷ *Id.*, Affidavit of Drs. Hieronymus and Hunger at PP 32, 33 and 35.

⁵⁸ *Id.*, Affidavit of Drs. Hieronymus and Hunger at P 40.

⁵⁹ *E.g.*, AMP Initial Comments at 6-7 (it has not been shown that MVPs are special); Indicated PJM TOs Initial Comments at 31 (MISO fails to prove that the prohibition against rate pancaking is no longer just and reasonable due to changed circumstances).

⁶⁰ Illinois Commission Initial Comments at 3-4.

3. Reply Comments

a. Replies to Comments Against Maintaining the Prohibition

31. Commenters argue that MISO's proposed export charge is not a permissible cross-border allocation methodology under the JOA.⁶¹ For example, PJM argues that the only appropriate mechanism to determine allocation for transmission facilities located in one region that benefit the other is through the JOA process. PJM in addition states that Order No. 1000's Interregional Cost Allocation Principle 4 provides that if a transmission facility located entirely within one planning region is exporting electric energy from that region to another planning region, the exporting region may not have a regional cost allocation method or methods that assigns some or all of the costs of that facility to beneficiaries in another region without reaching an agreement with those beneficiaries.⁶² PJM argues that cost allocation methodologies under the JOA do not create the market distortions and inefficiencies that result from rate pancaking.⁶³

32. In response to MISO Parties' argument that Commission precedent applying the cost causation principle requires MVP costs to be allocated to export transactions sinking in PJM, Indicated PJM TOs argue that MISO has misconstrued the Commission's cost causation precedent. Indicated PJM TOs state that, in Order No. 1000, the Commission expressly rejected the argument that cost causation precedent mandates transmission costs to be allocated to a different region that benefits from the facilities. In addition, Indicated PJM TOs assert that the Commission ruled that, even when a transmission facility is expected to provide energy across planning regions, the costs of that facility may not be allocated "to beneficiaries in another transmission planning region without reaching an agreement with those beneficiaries."⁶⁴

33. In response to MISO Parties' "free rider" argument, Indicated PJM TOs argue that the MVP Orders are not discriminatory due to the "unique" and "unprecedented"

⁶¹ *E.g.*, PJM Reply Comments at 3; Illinois Commission Reply Comments at 5-7.

⁶² PJM Reply Comments at 5.

⁶³ *Id.* at 8.

⁶⁴ Indicated PJM TOs Reply Comments at 5. *See also* Illinois Commission Reply Comments at 8.

circumstances of the combined PJM-MISO region.⁶⁵ They further argue that there is no free rider problem as, in exchange for the exemption from MISO's MVP charge, PJM is not adding an export charge on loads sinking in MISO for new high-voltage transmission projects built within PJM.⁶⁶

34. In response to MISO Parties' argument that the Commission erroneously applied the Anti-Pancaking Orders to MISO's MVP export charge, Indicated PJM TOs argue that the MVP export charge is a rate pancake as it is an additive charge imposed by MISO that PJM customers must pay in addition to the transmission charges applicable under the PJM Tariff.⁶⁷ They also argue that Schedule 26 of MISO's Tariff recognizes that the prohibition on rate pancaking in the combined region applies not only to rate pancaking from charges based on existing facilities, but also to rate pancaking from charges based entirely on the costs of new transmission facilities.⁶⁸

35. In response to MISO Parties' argument that the prohibition against rate pancaking should not apply to the proposed MVP export charge due to the changed circumstances from the origin of the prohibition, Indicated PJM TOs argue that that the changes are irrelevant because MISO is not seeking to challenge the Commission's prior rulings on prohibiting rate pancaking in the combined PJM-MISO region.⁶⁹ The Illinois Commission contends that the change in configuration of the PJM and MISO seam noted by MISO Parties is not sufficient to alleviate the concerns that led the Commission to issue the Anti-Pancaking Orders. The Illinois Commission states that although the Commission and the Seventh Circuit noted that there are no longer any parts of MISO in Ohio, the Court also recognized that PJM enclaves still exist in MISO.⁷⁰ The Illinois Commission disputes MISO Parties' claim that there has been a significant smoothing of the elongated and highly irregular seam. It argues that the map provided by MISO Parties in support of their claim fails to illustrate that, in spite of several transmission

⁶⁵ Indicated PJM TOs Reply Comments at 8.

⁶⁶ *Id.* at 10.

⁶⁷ *Id.* at 11.

⁶⁸ *Id.* at 12.

⁶⁹ *Id.* at 16.

⁷⁰ Illinois Commission Reply Comments at 3.

owners leaving one RTO for another, the net effect is that the MISO-PJM seam has simply been rearranged.⁷¹

36. AMP argues that the Anti-Pancaking Orders were intended to address more than just the convoluted border. AMP argues that of at least equal concern to the Commission was that rate pancaking would prevent beneficial power transactions across the “natural market” consisting of the combined PJM and MISO regions.⁷² AMP also states that as a consequence of decisions by FirstEnergy and Duke to move to PJM, most of AMP’s load has been pulled into PJM while a large portion of its power supply portfolio remains in MISO. AMP gauges the impact of the remand and estimates that AMP would incur approximately \$91M in additional transmission charges over 2016-2035 (the additional costs average \$4.6 million per year).⁷³

37. In its reply comments, Illinois Commission notes that while MISO Parties and OMS advocate for assessing the MVP charge on exports from MISO to PJM to the extent that PJM entities benefit from MVPs, neither MISO Parties nor the OMS call for repealing the current policy of not applying any MVP charge to energy withdrawals from the MISO system for the purpose of serving load in the MISO South sub-region of MISO.⁷⁴

b. Replies to Comments for Maintaining the Prohibition

38. In response to Indicated PJM TOs’ argument that MISO’s section 205 filing to change the existing rate or rate design is procedurally wrong, MISO Parties argue that they did not seek to overturn the Anti-Pancaking Orders or make any changes to the rate designs for existing transmission facilities or changes to the rate designs for cross-border reliability or economic projects set forth in the JOA.⁷⁵ They state that existing rate designs continue in effect for applicable transmission facilities, based on the Commission’s previous orders addressing pancaking and rate issues between MISO and

⁷¹ *Id.* at 4.

⁷² AMP Reply Comments at 4.

⁷³ *Id.* at 7.

⁷⁴ Illinois Commission Reply Comments at 10.

⁷⁵ MISO Parties Reply Comments at 7.

PJM. However, they reiterate, MVPs are new transmission facilities that provide benefits to all MISO customers, including those that export from the MISO region, and such facilities are thus outside the scope of the Anti-Pancaking Orders. Therefore, because the MVP Filing Parties did not seek to modify any existing cost allocation or rate design, there was no need to submit the MVP Filing under section 206, and certainly no burden to prove that current rates are unjust and unreasonable, as the Indicated PJM TOs suggest.⁷⁶

39. MISO Parties also argue that there is no basis to conclude that assessing the MVP usage charge on export transactions will create adverse market impacts. MISO Parties point to the MVP Orders where they say the Commission expressly “disagree[d] that the proposed MVP charge for export and wheel-through transactions should be rejected due to possible market distortions,” and also noted that “[m]any of these market impacts could be overcome by spreading the costs among all beneficiaries of MVPs to place external loads in a position comparable to [MISO] load.”⁷⁷ MISO Parties however also provide information regarding the ability of MISO and PJM to manage congestion and analysis regarding the relative impact of an MVP usage rate as compared with interface prices along the seam.

40. MISO Parties note that under the JOA, congestion affected by both RTOs is managed through the Market-to-Market process. This congestion management process allows both RTOs to jointly re-dispatch units at lower cost within the PJM and MISO regions. Each RTO, through the process, separately sets locational marginal prices at interface nodes (interface prices). These interface prices are used to settle physical schedules and financial bids cleared at the interface nodes and provide a price signal of the marginal cost of an incremental energy transfer across the MISO-PJM interface. MISO Parties further provide evidence that the differentials in these interface prices set by MISO and PJM have decreased between 2010 and 2013.⁷⁸

⁷⁶ *Id.* at 7-8.

⁷⁷ *Id.* at 15-16 & n.53 (citing MVP Order, 133 FERC ¶ 61,221 at PP 443, 439).

⁷⁸ MISO Parties note that interface price differentials between MISO and PJM are to be expected, because prices for transactions scheduled in advance are uncertain. However, MISO Parties also note that these interface price differentials have decreased from an average absolute price differential of \$12/MWh in 2010 to \$10/MWh in 2013.

41. MISO Parties also argue that the projected MVP usage charge will be small in comparison to interface prices along the seam. MISO estimates that the indicative MVP export usage rate with PJM exports is projected to be \$1.64/MWh while the 2013 average interface prices of PJM and MISO for both day-ahead and real-time were approximately \$31/MWh.⁷⁹ Thus, on average, the Indicative MVP usage rate counts for no more than 5.5 percent of these prices. MISO further states that even if we further assume that the MVP usage rate increases by 20 percent to approximately \$2/MWh, the MVP usage rate would only count for no more than 6.6 percent of the interface. MISO further asserts that the increase in the interface price due to the MVP usage rate, if any, is projected to have a small impact on interregional trades. According to MISO, even with an increase in the interface price of between \$5/MWh and \$15/MWh, there are economic benefits to interregional trades between MISO and PJM.⁸⁰ The estimated total production cost savings achieved by MISO and PJM are between \$17 million and \$72 million, depending upon scenarios of increases in the interface price and additional amount of MWs that both RTOs will schedule. Thus, states MISO, one should still observe beneficial MISO-PJM interregional trade even if an MVP usage charge of \$2/MWh were applied.

42. Further, MISO Parties argue that, to the extent that Indicated PJM TOs observe continuing seams integration issues along the MISO-PJM border, these issues are a function of other factors that are likely not to be affected substantially by applying the MVP usage charge to exports to PJM.⁸¹

43. OMS responds that the JOA is limited in scope, and it notes that, in the MVP Rehearing Order, the Commission rejected the argument that matters not directly addressed in the JOA are implicitly included.⁸²

4. Other Comments

44. In their limited answer to the reply comments of the Illinois Commission, MISO South Regulators assert that the Illinois Commission's argument - that it is unduly discriminatory to impose MVP charges on exports to PJM while exempting MISO

⁷⁹ *Id.*, Exhibit No. MISO-5, Affidavit of Drs. Fox-Penner and Broehm at P 25.

⁸⁰ *Id.* at P 26.

⁸¹ *Id.* at 16-17 (citing Affidavit of Drs. Fox-Penner and Broehm at PP 20-23).

⁸² OMS Reply Comments at 5.

South - should be barred as an impermissible collateral attack on prior Commission orders concerning the integration of Entergy into MISO.⁸³ They state that the Commission previously rejected the argument that the cost allocation arrangement between MISO, the existing MISO TOs, and the new MISO South transmission owners is discriminatory with respect to entities exporting energy from, or routing energy through MISO. And, they point out that the Illinois Commission was an active party in the Entergy integration proceeding.⁸⁴

45. MISO South Regulators also dispute the Illinois Commission's argument that imposing MVP charges on external loads in PJM, and not load in MISO South, is unduly discriminatory. They state that the Commission previously explained that, as new entrants into the MISO market, Entergy and the new MISO South market participants were not similarly situated to external entities conducting export and wheel-through transactions in the existing MISO footprint.⁸⁵

46. MISO South Regulators also argue that the Illinois Commission mischaracterizes the treatment of MVP charges for MISO South by claiming that MISO South has escaped MVP charges. According to MISO South Regulators, MISO South is exempted from MISO MVP costs only for the transition period. Further, they state that Illinois customers in MISO are also exempt from certain MVP costs during and after the transition period. For MVPs that terminate exclusively in MISO South, MISO North does not pay for those costs during the transition period, and only pays in gradually increasing percentages after that time if certain conditions are met.⁸⁶

⁸³ MISO South Regulators Limited Answer at 2, 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.* 139 FERC ¶ 61,056 (2012), *order on reh'g and compliance filing*, 141 FERC ¶ 61,128 (2012), *order denying reh'g*, 144 FERC ¶ 61,020 (2013) (collectively, the Entergy Integration Orders)).

⁸⁴ *Id.* at 6 (citing the Illinois Commission's comments filed on December 21, 2011 in *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER12-480-000).

⁸⁵ *Id.* at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,128, at P 30 (2012)).

⁸⁶ *Id.* at 9.

⁸⁶ *Id.* at 9.

47. The Illinois Commission responds that it did not collaterally attack the Entergy Integration Orders. Rather, it states that it was responding to OMS's initial comments and that its point was that the Commission's current policy of not allocating MISO MVP costs to transactions sinking in PJM so as to avoid pancaking is consistent with the Commission's policy of not allocating MISO MVP costs to transactions sinking in MISO South for a time-limited period. The Illinois Commission states that there is no need to change this approach.⁸⁷

II. Commission Determination

A. Procedural Matters

48. While ordinarily the Commission does not permit late interventions at such a late stage in a proceeding, we do so when special circumstances are present.⁸⁸ We will grant the motions to intervene out-of-time of the Arkansas Commission, OPSI, the Mississippi Commission, City of New Orleans and the Louisiana Commission pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015). We find that granting intervention at this stage appropriate because the interventions were filed at the beginning of a new remand on a limited discrete issue, the movants accept the underlying record, and the issue before us was highlighted by the court remand and the Paper Hearing Order.

49. 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 or answer unless otherwise ordered by the decisional authority. We accept the limited answer filed by MISO South

⁸⁷ Illinois Commission Limited Response at 2-3.

⁸⁸ See *Black Oak Energy, L.L.C.*, 153 FERC ¶ 61,231, at P 39 & n. 53 (2015) (citing *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 13 (2014) (granting intervention at the rehearing stage when other parties are not prejudiced); *Transcontinental Gas Pipe Line Corp.*, 132 FERC ¶ 61,034, at P 25 (2010) (granting late intervention given the ongoing nature of the proceeding and that the intervenors were new customers); *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corp. and the California Power Exchange*, 95 FERC ¶ 61,418, at 62,550 (2001) (granting late intervention at rehearing stage due to extensive overlap of issues between proceedings); *Trunkline Gas Co.*, 41 FERC ¶ 61,121 (1987) (granting late intervention when the public interest will be better served)).

Regulators and the limited response filed by the Illinois Commission, as they have provided information that assisted us in our decision-making process.

B. Substantive Matters

50. For the reasons explained below, we find that, in light of current conditions, the limitation on export pricing to PJM for MVPs by MISO is no longer justified.

51. In the July 23, 2003 Order, which eliminated rate-pancaking along the MISO-PJM seam, the Commission found that seam conditions at the time would frustrate the realization of the goals of RTO formation such as resolution of loop flow issues, effective management of congestion, and enhanced reliability and efficiency.⁸⁹ In the November 17, 2003 Order, the Commission confirmed that its actions of eliminating Regional Through and Out Rates were in compliance with Order No. 2000, because the Commission's actions were to achieve appropriate scope and RTO configuration⁹⁰ and to establish a more efficient and competitive electrical market.⁹¹ As noted above, the Commission then extended its actions of eliminating rate-pancaking along the MISO-PJM seam to MVP charges.

52. The Seventh Circuit held that “[s]o far as we can tell, the Commission is being arbitrary in continuing to prohibit MISO from charging anything for exports of energy to PJM enabled by the [MVPs] while permitting it to charge for exports of energy to all the other RTOs.”⁹² The Seventh Circuit remanded the case to the Commission for further proceedings to determine, *in light of current conditions*, what if any limitation on export pricing to PJM by MISO is justified.⁹³ The Commission, through a paper hearing, has developed a further record in which parties advance arguments that there has been improvement of the MISO-PJM seam since the issuance of the Anti-Pancaking Orders, and therefore that the Commission should not prohibit the assessment of MVP charges to export transactions from MISO to PJM. Based on our review of that record, we agree.

⁸⁹ July 23, 2003 Order, 104 FERC ¶ 61,105 at P 9.

⁹⁰ November 17, 2003 Order, 105 FERC ¶ 61,212 at P 13.

⁹¹ *Id.* P 16.

⁹² *Illinois Commerce Commission-II*, 721 F.3d at 780.

⁹³ *Id.*

53. First, we find that changes in the membership between MISO and PJM in recent years have addressed much of the irregularity that underpinned the Commission's concerns about the MISO/PJM seam in 2003.⁹⁴ While parts of Wisconsin and Michigan remain islanded, the realignment of ATSI in 2011 and Duke Ohio and Duke Kentucky in 2012 has significantly reduced the geographic complexity of the seam between the RTOs. Thus, we recognize that changes in the seam have improved the situation in certain areas, as observed by the Seventh Circuit (e.g., the smoothing of the seam's diagonal).

54. Furthermore, we find that the Market-to-Market coordination between MISO and PJM has significantly improved since 2003, which has helped address the inefficiencies and other issues arising along the MISO-PJM seam, including remaining issues resulting from the continued islanding of parts of Michigan and Wisconsin. Market-to-Market coordination is important to resolve those issues because it allows both RTOs to jointly re-dispatch units at lower cost within the PJM and MISO regions. As the MISO-PJM Joint Operating Agreement explains:

The fundamental philosophy of the PJM/MISO interregional transmission congestion coordination process is to set up procedures to allow any transmission constraints that are significantly impacted by generation dispatch changes in both markets to be jointly managed in the security-constrained economic dispatch models of both RTOs. This joint management of transmission constraints near the market borders will provide the more efficient and lower cost transmission congestion management solution, while providing coordinated pricing at the market boundaries.⁹⁵

⁹⁴ *See supra* P 18 (concerning MISO Parties' comments that there has been realignment of transmission owners which has mitigated the MISO-PJM seam irregularity: i.e., ATSI, which had created a horizontal border between Canada and PJM, transferred from MISO to PJM, and Duke Ohio and Duke Kentucky realigned to PJM).

⁹⁵ MISO Rate Schedule 5, MISO-PJM Joint Operating Agreement, Attachment 3, Interregional Coordination Process (34.0.0) at § 1 (Overview of the Market-to-Market Coordination Process).

We note that such congestion management allows the RTOs to more efficiently address the parallel flows that can result from such islanding, which also helps mitigate the impact of the seam.⁹⁶

55. In addition, as the Seventh Circuit noted that, at the time of the July 2003 Order, which prohibited tolls on transmission service between MISO and PJM, all of MISO's transmission projects were local and provided only local benefits. In contrast, MVPs are not local; they support all uses of the system, including transmission on the system that is ultimately used to deliver to an external load, and "benefit all users of the integrated transmission system, regardless of whether the ultimate point of delivery is to an internal or external load."⁹⁷ In this regard, we note the following: the development of large scale wind generation⁹⁸ capable of serving both MISO's and its neighbors' energy policy requirements in the western areas of MISO; the reported need of PJM entities to access those resources;⁹⁹ and the reported need for MISO to build new transmission facilities to deliver the output of those resources within MISO for export.¹⁰⁰ Given these changes, it is appropriate to allow MISO to assess the MVP usage charge for transmission service used to export to PJM just as MISO assesses the MVP usage charge for transmission service used to export energy to other regions.

⁹⁶ MISO Parties Initial Comments at 27, n.87 ("In fact, the existence and evolution of the Joint Operating Agreement between MISO and PJM itself is a change in circumstances that warrants reevaluation of the anti-pancaking policy with regard to MVPs. The Joint Operating Agreement establishes significant market and operational efficiencies that counteract the Commission's concerns expressed in the Anti-Pancaking Orders that pancaked rates retard efficiency and the establishment of regional markets").

⁹⁷ *Illinois Commerce Commission-II*, 721 F.3d at 778-780 (quoting MVP Order, 133 FERC ¶ 61,221 at P 439).

⁹⁸ MISO estimates that its MVP portfolio enables 43 million MWh of wind energy to meet renewable energy mandates and goals through 2028. *See* MISO Parties Initial Comments, Affidavit of Mr. Moser at P 13.

⁹⁹ There are currently 10 states within the PJM footprint that have RPS or other mandatory or quasi-mandatory targets. *Id.*

¹⁰⁰ *Id.*, Affidavit of Mr. Moser at P 11.

56. We note that Order No. 1000 does not make any new findings with respect to pancaked transmission rates.¹⁰¹ We disagree with the assertion that allowing MISO to assess the MVP usage charge on exports to PJM violates Order No. 1000 Cost Allocation Principle 4. Our finding that MISO may assess a pancaked transmission rate through the MVP usage charge for transmission service used to export to PJM is not inconsistent with any of the requirements of Order No. 1000 because: 1) MISO is not involuntarily allocating the costs of MVPs to any entity outside the MISO region; and 2) the MVP usage charge is assessed only on a transmission customer who voluntarily takes transmission service in MISO under the MISO Tariff for use of MISO's transmission facilities. If an entity does not take transmission service under the MISO Tariff and, for example, takes transmission service only under the PJM Tariff, MISO will not assess that entity an MVP usage charge.

57. In its Anti-Pancaking Orders, a goal of the Commission was to reduce potential impacts of pancaked rates on economic dispatch.¹⁰² We note that MVPs are planned, in part, to enable the more efficient dispatch.¹⁰³ In addition, we note that MISO provides evidence showing that the MVP usage rate is expected to be small relative to the average interface prices of MISO and PJM for both day-ahead and real-time. The MVP usage charge, for MVPs currently approved, is projected to be \$1.64/MWh with PJM exports compared to an Average 2013 LMP Day Ahead interface pricing point of \$31.31/MWh

¹⁰¹ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 764, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 623 (“We decline to make new findings with respect to pancaked rates in this Final Rule as it is beyond the scope of this proceeding. In particular, we do not make any modifications to the Commission’s pancaked rate provisions for an RTO under Order No. 2000. If rate pancaking is an issue in a particular transmission planning region, stakeholders may raise their concerns in the consultations leading to the compliance proceedings for this Final Rule or make a separate filing with the Commission under section 205 or 206 of the FPA, as appropriate.”)

¹⁰² *See, e.g.*, RTO Realignment Order II, 103 FERC ¶ 61,274.

¹⁰³ MISO Parties Initial Comments, Affidavit of Mr. Moser at P 10. Mr. Moser states that the MVP portfolio includes projects that “enhance the reliability of the regional transmission system, support public policy goals, such as state-mandated RPS, and enable the more efficient dispatch of market resources.” *See also* Midcontinent Independent System Operator, FERC Electric Tariff, Attachment FF. Transmission Expansion Planning Protocol (48.0.0) at §§ II.C.2.a-c.

or the Real Time interface pricing point average of \$30.79/MWh.¹⁰⁴ Based on this evidence, we agree with MISO that one should still observe beneficial MISO-PJM interregional trade even if the MVP usage charge is applied.

58. Finally, we reject Indicated PJM TOs' argument that it was improper for MISO to make the MVP Filing under section 205, rather than section 206, as beyond the scope of the Court's remand and the Paper Hearing Order. Similarly, we reject the issue argued in MISO South Regulators' limited answer and the Illinois Commission's limited response; the Commission's policy of not allocating MISO MVP costs to transactions sinking in MISO South is beyond the scope of the Court's remand and the Paper Hearing Order.

59. Therefore, we find that elimination of the Anti-Pancaking Orders' limitation on export pricing to PJM is appropriate with respect to cost recovery for MVPs. This determination is effective prospectively from the date of this order. In so doing, we deny MISO Parties' request to apply our determination retroactively to July 16, 2010, because the Commission's policy is not to order refunds in cases involving cost allocation or rate design.¹⁰⁵ We also direct MISO to file, within 30 days of the date of issuance of this

¹⁰⁴ MISO Parties Reply Comments, Affidavit of Drs. Fox-Penner and Broehm, Table 2 at 17.

¹⁰⁵ See, e.g., *La. Pub. Serv. Comm'n v. Entergy Corp.*, 155 FERC ¶ 61,120, at P 25 (2016) (citing *Portland Gen. Elec. Co.*, 106 FERC ¶ 61,193, at P 5 (2004) (accepting rate design change on a prospective basis); *Consumers Energy Co.*, 89 FERC ¶ 61,138, at 61,397 (1999) (same); *Union Elec. Co.*, 58 FERC ¶ 61,247, at 61,818 (1992) (same); *Commonwealth Edison Co.*, 25 FERC ¶ 61,323, at 61,732 (1983); *accord Second Taxing Dist. of City of Norwalk v. FERC*, 683 F.2d 477, 490 (D.C. Cir. 1982) (affirming determination to make rate design changes prospective only); *Cities of Batavia v. FERC*, 672 F.2d 64 (D.C. Cir. 1982) (same)); *Occidental Chemical Corp. v. PJM Interconnection, L.L.C. and Delmarva Power & Light Co.*, 110 FERC ¶ 61,378, (2005) at P 101 (stating that the "Commission's long-standing policy is that when a Commission action under Section 206 of the FPA requires only a cost allocation change, or a rate design change, the Commission's order will take effect prospectively"); *Commonwealth Edison Co.*, 8 FERC ¶ 61,277, at 61,844 (1979) (stating that "any change of rate form due to modification in the demand ratchet or in the form of energy charging . . . should not be given effect in computing refunds, if any, due under this decision" because the utility "cannot retroactively collect more from any customer than has already been collected subject to refund, even though a redesigned rate presumably would show some customers should be charged more and others less than under the rates in effect subject to refund").

order, a compliance filing with revisions to Schedule 26-A (Multi-Value Project Usage Rate) and Attachment MM (Multi-Value Project Charge) and any other parts of its Tariff as applicable, consistent with our findings herein.

The Commission orders:

(A) The Commission hereby finds that, in light of current conditions, the limitation on export pricing to PJM for MVPs by MISO is no longer justified, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.